

1 JAMES B. GILPIN, Bar No. 151466
james.gilpin@bbklaw.com
2 MOLLY E. SELWAY, Bar No. 234519
molly.selway@bbklaw.com
3 BEST BEST & KRIEGER LLP
655 West Broadway, 15th Floor
4 San Diego, California 92101
Telephone: (619) 525-1300
5 Facsimile: (619) 233-6118

EXEMPT FROM FILING FEES PURSUANT
TO GOVERNMENT CODE SECTION 6103

6 Attorneys for Cross-Complainant
ELSINORE VALLEY MUNICIPAL WATER
7 DISTRICT

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF RIVERSIDE

11
12 CANYON LAKE PROPERTY OWNERS
ASSOCIATION, a California non-profit
13 mutual benefit corporation,,

14 Plaintiff,

15 v.

16 ELSINORE VALLEY MUNICIPAL
WATER DISTRICT, et al.,

17 Defendants.

18
19 ELSINORE VALLEY MUNICIPAL
WATER DISTRICT, a California Water
20 District, organized and existing pursuant to
the provisions of Division 13 of the Water
21 Code of the State of California

22 Cross-Complainant,

23 v.

24 CANYON LAKE PROPERTY OWNERS
ASSOCIATION, a California corporation,
25 and ROES 1 through 1500, et al.

26 Cross-Defendants
27
28

Case No. RIC 1503428

CROSS-COMPLAINT FOR DECLARATORY
RELIEF; ANTICIPATORY BREACH; QUIET
TITLE; AND EJECTMENT

1 Plaintiff Elsinore Valley Municipal Water District (“EVMWD”), alleges:

2 **PARTIES**

3 1. EVMWD is, and at all times mentioned herein was, a municipal water district
4 established pursuant to the California Municipal Water District law, with its principal offices
5 located at 31315 Chaney Street, Lake Elsinore, County of Riverside, State of California.

6 2. EVMWD is informed and believes and on that basis alleges Defendant Canyon
7 Lake Property Owners Association (“CANYON LAKE POA”) is a California Non-Profit Mutual
8 Benefit Corporation duly organized and existing under the laws of the State of California with its
9 principal place of business within Riverside County, California.

10 3. EVWMD is informed and believes and on that basis alleges the CANYON LAKE
11 POA is serving as the representative of its over 4800 members (“Members”), and some 1,239
12 homeowners who own real property within the Property Owners Association adjacent to the real
13 property owned by EVMWD (“Lakefront Owners”).

14 4. EVMWD is unaware of the true names and capacities of those Defendants sued
15 herein as Roes 1 through 1500, inclusive. EVMWD is informed and believes and thereon alleges
16 that these Defendants claim some interest in the real property at issue in this action, and EVMWD
17 will amend this Complaint to allege their true names and capacities when ascertained.

18 **GENERAL ALLEGATIONS**

19 5. The CANYON LAKE POA is a private master-planned residential community
20 which surrounds the Railroad Canyon Reservoir (“Reservoir”) and is part of the incorporated
21 “City of Canyon Lake.”

22 6. The “City of Canyon Lake” was incorporate on December 1, 1990, and is one of
23 only five private gated cities in the State of California. It geographically spans 4.7 square miles
24 which surround the Reservoir.

25 7. This cross-action arises out of a dispute between EVMWD and the CANYON
26 LAKE POA and its members over the rights associated with the Reservoir, specifically the rights
27 and conditions associated with the use of the Reservoir and surrounding property by the
28 CANYON LAKE POA and/or its members, including the Lakefront Owners.

1 16. On or about November 30, 1970, the Temescal Water Company entered into a
2 Second Amendment to the Lease Agreement directly with the CANYON LAKE POA. A copy of
3 the Second Amendment to the Lease Agreement is attached hereto as Exhibit “C” and made a
4 part hereof.

5 17. On or about August 1, 1974, the Temescal Water Company and the CANYON
6 LAKE POA entered into a Third Amendment to the Lease Agreement. A copy of the Third
7 Amendment to the Lease Agreement is attached hereto as Exhibit “D” and made a part hereof.

8 18. On or about January 17, 1989, the Temescal Water Company and the CANYON
9 LAKE POA entered into a Fourth Amendment to the Lease Agreement. A copy of the Fourth
10 Amendment to the Lease Agreement is attached hereto as Exhibit “E” and made a part hereof.

11 19. The Lease Agreement, First Amendment to the Lease Agreement, Second
12 Amendment to the Lease Agreement, Third Amendment to the Lease Agreement, and Fourth
13 Amendment to the Lease Agreement are hereafter collectively referred to as the “Lease
14 Agreement.”

15 20. In 1989, EVMWD acquired the assets of the Temescal Water Company, including
16 but not limited to the LEASED PROPERTY.

17 21. Under the terms of the LEASE AGREEMENT, the Reservoir has been maintained
18 as a “private” lake not open to the general public. Residents of Canyon Lake pay fees to
19 CANYON LAKE POA in exchange for access and rights to use Reservoir.

20 22. During the term of the LEASE AGREEMENT, Lessee had the right to construct
21 and maintain improvements including “docks, sea walls, bulkheads, launching ramps, bathing
22 beaches and other improvements necessary or desirable for the complete utilization of its rights”
23 (the “Constructed Improvements”).

24 23. Under the express terms of the LEASE AGREEMENT, title and possession of all
25 of the Constructed Improvements, of a permanent nature, automatically vest in EVMWD upon
26 termination or expiration of the LEASE AGREEMENT.

27 24. Under the terms of the LEASE AGREEMENT, the Canyon Lake POA was
28 entitled to and obligated to restrict use of the Lease Property to permitted uses. This obligation

1 included an obligation to indemnify and defend EVMWD from claims or causes of action by third
2 parties.

3 25. Pursuant to its obligation to restrict use of the Leased Property to permitted uses,
4 the CANYON LAKE POA adopted and records covenants, conditions and restrictions
5 (“CC&Rs”) which governed all of the real property within the Property Owners Association.

6 26. The Lakefront Owners are persons who own lots which are adjacent to the
7 shoreline of the Reservoir (“Lake Frontage Lots”). Per the Declarations of Restrictions which
8 were recorded against and govern the Lots in the Property Owners Association, including the
9 Lake Frontage Lots:

- 10 • The water in and the land under any lake located within the boundaries of the
11 Subdivision is owned by others, now EVMWD.
- 12 • The title acquired by any Lakefront Owner, and to any successor or assigns of
13 such grantee, to any lot contiguous to the Reservoir extended only to the rear lot
14 line shown on the recorded map of each units of the Subdivision.
- 15 • Lakefront Owners, nor any successor or assign, acquired any right with respect to
16 any stream that is a tributary to the Reservoir or with respect to the Reservoir, the
17 land thereunder, the water therein, or its elevation, use or condition.
- 18 • None of the Lakefront Lots have any riparian rights or incidents appurtenant.

19 27. Some of the Lakefront Owners have executed Hold Harmless and/or Indemnity
20 Agreements with the CANYON LAKE POA and/or EVMWD.

21 28. EVMWD is informed and believes that approximately ____ Lakefront Owners
22 have executed hold harmless agreements. A list identifying those lots is attached hereto as
23 Exhibit “F” and made a part hereof. An exemplary executed indemnity agreement is attached
24 hereto as Exhibit “G” and made a part hereof.

25 29. EVMWD is informed and believes that approximately ____ Lakefront Owners
26 have executed indemnity agreements. A list identifying those lots is attached hereto as Exhibit
27 “H” and made a part hereof. An exemplary executed indemnity agreement is attached hereto as
28 Exhibit “I” and made a part hereof.

1 multiplying \$52,000.00 by a fraction which has, as it's numerator, the then lowest current price
2 per acre foot of water available for purchase by Lessor for the purpose of maintaining the lake
3 level under Paragraph 3 and has as its denominator \$22.00; this sum shall be payable regardless
4 of whether water is actually purchased by Lessor. In the event water for delivery into the lake can
5 be purchased from more than one source, the lowest current price as used herein shall be the price
6 offered by the source which offers the lowest actual cost including price of water and delivery
7 and transmission costs of the water to the lake. If during the twelve months preceding September
8 1 of each year water has been purchased by lessor for delivery into the lake, the then lowest
9 current price as used herein shall be computed by determining the average of the price per acre
10 foot for water so purchased and the price of water as of September 1 of said year.”

11 39. Since EVMWD acquired the Reservoir and up and until March 2015, the
12 CANYON LAKE POA has paid the rents due and payable under the LEASE AGREEMENT.

13 40. In 2006, the parties executed a tolling agreement regarding CANYON LAKE
14 POA's claims that it overpaid under the CIS formula. Effective November 18, 2011, EVMWD
15 terminated the Tolling Agreement.

16 41. In 2009, the parties executed a Memorandum Of Understanding regarding the CIS
17 calculation, wherein the parties waived all claims for over- and underpayment through August 31,
18 2009. A copy of the Memorandum Of Understanding is attached hereto as Exhibit "G" and made
19 a part hereof.

20 42. On January 7, 2013, EVMWD and CANYON LAKE POA executed a second
21 memorandum of understanding ("2nd MOU") changing the annual payments of the LEASE
22 AGREEMENT to quarterly payments. A copy of the 2nd MOU is attached hereto as Exhibit "H"
23 and made a part hereof.

24 43. In May 2014, EVMWD transmitted a draft Fifth Amendment to CANYON LAKE
25 POA for comment to address the issues of the CIS formula (tying it to the Consumer Price Index
26 instead of the MWD water rate), unifying the LEASE AGREEMENT with the second lease for
27 the additional portion, and clarifying the indemnity and hold harmless provisions to best protect
28 EVMWD.

1 44. In July 2014, CANYON LAKE POA rejected the proposed Fifth Amendment, and
2 instead raised issues beyond the scope of the LEASE AGREEMENT.

3 45. On or about February 17, 2015, CANYON LAKE POA for the first time made a
4 formal claim contending that payments under the LEASE AGREEMENT constituted an
5 unconstitutional tax as defined in Article 13C of the California Constitution.

6 46. CANYON LAKE POA further argued that if payments under the LEASE
7 AGREEMENT are not a tax under Article 13 section 1(e), then CANYON LAKE POA should
8 only be required to pay only the amount that is no more than necessary to cover the reasonable
9 costs of the governmental activity.

10 47. EVMWD is informed and believes and on that basis alleges that the fair market
11 value of the recreational rights leased by the CANYON LAKE POA exceed Two Million Dollars
12 per year. Accordingly, the current lease payment is substantially under market.

13 48. EVMWD is informed and believes and on that basis alleges that members of the
14 CANYON LAKE POA pay less than \$_____ per year, for the exclusive right to live on and use
15 a private lake for boating, fishing, and other water sports.

16 49. Notwithstanding its claims, CANYON LAKE POA, was required to make a
17 quarterly payment on March 15, 2015, in the amount of Three Hundred Forty Four Thousand
18 Three Hundred Two Dollars and Ninety Two Cents (\$344,302.92), but failed to do so.

19 50. On March 18, 2015, EVMWD served the Canyon Lake POA with a notice of the
20 default. A copy of the Default Notice is attached hereto as Exhibit "H" and made a part hereof.

21 51. Under the terms of the LEASE AGREEMENT, based upon the breach EVMWD
22 has the right to action to prevent further breaches by the CANYON LAKE POA and persons
23 claiming rights under the LEASE AGREEMENT, and is entitled to recover the entire cost of such
24 action, including litigation expenses and attorney's fees from the deposit made under the LEASE
25 AGREEMENT.

FIRST CAUSE OF ACTION
(Declaratory Relief against all defendants)

1
2
3 52. EVMWD incorporates herein by reference each of the facts and allegations set
4 forth in paragraphs 1 through 38.

5 53. An actual controversy has arisen and now exists between EVMWD and CANYON
6 LAKE POA concerning their respective rights and obligations under the LEASE AGREEMENT,
7 including but not limited to:

8 (A) Where the payments under the LEASE AGREEMENT are an unconstitutional
9 “tax” as defined in Article 13 of the California Constitution;

10 (B) Whether CANYON LAKE POA breached the LEASE AGREEMENT;

11 (C) Whether CANYON LAKE POA is in default under the terms of the LEASE
12 AGREEMENT;

13 (D) Whether the default by CANYON LAKE POA has or can be cured and if so, what
14 is the reasonable time for such cure;

15 (E) What is the monetary damage to EVMWD as a result of the default; and

16 (F) Whether in light of the uncured default by CANYON LAKE POA, EVMWD is
17 entitled to terminate the LEASE AGREEMENT.

18 54. EVMWD contends (1) the payments under the LEASE AGREEMENT are not an
19 unconstitutional tax as defined by Article 13; (2) CANYON LAKE POA breach the LEASE
20 AGREEMENT by electing to deposit rental payments into an escrow account; (3) CANYON
21 LAKE POA is in default under the LEASE AGREEMENT and has failed to cure the default; (4)
22 EVMWD has been damaged by CANYON LAKE POA’s breach of the LEASE AGREEMENT;
23 (5) EVMWD is entitled to terminate the LEASE AGREEMENT due to CANYON LAKE POA’s
24 uncured defaults.

25 55. EVMWD is informed and believes and on that basis alleges that CANYON LAKE
26 POA contests each of EVMWD’s contentions.

27 56. EVMWD requests a judicial determination of its rights under the LEASE
28 AGREEMENT.

1 Owners have incurred, suffered, or sustained any damages, which EVMWD denies, any such
2 damages were the result, in whole or in part, of conduct by CANYON LAKE POA.

3 67. EVMWD has performed all conditions, covenants, and promises required on its
4 part to be performed in accordance with the terms and conditions of the LEASE AGREEMENT,
5 except for those covenants and conditions EVMWD was prevented or excused from performing.

6 68. By reason of the foregoing, although EVMWD denies any liability to CANYON
7 LAKE POA on behalf of Lakefront Owners in the above-captioned action, in the event that
8 CANYON LAKE POA prevails on its claims, in whole or in part, EVMWD is entitled to be
9 indemnified by CANYON LAKE POA for the amount of any judgment or settlement, or a
10 portion thereof, and for attorneys' fees, costs and expenses incurred by EVMWD in relation to the
11 claims filed by CANYON LAKE POA on behalf of Lakefront Owners.

12 **FOURTH CAUSE OF ACTION**
13 **(Declaratory Relief Re Ownership of Lease Improvements against all Defendants)**

14 69. The EVMWD incorporates herein by reference each of the facts and allegations set
15 forth in paragraphs 1 through ____.

16 70. In the event a determination is made that the LEASE AGREEMENT has
17 terminated, EVMWD desires a judicial declaration that all Constructed Improvements, of a
18 permanent nature, including but not limited to docks, sea walls, bulkheads, launching ramps,
19 bathing beaches and other improvements necessary or desirable for the complete utilization of its
20 rights under the LEASE AGREEMENT constructed and maintained by the CANYON LAKE
21 POA and its members automatically vest in EVMWD.

22 71. An actual controversy has arisen and now exists between EVMWD and CANYON
23 LAKE POA, and the Lakefront Owners are represented the CANYON LAKE POA, concerning
24 their respective rights to all improvements, of a permanent nature, including but not limited to
25 docks, sea walls, bulkheads, launching ramps, bathing beaches and other improvements necessary
26 or desirable for the complete utilization of CANYON LAKE POA's rights under the LEASE
27 AGREEMENT.

28 72. EVMWD contends these constructed improvements consist of and include docks,

1 sea walls, bulkheads, launching ramps, bathing beaches and other improvements constructed and
2 maintained by CANYON LAKE POA and its members on the LEASED PROPERTY.

3 73. EVMWD is informed and believes and on that basis alleges that CANYON LAKE
4 POA and its members contest EVMWD's contentions.

5 74. EVMWD requests a judicial determination of those improvements which
6 ownership has vested in EVWMD based upon the termination of the LEASE AGREEMENT.

7 75. Such a declaration is necessary and appropriate at this time.

8 **FIFTH CAUSE OF ACTION**
9 **(Declaratory Relief re Public Nature of the Reservoir as against All Defendants)**

10 76. The EVMWD incorporates herein by reference each of the facts and allegations set
11 forth in paragraphs 1 through ____.

12 77. In the event a determination is made that the LEASE AGREEMENT has
13 terminated and/or expired, EVMWD desires a judicial declaration that the Reservoir is open to
14 the public, including for boating, fishing, water sports and other activities, and EVMWD may
15 restrict use provided it permits members of CANYON LAKE POA to use the Reservoir on an
16 individual basis for the same purpose and on the same conditions, and charges required of any
17 other person permitted to use the Reservoir, if any.

18 78. An actual controversy has arisen and now exists between EVMWD and CANYON
19 LAKE POA concerning the public nature of the Lake including but not limited to EVMWD's
20 right to allow others to use the Reservoir for boating, fishing, water sports and other activities,
21 and/or to establish conditions and charges required of any person permitted to use the Reservoir.

22 79. EVMWD contends that in the event the LEASE AGREEMENT has expired or
23 terminated, it has the right to open the Reservoir to the public, including for boating, fishing,
24 water sports and other activities, provided it permits members of CANYON LAKE POA to use
25 the Reservoir on an individual basis for the same purpose and on the same conditions and charges
26 required of any other person permitted to use the Reservoir.

27 80. EVMWD is informed and believes and on that basis alleges that CANYON LAKE
28 POA and its members contest EVMWD's contentions.

1 81. EVMWD requests a judicial determination of those improvements which
2 ownership has vested in EVWMD based upon the termination of the LEASE AGREEMENT.

3 82. Such a declaration is necessary and appropriate at this time.

4 **SIXTH CAUSE OF ACTION**
5 **(Quiet Title as to Shoreline against all Defendants)**

6 83. The EVMWD incorporates herein by reference each of the facts and allegations set
7 forth in paragraphs 1 through 24.

8 84. EVMWD is the record owner of the LEASED PROPERTY which includes the
9 Reservoir and Shoreline.

10 85. Defendants are the owners of real property surrounding the LEASED PROPERTY
11 and EVMWD is informed and believes and on that basis allege that CANYON LAKE POA,
12 including the Lakefront Owners who are represented in this litigation by the CANYON LAKE
13 POA, contend they have irrevocable licenses to maintain various property improvements in, on
14 and around the Reservoir and Shoreline.

15 86. EVMWD desire to quiet title as to the claims of CANYON LAKE POA and
16 Lakefront Homeowners who are represented by the CANYON LAKE POA, to the LEASED
17 PROPERTY, including but not limited to the Reservoir and Shoreline.

18 87. EVMWD desire to quiet title to the claims of CANYON LAKE POA, including
19 the Lakefront Owners who are represented in this litigation by the CANYON LAKE POA, as of
20 the date of the filing of this action, or alternatively, upon the date the LEASE AGREEMENT is
21 found to have terminated.

22 88. Pursuant to the terms of the Indemnity Agreements, in the event that any action or
23 proceeding is commenced between the Lakefront Owners and/or the District and Association to
24 enforce or interpret any term of the Indemnity Agreements, the prevailing party in such action or
25 proceeding, in addition to all other relief to which it may be entitled, shall be entitled to recover
26 from the other party the prevailing party's costs of suit and reasonable attorney's fees. The
27 attorneys' costs and fees recoverable include, without limitation, attorneys' costs and fees
28 incurred on appeal and those incurred in enforcing any judgment rendered. Attorneys' costs and

1 fees may be recovered as an element of costs in the underlying action or proceeding or in a
2 separate recovery action.

3 **SEVENTH CAUSE OF ACTION**
4 **(Ejectment against all Defendants)**

5 89. The EVMWD incorporates herein by reference each of the facts and allegations set
6 forth in paragraphs 1 through 24.

7 90. Defendants are now in possession of the PROPERTY and have been in possession
8 of the property since on or about _____ [date], when they refused to turn over
9 possession upon termination of the LEASE AGREEMENT.

10 91. EVMWD has demanded Defendants, and each of them, turn over possession upon
11 termination of the LEASE AGREEMENT and to vest ownership of Improvements constructed
12 and/or maintained on the PROPERTY in EVMWD.

13
14 92. Defendants and each of them have ignored these demands, instead contending they
15 have an irrevocable license to use the PROPERTY and have refused to relinquish possession.

16 5. The reasonable value of the rents and profits of the premises is, and was, the sum of
17 \$_____ per month. Plaintiff has been damaged in this sum since
18 _____ [date], and will continue to be damaged at the rate of
19 \$_____ per month as long as defendants withhold possession of the premises
20 from plaintiff.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, EVMWD prays for judgment as follows:

23 As to the First Cause of Action:

24 1. For a judicial determination and declaration stating: (a) The payments required
25 under the LEASE AGREEMENT are valid and not an unconstitutional "tax" as defined by
26 Article 13; (b) The CANYON LAKE POA breached the LEASE AGREEMENT by depositing
27 rental payments into an escrow account; (c) CANYON LAKE POA is in default under the
28 LEASE AGREEMENT and has failed to cure the default; (d) EVMWD has been damaged by

1 CANYON LAKE POA's breach of the LEASE AGREEMENT; and (e) EVMWD is entitled to
2 terminate the LEASE AGREEMENT due to CANYON LAKE POA's uncured defaults;

- 3 2. For costs of suit incurred herein;
- 4 3. For reasonable attorneys' fees; and
- 5 4. For all other proper orders.

6 As to the Second Cause of Action

- 7 1. For damages according to proof at the time of trial, but not less than \$344,302.92;
- 8 2. For costs of suit incurred herein;
- 9 3. For reasonable attorneys' fees; and
- 10 4. For all other proper orders.

11 As to the Third Cause of Action:

- 12 1. For a judicial determination and declaration stating that the LEASE
13 AGREEMENT has terminated and
- 14 2. For costs of suit incurred herein;
- 15 3. For reasonable attorneys' fees; and
- 16 4. For all other proper orders.

17 As to the Third Cause of Action:

- 18 1. For a judicial determination and declaration stating that the LEASE
19 AGREEMENT has terminated and
- 20 2. For costs of suit incurred herein;
- 21 3. For reasonable attorneys' fees; and
- 22 4. For all other proper orders.

23 As to the Fourth Cause of Action:

- 24 1. For a judicial determination and declaration stating that the LEASE
25 AGREEMENT has terminated and
- 26 2. For costs of suit incurred herein;
- 27 3. For reasonable attorneys' fees; and
- 28 4. For all other proper orders.

1 As to the Fifth Cause of Action:

- 2 1. For a judicial determination and declaration stating that the LEASE
3 AGREEMENT has terminated and
4 2. For costs of suit incurred herein;
5 3. For reasonable attorneys' fees; and
6 4. For all other proper orders.

7 As to the Sixth Cause of Action:

- 8 1. For restitution of the premises;
9 2. For damages for their unlawful possession of the Property from and after the date
10 the LEASE AGREEMENT terminated or terminates, until delivery of possession thereof;
11 3. For costs of suit incurred herein;
12 4. For reasonable attorneys' fees; and
13 5. For all other proper orders.

14 As to the Seventh Cause of Action:

15 Dated: March _____, 2015

BEST BEST & KRIEGER LLP

16
17
18
19
20
21
22
23
24
25
26
27
28

By: _____
JAMES B. GILPIN
MOLLY E. SELWAY
Attorneys for Defendant and Cross-
Complainant Elsinore Valley Municipal
Water District