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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**  
10

11 RICHARD CLARK, ) CASE NO. 30-2019-01109202-CU-WM-CJC  
12 )  
13 ) Assigned for All Purposes to:  
14 ) Judge: Judge Ronald L. Bauer  
15 ) Dept:  
16 ) **VERIFIED COMPLAINT AND**  
17 ) **PETITION FOR WRIT OF MANDATE**  
18 ) **(CCP §1060) AND FOR DECLARATORY**  
19 ) **RELIEF (CCP §1085) AND INJUNCTIVE**  
20 ) **RELIEF (CCP §526(a)) FOR VIOLATION**  
21 ) **CALIFORNIA GOVERNMENT CODE**  
22 ) **§87300 et seq.)**  
23 )  
24 ) Complaint Filed:  
25 ) Trial Date: None Set  
26 )  
27 )  
28 )

1. Plaintiff, Richard Clark (“CLARK”), brings this action for writ of mandate, declaratory and injunctive relief.

2. This action seeks relief from the failure of Defendant, CITY OF BREA (“BREA”) acting by and through its City Council (“City Council”) to perform as required by GOVERNMENT CODE §§ 87200 et. seq, and 87300, et. seq., as well as related provisions contained in the California Code of Regulations.

**THE PARTIES**



1 conflicts of interest. Section 87200 et. seq. requires that all persons appointed by the City Council as  
2 public officials who manage public investments also file a Form 700

3 8. For decades, BREA has appointed representatives to oversee, and effectively manage, its  
4 investments with the California Domestic Water Company (hereinafter CAL DOMESTIC).  
5 Specifically, the City Council appoints persons to serve two-year terms as Directors of Cal Domestic's  
6 board of directors. The California Domestic Water Company provides wholesale water service to its  
7 shareholders. The City of BREA is such a shareholder and has invested tens of millions of dollars in  
8 Cal Domestic, with its investment memorialized in the form of both common stock and preferred stock.  
9 The directors appointed to Cal Domestic's board by Brea, also serve as directors on the board of  
10 CADWAY, Cal Domestic's wholly owned subsidiary.

11 9. As reflected in the application attached hereto and incorporated herein as **Exhibit A**,  
12 BREA requires that applicants seeking the City Council to appoint them to these above noted board  
13 positions meet requirements similar to any other City Council appointed position, such as being Brea  
14 residents, having experience relevant to the appointment (here experience relevant to oversight of  
15 investments in water stocks), The formal application the City Council considers in connection with its  
16 appointees asks specific questions geared to ensure that the appointee will keep the Council informed  
17 of the board members actions, and ensuring the board members put the City's interests ahead of Cal  
18 Domestic's interests.

19 10. Section 87309 states: No conflict of Interest Code or amendment shall be approved by  
20 the code reviewing body (i.e., the City Council) or upheld by a court if it: (a) fails to provide reasonable  
21 assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented; (b)  
22 fails to provide to each affected person a clear and specific statement of his duties under the Code; or  
23 (c) fails to adequately differentiate between designated employees with different powers and  
24 responsibilities. Brea's Conflict of Interest Code does not meet the above standard in that the public  
25 officials appointed by the City Council to act as directors of Cal Domestic and CADWAY are not  
26 designated in such Code. By failing to identify them, the City Council has adopted a Conflict of  
27 Interest Code that does not, among other failings, provide reasonable assurance that all foreseeable  
28 potential conflict of interest situations will be disclosed or prevented. Compounding this error, the City

1 Clerk, as the filing officer, has failed to ensure that all proper statements of economic interest are filed,  
2 in that the above noted appointees/directors have not filed such statements.

3 11. Independent from the fact the “Brea Appointees” to Cal Domestic’s board manage  
4 Brea’s investments, these individuals are public officials subject to inclusion in the City’s Conflict of  
5 Interest Code based on the definitions in Government Code Section 82048 and 82041. Section 82048  
6 defines a public official to be any person who is a member of a local governmental agency. Section  
7 82041 contains a definition of governmental agency. Four factors are to be considered by the fact  
8 finder, here the court, in determining if a corporation meets the definition of a local governmental  
9 agency, although not all four factors must be met, because the true nature of the entity, not its stated  
10 purpose must be considered. (In re Seigel (1977) 3 FFFC Ops. 62; In re SAWA (2009) FPPC Ops  
11 111). The factors are 1. whether the impetus for formation originated with a governmental agency.  
12 This did not occur here at the time Cal Domestic was created. 2. whether the corporation is  
13 substantially funded by a governmental agency. That is the case here in that well over 50% of the  
14 ownership interest (stock) in Cal Domestic has been purchased by the Cities of Brea and La Habra, and  
15 its revenues are based on water purchases from those cities. 3. Whether the principle purpose is to  
16 provide a service that a governmental agency could provide or which such agencies traditionally  
17 provide. The services provided by Cal Domestic are traditionally provided by public agencies, and it is  
18 the exception, not the norm, that a non-governmental agency like Cal Domestic provide water services.  
19 And, 4. whether the entity is treated as a public entity by other statutory provisions. The Legislature  
20 has adopted specific provisions of the Corporations Code by which agencies such as Cal Domestic are  
21 treated like public agencies, or at least pseudo public agencies, for purposes of disclosing information.  
22 Their disclosure obligations are much more like those contained in the Public Records Act, applicable  
23 to all local agencies, than to the typical disclosure requirements applicable to other corporations.

24 12. BREa has refused to amend its Conflict of Interest Code pursuant to section 87307  
25 when Petitioner/Plaintiff petitioned BREa for the amendment. Specifically, Plaintiff sent a letter to  
26 BREa requesting that these Appointees should be subject to BREa’s conflict of interest code. BREa  
27 declined Plaintiffs request. Plaintiff filed a sworn complaint with the Fair Political Practices  
28 Commission and the FPPC declined to investigate or take further action. Rather, as more fully set forth

1 in the correspondence attached hereto and incorporated herein **Exhibit B**, it advised that  
2 Petitioner/Plaintiff's only course of action is judicial review per Section 87308.

3 13. Brea's actions, including those of the City Council and City Clerk, violate Government  
4 Code section 87300 et seq., and section 87200 et. seq., as well as related Regulations.

5 14. Plaintiff has exhausted any available administrative remedies. Plaintiff has sent a  
6 demand to Defendant, but Defendant refuses to acknowledge and /or correct the violations. The only  
7 plain, speedy, and adequate remedy left to Plaintiff is the relief provided by Government Code Section  
8 87309 and Code of Civil Procedure Sections 526(a) and 1085. The City of BREa made no attempt to  
9 cure the violation.

10 **JURISDICTION AND VENUE**

11 15. Plaintiff seeks review by and relief from this Court under Code of Civil Procedure  
12 Section 1060 *et seq.*

13 16. Venue is proper under Code of Civil Procedure Section 401.

14 17. Plaintiff has no plain, speedy, adequate remedy in the ordinary course of law, since its  
15 members and other members of the public will suffer irreparable harm as a result of Defendants'  
16 violations of the California Law, as alleged in this pleading.

17 18. Plaintiff has a beneficial right and interest in Defendants' fulfillment of all their legal  
18 duties, as alleged in this pleading.

19 19. There is a good-faith dispute between Plaintiff and Defendants that can only be resolved  
20 through a judicial determination of their respective rights and responsibilities.

21 **FIRST CAUSE OF ACTION**

22 **(PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF**  
23 **FOR VIOLATION OF GOVERNMENT CODE SECTION 87300, et. seq. and 87302)**

24 (RELIEF PURSUANT TO §87308; CCP §§ 1085)

25 20. Defendants repeat and re-allege Paragraphs 1 to 18 above as if set forth in full herein.

26 21. Section 87309 states: No conflict of Interest Code or amendment shall be approved by  
27 the code reviewing body or upheld by a court if it: (a) fails to provide reasonable assurance that all  
28 foreseeable potential conflict of interest situations will be disclosed or prevented; (b) fails to provide to

1 each affected person a clear and specific statement of his duties under the Code; or (c) fails to  
2 adequately differentiate between designated employees with different powers and responsibilities. As  
3 discussed above, Brea's code does not meet this standard.

4 22. In addition, Section 87200 requires that officials appointed to manage investments file a  
5 Form 700. The Brea Appointees manage such investments yet have not filed Form 700's, nor has the  
6 City met her mandatory duty of ensuring proper Statements of Economic interest are on file either by  
7 requiring the Brea Appointees to file them, or by including them in the City's Conflict of Interest Code.

8 23. California Government Code section 82408 defines "Public Official" as every member,  
9 officer, employee or consultant of a state or local government agency. California Government Code  
10 section 82041 defines a local government agency as a county, city or district of any kind including local  
11 school district, or any other local or regional political subdivision, or any department, division, bureau,  
12 office, board, commission or other agency of these, but does not include any court or any agency in the  
13 judicial branch of government. As discussed above, Cal Domestic is a local governmental agency  
14 because it satisfies three of the four factors to be considered in making this determination. More  
15 importantly, its true nature is that of a public agency providing an essential service to taxpayers, funded  
16 nearly exclusively with taxpayer dollars.

17 24. The California Fair Political Practices Act requires all Public Officials to file a Form 700  
18 document of disclosure of any potential conflicts of interest.

19 25. Here, the City of BREA provides two "City Appointees" to serve on the Board of  
20 Directors of CAL DOMESTIC. These directors vote and take part in significant decisions regarding  
21 water policy directly affecting the residents of BREA.

22 26. BREA has never updated its Conflict of Interest Code to require these representatives to  
23 prepare a Form 700 disclosure. Failure to make these amendments violates Government Code sections  
24 87300 et seq, and 87200, as well as 2 CCR 18115(a)(2). As such, BREA is in violation of the  
25 Government Code and must be ordered to amend its Conflict of Interest Code.

26 27. Plaintiff has exhausted any available administrative remedies. Plaintiff has sent a  
27 demand to Defendant, but Defendant refuses to acknowledge and /or correct the violations. The only  
28

1 plain, speedy, and adequate remedy left to Plaintiff is the relief provided by Government Code Sections  
2 87308 and Code of Civil Procedure Sections 526(a) and 1085.

3 **SECOND CAUSE OF ACTION**

4 **(DECLARATORY RELIEF)**

5 (RELIEF PURSUANT TO CCP § 526(a))

6 28. There presently exists, between the Plaintiff and BREA, an actual controversy relating  
7 to: the requirement of Government Code section 87300 et seq, and 87200 and whether BREA must  
8 amend its Conflict of Interest Code to include the City’s representatives to the CAL DOMESTIC  
9 BOARD or otherwise require them to file a Form 700 disclosure form.

10 29. California Government Code section 82408 defines “Public Official” as every member,  
11 officer, employee or consultant of a state or local government agency. California Government Code  
12 section 82041 defines a local government agency as a county, city or district of any kind including local  
13 school district, or any other local or regional political subdivision, or any department, division, bureau,  
14 office, board, commission or other agency of these, but does not include any court or any agency in the  
15 judicial branch of government. As discussed above, Cal Domestic meets this definition.

16 30. The California Fair Political Practices Act requires all Public Officials to file a Form 700  
17 document of disclosure of any potential conflicts of interest. The City of BREA has appointed two  
18 “City Appointees” to serve on the Board of Directors of CAL DOMESTIC. These directors vote and  
19 take part in significant decisions regarding water policy directly affecting the residents of BREA.

20 31. Therefore, BREA has a duty to update its Conflict of Interest Code to require these  
21 representatives to prepare a Form 700 disclosure. Failure to make these amendments violates  
22 Government Code sections 87300 et seq, and Section 87200, as well as related Regulations as noted  
23 above.

24 32. Plaintiff requests a judicial determination that Defendant has violated Government Code  
25 Section 87300 et seq., Section 87200. and 2 CCR 18115(a)(2).

26 33. This determination is necessary and proper because Defendant refuses to acknowledge it  
27 has violated the Government Code and is therefore likely to continue to act in a similar manner, in  
28 violation of the Government Code.

1 34. Defendant has failed and refused to perform its ministerial duties as required by law.

2 35. Plaintiffs have a clear, present, and legal right to Defendants' performance of its  
3 ministerial duties, as required by law.

4 36. Plaintiff has exhausted any available administrative remedies. Plaintiff has sent a  
5 demand to Defendant, but Defendant refuses to acknowledge and /or correct the violations. The only  
6 plain, speedy, and adequate remedy left to Plaintiff is the relief provided by the Code of Civil  
7 Procedure Sections 526(a) and 1085.

8 **PRAYER**

9 **WHEREFORE**, Defendants prays:

10 1. That Defendants take nothing by way of the Complaint, and that judgment is rendered  
11 in favor of Plaintiffs and against Defendant;

12 2. That this Court issue a preemptory Writ of Mandate ordering BREa to perform as  
13 required by the Section 87309; specifically order BREa to amend its Conflict of Interest Code to  
14 include the City's Representatives to the Cal Water Company Board and that they must complete form  
15 700 forms as required by the Fair Political Practices Act.

16 3. That this Court declares that BREa has a duty to amend it Conflict of Interest Code to  
17 include the City's representatives to the California Domestic Water Company Board and that they  
18 must complete Form 700's.

19 4. For reasonable costs and attorneys' fees incurred herein; and

20 5. For such other and further relief as the Court may deem just and proper.

21  
22 DATED: November 1, 2019

**BARIC & ASSOCIATES**

23  
24 

25 By: \_\_\_\_\_

26 Steven D. Baric, Esq.  
27 Attorneys for Plaintiffs  
28

# EXHIBIT A



CITY OF BREA APPLICATION  
**CALIFORNIA DOMESTIC  
WATER COMPANY  
BOARD MEMBER**

DESCRIPTION OF RESPONSIBILITIES:

The desired appointee will serve a two-year term and provide oversight, direction and leadership in a unique public/private partnership between the City and California Domestic Water Company (CDWC). The responsibilities include but are not limited to: attending Board meetings and ensuring continued success of a long partnership between the City and CDWC. The City of Brea is part owner of this private mutual water company and is represented by two (2) board appointments. The position will be filled by City Council appointment on or before the October 20, 2015 meeting.

DESIRABLE QUALIFICATIONS

- Brea resident
- Brea businessperson or Brea business owner
- Corporate executive or senior management experience
- Minimum years of work experience
- Current or past member of a corporate board of directors
- Knowledge or interest of water delivery systems
- Finance/accounting or banking experience
- Risk management or commercial real estate experience
- Strong interpersonal and negotiation skills
- Possess strategic and problem solving skills
- Working knowledge of private/public utility operations
- Knowledge of land use, zoning and finance
- Experience in private or commercial real estate ventures
- Experience working with city and county governmental entities
- Management experience in the banking, finance, or insurance industries
- Legal, Engineering, or Accounting Professional

<b>Applications must be returned by:</b> 5:00 p.m. on September 17, 2015	<b>To: City Clerk's Office</b> 1 Civic Center Circle Brea, CA 92821
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Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Employer: \_\_\_\_\_

Employer Address: \_\_\_\_\_

Employer Phone: \_\_\_\_\_ Email: \_\_\_\_\_

How Long: \_\_\_\_\_ Occupation: \_\_\_\_\_

Degree or course of study in College: \_\_\_\_\_

Licenses or special certificates held: \_\_\_\_\_

<b>Skills</b>

Have you ever been convicted of any crime of violation of any law or statute other than minor traffic violations?  Yes  No *(If yes, please attached a separate sheet of explanation)*

<b>Prior or Current Work Experience</b>	
<b>Company Name and Address</b>	<b>Job Title</b>
Duties	Dates of Employment
<b>Company Name and Address</b>	<b>Job Title</b>
Duties	Dates of Employment
<b>Company Name and Address</b>	<b>Job Title</b>
Duties	Dates of Employment

Please provide additional Work Experience on a separate piece of paper

**Appointment to this position is intended to fill one board seat created by a term expiration.**

This questionnaire has been designed to provide detailed information regarding your background, experience, skills and community involvement so we may better evaluate your qualifications for the Cal Domestic Water Company Board. It identifies significant areas of responsibility for the position. Please provide a full response to each item. A response such as, "Refer to attached resume" is not considered a full response.

**Please attach your responses to this form. Responses that do not provide the information as requested may disqualify you from further participation in the selection process.**

The application form and supplemental response sheets must be completed and submitted to the City of Brea City Clerk, 1 Civic Center Circle, Brea, CA 92821, no later than **5:00 p.m., September 17, 2015**. Postmarks and facsimiles will not be accepted. Based upon a review of information, as submitted, those applicants who are determined to be most qualified will be invited to participate in an oral appraisal interview.

If you have questions, please feel free to contact Brea City Clerk Lillian Harris-Neal at (714) 990-7757.

Please answer the following question on a separate piece of paper. Responses must be double-spaced and not exceed three pages total.

1. Why do you want serve on the Board of Directors at CDWC? What do you feel you will bring to the position?
2. What steps will you take to ensure Brea maintains a leadership role at CDWC?
3. What would you do if you were at odds with a CDWC decision and its potential impact to the City of Brea?
4. What steps would you take to keep the City informed about CDWC?

I certify under penalty of perjury that all statements are made by me and are true, correct, and complete to the best of my knowledge or belief. I understand that any misrepresentation, falsification, or omission of the facts herein may subject me to disqualification or dismissal.

Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Applicant's printed name: \_\_\_\_\_

## EXHIBIT B

From: Teri Rindahl TRindahl@fppc.ca.gov  
Subject: COM-08082019-01482; City of Brea  
Date: August 22, 2019 at 10:14 AM  
To: drdeadline@earthlink.net

TR

Mr. Clark,

The Enforcement Division has made a decision concerning the sworn complaint you filed against the City of Brea.

Please see the attached letter, and don't hesitate to contact me if you have any questions.

Teri Rindahl  
Fair Political Practices Commission  
Enforcement Division  
1102 Q Street, Suite #3000  
Sacramento, CA 95811  
(916) 327-2018



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811

August 22, 2019

Richard Clark  
Via Email: [REDACTED]

Re: Complaint No. COM-08082019-01482; City of Brea

Dear Mr. Clark,

This letter is in response to the sworn complaint you submitted to the Enforcement Division of the Fair Political Practices Commission regarding the above-named entity. Based on a review of the complaint and documentation provided, the Enforcement Division found insufficient evidence of a violation of the Political Reform Act, and will not pursue an enforcement action in this matter. If you have any questions, please contact Teri Rindahl at [trindahl@fppc.ca.gov](mailto:trindahl@fppc.ca.gov).

You believe the two appointees to represent the City of Brea on the Cal Domestic Water board are influencing governmental decisions and should be designated in the City of Brea's Conflict of Interest Code. The Act requires public officials who make or participate in the making of governmental decisions shall be designated in an agency's conflict of interest code.<sup>1</sup> You petitioned the City of Brea to amend their conflict of interest code pursuant to Government Code Section 87307.<sup>2</sup> The City has denied your request. The next step available to you would be following Government Code Section 87308,<sup>3</sup> and petitioning for judicial review.

Sincerely,

Galena West, Chief  
Enforcement Division

GW:tr

cc: City of Brea (via email: [billga@cityofbrea.net](mailto:billga@cityofbrea.net))

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<sup>1</sup> Section 87302.

<sup>2</sup> Section 87307 in part, allows for a resident of the jurisdiction to petition the agency. If the agency fails to act on the petition, the petition shall be deemed denied. Within 30 days after the denial of a petition, the petitioner may appeal to the code reviewing body. The code reviewing body shall either dismiss the appeal or issue an appropriate order to the agency within 90 days.

<sup>3</sup> Section 87308 allows a resident of the jurisdiction to seek a judicial review of any action of the code reviewing body under this chapter.

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, Richard Clark, have read the attached VERIFIED COMPLAINT AND PETITION FOR WRIT OF MANDATE (CCP §1060) AND FOR DECLARATORY RELIEF (CCP §1085) AND INJUNCTIVE RELIEF (CCP §526(a) and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters, I am informed and believe that they are true.

Executed on October 21, 2019, at Irvine, California.

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

  
Richard Clark