

**AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN  
CALIFORNIA**

JOHN THOMAS H. DO (SBN 285075)

jdo@aclunc.org

EMI YOUNG (SBN 311238)

eyoung@aclunc.org

GRAYCE ZELPHIN (SBN 279112)

gzelphin@aclunc.org

39 Drumm Street

San Francisco, CA 94111

Telephone: (415) 293-6333

Facsimile: (415) 255-8437

**ASIAN LAW CAUCUS**

CARL TAKEI (SBN 256229)

carlt@asialawcaucus.org

MEGAN VEES (SBN 325184)

meganv@asianlawcaucus.org

55 Columbus Avenue

San Francisco, CA 94111

Telephone: (415) 896-1701

Facsimile: (415) 896-1702

*Counsel for Plaintiffs Chang, et al.*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**GER CHONG ZE CHANG, MAI NOU VANG,  
RUSSELL MATHIS, YING SUSANNA VA, and**  
all others similarly situated,

Plaintiffs,

v.

**COUNTY OF SISKIYOU and JEREMIAH  
LARUE, in his official capacity as Sheriff,**

Defendants.

**COVINGTON & BURLING LLP  
STANLEY YOUNG (SBN 121180)**

syoung@cov.com

3000 El Camino Real

5 Palo Alto Square, 10th Floor

Palo Alto, CA 94306-2112

Telephone: (650) 632-4700

Facsimile: (650) 632-4800

MICHAEL PLIMACK (SBN 133869)

mplimack@cov.com

ALISON WALL (SBN 319562)

awall@cov.com

ELLEN CHOI (SBN 326291)

echoi@cov.com

COVINGTON & BURLING LLP

Salesforce Tower

415 Mission St., Suite 5400

San Francisco, CA 94105-2533

Telephone: (415) 591-6000

Facsimile: (415) 591-6091

CASE NO.: 2:22-cv-01378-KJM-AC

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PROVISIONAL CLASS  
CERTIFICATION; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Hearing Date: September 13, 2024

Time: 10:00 AM

Judge: Kimberly J. Mueller (KJM)

Courtroom: 3

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

NOTICE OF MOTION AND MOTION ..... 1

MEMORANDUM OF POINTS AND AUTHORITIES ..... 1

I. INTRODUCTION ..... 2

II. FACTUAL BACKGROUND..... 3

    A. Many Asian Americans in Siskiyou County Rely on Hauled Water for Daily and  
        Emergency Use. .... 3

    B. The County Has Historically Targeted Asian Americans’ Water Access. .... 4

    C. The County’s Shift to Enforcing the Zoning Ordinance as the Primary Mechanism  
        for Restricting Water Access for Asian Americans. .... 5

    D. The County’s Use of the Zoning Ordinance to Restrict Water Access for Asian  
        Americans Has Led to Dangerous Consequences. .... 6

    E. Proposed Class Representative. .... 7

III. ARGUMENT ..... 8

    A. The Proposed Class Meets the Requirements of Rule 23(a)..... 8

        1. Numerosity..... 8

        2. Commonality..... 9

        3. Typicality ..... 10

        4. Adequacy ..... 11

    B. The Proposed Class Meets the Requirements of Rule 23(b)(2)..... 11

IV. CONCLUSION..... 12

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

1

2

3

4 *Ahlman v. Barnes,*  
445 F. Supp. 3d 671 (C.D. Cal. 2020) .....8

5

6 *Amchem Prods., Inc. v. Windsor,*  
521 U.S. 591 (1997).....11

7 *Evon v. Law Offs. of Sidney Mickell,*  
688 F.3d 1015 (9th Cir. 2012) .....11

8

9 *Gilbert v. MoneyMutual, LLC,*  
318 F.R.D. 614 (N.D. Cal. 2016).....9

10

11 *Hanlon v. Chrysler Corp.,*  
150 F.3d 1011 (9th Cir. 1998) .....11

12 *Hanon v. Dataproducts Corp.,*  
976 F.2d 497 (9th Cir. 1992) .....10

13

14 *J.L. v. Cissna,*  
341 F. Supp. 3d 1048 (N.D. Cal. 2018) .....1

15

16 *Just Film, Inc. v. Buono,*  
847 F.3d 1108 (9th Cir. 2017) .....10

17 *Kidd v. Mayorkas,*  
343 F.R.D. 428 (C.D. Cal. 2023).....10

18

19 *Kincaid v. City of Fresno,*  
244 F.R.D. 597 (E.D. Cal. 2007) .....9

20

21 *Lo v. County of Siskiyou,*  
558 F. Supp. 3d 850 (E.D. Cal. 2021).....5

22 *Meyer v. Portfolio Recovery Assoc., LLC,*  
707 F.3d 1036 (9th Cir. 2012) .....8

23

24 *Parsons v. Ryan,*  
754 F.3d 657 (9th Cir. 2014) .....9, 10, 12

25 *Rannis v. Recchia,*  
380 F. App'x 646 (9th Cir. 2010) .....9

26

27 *Sueoka v. United States,*  
101 F. App'x 649 (9th Cir. 2004) .....9

28

1 *Wal-Mart Stores, Inc. v. Dukes*,  
 2 564 U.S. 338 (2011).....9, 12

3 *Walters v. Reno*,  
 4 145 F.3d 1032 (9th Cir. 1998) .....12

5 *Wang v. Chinese Daily News, Inc.*,  
 6 737 F.3d 538 (9th Cir. 2013) .....10

7 **Statutes**

8 Cal. Gov’t Code § 11135 .....10

9 Siskiyou Cnty. Code § 3-4.1501 .....4

10 Siskiyou Cnty. Code § 3-13.702 .....4

11 Siskiyou Cnty. Code § 3.5-13.101 et seq.....4

12 **Other Authorities**

13 Fed. R. Civ. P. 23(a) ..... *passim*

14 Fed. R. Civ. P. 23(b) .....3, 8, 12

15 U.S. Const. amend. XIV .....10

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

**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that, at 10:00 a.m. on September 13, 2024, Plaintiffs will and hereby do move, pursuant to Fed. R. Civ. P. 23 and Civil L.R. 205, for provisional certification of a class of all Asian Americans who reside or will reside within Siskiyou County without access to a residential well or municipal water at their property.<sup>1</sup> This motion is supported by the following Memorandum of Points and Authorities; by the Class Action Complaint on file, and the Supplemental Complaint filed contemporaneously herewith; by Plaintiffs’ Motion for Preliminary Injunction (“PI Motion”) and the supporting declarations filed contemporaneously herewith; by Plaintiffs’ Request for Judicial Notice, filed contemporaneously herewith; by declarations of the Plaintiffs’ attorneys, filed contemporaneously herewith; by the pleadings and papers on file; any subsequent briefing; and any evidence and oral argument that may be requested or permitted by the Court.

Pursuant to the Court’s Standing Order, Plaintiffs’ counsel reached out to Defendants’ counsel requesting a time to meet and confer on Plaintiffs’ intent to file this motion on both August 2 and August 5, 2024. Mr. Donald refused to meet and confer until the week of August 19 due to scheduling conflicts. Given the urgent nature of the preliminary relief Plaintiffs are seeking, Plaintiffs’ counsel requested a timely meet and confer with any of the other attorneys who have appeared on behalf of Defendants and provided a brief written summary of the intended motions, but Defendants’ counsel did not respond. Plaintiffs therefore believe that meet and confer efforts have been exhausted. There are no pending settlement discussions in this matter.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Because Class-wide preliminary injunctive relief is necessary to protect the rights of Class members, *see* concurrently filed Motion for Preliminary Injunction, Plaintiffs respectfully urge the Court to grant provisional class certification. *But see J.L. v. Cissna*, 341 F. Supp. 3d 1048, 1070 (N.D. Cal. 2018) (courts retain discretion to grant preliminary class-wide relief to preserve the *status quo* and prevent irreparable harm before certifying a class).

---

<sup>1</sup> In their First Amended Complaint, Plaintiffs also propose traffic and liens subclasses, but do not seek provisional certification of those subclasses at this time.

1 **I. INTRODUCTION**

2 Siskiyou County (“County”) has begun using its zoning ordinance to restrict water access for its  
3 Asian American residents. It is doing so by citing and informing well owners that off-parcel water transfers  
4 of any kind violate the local zoning restrictions. As set forth more fully in the contemporaneously filed  
5 Motion for Preliminary Injunction, this practice is merely the latest iteration of the County’s racially  
6 motivated attempts to restrict water access for Asian Americans who are dependent on hauled water. But  
7 the current practice creates an immediate health and safety risk for many Asian Americans who are  
8 struggling, or no longer able, to obtain hauled water for their necessary domestic use.

9 Plaintiff Mathis and members of the proposed Class (hereafter “Class” and “Class members”) are  
10 Asian American residents of Siskiyou County who do not have well or municipal water access where they  
11 live. They are, accordingly, almost entirely dependent on water hauled from other properties and wells for  
12 both daily and emergency use. Although the County is aware of the need for hauled water in communities  
13 where Class members live, its application of the zoning ordinance renders virtually all such water transfers  
14 unlawful.

15 Plaintiffs seek provisional certification of the following Class: all Asian Americans who reside or  
16 will reside within Siskiyou County without access to a residential well or municipal water at their property.  
17 The proposed Class meets the requirements of Federal Rules of Civil Procedure 23(a) and (b).

18 With respect to the requirements of Rule 23(a), the proposed Class is sufficiently numerous, as  
19 there are at least hundreds of Asian Americans who currently reside in Siskiyou County without a  
20 residential well or municipal water access where they live. Class members also share common questions  
21 of fact and law, namely: 1. whether the zoning interpretation adopted by the County is at least in part  
22 racially motivated; 2. whether the County’s zoning policy and targeting of well owners thereunder exposes  
23 Class members to actual, particularized danger; and 3. whether the County has taken these actions with  
24 deliberate indifference to the dangerous consequences for Asian Americans. Finally, Plaintiff Mathis’s  
25 claims are typical of absent Class members, and he and proposed Class counsel will adequately represent  
26 the Class.

27 With respect to Rule 23(b), Defendants have acted and refused to act on grounds that are generally  
28 applicable to the Class, by adopting and executing an interpretation of the zoning ordinance that prohibits

1 nearly all off-parcel transfers of water. The injunction sought will provide Class-wide relief, and therefore  
2 meets the requirements for certification under Rule 23(b)(2).

3 **II. FACTUAL BACKGROUND**

4 **A. Many Asian Americans in Siskiyou County Rely on Hauled Water for Daily and**  
5 **Emergency Use.**

6 Asian Americans are a small minority in Siskiyou County.<sup>2</sup> Within the County, Asian Americans  
7 largely reside in a few rural, unincorporated communities located in and around the Mount Shasta Vista  
8 subdivision (“Shasta Vista”), and around of the towns of Dorris and MacDoel. Moua Decl. ¶ 3; Khang  
9 Decl. ¶ 4; Thao Decl. ¶ 6; Reynolds Decl. ¶ 4.<sup>3</sup> There is no municipal water access in these areas, and  
10 wells are scarce. Reynolds Decl. ¶¶ 4, 6, 8; M. Lee Decl. ¶ 3; N. Vue Decl. ¶ 3. For example, in Shasta  
11 Vista, which is the largest of these communities and home to at least several hundred Asian Americans,  
12 Khang Decl. ¶ 4, the vast majority of Asian Americans do not have wells and therefore rely on hauled  
13 water for their daily use. Reynolds Decl. ¶ 6; *see also* V. Moua Decl. ¶ 5; Khang Decl. ¶ 9; Thao Decl.  
14 ¶ 7. Within the County, there are at least hundreds of Asian Americans who do not have a well or direct  
15 water access where they live and require hauled water for their domestic use. Reynolds Decl. ¶ 7; Thao  
16 Decl. ¶ 5.

17 These residents rely on hauled water for a variety of domestic uses, including bathing and hygiene,  
18 cleaning clothes and dishes, cooking, keeping cool in triple digit summer temperatures, and keeping their  
19 animals alive. Mathis Decl. ¶ 10; B. Lee Decl. ¶ 5; Thao Decl. ¶ 9; K. Lee Decl. ¶ 4; M. Lee Decl. ¶¶ 7–  
20 10; Xiong Decl. ¶ 5; Y. Yang Decl. ¶¶ 3–6. They also rely on hauled water to mitigate fire risks and enable  
21 local volunteer firefighters to respond when a wildfire breaks out, as fires spread quickly in these areas  
22 and it can take professional firefighters 30 minutes or more to arrive in neighborhoods like Shasta Vista.  
23 Khang Decl. ¶¶ 8, 13, 15; Ya Decl. ¶ 11; King Decl. ¶¶ 18–19, 22–24.

24  
25  
26 <sup>2</sup> U.S. Census Bureau, “Siskiyou County, California” 2020 Decennial Census, *available at*  
27 [https://data.census.gov/profile/Siskiyou\\_County,\\_California?g=050XX00US06093](https://data.census.gov/profile/Siskiyou_County,_California?g=050XX00US06093).

28 <sup>3</sup> Unless otherwise noted, declaration citations refer to the declarations filed in support of the Motion for Preliminary Injunction filed herewith.

1           **B.       The County Has Historically Targeted Asian Americans’ Water Access.**

2           Since 2020, the County has taken a series of actions designed to restrict the availability of hauled  
3 water in Asian American communities by going after well owners or water haulers who provide water to  
4 residents.

5           First, in late 2020, the County passed Urgency Ordinance 20-13 and Ordinance 20-15, which were  
6 later codified at Siskiyou County Code section 3-13.702 (hereafter “water nuisance” ordinance). Pls.’ Req.  
7 for Judicial Notice In Supp. of Mot. for Prelim. Inj. (“RJN”) Ex. B. The water nuisance ordinance facially  
8 prohibited the use of water for cannabis cultivation, but was written in a manner that allowed the County  
9 to cite well owners who distributed water regardless of whether they knowingly permitted their water to  
10 be used for cannabis. *Id.*; Griset Decl. ¶ 6. Shortly after the passage of the water nuisance ordinance, the  
11 County sued the major agricultural well operators who had been providing water to the Asian American  
12 community. Griset Decl. ¶¶ 4, 7; Verner-Crist Decl. ¶¶ 18–19 & Ex. I. Steve Griset, who had provided  
13 Asian Americans in Shasta Vista with access to water from his well since 2016, was sued under both the  
14 water nuisance ordinance and the local zoning ordinance. Griset Decl. ¶¶ 4, 7–8. With respect to the zoning  
15 ordinance, the County alleged that Griset was violating his agricultural zoning designation by distributing  
16 water. *Id.* at ¶ 8. Water transfers are common in rural, agricultural areas, and Griset had never experienced  
17 or seen a similar interpretation of zoning laws, despite providing water and seeing other farmers transfer  
18 water for many years. *Id.* at ¶¶ 3–4, 8; *see also* House Decl. ¶¶ 4–5 (off-parcel water distribution common  
19 in agricultural land and not typically regulated via zoning law).

20           Then, in May of 2021, the County adopted two additional ordinances: a water extraction ordinance  
21 prohibiting all off-parcel transportation of water in the absence of a discretionary permit (Urgency  
22 Ordinance 21-07 and later Ordinance 21-13, codified at Siskiyou Cnty. Code § 3.5-13.101 et seq.), and a  
23 water truck ordinance prohibiting unpermitted hauling of water in excess of 100 gallons (Urgency  
24 Ordinance 21-08 and later Ordinance 21-14, codified at Siskiyou Cnty. Code § 3-4.1501) (hereafter “water  
25 extraction” and “water truck” ordinances, respectively). RJN Exs. C, D. The County adopted a resolution  
26 that limited the water truck ordinance to particular streets in the County surrounding Shasta Vista and  
27 other areas where Asian Americans live. Griset Decl. ¶ 10; Verner-Crist Decl. ¶¶ 28–29 & Exs. J, K.



1           There is a substantial record of public and official animus against Asian Americans surrounding  
 2 the County’s adoption of these three water ordinances and its decision to sue well owners like Steve Griset.  
 3 *See generally* Mem. of P. & A. In Supp. of Mot. for Prelim. Inj. at pp. 7-9; Griset Decl. ¶¶ 5, 7. There is  
 4 also evidence that the water ordinances were overwhelmingly enforced against Asian Americans. Verner-  
 5 Crist Decl. ¶ 33 & Ex. O. In light of this factual record, on September 3, 2021, this Court issued a  
 6 preliminary injunction enjoining both the water extraction and water truck ordinances in the related matter  
 7 of *Dilevon Lo, et al. v. County of Siskiyou, et al.* (“*Lo*”). 558 F. Supp. 3d 850 (E.D. Cal. 2021). These  
 8 ordinances remained enjoined until August 2023 when, as part of a settlement of the *Lo* litigation, the  
 9 County repealed the water extraction and water truck ordinances. Joint Stipulation of Dismissal at ¶¶ 2–  
 10 3, *Lo*, 2:21-cv-00999-KJM-AC (E.D. Cal. Sept. 11, 2023), ECF No. 107. While some water access was  
 11 restored with the injunction and subsequent repeal of the water extraction and water truck ordinances,  
 12 other major wells remain unavailable due to the County’s harassment and zoning litigation. Griset Decl.  
 13 ¶ 15; Verner-Crist Decl. Ex. V (Ellison settlement prohibiting off-parcel water transfer without County  
 14 authorization); Mathis Decl. ¶ 19.

15           **C.     The County’s Shift to Enforcing the Zoning Ordinance as the Primary Mechanism**  
 16           **for Restricting Water Access for Asian Americans.**

17           Several months after the County repealed its water extraction and water truck ordinances, and  
 18 motivated by the same animus, the County turned to using the zoning ordinance for the same purpose: to  
 19 penalize well owners who provide water to the Asian American community. Beginning in December of  
 20 2023, the County issued a series of notices to comply, citations, and fines to well owners for providing or  
 21 transferring water off-parcel when their land was zoned for agricultural use. Verner-Crist Decl. Ex. A;  
 22 Vue Decl. ¶ 6. It issued five citations since December of 2023, and several additional notices, all of which  
 23 were issued to Asian American well owners. Verner-Crist Decl. ¶¶ 5–7; Moua Decl. ¶¶ 2, 8; Vue Decl. ¶¶  
 24 2, 6; B. Yang Decl. ¶¶ 2, 6.

25           One of the cited well owners was Vue Moua, who owns a property with a well near Shasta Vista.  
 26 Moua Decl. ¶¶ 2, 8. Before he purchased the property it was owned by a white man who allowed water  
 27 trucks to fill at the well. *Id.* at ¶¶ 4–6. There is no record of zoning enforcement against the property owner  
 28 during this time. Verner-Crist Decl. ¶¶ 6–7. However, in April of 2024, several weeks after purchasing

1 the property, Moua received his first notice of a zoning violation for allowing water trucks to fill water at  
 2 his property. Moua Decl. ¶ 8. In May, Moua contacted the County Community Development Department  
 3 to try to change his zoning designation so he could continue providing water to other Asian Americans,  
 4 including his family members who rely on him for water access. *Id.* at ¶ 11. The County denied his request,  
 5 indicating that anyone who was reliant on water from Moua's well would have to obtain their own well.  
 6 *Id.* The County has continued to cite and surveil Moua. *Id.* at ¶¶ 12–16. Members of the Asian American  
 7 community rely on him for water, and he worries about the harm that may befall them if he is unable to  
 8 continue providing it in the face of the County's enforcement. *Id.* at ¶ 17.

9 Other well owners who have recently been noticed or cited under the zoning ordinance have  
 10 likewise indicated they are fearful of providing water in the face of continued enforcement. Vue Decl.  
 11 ¶¶ 6–7; B. Yang Decl. ¶ 9.

12 **D. The County's Use of the Zoning Ordinance to Restrict Water Access for Asian**  
 13 **Americans Has Led to Dangerous Consequences.**

14 Under the County's current interpretation of its zoning ordinance, *any* transfer of water from land  
 15 zoned agricultural or rural residential is unlawful. Yang Decl. ¶ 7; Moua ¶ 10. If the County is successful  
 16 in prohibiting transfers of well water, the vast majority of the Asian American community will be without  
 17 water. Reynolds Decl. ¶ 10. The County's increasing targeting of Asian American well owners under this  
 18 ordinance has already led to a scarcity of hauled water for Asian Americans who need it, as the few well  
 19 owners who provide water have either been cited, or fear being cited, by the County. B. Lee Decl. ¶¶ 9–  
 20 12; Khang Decl. ¶¶ 16–17; Ya Decl. ¶¶ 19–20; M. Lee Decl. ¶¶ 5–6; Y. Yang Decl. ¶¶ 7–8; Xiong Decl.  
 21 ¶ 6. Community members report that due to their inability to find water, they are unable to regularly bathe  
 22 and clean, their food gardens have died, and some animals have perished, much like what they experienced  
 23 during the water crisis in 2021. B. Lee Decl. ¶¶ 6–7, 13, 17–18; Y. Yang Decl. ¶¶ 9–11; Xiong Decl. ¶¶  
 24 7, 9; M. Lee Decl. ¶¶ 4–5, 7–10. They also struggle to stay cool and safe without being able to bathe or  
 25 use water, even as temperatures this summer regularly exceed one hundred degrees. B. Lee Decl. ¶¶ 13–  
 26 15; Xiong Decl. ¶ 9; Y. Yang Decl. ¶ 9. Other Asian Americans who do not have wells fear they may soon  
 27 find themselves in a similar position due to the increasing scarcity of water. Thao Decl. ¶¶ 9–11.

1 In addition to these immediate harms, the scarcity of water during the current fire season poses a  
2 threat to community members' safety. Shasta Vista, which is predominantly Asian American, Ya Decl.  
3 ¶ 3, is consistently rated as a high or very high fire danger zone. King Decl. ¶ 6. It has a history of being  
4 ravaged by wildfire, including the 2021 Lava Fire which cut through approximately six miles of the  
5 subdivision in a single day. *Id.* at ¶ 22; Khang Decl. ¶¶ 5–6. This year is already a particularly bad fire  
6 season, as at least seven fires have broken out in the area. Khang Decl. ¶ 12. It typically takes professional  
7 firefighters like CalFire at least 30 minutes to respond to a reported fire in Shasta Vista, but on occasion,  
8 it has taken CalFire well over an hour to arrive. *Id.* at ¶¶ 8, 13, 15; Ya Decl. ¶ 11. In that time, a small  
9 brush fire could grow into a large fire covering acres or miles. Ya Decl. ¶ 11; King Decl. ¶ 23.

10 The first line—and often primary source—of fire defense in a community like Shasta Vista are  
11 volunteer firefighters and water haulers who need water to put out or mitigate fires before CalFire can  
12 arrive. Khang Decl. ¶¶ 3, 8–9; King Decl. ¶¶ 19–20; Ya Decl. ¶¶ 5–6, 11, 18; K. Lee. Decl. ¶¶ 7–8.  
13 However, their efforts have become increasingly strained this year by difficulty finding hauled water. Ya  
14 Decl. ¶¶ 19–20; Khang Decl. ¶¶ 12, 16, 17. The consequences of having insufficient water to fight fires  
15 include not just the loss of property and homes, but also risks to Asian American residents, many of whom  
16 are elderly and may have difficulty evacuating quickly. B. Lee Decl. ¶ 19; Y. Yang Decl. ¶ 12; *see also*  
17 King Decl. ¶ 13 (limited evacuation routes).

18 **E. Proposed Class Representative.**

19 Russell Mathis, the proposed Class representative, is an Asian American man who lives in Shasta  
20 Vista. Mathis Decl. ¶ 2. Mathis does not have a well on his property and, due to his fixed income, cannot  
21 afford to get one. *Id.* at ¶¶ 5–6. Like other members of the proposed Class, Mathis relies on hauled water  
22 for bathing, cooking, cleaning, cooling off during the summer months, and caring for his dogs. *Id.* at ¶¶ 10,  
23 19, 21. He has also experienced the dangers of wildfire in his community, as he fought and nearly lost his  
24 property to the Lava Fire in 2021, and relies on both his own water stores and those of community  
25 firefighters to protect against this danger. *Id.* at ¶¶ 14–16, 23.

26 Like other Asian Americans without well access, Mathis has experienced the increasing scarcity  
27 of hauled water since the spring of this year. In May, when his water tank ran out, Mathis attempted to  
28 locate someone who would sell him water and was initially denied due to fear of targeting by the County.

1 *Id.* at ¶ 20. His neighbors are also struggling to get water. *Id.* at ¶ 24. While he was eventually able to  
2 locate someone willing to bring him a load of water, he has been forced to take extreme measures to ration  
3 water out of fear that he will not be able to find any more. *Id.* at ¶¶ 20–21. He now uses only five gallons  
4 of water most days, for both his daily needs and to provide for his dogs. *Id.* at ¶¶ 20–22. This is roughly  
5 half the amount of water he was using the year before, when he was already limiting his water use and  
6 restricting activities like bathing due to the unavailability of reliable water sources like the Griset well. *Id.*  
7 at ¶ 19. He worries that he will not have water for things like bathing, washing his hands, or trying to stay  
8 cool. *Id.* at ¶ 21. He also worries that the limited supply of water will make defending against wildfire  
9 very difficult this summer. *Id.* at ¶ 23.

10 Plaintiff Mathis understands and accepts his responsibility to represent the interests of all Class  
11 members in this action, not just his own, and seeks relief on behalf of all Asian Americans in the County  
12 who do not have access to water. *Id.* at ¶ 3.

### 13 **III. ARGUMENT**

14 “Courts in the Ninth Circuit ‘routinely grant provisional class certification for purposes of entering  
15 injunctive relief.’” *Ahlman v. Barnes*, 445 F. Supp. 3d 671, 682 (C.D. Cal. 2020) (citation omitted).  
16 Provisional class certification is appropriate for the purpose of entering a preliminary injunction where  
17 plaintiffs satisfy the threshold requirements of Federal Rule of Civil Procedure Rule 23(a) and (b)  
18 including, as relevant here, the requirements for a class under Rule 23(b)(2). *Meyer v. Portfolio Recovery*  
19 *Assoc., LLC*, 707 F.3d 1036, 1041–43 (9th Cir. 2012). Because the proposed Class meets the requirements  
20 of Rule 23(a) and a single injunction would afford a class-wide remedy, the Court should provisionally  
21 certify the proposed Class.

#### 22 **A. The Proposed Class Meets the Requirements of Rule 23(a).**

23 Under Rule 23(a), a party seeking certification of a class or subclass must satisfy four  
24 requirements: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation.  
25 *Parsons v. Ryan*, 754 F.3d 657, 674 (9th Cir. 2014). The proposed Class meets each of these requirements.

##### 26 *I. Numerosity*

27 Under Rule 23(a)(1), a class may be certified if it is “so numerous that joinder of all members is  
28 impracticable.” Fed. R. Civ. P. 23(a)(1). Although “[t]here is no absolute minimum number of plaintiffs

1 necessary to demonstrate that the putative class is so numerous so as to render joinder impracticable[,] . .  
2 . [j]oinder has been deemed impracticable in cases involving as few as 25 class members.” *Gilbert v.*  
3 *MoneyMutual, LLC*, 318 F.R.D. 614, 621 (N.D. Cal. 2016) (citation omitted). Plaintiffs need only “show  
4 some evidence of or reasonably estimate the number of class members.” *Kincaid v. City of Fresno*, 244  
5 F.R.D. 597, 601 (E.D. Cal. 2007) (citation omitted). Additionally, where only declaratory or injunctive  
6 relief is sought, “the numerosity requirement is relaxed and plaintiffs may rely on the reasonable inference  
7 arising from plaintiffs’ other evidence that the number of unknown and future members” makes joinder  
8 impracticable. *Sueoka v. United States*, 101 F. App’x 649, 653 (9th Cir. 2004).

9 The proposed Class is sufficiently numerous. There are at least hundreds of Asian Americans  
10 currently living in the County who require hauled water because they do not have wells or other water  
11 access where they live. Reynolds Decl. ¶ 7; Thao Decl. ¶ 5; *see also* Moua Decl. ¶ 5; K. Lee Decl. ¶ 3.  
12 This number clearly satisfies the numerosity requirement. *See Rannis v. Recchia*, 380 F. App’x 646, 651  
13 (9th Cir. 2010) (“In general, courts find the numerosity requirement satisfied when a class includes at least  
14 40 members.”).

## 15 2. Commonality

16 Under Rule 23(a)(2), there must be “questions of law or fact common to the class.” Under this  
17 requirement, plaintiffs’ claims “must depend upon a common contention” such that “determination of its  
18 truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.”  
19 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Plaintiffs need not show that every question in  
20 the case is capable of class-wide resolution. “So long as there is ‘even a single common question,’ a would-  
21 be class can satisfy the commonality requirement of Rule 23(a)(2).” *Wang v. Chinese Daily News, Inc.*,  
22 737 F.3d 538, 544 (9th Cir. 2013) (citation omitted). “Thus, ‘[w]here the circumstances of each particular  
23 class member vary but retain a common core of factual or legal issues with the rest of the class,  
24 commonality exists.’” *Parsons*, 754 F.3d at 675 (citation omitted); *see also Kidd v. Mayorkas*, 343 F.R.D.  
25 428, 438 (C.D. Cal. 2023) (“individual factual differences” in challenge to “system-wide practice or  
26 policy” do not preclude a finding of commonality).

1 Here, while there may be some factual differences in the current impact of the County’s zoning  
 2 policy on Class members, all Class members are dependent on off-parcel water sources and are therefore  
 3 subject to the same risk of harm: that the County will successfully cut off all their water sources.

4 Additionally, in alleging that the County’s zoning policy violates the Fourteenth Amendment and  
 5 California Government Code section 11135, the proposed Class presents common questions amenable to  
 6 common answers, including: 1. whether the County’s adoption of the current zoning policy and practice  
 7 is racially motivated or has a disparate impact on Asian Americans; 2. whether the County’s zoning  
 8 interpretation and targeting of well owners who distribute water exposes Class members to actual,  
 9 particularized danger; and 3. whether the County is deliberately indifferent to the dangers posed to Class  
 10 members by the restriction of hauled water. The presence of these common issues permits Class resolution.

### 11 3. *Typicality*

12 Rule 23(a)(3) requires that the claims “of the representative parties [be] typical of the claims . . .  
 13 of the class.” The test of typicality “is whether other members have the same or similar injury, whether  
 14 the action is based on conduct which is not unique to the named plaintiffs, and whether other class  
 15 members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d  
 16 497, 508 (9th Cir. 1992) (citation omitted). The requirement of typicality “is permissive, such that  
 17 ‘representative claims are “typical” if they are reasonably coextensive with those of absent class members;  
 18 they need not be substantially identical.’” *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1116 (9th Cir. 2017)  
 19 (citations omitted). It “is not primarily concerned with whether each person in a proposed class suffers the  
 20 same type of damages; rather, it is sufficient for typicality if the plaintiff endured a course of conduct  
 21 directed against the class.” *Id.* at 1118.

22 Plaintiff Mathis satisfies the typicality requirement because his injuries, and risk of further harm,  
 23 are reasonably coextensive with those of absent Class members. More specifically, Plaintiff Mathis suffers  
 24 from the same types of injuries generally associated with the scarcity of water for domestic use: lack of  
 25 water for hygiene, cleaning, temperature regulation, keeping his animals alive, and protecting against  
 26 wildfires. These are the same types of injuries facing absent Class members. *See* B. Lee Decl. ¶¶ 13–15,  
 27 17–19; Y. Yang Decl. ¶¶ 9–12; Xiong Decl. ¶¶ 8–9; M. Lee Decl. ¶¶ 7–10; Thao Decl. ¶¶ 9–11; Khang  
 28 Decl. ¶¶ 17–18. Moreover, Mathis and absent Class members face injury or risk of injury because of the

1 same course of conduct: the County’s zoning policy and targeting of well owners who provide supply  
2 hauled water to Asian American residents.

3 4. *Adequacy*

4 Rule 23(a)(4) requires a showing that the “representative parties will fairly and adequately protect  
5 the interests of the class.” In determining this, the Court must consider two questions: ““(1) do the named  
6 plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named  
7 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?”” *Evon v. Law Offs. of*  
8 *Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,  
9 1020 (9th Cir. 1998)).

10 With respect to Plaintiff Mathis, he has no known conflicts of interests with other Class members.  
11 Mathis Decl. ¶ 3. The proposed Class members all have suffered from the same policy and practice and  
12 seek the same relief. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997) (noting that  
13 adequacy inquiry “tends to merge” with commonality and typicality in assessing whether “the interests of  
14 the class members will be fairly and adequately protected in their absence”). Plaintiff Mathis has  
15 demonstrated an understanding of his duties as a Class representative and his willingness to pursue relief  
16 for the benefit of the Class. Mathis Decl. ¶ 3.

17 The proposed Class is also represented by experienced counsel, who collectively have extensive  
18 experience litigating class actions, constitutional and civil rights cases, and other complex federal matters.  
19 Plaintiffs’ counsel have adequately and thoroughly investigated the claims prior to bringing this suit. *See*  
20 Decl. of Grayce Zelphin in Supp. of Pls.’ Mot. for Provisional Class Certification ¶¶ 3–9; Decl. of Stanley  
21 Young in Supp. of Pls.’ Mot. for Provisional Class Certification ¶¶ 3–7; Decl. of Carl Takei in Supp. of  
22 Pls.’ Mot. for Provisional Class Certification ¶¶ 3–7. Plaintiffs’ counsel will accordingly vigorously  
23 prosecute this action on behalf of the proposed Class.

24 **B. The Proposed Class Meets the Requirements of Rule 23(b)(2).**

25 Rule 23(b)(2) permits certification where the requirements of Rule 23(a) are met and the opposing  
26 party “has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief  
27 or corresponding declaratory relief is appropriate respecting the class as a whole.” The key to a (b)(2)  
28 class is “the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the

1 conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to  
2 none of them.” *Wal-Mart*, 564 U.S. at 360. This requirement is “unquestionably satisfied when members  
3 of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally  
4 applicable to the class as a whole.” *Parsons*, 754 F.3d at 688. The Court need not examine “the viability  
5 or bases of the class members’ claims for relief” nor find “that all members of the class have suffered  
6 identical injuries.” *Id.* “It is sufficient if class members complain of a pattern or practice that is generally  
7 applicable to the class as a whole.” *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998).

8 The proposed Class plainly meets the requirements for certification under Rule 23(b)(2). Plaintiffs  
9 allege that the County has promoted, and continues to promote, an unconstitutional and racially motivated  
10 zoning policy that harms the Class by cutting off their water access. The Motion for Preliminary Injunction  
11 filed together with this Motion seeks a single injunction against enforcement of this policy that will  
12 provide relief on a class-wide basis. *See* Proposed Preliminary Injunction Order. In light of the uniform  
13 relief sought, certification as a Rule 23(b)(2) class is appropriate.

14 **IV. CONCLUSION**

15 Because it meets the requirements of Rule 23(a) and (b), the Court should provisionally certify the  
16 proposed Class.



1 Dated: August 8, 2024

Respectfully submitted,

2  
3 **AMERICAN CIVIL LIBERTIES UNION**  
4 **FOUNDATION OF NORTHERN**  
5 **CALIFORNIA**

6 By: /s/ Emi Young  
7 JOHN THOMAS H. DO  
8 EMI YOUNG  
9 GRAYCE ZELPHIN

10 **ASIAN LAW CAUCUS**

11 By: /s/ Megan Vees (approved 8/8/2024)  
12 MEGAN VEES  
13 CARL TAKEI

14 **COVINGTON & BURLING LLP**

15 By: /s/ Stanley Young (approved 8/8/2024)  
16 STANLEY YOUNG  
17 MICHAEL PLIMACK  
18 ALISON WALL  
19 ELLEN CHOI

20 *Counsel for Plaintiffs Chang, et al.*