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8

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF PLACER

11
12 **PEOPLE OF THE STATE OF CALIFORNIA, ex**
13 **rel. BILL LOCKYER, ATTORNEY GENERAL OF**
14 **CALIFORNIA, and PEOPLE OF THE STATE OF**
15 **CALIFORNIA, ex rel. the CALIFORNIA**
16 **REGIONAL WATER QUALITY CONTROL**
17 **BOARD, LAHONTAN REGION,**

18 Plaintiffs,

19 v.

20 **SQUAW VALLEY SKI CORPORATION; SQUAW**
21 **VALLEY DEVELOPMENT COMPANY; SQUAW**
22 **VALLEY PRESERVE; ALEXANDER C.**
23 **CUSHING, an individual; NANCY R. WENDT, an**
24 **individual; HANS A. BURKHART, an individual;**
25 **Does 1 through 30,**

26 Defendants.

Case No. SCV 12916

**COMPLAINT FOR CIVIL
PENALTIES, CIVIL
LIABILITIES, INJUNCTION,
AND OTHER EQUITABLE
RELIEF**

27 The People of the State of California, *ex rel.* Bill Lockyer, Attorney General of California,
28 and the California Regional Water Quality Control Board, Lahontan Region (collectively referred
to as “the People”), allege the following, on information and belief:

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1 **INTRODUCTION**

2 1. Placer County’s Squaw Creek and the Truckee River are listed as among the nation’s
3 most polluted waterways by the State Water Resources Control Board and the U.S.
4 Environmental Protection Agency due to excessive sediment loads. Squaw Creek’s South Fork
5 drains the slopes of Squaw Peak and then joins the North Fork at the western end of Squaw
6 Valley’s floor. At the eastern end of Squaw Valley, Squaw Creek flows into the Truckee River.

7 2. Squaw Valley USA ski resort (“Ski Resort”), a 2,800-acre downhill ski area, is located
8 in the Squaw Creek watershed. Rainstorms and snowmelt at the Ski Resort carry sediment into
9 both the North and South Forks of Squaw Creek. Construction of ski runs, ski lifts, access roads,
10 buildings, and other facilities at the Ski Resort have changed natural drainage patterns and
11 vegetation, thereby increasing erosion on the Resort’s land. This contributes excessive sediment
12 to and further degrades the water quality of Squaw Creek.

13 3. Recent construction activities at the Ski Resort have, in the instances described below,
14 violated water quality standards and prohibitions and construction conditions intended to
15 minimize erosion. Those standards, prohibitions, and conditions are implemented through local,
16 state, and federal permits, through the California Environmental Quality Act (“CEQA”) process,
17 and/or by the direct operation of California and federal laws.

18 4. By constructing and operating projects without required permits and approvals, without
19 adequate prior environmental review, in violation of approval conditions, or in violation of local,
20 state, and federal laws, Defendants have harmed and continue to harm Squaw Creek and its
21 tributaries.

22 5. The People bring this action to enjoin conduct contributing unduly to erosion and
23 sedimentation, to obtain penalties and liabilities under applicable statutes, and to obtain such other
24 relief as authorized by law.

25 **PARTIES**

26 6. Plaintiff People of the State of California, by and through Attorney General Bill
27 Lockyer, seek relief from Defendants’ unlawful, unfair, and fraudulent business practices in the
28 operation of Squaw Valley Ski Resort. California Business and Professions Code 17204 provides

1 that actions to prohibit unfair competition may be brought by the Attorney General in the name of
2 the People of the State of California.

3 7. Plaintiff California Regional Water Quality Control Board, Lahontan Region (“Regional
4 Board”), is a public agency of the State of California organized and existing under section 13200
5 of the Water Code. The Ski Resort is within the jurisdiction of the Lahontan Region. The
6 Regional Board is responsible for water quality control, including the prevention and abatement of
7 water pollution and nuisance through enforcement of the Porter-Cologne Water Quality Control
8 Act (“Porter- Cologne Act”) (Division 7, sections 13000 *et seq.* of the Water Code), and seeks
9 relief for actions in violation of that Act.

10 8. Defendant Squaw Valley Ski Corporation (SVSC) is a Nevada corporation, with its
11 principal place of business at 1960 Squaw Valley Road in the Olympic Valley of Placer County.

12 9. Defendant Squaw Valley Development Company is a Nevada corporation, with its
13 principal place of business at 1960 Squaw Valley Road in the Olympic Valley of Placer County.

14 10. Defendant Squaw Valley Preserve is a Delaware corporation, with its principal place of
15 business at 1960 Squaw Valley Road in the Olympic Valley of Placer County.

16 11. Defendants SVSC, Squaw Valley Development Company, and Squaw Valley Preserve
17 at all relevant times owned and operated the Ski Resort. These three corporate defendants are
18 collectively referred to in this complaint as the “SV Corporations.”

19 12. Defendant Nancy R. Wendt resides in California, and is, and at all relevant times has
20 been, the President, Registered Agent, and/or Chief Executive Officer of SVSC; the President and
21 Registered Agent of Squaw Valley Development Company; and the President and Registered
22 Agent of Squaw Valley Preserve.

23 13. Defendant Hans A. Burkhardt resides in Nevada and is, and at all relevant times has
24 been, the General Manager of the Ski Resort.

25 14. Defendant Alexander C. Cushing resides in Rhode Island and is, and at all relevant
26 times has been, the founder and owner of the Ski Resort.

27 15. The true names and capacities of those defendants identified as Does 1 through 30,
28 inclusive, are unknown to the People, who therefore sue them under fictitious names. The People

1 will amend this complaint to allege the true names and capacities of these defendants when they
2 have been determined. Each of the fictitiously named defendants is responsible in some manner
3 for the conduct alleged herein.

4 16. As used herein, the term “Defendants” refers collectively to all defendants, including
5 Doe defendants.

6 17. In this complaint, when reference is made to any act of any defendant, that allegation
7 shall mean that the defendant, or the owners, officers, directors, agents, employees, or
8 representatives of that defendant, either did, or authorized, such acts, or failed or omitted to
9 adequately or properly supervise, control, or direct employees, representatives, or agents while
10 engaged in the management, direction, operation, or control of the affairs of the business
11 organization, and did so while acting within the course and scope of employment or agency.

12 18. All corporate and individual defendants are “persons” within the meaning of Business
13 and Professions Code section 17201, Water Code section 13050(c), and federal Clean Water Act
14 section 502(5) (33 U.S.C. § 1362(5)), and are “person[s] discharging waste” within the meaning
15 of Water Code section 13260(a)(1).

16 19. Defendants and the People have executed agreements to toll the statute of limitations on
17 all violations alleged in this complaint until February 1, 2002.

18 **JURISDICTION AND VENUE**

19 20. This Court has jurisdiction pursuant to Article VI, section 10 of the California
20 Constitution because this case is a cause not given by statute to other trial courts.

21 21. Defendants’ conduct, and the potential and actual environmental harm, including
22 discharges, occurred primarily in Placer County. Defendants’ principal places of business, and
23 some of defendants’ residences, are located in Placer County. Accordingly, venue is proper in
24 Placer County under Business and Professions Code sections 17204 and 17207; California Code
25 of Civil Procedure sections 395 and 395.5; and Water Code section 13361.

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1 waste discharge requirements (“WDRs”), conditions of a WDR waiver, or other order or
2 prohibition issued by a Regional Board, intentionally or negligently discharges or causes the
3 discharge of waste into waters of the state and creates a condition of pollution or nuisance.
4 Violators face civil liabilities of up to twenty dollars (\$20) per gallon of waste discharged. (Water
5 Code §13350(a), (e)(2).) Runoff of sediment or other earthen material is a “discharge” of a
6 “waste.” (*Id.* § 13050(d).) Squaw Creek and all of its tributaries, named and unnamed, year-
7 round and intermittent, constitute “waters of the state” within the meaning of sections 13050(e),
8 13304(a), and 13350, and are referred to generally in this complaint as “Squaw Creek.”

9 27. Any person who violates a WDR or other order of the Regional Board may be subject
10 to an administrative Cleanup and Abatement Order (“CAO”). (Water Code § 13304(a).) Where
11 a CAO is intentionally or negligently violated, a court may impose civil liabilities of up to \$15,000
12 per day per violation. (*Id.* § 13350(a), (d).)

13 28. Water Code section 13385 imposes civil strict liability on any person who discharges or
14 proposes to discharge pollutants or waste to navigable waters, or who violates section 301 of the
15 Federal Water Pollution Control Act (33 U.S.C. section 1311). (Water Code §§ 13385(a)(1),
16 (a)(4), and (a)(5).) Section 301 of the federal act prohibits discharges of pollutants from a “point
17 source” without a National Pollutant Discharge Elimination System (“NPDES”) permit.

18 29. Stormwater discharges associated with construction activities are regulated as point
19 sources, and governed by a statewide general NPDES permit that is enforced locally by Regional
20 Boards. (Water Quality Order 99-08-DWQ.) Effective March 30, 1992, Defendants were
21 required to obtain permit coverage for any projects that aggregated to more than 5 acres of land
22 disturbance and constituted all or part of a “larger common plan of development,” or projects that
23 resulted in “significant water quality impairment.” Persons violating Water Code section 13385
24 are strictly liable for civil liabilities of up to \$25,000 per day per violation. (Water Code
25 §§ 13385(b)(1).)

26 30. Under Water Code section 13260(a), any person discharging or proposing to discharge
27 waste that could affect the quality of the waters of the state must file a report of the waste
28 discharge (ROWD) with the Regional Board and pay a fee. Any person who fails to furnish a

1 ROWD when requested by a Regional Board is subject to civil liabilities of up to \$5,000 per day
2 per violation. (*Id.* § 13261(a), (b).) Civil liabilities of up to \$5,000 per day may also be levied if a
3 person discharging waste fails to furnish any technical or monitoring reports required by the
4 Regional Board. (*Id.* §§ 13267(b), 13268(a), (b).)

5 31. After a noticed public hearing pursuant to Water Code section 13350(g), the Regional
6 Board has requested that the Attorney General (1) petition the superior court for the issuance of
7 an injunction requiring Defendants to comply with existing CAOs, WDRs, and other applicable
8 Regional Board orders, and (2) petition the court to impose civil liabilities upon Defendants. (Res.
9 No. 6-01-27.)

10 32. Actions to enforce the Porter-Cologne Act must be brought within three years after the
11 cause of action accrues. (Cal. Code Civ. Proc. §338(i).)

12 **GENERAL ALLEGATIONS**

13 33. The Ski Resort's business activities involve numerous construction projects, each of
14 which alters the topography, the vegetation, or both at the Ski Resort, increasing erosion and
15 sedimentation. The following general allegations summarize certain construction projects at the
16 Ski Resort. In order to construct these projects lawfully, the Ski Resort was required to apply for
17 and obtain various permits, authorizations, and waivers from Placer County and from the
18 Regional Board, and to comply with the Water Quality Control Plan for the Lahontan Region
19 ("Basin Plan").

20 34. Backdoor Trail blasting: In or about 2000, the Ski Resort used dynamite to further
21 develop a trail from the base of the Shirley Lake Express chairlift to the base of the Solitude
22 chairlift in the Northern portion of the Ski Resort, in an area known as Shirley Canyon. This
23 action directly violated a permanent injunction entered by the Placer County Superior Court and
24 affirmed by the Third District Court of Appeal.

25 35. Funitel Gondola construction: Beginning in 1998, the Ski Resort replaced an existing
26 gondola that transported skiers to the top of the main ski area with the "Funitel," a gondola that
27 can operate in high-wind conditions. In obtaining permission to construct the Funitel, the Ski
28 Resort described the project to county and state officials as involving minimal excavation, minimal

1 alteration of terrain, and minimal disturbance of vegetation. As ultimately constructed, however,
2 the project involved blasting and excavating thousands of cubic yards of material, reshaping a
3 ridge, cutting numerous trees, and burying other vegetation. Blasting debris was “sidecast,” *i.e.*,
4 pushed, off the ridge toward Squaw Creek, in direct violation of the terms of the Basin Plan, the
5 Ski Resort’s site-wide WDRs and waivers of WDRs, a CAO issued by the Regional Board, and a
6 conditional use permit (“CUP”) and stop-work orders issued by Placer County.

7 36. Headwall-Cornice II Express Lift construction: As proposed by the Ski Resort and
8 approved by Placer County and the Regional Board, this project involved construction of a new
9 chairlift to replace two existing lifts -- the Headwall and the Cornice II lifts. After the new lift was
10 constructed in 1999, however, only one of the existing lifts was actually removed. Further, to
11 build the new lift, the Ski Resort altered two drainage channels, in contravention of conditions
12 imposed by the Regional Board in a waiver of WDRs and by Placer County in a CUP, and in
13 violation of the California Fish and Game Code. These drainage alterations resulted in discharge
14 of earthen materials to surface waters. The Ski Resort also failed to implement adequate BMPs;
15 failed to timely comply with Regional Board requests for technical information; failed to timely
16 winterize the project site; and violated water quality standards.

17 37. Gold Coast-Mainline Express Lift construction: As proposed by the Ski Resort and
18 approved by Placer County and the Regional Board, this new chairlift was to replace two existing
19 lifts -- the Gold Coast and the Mainline Express lifts. Again, after the new lift was constructed in
20 1999, the Ski Resort removed only one of the existing lifts. To build the new lift, the Ski Resort
21 disturbed considerably more earth and rock than was authorized by the Regional Board’s waiver
22 of WDRs; constructed an unauthorized French drain system and failed to timely provide
23 information about it to regulators upon request; discharged or threatened to discharge earthen
24 material from the project site; failed to employ adequate temporary or permanent BMPs; and
25 failed to winterize the project site properly by the seasonal deadline specified in the WDR waiver.

26 38. Gold Coast Pond Expansion and Mitigation Wetlands: The Ski Resort obtained
27 permission -- through WDRs and a CUP -- to expand the Ski Resort’s existing Gold Coast Pond,
28 for the stated purpose of using the additional water primarily to irrigate revegetated areas. The

1 Ski Resort violated the WDRs in numerous ways, including failing to identify wetlands prior to
2 removal and to construct mitigation wetlands as required, prompting the Regional Board to issue,
3 and later amend, a CAO. The Ski Resort then violated the amended CAO. The Ski Resort
4 eventually entered into a settlement agreement with the Regional Board in 1998 to remedy the
5 CAO violations, but then proceeded to violate the settlement agreement. The Ski Resort has also
6 used the pond water for snowmaking, in violation of a CUP condition prohibiting this use absent
7 further authorization.

8 39. “Ho Chi Minh” Trail construction: The Ski Resort illegally constructed or significantly
9 expanded this ski trail without obtaining the required authorization from Placer County or the
10 Regional Board. The existence of the trail was not discovered by regulators until the fall of 1998
11 or later.

12 40. Siberia Lift Drainage Project: In 1998, the Ski Resort proposed to modify an existing
13 drainage system pursuant to specified plans submitted to the Regional Board and Placer County.
14 The Ski Resort did not perform the project as initially proposed and as approved by the County,
15 however, and failed to provide a report of waste discharge to the Board upon request. Moreover,
16 as built, this project included the illegal modification of a stream, including its bank and channel,
17 without the streambed alteration agreement required by the Fish and Game Code.

18 41. 48" Culvert Replacement Project: In 1998 and/or 1999, the Ski Resort proposed to
19 replace two drainage culverts pursuant to specified plans submitted to the Regional Board and
20 Placer County. Again, the Ski Resort failed to perform the project as initially proposed and
21 approved. The Ski Resort also improperly constructed the replacement drainage system during a
22 time of active stream flow in late 1999, and worked in and altered a stream channel without the
23 required streambed alteration agreement. Because the Ski Resort failed to use the required
24 BMPs, the project also caused unlawful discharges of sediment from the project site.

25 42. Fuel Tank Farm construction: In proposing to construct a new tank farm at the Ski
26 Resort, the Ski Resort represented to regulators that the project would result in no discharges to
27 surface waters and no alterations of natural drainage ways. As ultimately constructed, however,
28 the project resulted in the obliteration of a natural drainage channel that the Ski Resort failed to

1 repair until in or about September 1998.

2 **FIRST CAUSE OF ACTION**

3 **Unfair Competition: Violation of a Permanent Injunction**
4 **(Against Defendants SV Corporations and Does 1-30)**

5 43. Paragraphs 1 through 42 are realleged as though fully set forth herein.

6 44. In 1994, the Placer County Superior Court found that SVSC had engaged in unfair
7 competition under section 17200 of the Business and Professions Code by cutting more than
8 1,800 trees without the permit required under California's Forest Practices Act, and enjoined the
9 Ski Resort (under section 17203) from undertaking any further development in a designated area
10 that consisted of all of Section 25 and a portion of Section 36 on the U.S. Geological Survey
11 topographic quadrangle maps of the Ski Resort area. In issuing a permanent injunction, the Court
12 ordered that the depicted area was henceforth to remain "in its natural state," and "free from
13 further development in any manner." (Statement of Decision and Order, Placer Superior # 86683
14 (Oct. 11, 1994.)) The Court's order was affirmed on appeal in 1997. (*Hewlett v. Squaw Valley*
15 *Ski Corporation* (1997) 63 Cal. Rptr. 2d 118).

16 45. In or about 2000, defendants SV Corporations and Does 1-30 violated the Court's
17 permanent injunction by undertaking activities, including the use of dynamite, designed to further
18 develop the "Backdoor Trail" from the base of the Shirley Lake Express lift to the base of
19 Solitude lift, an area subject to the Court's injunction.

20 46. Violations of the Court's order constitute unfair competition within the meaning of
21 Business and Professions Code sections 17200 *et seq.* and subject defendants SV Corporations
22 and Does 1-30 to penalties of up to \$2,500 for each violation, and other equitable remedies as
23 appropriate.

24 47. Violations of the Court's order constitute intentional violation of an injunction within
25 the meaning of Business and Professions Code section 17207 and subject defendants SV
26 Corporations and Does 1-30 to penalties of up to \$6,000 per violation per day, and other
27 equitable remedies as appropriate.

28 **SECOND CAUSE OF ACTION**

1 **Unfair Competition: Submittal of Incomplete, Inaccurate, or Misleading**
2 **CEQA Information to Government Officials**
3 **(Against Defendants SV Corporations and Does 1-30)**

4 48. Paragraphs 1 through 47 are realleged as though fully set forth herein.

5 49. Placer County is a “lead agency” under the California Environmental Quality Act
6 (“CEQA”), required to conduct environmental analysis before granting approvals or permits for
7 discretionary development projects that may have an adverse impact on the environment. (Cal.
8 Pub. Res. Code § 21000 *et seq.*) Applicants for development permits are required to provide
9 Placer County with a complete and signed application for any proposed project, so that the
10 County may prepare the appropriate CEQA analysis. (Placer Cty. Code § 18.08.030.) The
11 Regional Board is a “responsible agency” under CEQA, required to provide analysis and comment
12 to the County based on the information provided by the project applicant.

13 50. Defendants SV Corporations and Does 1-30, on exact dates unknown to the People but
14 within four years preceding the filing of this complaint, have repeatedly submitted incomplete,
15 inaccurate, and/or misleading descriptions of the planned physical scope and environmental
16 impacts of construction projects to government officials in seeking approvals and permits. This
17 conduct of defendants SV Corporations and Does 1-30 has prevented Placer County, the
18 Regional Board, and the public from obtaining the information necessary to evaluate adequately
19 the environmental effects of the proposed projects, in violation of the policy or spirit of CEQA,
20 and/or has been likely to deceive the public, in violation of Business and Professions Code 17200,
21 including but not limited to the following examples:

22 a. In connection with construction of the Funitel Gondola, defendants SV Corporations
23 and Does 1-30 inaccurately stated:

24 i. In the initial application for project approval, that the project would involve minimal
25 earth disturbance and no blasting or exporting of rock or soil, and that sediment releases would be
26 carefully controlled and would not escape the construction site nor enter the waters of the state.

27 ii. In later submittals, after it became apparent that substantial rock material needed to be
28 removed from the site, that all material under six inches in size would be taken off-site for
disposal.

1 b. In connection with construction of the Headwall-Cornice II Express Lift, defendants
2 SV Corporations and Does 1-30 omitted mention of significant structures they ultimately installed
3 at the lower terminal; failed to state that earthen ramps would be needed to facilitate skier loading
4 at the lower terminal; and inaccurately stated:

5 i. The amount of soil disturbance required to construct the project;

6 ii. That only minor grading was required;

7 iii. That there would be no construction in stream zones or alteration of natural drainages;
8 and,

9 iv. That two pre-existing lifts would be removed.

10 c. In connection with construction of the Gold Coast-Mainline Express Lift, defendants
11 SV Corporations and Does 1-30 failed to state that earthen ramps would be needed to facilitate
12 skier dismount from the upper terminal, failed to state that a french drain would be required, and
13 inaccurately stated that:

14 i. The project would involve no more than 1200 feet of disturbance at each terminal;

15 ii. Two pre-existing lifts would be removed.

16 d. In connection with construction of the Gold Coast Pond Expansion, defendants SV
17 Corporations and Does 1-30 inaccurately represented that the pond would not be used for
18 snowmaking, but would instead be enlarged for irrigation of revegetation projects.

19 e. In constructing the Siberia Lift Drainage Project, defendants SV Corporations and
20 Does 1-30 defendants inaccurately represented that they intended to follow submitted, engineered
21 plans for culvert replacement.

22 f. In connection with the 48" Culvert Replacement Project, SV Corporations and Does 1-
23 30 inaccurately represented that they intended to replace two existing culverts with two
24 corrugated metal arch-pipe culverts and stated that they would construct the project after stream
25 flow had ceased.

26 g. Defendants SV Corporations and Does 1-30 failed to inform Placer County that they
27 planned to engage in blasting of the “Backdoor Trail.” and to construct the “Ho Chi Minh” trail,
28 both of which were projects subject to CEQA.

1 h. Despite County requirements to do so, defendants SV Corporations' and Does 1-30's
2 environmental submittals failed adequately to disclose the full range of plant and animal species
3 they knew or would have known upon inquiry to the Department of Fish and Game were present
4 at the Ski Resort.

5 51. Each violation of Business and Professions Code sections 17200 *et seq.* subjects
6 defendants SV Corporations and Does 1-30 to penalties of up to \$2,500, and other equitable
7 remedies as appropriate.

8 **THIRD CAUSE OF ACTION**

9 **(Unfair Competition: Violation of Streambed Alteration Requirements)**
10 **(Against Defendants SV Corporations, Burkhart, and Does 1-30)**

11 52. Paragraphs 1 through 51 are realleged as though fully set forth herein.

12 53. California Fish and Game Code section 1603 makes it unlawful to substantially divert or
13 obstruct the natural flow, or substantially change the bank, of any stream designated by the
14 Department of Fish and Game ("DFG") without first notifying that agency. DFG has designated
15 all rivers, streams, and streambeds in the State, including those with intermittent flows, as subject
16 to section 1603. (14 Cal. Code Regs. § 720.)

17 54. In addition, the site-wide WDRs applicable to the Ski Resort (Board Order No. 6-93-
18 25) specifically provide that all modifications of the streambed, channel, or bank require a prior
19 written agreement with the DFG.

20 55. On exact dates unknown to the People but within four years preceding the filing of this
21 complaint, defendants SV Corporations, Burkhart, and Does 1-30 engaged in acts of unfair
22 competition by failing to complete the required notification and obtain the required streambed
23 alteration agreements from DFG, in circumstances including, but not limited to, the following
24 examples:

25 a. Performing construction activity during a time of active stream flow in the South Fork
26 of Squaw Creek in connection with the 48" Culvert Replacement Project;

27 b. Performing construction activity in a stream channel in connection with the Siberia Lift
28 Drainage Project;

1 c. Altering one or more stream channels of the South Fork of Squaw Creek in connection
2 with construction of the lower lift terminal of the Headwall-Cornice II Express Lift; and

3 d. Placing fill material into a natural drainage channel in the process of constructing the
4 Fuel Tank Farm.

5 56. Each violation of Business and Professions Code sections 17200 *et seq.* subjects
6 defendants SV Corporations, Burkhart, and Does 1-30 to penalties of up to \$2,500 and other
7 equitable remedies as appropriate.

8 **FOURTH CAUSE OF ACTION**

9 **(Unfair Competition: Violation of Placer County Ordinances,
10 Conditional Use Permits, and Stop-Work Orders)
11 (Against Defendants SV Corporations, Burkhart and Does 1-30)**

12 57. Paragraphs 1 through 56 are realleged as though fully set forth herein.

13 58. Developers of construction projects in Placer County are required to comply with
14 Placer County’s municipal ordinances governing grading, erosion and sediment control. (Placer
15 Cty. Code §§ 15.48.010 *et seq.*)

16 59. Developers must comply with any conditions placed on the project at the time of
17 approval (Cty. Code § 18.28.030), and must monitor and report on implementation of measures
18 required by the County to mitigate environmental impacts (Cty. Code §§ 18.28.020, 18.28.060).
19 Verification of compliance occurs through County inspections.

20 60. Placer County also requires developers to obtain a permit for any grading activity that
21 moves or erodes soil, rock or other debris at a rate substantially in excess of natural levels (Cty.
22 Code § 15.48.040), and to install erosion and sediment control as soon as possible during grading
23 projects (*id.* § 15.48.630). Grading permits authorize only the work shown on grading plans
24 approved by the director of public works. (*Id.* § 15.48.240.)

25 61. The County is empowered to sanction the violation of grading, erosion, and sediment-
26 control ordinances, and the violation of mitigation monitoring or reporting requirements, by
27 issuing a “stop-work order” under sections 15.48.710 and 18.28.080 of the Placer County Code.

28 62. On exact dates unknown to the People, but within the four years preceding the filing of
this complaint, defendants SV Corporations and Does 1-30 engaged in acts of unfair competition

1 by violating numerous conditions of County approval, grading and erosion-control requirements,
2 and mitigation monitoring requirements, including, but not limited to, the following examples:

3 a. In connection with the Funitel Gondola, grading activities at Tower 4 were inconsistent
4 with the County-approved grading permit; the Tower 4 Pond was not build as per approved
5 plans; more trees were removed than permitted; and revegetation at Tower 4 did not conform to
6 approved plans. The Tower 6 Pond was not built as specified in approved plans and was installed
7 after defendants SV Corporations and Does 1-30 informed the County that no further
8 construction activities would be undertaken. Erosion control measures in preparation for winter,
9 including BMPs, were inadequate and were not in place at the time storm events occurred.

10 b. In connection with the Headwall-Cornice II Express Lift, an inaccurate drainage report
11 was submitted; approved plans failed to depict all construction and grading work planned and
12 actually performed; work depicted in approved plans was not performed as represented in those
13 plans; soil was improperly pushed into drainage channels; required BMPs were not installed;
14 winterization activities were inadequate and not timely; and lift removal was never completed.

15 c. In connection with the Gold Coast-Mainline Express Lift, excavation exceeded the
16 approved scope; an unauthorized french drain was constructed; BMPs and winterization were
17 deficient and untimely; and lift removal was never completed.

18 d. In connection with the Gold Coast Pond Expansion Project, the pond has been and/or is
19 being used for snowmaking without approval from Placer County.

20 e. In connection with the Siberia Lift Drainage Project, the project as built deviates from
21 County-approved plans, and sediment fencing was not installed or properly maintained.

22 f. In connection with the 48" Culvert Replacement Project, the project as built deviates
23 from approved plans.

24 g. In connection with the blasting of the "Backdoor Trail" and the development of the Ho
25 Chi Minh trail, work performed was never proposed to or approved by Placer County.

26 h. In connection with the Fuel Tank Farm, the project as built deviated from approved
27 plans.

28 63. On exact dates unknown to the People, but within the four years preceding the filing of

1 this complaint, defendants SV Corporations, Burkhart, and Does 1-30 engaged in acts of unfair
2 competition by obstructing and denying without cause the access of County inspectors to the Ski
3 Resort property, preventing the County from verifying compliance with County permits and
4 ordinances.

5 64. Defendants SV Corporations and Does 1-30 engaged in acts of unfair competition by
6 failing to comply with stop-work orders issued by the County on numerous occasions, including
7 but not limited to the following examples:

8 a. Continuing to work on aspects of the Funitel Gondola project prohibited by, and after
9 receipt of, the County's October 22, 1998 stop-work order.

10 b. Continuing to work on aspects of the Headwall-Cornice Express Lift project prohibited
11 by, and after receipt of, the County's October 6, 1999 stop-work order, and failing to timely
12 winterize the project site as required by that order.

13 c. Failing to timely winterize the Gold Coast-Mainline Express Lift project site as
14 required by, and after receipt of, the County's October 22, 1999 stop-work order.

15 65. Each violation of Business and Professions Code 17200 *et seq.* subjects defendants SV
16 Corporations, Burkhart, and Does 1-30 to penalties of up to \$2,500 and other equitable remedies
17 as appropriate.

18 **FIFTH CAUSE OF ACTION**

19 **(Unfair Competition: Failure to Comply with**
20 **Waste Discharge Requirements and**
21 **Basin Plan Prohibitions)**
22 **(Against Defendants SV Corporations and Does 1-30)**

23 66. Paragraphs 1 through 65 are realleged as though fully set forth herein.

24 67. The Ski Resort operates subject to the requirements of the Water Quality Control Plan
25 for the Lahontan Region (the "Basin Plan"), which contains specific water quality objectives for
26 Squaw Creek and its tributaries, located within the Truckee River Hydrologic Unit ("TRHU").
27 The Basin Plan prohibits: (1) the discharge of any waste or deleterious material in the TRHU
28 which would cause or threaten to cause violation of any water quality objective or otherwise
adversely affect or threaten to adversely affect the beneficial uses of the water; (2) the discharge

1 of soil or other earthen material to surface waters of the TRHU; (3) the discharge or threatened
2 discharge of soil or other earthen material to lands within the 100-year floodplain of the Truckee
3 River or its tributaries.

4 68. The Ski Resort also operates pursuant to site-wide waste discharge requirements
5 (“WDRs”) that specify conditions under which construction projects may be undertaken and
6 specify measures required to control erosion. (Regional Board Order No. 6-93-25.)

7 69. The WDRs incorporate water quality standards applicable to the Ski Resort, including,
8 but not limited to, numeric standards for turbidity, expressed in Nephelometric Turbidity Units
9 (“NTU”), and standards prohibiting an increase in turbidity exceeding natural levels by more than
10 10 percent.

11 70. The WDRs also establish a water quality monitoring and reporting program, which
12 requires defendant SV Corporations to take water quality samples at specific locations on a
13 regular basis and report specified information to the Regional Board.

14 71. Under the site-wide WDRs, defendant SV Corporations must obtain project-specific
15 WDRs, or a waiver of project-specific WDRs, for construction projects subject to CEQA.

16 72. On exact dates unknown to the People, but within the four years preceding the filing of
17 this complaint, defendants SV Corporations and Does 1-30 engaged in acts of unfair competition
18 by violating the requirements of the Basin Plan prohibitions and/or site-wide or project-specific
19 WDRs, including but not limited to the following examples:

20 a. The discharge, or threatened discharge, of soil or other earthen material to lands within
21 the 100-year floodplain of the Truckee River or its tributaries, in connection with the Headwall-
22 Cornice II Express Lift, the Gold Coast-Mainline Express Lift, the Funitel Gondola, the Siberia
23 Lift Drainage Project, the 48" Culvert Replacement Project, and the Fuel Tank Farm.

24 b. The discharge of soil or other earthen material to surface waters of the TRHU, in
25 connection with the Headwall-Cornice II Express Lift, the Gold Coast-Mainline Express Lift, the
26 Siberia Lift Drainage Project, the 48" Culvert Replacement Project, the Gold Coast Pond
27 Expansion and Wetlands Mitigation, and the Fuel Tank Farm.

28 c. The discharge of waste material caused or threatened to cause a violation of water

1 quality objectives contained in the Basin Plan, or otherwise adversely affected or threatened to
2 adversely affect the beneficial uses of water, in connection with the Funitel Gondola, the
3 Headwall-Cornice II Express Lift, the Gold Coast-Mainline Express Lift, the Siberia Lift Drainage
4 Project, the 48" Culvert Replacement Project, the Gold Coast Pond Expansion and Mitigation
5 Wetlands.

6 d. Failure to comply with the permitted limit of 3 NTU, measured by the mean-of-
7 monthly-means, at the Funitel Gondola monitoring sites (sample sites SC-30 through SC-41); at
8 the outflow from the Gold Coast Pond (sample site SC-2); and at sample sites SC-17 and SC-18.

9 e. Failure to collect and/or timely transmit complete weather observation and flow data
10 taken contemporaneously with water quality samples.

11 f. Failure to collect water quality samples during certain significant rainfall runoff events
12 in the July through March period, thereby frustrating compliance with water quality standards by
13 skewing the mean-of-monthly-mean data set used to measure compliance.

14 g. Failure to obtain required Regional Board authorization to construct the chair storage
15 facility, lift operator's shack, and electrical vaults at the Headwall-Cornice II Express Lift.

16 h. Failure to install adequate temporary erosion control measures prior to soil disturbance
17 in connection with the Funitel Gondola, the Gold Coast- Mainline Express Lift, the 48" Culvert
18 Replacement Project, the Backdoor Trail Blasting Project.

19 i. Failure to obtain DFG approval prior to undertaking significant modification of existing
20 streambeds and channels, as alleged in paragraphs 53 through and including 55 above.

21 j. Failure to adequately stabilize disturbed areas in connection with the Funitel Gondola,
22 the Headwall-Cornice II Express Lift, the Gold Coast- Mainline Express Lift, the Gold Coast
23 Pond Expansion and Wetlands Mitigation, the Siberia Lift Drainage Project, the 48" Culvert
24 Replacement Project, and the construction of the road network and ski run network at the Ski
25 Resort.

26 k. Failure to ensure that surface flows did not cause downstream erosion from
27 construction of the Funitel Gondola, the Headwall-Cornice II Express Lift, and the Gold Coast-
28 Mainline Express Lift, and from construction of the road network and ski run network at the Ski

1 Resort.

2 1. Failure to complete timely wetlands restoration, and to install BMPs properly, in
3 connection with the Gold Coast Pond Expansion and Wetland Mitigation.

4 73. Each violation of Business and Professions Code 17200 *et seq.* subjects defendants SV
5 Corporations and Does 1-30 to penalties of up to \$2,500 and other equitable remedies as
6 appropriate.

7 **SIXTH CAUSE OF ACTION**

8 **(Unfair Competition: Failure to Comply with WDR Waiver Conditions)**
9 **(Against Defendants SV Corporations and Does 1-30)**

10 74. Paragraphs 1 through 73 are realleged as though fully set forth herein.

11 75. On exact dates unknown to the People, but within the four years preceding the filing of
12 this complaint, defendants SV Corporations and Does 1-30 engaged in acts of unfair competition
13 by violating the conditions imposed by the Regional Board when it granted project-specific
14 waivers of WDRs. Violations of waiver conditions include, but are not limited to, the following:

15 a. In connection with the Funitel Gondola, conducting unauthorized blasting and removal
16 of a rock knob along the Funitel route, engaging in unauthorized sidecasting of small rocks and
17 sediment over the cliff edge, and removing more than the authorized number of trees.

18 b. In connection with the Headwall-Cornice II Express Lift, failure to comply with
19 authorized soil disturbance limits; discharging earthen material into Squaw Creek; and altering the
20 course of two channels that serve as tributaries to the South Fork of Squaw Creek.

21 76. Each violation of Business and Professions Code 17200 *et seq.* subjects defendants SV
22 Corporations and Does 1-30 to penalties of up to \$2,500 and other equitable remedies as
23 appropriate.

24 **SEVENTH CAUSE OF ACTION**

25 **(Porter-Cologne Act: Failure to Comply with Cleanup and Abatement Orders)**
26 **(Against Defendants SVSC and Does 1-30)**

27 77. Paragraphs 1 through 76 are realleged as though fully set forth herein.

28 78 Under section 13304 of the Water Code, the Regional Board issued and later amended
a cleanup and abatement order (CAO) to defendant SVSC in 1994 after SVSC violated project-

1 specific WDRs for the Gold Coast Pond Expansion Project and Mitigation Wetlands by initiating
2 construction and removing wetlands without a wetlands inventory, and by failing to submit plans
3 for constructing mitigation wetlands. On or about June 5, 1998, the Regional Board and SVSC
4 entered into a settlement agreement that extended SVSC's deadlines for compliance with the
5 requirements of the CAO, including an extension of the deadline to construct mitigation wetlands
6 to October 15, 1998. However, defendants SVSC and Does 1-30 intentionally or negligently
7 violated the new deadline, failing to complete construction of the required mitigation wetlands
8 until nearly a year overdue, on or about October 11, 1999.

9 79. The Regional Board issued a CAO for the Funitel Gondola project in March 1999, after
10 defendants SVSC and Does 1-30 illegally pushed earthen material under six inches in size over
11 the ridge when constructing Towers 4 and 6 of the project, and exceeded the amount of
12 excavation authorized at the upper terminal, in direct violation of conditions of the site-specific
13 WDR waivers for this project. In addition, although the CAO required the design and
14 implementation of permanent BMPs by specified deadlines in 1999, defendants SVSC and Does
15 1-30 intentionally or negligently failed to comply with these deadlines.

16 80. Each violation of these CAOs constitutes a violation of section 13350(a) of the Water
17 Code, subjecting defendants SVSC and Does 1-30 to civil liabilities of up to \$15,000 per day per
18 violation. (Water Code § 13350(d)(1).)

19 EIGHTH CAUSE OF ACTION

20 **(Porter-Cologne Act: Creation of a Condition of Pollution or Nuisance)** 21 **(Against Defendants SV Corporations and Does 1-30)**

22 81. Paragraphs 1 through 80 are realleged as though fully set forth herein.

23 82. The discharge of sediment-laden water into Squaw Creek is the discharge of a waste into
24 the waters of the state that creates a condition of pollution or nuisance.

25 83. Defendants SV Corporations and Does 1-30 intentionally or negligently caused
26 sediment-laden runoff to be deposited where it was discharged directly or indirectly into Squaw
27 Creek, creating a condition of pollution or nuisance, and also violated the site-wide WDR
28 prohibition against creating a condition of pollution or nuisance or threatened pollution, and/or

1 the prohibitions contained in the Basin Plan, including, but not limited to, the following examples:

2 a. In connection with construction of the Funitel Gondola, on dates including, but not
3 limited to, on or about November 23, 1998;

4 b. In connection with construction of the lower terminal of the Headwall-Cornice II Lift,
5 on dates including, but not limited to, on or about November 4, 1999, and on or about May 15,
6 2000;

7 c. In connection with construction of the Gold Coast-Mainline Express Lift, on dates
8 including, but not limited to, on or about November 16, 1999; and

9 d. In connection with construction of the 48" Culvert Replacement Project, on dates
10 including, but not limited to, on or about November 4, 1999.

11 84. In addition, defendants SV Corporations and Does 1-30 intentionally or negligently
12 discharged sediment-laden water from the ski area parking lot into the Olympic channel, which
13 drains into Squaw Creek, on dates including, but not limited to, on or about April 13, 2000, and
14 on or about May 8, 2001, creating a condition of pollution or nuisance and violating Basin Plan
15 prohibitions.

16 85. Each discharge constitutes a violation of section 13350(a) of the Water Code,
17 subjecting defendants SV Corporations and Does 1-30 to civil liabilities of up to twenty dollars
18 (\$20) per gallon of waste discharged. (Water Code section 13350(e)(2).)

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23 **NINTH CAUSE OF ACTION**

24 **(Porter-Cologne Act: Failure To Submit Report of Waste Discharge after Regional Board**
25 **Request, and/or Failure to Submit Required Technical Monitoring Report)**
26 **(Against Defendants SV Corporations and Does 1-30)**

26 86. Paragraphs 1 through 85 are realleged as though fully set forth herein.

27 87. Defendants SV Corporations and Does 1-30 failed to furnish, or failed to timely furnish,
28 required reports of waste discharge and/or required technical or monitoring reports (under Water

1 Code sections 13260 and 13267, respectively), after those reports had been requested by the
2 Regional Board, including but not limited to, the following examples:

3 a. In connection with the Siberia Lift Drainage project: failure to furnish a report of waste
4 discharge activities associated with culvert placement in a creek by the required date of July 22,
5 1999.

6 b. In connection with the Headwall-Cornice II Express Lift: (1) failure to furnish a
7 technical report on the amount of fill discharged, the date it was discharged, and the date it would
8 be removed from the project site, by the required date of October 29, 1999; and (2) failure to
9 furnish a plan for winterizing the entire project site by the required date of October 28, 1999.

10 c. In connection with the Gold Coast-Mainline Express Lift: failure to furnish a technical
11 report on the unauthorized installation of a french drain by the required date of October 27, 1999.

12 d. In connection with the Backdoor Trail Blasting: failure to timely respond to the
13 Regional Board's October 2, 2000 request for a technical description of unauthorized blasting
14 activity.

15 88. Each violation of Water Code sections 13260 and 13267 subjects defendants SV
16 Corporations and Does 1-30 to civil liabilities of up to \$5,000 per day per violation. (Water Code
17 §§ 13261(a), (b), 13268(a), (b).)

18 TENTH CAUSE OF ACTION

19 **(Porter-Cologne Act: Failure To Obtain Clean Water Act Permit for** 20 **Discharges of Stormwater from Construction Activities)** 21 **(Against All Defendants)**

22 89. Paragraphs 1 through 88 are realleged as though fully set forth herein.

23 90. Individually and collectively, defendants are "owners" or "operators" of the Ski Resort
24 and "persons" within the meaning of 40 C.F.R. §122.2.

25 91. The waters of Squaw Creek and its tributaries (named and unnamed, year-round and
26 intermittent) constitute "navigable water" within the meaning of Federal Water Pollution Control
27 Act ("Clean Water Act") section 502(7) (33 U.S.C. § 1362(7).)

28 92. Soil, sediment, and other earthen materials are "pollutants" within the meaning of Clean
Water Act section 502(6) (33 U.S.C. § 1362(6).)

1 93. On every day within the three years preceding the filing of this complaint, Defendants
2 failed to comply with the requirements of Clean Water Act section 402(p)(3)(A) (33 U.S.C. §
3 1342(p)(3)(A)) -- incorporated by reference to Clean Water Act section 301 in Water Code
4 section 13385(a)(5) -- to obtain NPDES permit coverage for stormwater discharges associated
5 with construction activities.

6 94. Defendants' numerous construction projects have aggregated to more than 5 acres of
7 land disturbance and constitute all or part of a "larger common plan of development" of the Ski
8 Resort, triggering the requirement of coverage under the statewide general permit. Development
9 projects undertaken in 1999-2000 that collectively exceed more than 5 acres of disturbance
10 include, but are not limited to: construction of Funitel Tower 4 and the upper Funitel terminal; the
11 Easy Street Trail Widening project; the Gold Coast-Mainline Express Lift; and the Headwall-
12 Cornice II Express Lift.

13 95. Further, construction activities undertaken by Defendants have resulted in "significant
14 water quality impairment," including but not limited to the following examples:

15 a. altering natural runoff and thereby impairing the South Fork of Squaw Creek through
16 placement of unauthorized fill at the Fuel Tank Farm; and,

17 b. discharging sediment-laden runoff into the South Fork of Squaw Creek as a result of
18 "sidecasting" sediment from below Funitel Tower 4 and Tower 6.

19 96. Under section 13385(a)(5) and (b) of the Water Code, Defendants are strictly liable for
20 civil liabilities of up to \$25,000 per day per violation.

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23 ELEVENTH CAUSE OF ACTION

24 **(Unfair Competition: Violation of California Water Code)** 25 **(Against Defendants SV Corporations and Does 1-30)**

26 97. Paragraphs 1 through 96 are realleged as though fully set forth herein.

27 98. Each violation of the California Water Code alleged in the Seventh through Tenth
28 Causes of Action constitutes an act of unfair competition that subjects defendants SV

1 Corporations and Does 1-30 to additional liability under Business and Professions Code section
2 17200 *et seq.*, including penalties of up to \$2,500 for each violation and other equitable remedies
3 as appropriate.

4 **TWELFTH CAUSE OF ACTION**

5 **(Injunctive Relief for Failure to Comply with Cleanup and Abatement Order)**
6 **(Against all Defendants SVSC and Does 1-30)**

7 99. Paragraphs 1 through 98 are realleged as though fully set forth herein.

8 100. Upon the failure of any person to comply with a CAO, as alleged in the Seventh Cause
9 of Action, the Attorney General may seek injunctive relief requiring the person to comply with the
10 order. (Water Code § 13304 (a).)

11 101. In any civil action brought under the Porter-Cologne Act, it is not necessary for the
12 Attorney General to allege or prove irreparable damage or lack of an adequate legal remedy to
13 obtain injunctive relief. (Water Code §13361(c).)

14 **THIRTEENTH CAUSE OF ACTION**

15 **(Injunctive Relief for Failure to Comply with NPDES Permit Requirements)**
16 **(Against All Defendants)**

17 102. Paragraphs 1 through 101 are realleged as though fully set forth herein.

18 103. As alleged in the Tenth Cause of Action, Defendants failed to comply and continue to
19 fail to comply with the Federal Water Pollution Control Act's NPDES permit requirements for
20 stormwater discharges from construction activities. Defendants' operation of the Ski Resort
21 constitutes a continued and a threatened violation of section 301 of the Federal Water Pollution
22 Control Act, entitling the People to seek injunctive relief under section 13386 of the Water Code.

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24 **FOURTEENTH CAUSE OF ACTION**

25 **(Injunctive Relief for Failure to File Report of Waste Discharge)**
26 **(Against all Defendants)**

27 104. Paragraphs 1 through 103 are realleged as though fully set forth herein.

28 105. Upon the failure of any person to comply with section 13260 of the Water Code

1 (requirement to file a report of waste discharge) as alleged in the Ninth Cause of Action, the
2 Attorney General may seek injunctive relief. (Water Code § 13262.)

3 **PRAYER FOR RELIEF**

4 WHEREFORE the People pray that the Court:

5 1. Grant civil penalties and civil liabilities in an amount according to proof against
6 Defendants, and each of them, pursuant to the First through Twelfth Causes of Action; and

7 2. Enjoin Defendants, and each of them, their successors, agents, representatives, and
8 employees from engaging in unfair competition as defined in Business and Professions Code
9 section 17200, including but not limited to the types of acts or practices alleged herein;

10 3. Enjoin Defendants, and each of them, their successors, agents, representatives, and
11 employees from violations of the Porter-Cologne Act, including but not limited to the types of
12 violations alleged herein, and to remedy fully the effects of all violations of the Porter-Cologne
13 Act alleged herein;

14 4. Grant the People such equitable relief as the Court deems necessary to prevent any
15 defendant from using or employing any practice that constitutes unfair competition; to restore any
16 money or property that may have been acquired by means of unfair competition; and to fully
17 dissipate and remedy the effects of the unfair competition complained of herein;

18 5. Award the People their costs of suit; and

19 6. Grant such other and further relief as the Court deems just and proper.

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24 Dated: January 24, 2002

25 Respectfully submitted,

26 BILL LOCKER
27 Attorney General
28 THEODORA BERGER
Senior Assistant Attorney General
KEN ALEX

