

1 Lauren C. Regan, *pro hac vice* forthcoming;  
Oregon State Bar No. 970878  
2 Civil Liberties Defense Center  
1430 Willamette St. #359  
3 Eugene, OR 97401  
lregan@cldc.org  
4 (541) 687-9180 Phone  
(541) 804-7391 Fax  
5 Lead Counsel

6 Donald B. Mooney (SBN 153721)  
Law Office of Donald B. Mooney  
7 417 Mace Blvd, Suite J-334  
Davis, CA 95618  
8 dbmooney@dcn.org  
(530) 758-2377 Phone  
9 (530) 758-7169 Fax  
Local Counsel

10 Attorneys for Plaintiffs

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SISKIYOU

13 WATER FOR CITIZENS OF WEED  
14 CALIFORNIA; JIM TAYLOR; MICHAEL  
YATES; BOB HALL; MONICA ZINDA;  
15 DAVID PEARCE; MARY JACKSON; RAY  
STRACK; and BRUCE SHOEMAKER;

16 Plaintiffs,

17 v.

18 CHURCHWELL WHITE LLP; BARBARA  
19 A. BRENNER; and ROBIN R. BARAL,

20 Defendants.

Case No. CVCV20-387

COMPLAINT FOR:

SLAPPback (CCP § 425.18) -- Malicious  
Prosecution

JURY TRIAL DEMANDED

21 **INTRODUCTION**

22 Plaintiffs Water for Citizens of Weed California (WCWC), Jim Taylor, Michael Yates,  
23 Bob Hall, Monica Zinda, David Pearce, Mary Jackson, Ray Strack, and Bruce Shoemaker, by  
24

1 and through their attorneys, bring this action against Defendants for general, compensatory, and  
2 punitive damages; costs; attorneys' fees; and other appropriate and just relief resulting from  
3 Defendants' unlawful conduct, and as grounds therefore allege:

4 **PARTIES**

5 1. Plaintiff Water for Citizens of Weed California (WCWC) is an unincorporated  
6 association, a grassroots group of concerned citizens that organized to oppose the takeover and  
7 privatization of spring water the City of Weed had relied on for over 100 years.

8 2. Plaintiff Jim Taylor is a resident of Weed, California, and has resided in Weed  
9 for 54 years. Taylor has been a school board member at Weed Elementary School for 21 years,  
10 was twice awarded Citizen of the Year of Weed, manager of the Weed Museum, and is  
11 President of WCWC.

12 3. Plaintiff Michael Yates is a resident of Weed, California, has resided in Weed for  
13 over 70 years, and is a member of WCWC.

14 4. Plaintiff Bob Hall is a resident of Weed, California, and has resided in Weed for  
15 50 years. Hall is a former mayor of Weed, California, is serving his third term as a City  
16 Councilman, and was the 2014 Citizen of the Year for Weed, California. Hall is a member of  
17 WCWC.

18 5. Plaintiff Monica Zinda is a resident of Weed, California. Zinda is also the Chair  
19 of the Weed Planning Commission.

20 6. Plaintiff David Pearce is a resident of Weed, California. He has resided in Weed  
21 for 62 years, was a Mayor and City Councilman of Weed, and is a member of WCWC.

22 7. Plaintiff Mary Jackson is a resident of Weed, California, and is a member of  
23 WCWC.

1 8. Plaintiff Ray Strack is a resident of Weed, California, and is a member of  
2 WCWC.

3 9. Plaintiff Bruce Shoemaker is a resident of Weed, California, and is a member of  
4 WCWC.

5 10. Defendant Churchwell White LLP (Churchwell White) is a law firm with offices  
6 in Sacramento, California. Churchwell White represented Roseburg Forest Products Co.  
7 (“Roseburg”) in Roseburg’s abusive lawsuit against Plaintiffs and others, *Roseburg Forest*  
8 *Products Company, Inc. v. The City of Weed, et. al.*, Siskiyou County Superior Court Case No.  
9 SC CV 17-00532 (“RFP lawsuit”).

10 11. Defendant Barbara A. Brenner is an attorney and partner at Churchwell White.  
11 Brenner was one of three attorneys that represented Roseburg in Roseburg’s abusive lawsuit  
12 against Plaintiffs and others. Upon information and belief, Defendant Brenner is a resident of  
13 Sacramento County. At all times mentioned herein, Brenner was the agent, employee, and/or  
14 partner of the other two Defendants and in doing each act, was acting within the course and  
15 scope of such agency, employment, and/or partnership.

16 12. Robin R. Baral is one of three attorneys that represented Roseburg in the abusive  
17 lawsuit against Plaintiffs. Defendant Baral is a former employee of Churchwell White and was  
18 employed by Churchwell White throughout the lawsuit against Plaintiffs. Upon information and  
19 belief, Defendant Baral is a resident of Sacramento County. At all times mentioned herein,  
20 Baral was the agent and/or employee of the other two Defendants and in doing each act, was  
21 acting within the course and scope of such agency and/or employment.

22 13. Venue is appropriate in Siskiyou County because the acts and occurrences  
23 alleged herein occurred in Siskiyou County and the Plaintiffs reside in and/or do business in this  
24

1 district.

2 **FACTUAL ALLEGATIONS**

3 14. This action arises from a lawsuit that was filed against Plaintiffs (and others) by  
4 Defendants on behalf of their client, Roseburg, regarding a dispute over whether Roseburg was  
5 entitled to 2.0 cubic feet per second (“cfs”) of water from Beaghan Springs. *Roseburg Forest*  
6 *Products Company, Inc. v. The City of Weed, et. al.*, Siskiyou County Superior Court Case No.  
7 SC CV 17-00532 (“the RFP lawsuit”).

8 15. The City of Weed has depended on the water from Beaghan Springs for over 110  
9 years.

10 16. The underlying lawsuit was filed after WCWC and the eight named Plaintiffs in  
11 this current action voiced their concerns over the water dispute as private citizens and residents  
12 of Weed.

13 17. The Plaintiffs, several of whom are over 80 years old and have lived in Weed  
14 most of their lives, gathered together to form the citizen advocacy group WCWC in 2016 after  
15 Roseburg, in Plaintiffs view, took extraordinarily aggressive actions to deprive the City of Weed  
16 of water, a vital public resource.

17 18. In 2016, the City declared a state of emergency because a previous contract that  
18 guaranteed the City rights to Beaghan Springs water was about to expire. The prior contract  
19 was with International Paper and had been in effect since 1966. That contract gave the City the  
20 right to the water in exchange for one dollar per year. International Paper sold its property,  
21 including the area providing access to Beaghan Springs, to Roseburg Forest Products in 1982.

22 19. Shortly after the City’s declaration of emergency, Roseburg offered the City a  
23 ten-year lease on a portion of the Springs water it had been using, for an initial \$97,500 per  
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1 year, increasing over time.

2           20.     The 10-year lease offered by Roseburg required the City to identify an  
3 alternative source of water within two years and to completely cease its use of Beaughan  
4 Springs water after ten years. The City had no other certain and sufficient substitute water  
5 source at the time and, according to some City Council members, they felt coerced under duress  
6 to sign the lease. Roseburg also tried to require the City to accept its storm water run-off and  
7 industrial waste water as part of the lease agreement. The City, however, refused to do this.  
8 Roseburg responded by saying the City was putting its access to the spring water at-risk. After  
9 strong advocacy by WCWC and other community members, Roseburg eventually relented and  
10 signed the lease agreement without the storm water and industrial waste stipulation.

11           21.     Roseburg sells Beaughan Springs water to a Crystal Geysers Roxane water  
12 bottling facility.

13           22.     After the City entered into the lease with Roseburg, members of WCWC  
14 (including Plaintiffs) discovered documents that appeared to contradict the fundamental terms  
15 of the lease and, in their view, illustrated that Roseburg had no right to appropriate the City's  
16 water source for its own private gain.

17           23.     Plaintiffs, many of whom were current or former elected public officials, raised  
18 concerns to their community about their City losing a vital public water resource to a private  
19 corporation.

20           24.     The Plaintiffs took at least four actions to raise their concerns to the public and  
21 government. First, the Plaintiffs gathered together to participate in public advocacy to address  
22 their concerns over the water rights. Second, they wrote a letter to the Scott-Shasta Watermaster  
23 District (SSWD), asking it to correct its records to show (in their view) the City of Weed's  
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1 ownership of the water right. Third, they attended a SSWD meeting regarding the water right.  
2 Fourth, they asked the Weed City Council to join their request to the District (which it did).  
3 These are the only acts of Plaintiffs that Roseburg alleged in its First Amended Complaint in the  
4 RFP lawsuit (FAC). A true and correct copy of the First Amended Complaint is attached hereto  
5 as **Exhibit A**.

6 25. Subsequent to the filing of the RFP lawsuit, the Plaintiffs held several protests,  
7 including one at Roseburg's offices in Springfield, Oregon.

8 26. Plaintiffs also participated in the production of two documentary films about the  
9 fight over the water rights, wrote letters to the editors of several newspapers, held educational  
10 events and community forums for the public, wrote letters to their local government and  
11 Roseburg Forest Products, and engaged in several other forms of protected speech and speech  
12 activity to voice their opposition to Roseburg's activities.

13 27. Plaintiffs also raised concerns that the City of Weed may not have enough water  
14 to prevent or fight future forest fires. In public events and publications, Plaintiffs noted that the  
15 former Weed fire chief has stated that the gravity-fed Beaghan Springs water was essential to  
16 fighting and containing the 2014 fires that ravaged Weed.

17 28. Plaintiffs were also deeply concerned over where members of their community  
18 who relied on the Beaghan spring water for daily life and business were going to find other  
19 sources of water, at a time of a severe drought in California.

20 29. Plaintiffs asked the City of Weed to join their request to SSWD to correct the  
21 historical record regarding the rights to the spring water on May 11, 2017, at a City Council  
22 meeting.

23 30. The City Council agreed, and adopted a resolution entitled "A Resolution of the  
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1 City Council of the City of Weed Requesting that the California State Water Resources Control  
2 Board Correct Its Records as to Ownership of Beaughan Springs Water Rights.” **Exhibit A** ¶  
3 52.

4 31. On May 12, 2017 -- the day after the City’s resolution -- Roseburg, by and  
5 through the Defendants named in this lawsuit, sued the City of Weed and the Plaintiffs of this  
6 lawsuit, presenting claims of Quiet Title, Declaratory Relief, and Adverse Possession.

7 32. There was no probable cause to name the Plaintiffs of this lawsuit, because the  
8 Plaintiffs had no legal personal claim to the disputed water, had not asserted such a claim, and  
9 had not in any way (as a matter of law) created a cloud on the title to the water.

10 33. Defendants were motivated to name the Plaintiffs of this lawsuit due to  
11 Plaintiffs’ persistent, effective, and lawful exercise of speech rights under the U.S. and  
12 California constitutions.

13 34. In their FAC, Roseburg and its attorneys expressly asserted that WCWC and its  
14 members neither had, *nor had claimed*, any legal right to the water, stating:

15 "a. WCWC does not represent the City;

16 "b. The City does not have any rights to Beaughan Springs under Paragraph 230,  
17 231, and 232 of the 1932 Decree;

18 "c. WCWC does not have, *nor claim*, any rights to Beaughan Springs under the 1932  
19 Decree; and

20 "d. On that basis, WCWC has no legal standing or other legal basis to request SSWD  
reexamine Roseburg's Pre-1914 Water Rights to Beaughan Springs."

21 Exhibit A at ¶ 51(c) (emphasis added).

22  
23 35. Shortly after Defendants filed their FAC, Plaintiffs of this lawsuit filed a Special  
24 Motion to Strike pursuant to California’s Anti-SLAPP statute, Civil Proc. Code section 425.16,

1 arguing that the actions of WCWC and its members (Plaintiffs of this lawsuit) were protected by  
2 the Anti-SLAPP statute and by the First Amendment to the U.S. Constitution. A true and correct  
3 copy of the Special Motion to Strike is attached hereto as **Exhibit B**.

4 36. After the Special Motion to Strike was filed, Roseburg and its attorneys (the  
5 Defendants in this case) filed a Motion for Sanctions against the individual defendants, WCWC,  
6 and their attorneys, asserting they were entitled to \$178,684.25.

7 37. In their Opposition to the Special Motion to Strike, Roseburg and its attorneys  
8 (Defendants in this case) admitted that its “FAC outlines petitioning activity undertaken by the  
9 WCWC Defendants.” Plaintiff’s Opposition to Defendants’ Special Motion to Strike the First  
10 Amended Complaint, p. 7 (FAC, ¶¶ 50-53). Roseburg also did “not dispute that these activities  
11 fall within the text of the anti-SLAPP statute.” *Id.*

12 38. On January 23, 2018, Judge Karen Dixon granted the Special Motion to Strike  
13 and dismissed WCWC, Bob Hall, Mary Jackson, David Pearce, Bruce Shoemaker, Ray Strack,  
14 Jim Taylor, Michael Yates, Monica Zinda, and Jim Gubetta from the abusive RFP lawsuit. A  
15 true and correct copy of the order granting the special motion to strike is attached hereto as  
16 **Exhibit C**.

17 39. Despite the FAC expressly stating that Plaintiffs in this case never had, and never  
18 asserted, a claim to the water right at issue, and had only urged the City of Weed to assert a  
19 claim, Defendants Brenner and Baral argued that they were trying to “clear any cloud on title”  
20 and that to do so, they were entitled to “file a quiet title against the world. We don't need to  
21 particularize any defendant's claim.” **Exhibit C** at 21 (labeled page 17 at top).

22 40. Defendant Brenner stated that Roseburg did not “need to assert what those  
23 claims are or show what they are. We simply give notice that if you do have a claim to this  
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1 | property right, please come forward so that that claim can be determined.” *Id.*

2 | 41. Defendant Brenner also stated that “we are not punishing them for asserting  
3 | things.” *Id.* at 21-22. However, that is precisely what they did by haling Plaintiffs into court and  
4 | forcing them to defend themselves.

5 | 42. Some of the Plaintiffs of this lawsuit were told by the process server that he (the  
6 | process server) was being paid \$10,000 and that the Plaintiffs would be responsible for  
7 | reimbursing those expenses if they lost in court. Between that and the simple fact of being sued  
8 | and served with summonses, the Plaintiffs of this lawsuit reasonably believed they had to obtain  
9 | legal counsel and file appearances in the RFP lawsuit.

10 | 43. The filing fees paid by the Plaintiffs totaled several thousand dollars.

11 | 44. It appears more likely than not that Churchwell White lawyers (Defendants  
12 | herein) named the WCWC Plaintiffs as defendants in the underlying suit primarily as a means to  
13 | silence, intimidate, and prevent WCWC and Plaintiffs from engaging in conduct that is  
14 | protected under the U.S. and California Constitutions.

15 | 45. That is based upon abundant circumstantial evidence, including the following:

16 | a) The timing of the underlying lawsuit;

17 | b) The fact that WCWC and its members advocacy appeared to be effective, a force  
18 | to be reckoned with;

19 | c) The fact that, as explained *supra*, Roseburg’s attorneys (the Defendants in this  
20 | case) acknowledged in their own complaint (FAC) that WCWC and its members had  
21 | never made a claim of ownership of the water; and

22 | d) The fact that the initial Roseburg lawsuit complaint included statutory language  
23 | that Roseburg was suing (as "Doe" defendants) "all persons unknown, claiming any legal  
24 | or equitable right, title, estate, lien, or interest in the water rights adverse to Roseburg's title,

1 or any cloud on Roseburg's title thereto" (which language would arguably obviate the need  
2 to specifically name all interested parties); but less than three weeks later, filed an amended  
3 complaint (the FAC) which inexplicably deleted that language).

4 46. There was no lawful reason to name the WCWC Plaintiffs of this lawsuit as  
5 Defendants in the underlying lawsuit.

6 47. As noted in the order granting the Special Motion to Strike, the actions of  
7 WCWC Plaintiffs to petition the representatives of the water district and city council were  
8 privileged acts under the U.S. and California Constitutions.

9 48. WCWC Plaintiffs "were the private citizens who were exercising their privilege  
10 and their rights under the Constitution and as demonstrated by statute." **Exhibit C** at 37.

11 49. As a result of being unlawfully named in the underlying lawsuit and having  
12 undergone the extraordinary unpleasant experience of being sued, Plaintiffs have suffered  
13 several damages.

14 50. WCWC, as a public advocacy organization dedicated not only to opposing  
15 Roseburg, but also, generally, "the safety and protection of their community's water," was  
16 subject to several harms as a result of Defendants' unlawful actions.

17 51. In addition to naming the Plaintiffs of this lawsuit in the underlying lawsuit,  
18 Defendants held open the possibility of naming up to 100 "Doe" individuals. After unlawfully  
19 naming WCWC and its members, actual and potential supporters of WCWC's mission were  
20 fearful of publicly supporting or being associated with WCWC because they believed they  
21 would end up getting sued for voicing their opinion or support for WCWC or its mission,  
22 harming WCWC's organizational mission.

23 52. Plaintiffs Strack and Zinda were at the time only loosely associated with WCWC  
24 yet were still named by Defendants. Strack was not a member of WCWC, but merely signed the

1 letter to the Watermaster authored by WCWC. Zinda acted as a moderator for one community  
2 meeting and signed the letter to the Watermaster.

3 53. Defendants' unlawful actions chilled and attempted to chill the exercise of First  
4 Amendment rights of several residents of Weed, including Plaintiffs.

5 54. After Defendants named Plaintiffs in the underlying lawsuit, a number of  
6 community members, who had expressed interest and support and had begun attending WCWC  
7 events, suddenly became fearful of being associated with WCWC, and ceased their involvement  
8 with and support of WCWC.

9 55. Defendants' unlawful actions also interfered with and impeded the mission of  
10 WCWC, causing WCWC and Plaintiffs to divert their extremely limited resources to defending  
11 themselves in court.

12 56. As a result of Defendants' unlawful actions, contributions to WCWC were  
13 reduced and WCWC was unable to continue many of its outreach efforts and advocacy.

14 57. WCWC was forced to seek legal advice and representation rather than engage in  
15 its core mission protecting the water of Weed and fighting the privatization of water.

16 58. WCWC agreed to cover some of the costs of defending itself and its members.  
17 As a result of having to defend itself in the underlying action, WCWC had to go into debt, and  
18 reallocate funds meant for other activities, just to pay for the filing fees for each of its members  
19 who were sued.

20 59. WCWC and its members were fearful of the additional time and money they  
21 would have to spend defending themselves, and suffered the psychological toll of being  
22 personally sued.

23 60. Plaintiffs experienced extreme emotional and psychological distress as a result of  
24

1 being unlawfully named and having to defend themselves in the underlying lawsuit.

2 61. Most of the named WCWC members, including Plaintiffs Pearce, Yates, Hall,  
3 and Taylor, were on fixed incomes at the time they were unlawfully named as defendants in the  
4 underlying lawsuit. Their economic status made the usual psychological harm from being sued  
5 even greater.

6 62. All claims were dismissed in favor of the Plaintiffs of this lawsuit pursuant to a  
7 "special motion to strike," also known as an anti-SLAPP motion.

8 63. Defendants and its client Roseburg appealed that dismissal but did not ultimately  
9 pursue the appeal. The appeal remained active for almost two additional years, from early 2018  
10 when the judge issued the dismissal, until December 2019, when the appeal was finally  
11 dismissed. This caused an additional two years of uncertainty, stress, and anxiety for the named  
12 WCWC members, and continued to tie up WCWC's financial resources, continuing to impair  
13 the effectiveness of WCWC.

14 **FIRST CAUSE OF ACTION**

15 SLAPPBACK (CCP § 425.18) — Malicious Prosecution

16 64. Plaintiffs incorporate the foregoing paragraphs, as though fully set forth herein.

17 65. Defendants, on behalf of their client Roseburg, commenced the RFP lawsuit with  
18 malice and without probable cause, and with an intent to harm or harass Plaintiffs.

19 66. The RFP lawsuit was pursued to a legal termination favorable to the plaintiffs,  
20 namely a dismissal pursuant to a SLAPP motion.

21 67. The underlying lawsuit against Plaintiffs was completely without merit.

22 68. No reasonable attorney in the Defendants' circumstances would have believed  
23 that there were any reasonable or lawful grounds to bring the claims of the underlying lawsuit  
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1 against Plaintiffs.

2 69. Defendants knew, and admitted in the FAC and their Opposition to the Special  
3 Motion to Strike, that Plaintiffs of this lawsuit made no claim to the water rights at issue in the  
4 underlying lawsuit.

5 70. Based on the circumstances, as discussed in detail supra, Defendants named  
6 Plaintiffs in the underlying lawsuit as a means to silence and chill the First Amendment rights of  
7 Plaintiffs.

8 71. Defendants' actions violated California Code of Civil Procedure § 425.16, and  
9 the SLAPP dismissal created a "SLAPPback" cause of action pursuant to CCP § 425.18 to  
10 protect the valid exercise of the constitutional rights of free speech and petition by its deterrent  
11 effect on SLAPP (Strategic Lawsuit Against Public Participation) litigation, and by its  
12 restoration of public confidence in participatory democracy.

13 72. As a result of Defendants' actions, Plaintiffs have suffered and will continue to  
14 suffer damages, including without limitation general damages, special damages, injury to their  
15 professional and personal reputation, emotional distress, all to their damage in sums according  
16 to proof at trial.

17 73. The conduct of defendants was done with fraud, oppression, or malice, thereby  
18 entitling Plaintiffs to punitive or exemplary damages in a sum according to proof at trial.

19 **PRAYER FOR RELIEF**

20 WHEREFORE Plaintiffs pray for judgment as follows on all causes of action:

21 A. For damages according to proof including, without limitation, general damages, special  
22 damages, compensatory damages, lost revenues, damage to WCWC's business goodwill,  
23 emotional distress damages, and harm to reputation;

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- B. For punitive damages in an amount to be proven;
- C. For costs of suit incurred herein;
- D. For attorneys' fees;
- E. For trial by jury;
- F. For other and further relief as the Court deems just and proper.

DATED: April 20, 2020

By:

  
Lauren C. Regan, Oregon State Bar 970878  
Admission *pro hac vice* pending  
Attorney for Plaintiffs

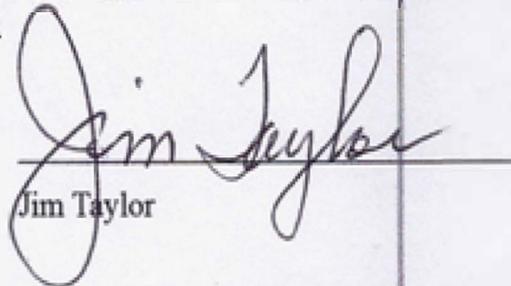
By:

  
Donald Mooney, SBN 153721  
Local Counsel  
Attorney for Plaintiffs

**VERIFICATION**

I, Jim Taylor, the undersigned, certify and declare that I have read the foregoing **Verified Complaint for Damages** and know its contents. I am the President of Water for Citizens of Weed, California, a Plaintiff of this action and I am also an individual Plaintiff in this action. I am authorized to make this verification for and on behalf of WCWC and the individual Plaintiffs. I am informed and believe and, on that ground, allege that the matters stated in the Verified Complaint for Damages are true.

I declare under penalty of perjury that the above is true and correct. Executed this 20<sup>th</sup> Day of April, 2020, at Siskiyou County, California.

  
Jim Taylor

**VERIFIED COMPLAINT FOR DAMAGES**