IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

Q HAYWARD HOLDINGS, LLC,

Plaintiff,

v.

CITY OF CARROLLTON, GEORGIA, a body corporate and politic and political subdivision of the State of Georgia; MAYOR AND CITY COUNCIL OF CARROLLTON, GEORGIA, a body corporate; BETTY B. CASON, individually and in her official capacity as Mayor for the City of Carrollton, Georgia; and JACQULENE ELAINE BRIDGES, BRETT LEDBETTER, JIM WATTERS, BOB UGLUM, individually and in their official capacities as Councilmembers of the City of Carrollton, Georgia; DAVID BROOKS, individually and in his official capacity as City Manager for the City of Carrollton, Georgia; and TOMMY HOLLAND, individually and in his official capacity as City Engineer for the City of Carrollton,

Defendants.

CIVIL ACTION NO.:

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

COMES NOW, Plaintiff Q Hayward Holdings, LLC (“Plaintiff” or

"Q Hayward"), by and through its undersigned counsel, and hereby brings claims under 42 U.S.C. § 1983 against the City of Carrollton, Georgia (the "City"), the Mayor and City Council of Carrollton, Georgia (the "Council"), and Betty B. Cason (the "Mayor"), Jacqulene Elaine Bridges ("Councilwoman Bridges"), Brett Ledbetter ("Councilman Ledbetter"), Jim Watters ("Councilman Watters"), Bob Uglum ("Councilman Uglum"), David Brooks ("City Manager Brooks"), and Tommy Holland ("City Engineer Holland"), all in their individual and official capacities (individually, each a "Defendant"; collectively, "Defendants") for illegally causing Plaintiff substantial damages and taking Plaintiff's Property without paying just and adequate compensation due to Defendants unlawful withholding of sanitary services in relation to real property identified as Carroll County Parcel Identification Numbers 130 0108, 130 0699, and 130 0703 (the "Property") and which is more particularly described in the true and accurate copies of Plaintiff's vesting deeds, attached hereto as Exhibit "A".

In support thereof, Plaintiff respectfully shows the Court the following:

THE PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a Delaware limited liability company with its principal place of business in Atlanta, Georgia.

2. Plaintiff is the owner of the Property, which is located in

unincorporated Carroll County, being identified as Carroll County Parcel Identification Numbers 130-0108, 130 0699, and 130 0703.

3. The City is a municipal corporation, body corporate and politic, and political subdivision existing under the laws of the State of Georgia. Pursuant to Rule 4(j) of the Federal Rules of Civil Procedure (the "FRCP") and other law, the City may be served with process by service upon its City Manager, David Brooks, at 315 Bradley Street, Carrollton, Georgia 30117.

4. The Council is a body corporate vested with the governmental power of the City. Pursuant to Rule 4(j) of the FRCP and other law, the City may be served with process by service upon its City Manager, David Brooks, at 315 Bradley Street, Carrollton, Georgia 30117.

5. The Mayor is the chief executive officer of the City and a resident of the State of Georgia and the City and can be served with process at 115 West Center Street or 315 Bradley Street, Carrollton, Georgia 30117. The Mayor is subject to the jurisdiction of this Court by virtue of, but not limited to, violating Plaintiff's rights set forth in 42 U.S.C. § 1983 under the color of state law.

6. Councilwoman Bridges is a Councilmember for the City and a resident of the State of Georgia and the City and can be served with process at 115 West Center Street, Carrollton, Georgia 30117. Councilwoman Bridges is subject to the

jurisdiction of this Court by virtue of, but not limited to, violating Plaintiff's rights set forth in 42 U.S.C. § 1983 under the color of state law.

7. Councilman Ledbetter is the City's Mayor Pro Templar and a resident of the State of Georgia and the City and can be served with process at 115 West Center Street, Carrollton, Georgia 30117. Councilman Ledbetter is subject to the jurisdiction of this Court by virtue of, but not limited to, violating Plaintiff's rights set forth in 42 U.S.C. § 1983 under the color of state law.

8. Councilwoman Bridges is a Councilmember for the City and a resident of the State of Georgia and the City and can be served with process at 115 West Center Street, Carrollton, Georgia 30117. Councilwoman Bridges is subject to the jurisdiction of this Court by virtue of, but not limited to, violating Plaintiff's rights set forth in 42 U.S.C. § 1983 under the color of state law.

9. Councilman Watters is a Councilmember for the City and a resident of the State of Georgia and the City and can be served with process at 115 West Center Street, Carrollton, Georgia 30117. Councilman Watters is subject to the jurisdiction of this Court by virtue of, but not limited to, violating Plaintiff's rights set forth in 42 U.S.C. § 1983 under the color of state law.

10. Councilman Uglum is a Councilmember for the City and a resident of the State of Georgia and the City and can be served with process at 115 West Center

Street, Carrollton, Georgia 30117. Councilman Uglum is subject to the jurisdiction of this Court by virtue of, but not limited to, violating Plaintiff's rights set forth in 42 U.S.C. § 1983 under the color of state law.

11. City Manager Brooks is the City Manager (i.e., the "City Supervisor") for the City and a resident of the State of Georgia and can be served with process at 315 Bradley Street, Carrollton, Georgia 30117. City Manager Brooks is subject to the jurisdiction of this Court by virtue of, but not limited to, violating Plaintiff's rights set forth in 42 U.S.C. § 1983 under the color of state law.

12. City Engineer Holland is the City Engineer for the City and a resident of the State of Georgia and can be served with process at 315 Bradley Street, Carrollton, Georgia 30117. City Engineer Holland is subject to the jurisdiction of this Court by virtue of, but not limited to, violating Plaintiff's rights set forth in 42 U.S.C. § 1983 under the color of state law.

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331(a), because this action arises under the laws of the United States, namely 42 U.S.C. § 1983.

14. The Court has subject matter jurisdiction over Plaintiffs' pendant state law claims pursuant to 28 U.S.C. § 1367 because the state law claims arise out of a common nucleus of operative facts as the federal law claims.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and this division pursuant to Rule 3.1 of the Civil Local Rules ("CLR") of this United States District Court for the Northern District of Georgia because the events giving rise to these claims occurred in this District and division and Defendants are located within or reside in this District and this division.

FACTUAL BACKGROUND

16. On December 7, 2020, the County Planner for Carroll County, Janet L. Hyde, informed Plaintiff via a "Zoning Certification" letter that the Property meets the zoning requirements for a Planned Unit Development ("PUD") (the "December 2020 Carroll County Zoning Letter"), a true and correct copy of that letter is attached hereto as Exhibit "B".

17. The December 2020 Carroll County Zoning Letter set forth that such compliance was in accordance with the Zoning Ordinance of Carroll County in effect on December 7, 2020.

18. Three days after the December 2020 Carroll County Zoning Letter, Ms. Hyde informed Plaintiff via email, a true and accurate copy of which is attached hereto as Exhibit "C", that Carroll County's approval included: (i) up to **275 single-family dwelling units**; (ii) 1,400 sf minimum; (iii) required fire flow for residential – 1,000 gpm; (iv) required fire flow for mixed use - 1,500 gpm; (v) tested flow on

7/30/06- 1,162 gpm; (vi) buffer of 50 Leyland cypress between development and Bethany Church; (vii) 15 foot natural buffer of existing Sage Hill subdivision; and (viii) "**Authorization from City to connect to sewer**" (collectively, the "December 2020 Sewer Authorization").

19. Consistent with the December 2020 Carroll County Zoning Letter and the December 2020 Sewer Authorization, the City informed an affiliate of Plaintiff by letter (the "Availability Letter"), dated May 14, 2021 and signed by Defendant Holland, that "the City . . . has a sanitary sewer system located within the Hwy [sic] 61 right-of-way (along the eastern side of the roadway [and adjacent to the Property]) that is available to serve the . . . [P]roperty." A true and accurate copy of the Availability Letter is attached hereto as Exhibit "D".

20. Relying upon the December 2020 Carroll County Zoning Letter, the December 2020 Sewer Authorization, and the Availability Letter, on October 12, 2021, Plaintiff purchased the Property. *See* Exhibit "A".

21. Consistent with the December 2020 Carroll County Zoning Letter, the December 2020 Sewer Authorization, and the Availability Letter, on December 15, 2021, Carroll County, Georgia (the "County") issued to Plaintiff a permit for land disturbance activities and approved its construction plans for the same purpose (collectively, the "LDP").

22. Consistent with the zoning of the Property under the Zoning, Regulations of Carroll County, Georgia (the "Zoning Ordinance"), the LDP authorizes the construction of infrastructure, rights of way, and other improvements on the Property for two hundred and sixty-three (263) single-family residential dwelling lots.

23. Consequently, consistent with the December 2020 Carroll County Zoning Letter, the December 2020 Sewer Authorization, the Availability Letter, and the LDP, and Plaintiff's expenditure of substantial funds in reliance thereon, Plaintiff has vested rights to develop the Property pursuant to the LDP.

24. Georgia's Service Delivery Strategy Law, O.C.G.A. § 36-70-20, *et seq.*, (the "SDS Law") requires that each county and every municipality therein, such as Carroll County, Georgia (the "County") and the City, "execute an agreement for the implementation of a local government service delivery strategy", commonly known as a Service Delivery Strategy Agreement (an "SDS Agreement").

25. The County and the City, along with the other cities wholly or partly within the County (collectively, the "Other Cities") have entered into a Carroll County Service Delivery Strategy Agreement, which (upon information and belief) has from time to time been amended, (the "Carroll County SDS Agreement"). A true and accurate copy of the Carroll County SDS Agreement is attached hereto as

Exhibit "E".

26. Pursuant to O.C.G.A. § 36-70-23 and under the Carroll County SDS Agreement, the City, the County, and the Other Cities have identified which one of those local governments will provide various, vital, and essential public services—such as, fire, emergency medical, law enforcement, water, and sanitary sewer services—to every parcel, property, and (therefore) person in the County.

27. The SDS Law requires that the local government identified as the service provider in a specific geographic area provide the service it agreed to provide in the applicable SDS Agreement for that geographic area.

28. For example, if a city agrees to provide fire and law enforcement services to a property in the unincorporated part of the county in which that city is located, that city cannot thereafter withhold and not provide such essential services based on whether that city likes the property, the property's owner, or the existing or proposed development of the property. *See* O.C.G.A. § 36-70-23, -24(2), -24(4).

29. Additionally, the SDS Law forbids local governments from providing the same governmental service in the same area as another local government, unless the applicable SDS Agreement provides for overlapping, duplicative services and includes an explanation of the justification for the redundant expenditure of public funds, which the SDS Law strongly discourages.

30. Likewise, in accordance with O.C.G.A. §§ 36-70-23, -24(2), -24(4), the SDS Law forbids a local government from arbitrarily withholding sanitary sewer service to a customer located outside its geographical boundaries but within its services area under the applicable SDS Agreement.

31. However, in direct opposition to Plaintiff's vested rights and reliance interests vested through and upon the issued LDP, the December 2020 Carroll County Zoning Letter, the December 2020 Sewer Authorization, the Availability Letter, and the Carroll County SDS Agreement, the City, through a letter, signed by Defendant Holland and dated December 30, 2021 (the "December 2021 Letter"), stated that "[i]t is the position of the current administration [of the City] that the City of Carrollton sewer capacity is best utilized by supporting construction within the City limits." A true and accurate copy of the December 2021 Letter is attached hereto as Exhibit "F".

32. The December 2021 Letter statement regarding sewer capacity directly contradicted the December 2020 Sewer Authorization. Exhibit "F".

33. The December 2021 Letter further stated that:

> [t]he City would consider sewer service to a project outside the City, if such a project had regional impact and significant positive impact on the City of Carrollton itself. Such a project might be a large industrial user. Even this would require the specific approval of the Mayor and Council.

Exhibit "F".

34. Since the December 2021 Letter and as of the date of the filing of this Complaint, the City, through its City Attorney and others, has continued to withhold from the Property sanitary sewer service and/or interconnection of the Property (and the approved development thereof) to the City's sanitary sewer system.

35. The December 2021 Letter does not identify whether the "administration" refers to the City Manager, the Mayor, the City Council, and/or any other person, officer, body, and/or entity. *See* Exhibit "F".

36. Defendants had and have no authority or discretion under Georgia or other applicable law to withhold sanitary sewer service to the Property based on, at a minimum, whether the Property or the proposed development thereon is determined by the City to have "regional impact and significant positive impact on the City . . . itself" as the City claims in the December 2021 Letter.

37. The Georgia legislature identifies the SDS Law's "[i]ntent" as "provid[ing] a flexible framework within which local governments in each county can develop a service delivery system that is both efficient and responsive to citizens in their county," *see* O.C.G.A. § 36-70-20.

38. The chapter of the SDS Law titled "[d]ispute resolution procedures", *see* O.C.G.A. § 36-70-25.1, addresses disputes arising between and among counties

and affected municipalities, but not between citizens seeking or using the essential services governed by the SDS Law. *See generally* O.C.G.A. § 36-70-20, *et seq.*

39. The SDS Law does not contain any chapter or provision under which a Georgia citizen can challenge a municipality's unlawful withholding of essential services it is supposed to provide in accordance with the SDS law. *See generally* O.C.G.A. § 36-70-20, *et seq.*

40. In e-mail correspondence with Plaintiff's counsel, between March and April 2022, the City Attorney for the City confirmed the City has no established procedure or authority pursuant to which the City, the Council, and/or any other official, board, and/or entity reviews or evaluates requests for connections to its sanitary sewer system in unincorporated areas of the County that are within the City's service area under the Carroll County SDS Agreement.

41. The only thing preventing Plaintiff's development of the Property is the City withholding of sanitary sewer service to the Property.

42. Without sanitary sewer service, it is financially and practically impossible for Plaintiff to develop the Property consistent with Plaintiff's vested rights and reliance interests set forth and established in, but not limited to, the LDP, December 2020 Carroll County Zoning Letter, the December 2020 Sewer Authorization, and the Availability Letter.

43. Defendants' withholding of sanitary sewer service to the Property has resulted in injury to Plaintiff of the foregoing nature, character, and particulars totaling TWENTY-TWO MILLION FOUR HUNDRED THOUSAND AND NO/100THS DOLLARS ($22,400,000.00).

44. In correspondence dated May 12, 2022, counsel for Plaintiff sent Defendants a letter setting forth the allegations and claims described herein, additionally identified as an Ante Litem Notice Pursuant to O.C.G.A. § 36-33-5 and Litigation Hold Demand and Preservation Notice to Defendants (the "May 2022 Ante Litem Notice"). A true and accurate copy of the May 2022 Ante Litem Notice is attached hereto as Exhibit "G".

45. The May 2022 Ante Litem Notice requested Defendants either: (i) pay to Plaintiff TWENTY-TWO MILLION FOUR HUNDRED THOUSAND AND NO/100THS DOLLARS ($22,400,000.00), which represents the damages Plaintiff has and will suffer as a result of the City's illegal actions; or (ii) permit the Property to connect to the City's sanitary sewer system and serve the Property with sanitary sewer service sufficient for development pursuant to the LDP.

46. Defendants not only refused both of the requests in the May 2022 Ante Litem Notice, but never engaged in any meaningful discourse with Plaintiff in connection with the allegations described and set forth herein.

47. On June 7, 2022, the City Attorney provided a one-paragraph response to the May 2022 Ante Litem Notice, addressing none of the facts or law set forth therein and only informing Plaintiff its “claim” was “rejected.” A true and accurate copy of this letter is attached hereto as Exhibit “H”.

CAUSES OF ACTION

COUNT ONE: PROCEDURAL DUE PROCESS VIOLATIONS PURSUANT TO 42 U.S.C. § 1983/FIFTH AND FOURTEENTH AMENDMENTS TO U.S. CONSTITUTION

48. Plaintiff hereby incorporates and re-alleges the allegations in paragraphs 1 to 47 as if fully set forth herein.

49. The Fourteenth Amendment of the Constitution of the United States guarantees to citizens of the United States, like Plaintiff, freedom from the deprivation of life, liberty, and property without due process of law.

50. Defendants deprived and continue to deprive Plaintiff of its rights secured by the Constitution of the United States, as set forth above, under color of state law, thereby violating 42 U.S.C. § 1983.

51. Pursuant to 42 U.S.C. § 1983,

> [e]very person who, under color of any statute, ordinance regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen by the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

52. Defendants acted under the color of state law when withholding, and thereby infringing upon Plaintiff's rights to, sanitary sewer service to the Property.

53. Because it is impossible to develop the Property without sanitary sewer service, Plaintiff has a significant interest in connection with the City providing sanitary sewer service to the Property.

54. At a minimum, the "intent" of the SDS Law, *see* O.C.G.A. § 36-70-20, the specific requirements in the SDS Law, *see* O.C.G.A. §§ 36-70-21, -23, -24(2), -24(4), and how the Carroll County SDS Agreement establishes, under Georgia law, the City as the only provider of sanitary sewer services to the Property, Plaintiff has a sufficient property interest under Georgia law to prevent Defendants from withholding sanitary sewer service to the Property.

55. In accordance with the above law, the Carroll County SDS Agreement, the December 2020 Carroll County Zoning Letter, December 2020 Sewer Authorization, and the Availability Letter, Plaintiff had and has a clearly established right in connection with the City providing sanitary sewer service to the Property.

56. As an essential service, Plaintiff had and has a clearly established right to sanitary sewer services.

57. Based on the foregoing, Plaintiff had a protectible constitutional interest in connection with the City providing sanitary sewer service to the Property.

58. The United States Supreme Court has long-recognized the "*root* requirement," of the Due Process Clause of the U.S. Constitution as "the opportunity for a hearing *before* . . . depriv[ation] of any significant property interest." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985) (emphasis added).

59. The SDS Law explicitly provides no protections, procedures, or recourse for a property owner when a local government withholds an essential service to a property to which the local government is obligated to provide a service under the applicable SDS Agreement.

60. Instead of providing pre-deprivation safeguards available to Plaintiff, the City instead informed Plaintiff "[t]he City would consider sewer service to a project outside the City [only] if such a project had regional impact and significant positive impact on the City of Carrollton itself," and, later in response to Plaintiff's May 2022 Ante Litem Notice, that Plaintiff's "claim" was "rejected" with no explanation, let alone, for example, an opportunity to be heard.

61. The City's subjective determination and application of whether "a project had regional impact and significant positive impact on the City of Carrollton itself" provided no pre-deprivation safeguards to Plaintiff.

62. There would be substantial value if the City provided additional – or

any – procedural safeguards when withholding sanitary sewer service as done to Plaintiff with respect to the Property.

63. Providing additional or substitute procedural requirements when withholding sanitary sewer service as done to Plaintiff in connection with the Property would not create fiscal and administrative burdens for the City.

64. The City does not – nor has it attempted to – identify even a minimal interest in failing to provide procedural safeguards when withholding sanitary sewer service as done to Plaintiff with respect to the Property.

65. Therefore, Defendants have violated Plaintiff's constitutional right to procedural due process because of Plaintiff's significant interest in the Property receiving sanitary sewer service, the high risk of an erroneous deprivation, and the value and minimal burden of additional safeguards.

66. Plaintiff has an established right to essential services such as sewer sanitary service to the Property.

67. Plaintiff had an established property right in such services following the County's approval of the LDP.

68. As admitted by the City Attorney, the City had no safeguards to protect Plaintiff's substantial rights in connection with the City providing sanitary sewer service to the Property prior to, or following, the City withholding these rights.

69. Reasonable officials in Defendants' positions would know pre-deprivation process, including notice and an opportunity to be heard, was required before withholding sewer sanitary service to the Property.

70. Therefore, Defendants are foreclosed from any claim to qualified immunity under Plaintiff's due process claim, because Defendants failed to provide any notice and opportunity to be heard despite Plaintiff's requests for the same and Plaintiff's clearly established procedural due process rights to the Property's sewer sanitary service. Neither the City nor the State had safeguards to protect Plaintiff's substantial rights in connection with the City providing sanitary sewer service to the Property prior to the City infringing upon these rights.

71. Despite the SDS Law thoroughly and specifically establishing a municipality's duties and obligations when providing essential services, and explicitly identifying several provisions governing "[d]ispute resolution procedures" solely between a *county* and "affected municipalities," *see* O.C.G.A. § 36-70-25.1, neither this provision, *see generally id.*, any other provisions in the SDS Law, *see generally* O.C.G.A. § 36-70-20, *et seq.*, nor other Georgia law provides Plaintiff and similarly-situated parties recourse when a local government withholds an essential utility service governed by the SDS Law's requirements and obligations.

72. Therefore, while counties and affected municipalities are provided

notice and hearing when harmed in connection with the SDS Law, *see generally* O.C.G.A. § 36-70-25.1, Georgia citizens such as Plaintiff explicitly are not provided such process, *see generally* O.C.G.A. § 36-70-25.1.

73. Indeed, confirming both the existence and substantial harm of the absence of any protections for Plaintiff under the SDS Law or other Georgia law, in e-mail correspondence responding to Plaintiff's desperate efforts for recourse from the City's actions, dated April 18, 2022, the City Attorney for the City explicitly informed Plaintiff's counsel that the City has no established procedure pursuant to which the City, the Council, and/or any other official, board, and/or entity reviews or evaluates request for connections to the City's sanitary sewer system within the City's service area under the Carroll County SDS Agreement.

74. Rather, Plaintiff's only available recourse was demanding payment under the Ante-Litem Notice, to which the City Attorney curtly responded that the City "reject[ed Plaintiff's] claim."

75. Based on the foregoing, Plaintiff's procedural due process was violated because the State of Georgia has not provided a process sufficient to remedy Plaintiff's procedural deprivation.

76. Based on the foregoing, Plaintiff's procedural due process was violated because the State of Georgia not only failed to provide "adequate" remedies, it

provided *no* remedies to Plaintiff under state law.

77. Therefore, the state has not fulfilled its obligation to provide Plaintiff procedural due process when depriving Plaintiff of constitutional and state-created rights.

78. Therefore, Defendants have acted under color of state law to deprive Plaintiff of the rights, privileges, and immunities afforded it under the Constitution and laws of the United States, and are liable to Plaintiff for monetary damages for all the harm caused by their unlawful conduct, including the expense caused Plaintiff in being required to employ professional assistance to defend against Defendants' unlawful conduct, the delay caused Plaintiff in being able to use their property for lawful purposes, the unlawful interference with Plaintiff's property rights, and for all other harm which the evidence shows or will show was caused by Defendants' unlawful conduct.

79. Thus, Defendants, acting under the color of state law, county ordinances, regulations, customs, or practices, and without qualified immunity, have deprived Plaintiffs of the rights, privileges, or immunities secured by the Due Process Clause of the Fourteenth Amendment.

80. As a direct and proximate result of the foregoing, Plaintiff has been damaged in an amount according to proof at trial.

COUNT TWO: SUBSTANTIVE DUE PROCESS VIOLATIONS PURSUANT TO 42 U.S.C. § 1983/FIFTH AND FOURTEENTH AMENDMENTS TO U.S. CONSTITUTION

81. Plaintiff hereby incorporates and re-alleges the allegations in paragraphs 1 to 47 as if fully set forth herein.

82. The Fourteenth Amendment to the Constitution of the United States guarantees to citizens of the United States, like Plaintiff, freedom from the deprivation of life, liberty, and property without due process of law.

83. Defendants deprived and continue to deprive Plaintiff of its rights secured by the Constitution of the United States, as set forth above, under color of state law, thereby violating 42 U.S.C. § 1983.

84. Pursuant to 42 U.S.C. § 1983,

> [e]very person who, under color of any statute, ordinance regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen by the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

85. Plaintiff has a constitutionally- and state-protected interest to sanitary sewer services for the Property under state law pursuant to the "intent" of the SDS Law, *see* O.C.G.A. § 36-70-20, the specific requirements in the SDS Law, *see* O.C.G.A. §§ 36-70-21, -23, -24(2), -24(4), and how such rights are reflected in the Carroll County SDS Agreement, namely, establishing under Georgia law that the

City is the provider of sanitary sewer services to the Property.

86. Specifically, Georgia law, pursuant to O.C.G.A. §§ 36-70-23, -24(2), -24(4), forbids a local government from arbitrarily withholding sanitary sewer service to a customer located outside its geographical boundaries but within its services area under the applicable SDS Agreement.

87. Plaintiff sought sanitary sewer service from the City for property that was outside the City's geographical boundaries, but within the City's service area under the Carroll County SDS Agreement.

88. Defendants stated it would withhold from Plaintiff and Plaintiff's property sanitary sewer service by the City because "[t]he City would consider sewer service to a project outside the City [only] if such a project had regional impact and significant positive impact on the City of Carrollton itself."

89. Based on the foregoing, Plaintiff has a state-created right to sanitary sewer services in connection with the development of the Property.

90. In infringing upon Plaintiff's constitutional and state-created rights to sanitary sewer services, because "[t]he City would consider sewer service to a project outside the City [only] if such a project had regional impact and significant positive impact on the City of Carrollton itself," the Defendants' action did not apply to one person, or even a limited number of people.

91. In infringing upon Plaintiff's state-created right to sanitary sewer services because "[t]he City would consider sewer service to a project outside the City [only] if such a project had regional impact and significant positive impact on the City of Carrollton itself," the Defendants' actions applied to a larger segment of people, namely, any project conducted by a similarly-situated party to Plaintiff within the City's service area, but outside "the City of Carrollton itself."

92. Defendants' actions against Plaintiff, therefore, were legislative because the act generally applied to a larger segment of society, namely, any party similarly-situated party to Plaintiff within the City's service area, but outside "the City of Carrollton itself."

93. Defendants' actions against Plaintiff, therefore, were legislative because the act involved policy-making rather than mere administrative application of existing policies in that it "considered regional impact and significant positive impact on the City of Carrollton itself" to the exclusion of a large segment of society situated in the City's service area, but outside the City.

94. Therefore, because Plaintiff's state-created rights have been infringed by the Defendants' legislative act, the substantive component of the Due Process Clause protects Plaintiff from arbitrary and irrational action under the color of state law.

95. As a direct and proximate result of the foregoing, Plaintiff has been damaged in an amount according to proof at trial.

COUNT THREE: EQUAL PROTECTION VIOLATIONS PURSUANT TO THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION

96. Plaintiff hereby incorporates and re-alleges the allegations in paragraphs 1 to 47 as if fully set forth herein.

97. The U.S. Supreme Court has long-recognized the equal protection clause of the Fourteenth Amendment "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 3254, 87 L. Ed. 2d 313 (1985).

98. At a minimum, the "intent" of the SDS Law, *see* O.C.G.A. § 36-70-20, the specific requirements in the SDS Law, *see* O.C.G.A. § 36-70-21, -23, -24(2), -24(4), and how such rights are reflected in the Carroll County SDS Agreement, namely, establishing under Georgia law the City as the only provider of sanitary sewer services to the Property, Plaintiff has a sufficient property interest under Georgia law preventing Defendants' withholding of sanitary sewer service to the Property because "[t]he City would consider sewer service to a project outside the City [only] if such a project had regional impact and significant positive impact on the City of Carrollton itself."

99. Defendants withheld from the Property sanitary sewer service based on reasoning explicitly forbidden under Georgia law, *see* O.C.G.A. §§ 36-70-23, -24(2), -24(4), while further arbitrarily and capriciously discriminating against Plaintiff in favor of similarly-situated owners of property outside the City's municipal limits but inside the City's essential services area under the Carroll County SDS Agreement and that the City thinks will have "regional impact and significant positive impact on the City of Carrollton itself."

100. In accordance with the December 2020 Carroll County Zoning Letter, December 2020 Sewer Authorization, the Availability Letter, and the LDP, Plaintiff further obtained a constitutionally-protectible property right in the specific proposed development on the Property, a property right lost when development of the Property was impossible following the actions of Defendants described herein.

101. Based on the foregoing, Plaintiff enjoyed constitutionally protected and state-created property interests in connection with the City providing essential sanitary sewer service to the Property.

102. Based on the foregoing, acting under the color of state law, City ordinances, regulations, customs, and/or usage of regulations and authority, in violation of 42 U.S.C. § 1983, Defendants deprived Plaintiff rights secured by the Equal Protection Clause of the Fourteenth Amendment.

103. In infringing upon Plaintiff's constitutional and state-created rights to sanitary sewer services, because "[t]he City would consider sewer service to a project outside the City [only] if such a project had regional impact and significant positive impact on the City of Carrollton itself," Defendants treated Plaintiff differently than other similarly situated persons, namely, owners of property located outside the City's municipal boundaries but within its services area under the applicable SDS Agreement and that the City believes to have "regional impact and significant positive impact on the City of Carrollton itself."

104. Defendants' policy treating Plaintiff differently than other similarly situated persons did not – and could not – rationally relate to a legitimate government purpose because this policy was directly contradicted by the SDS Law.

105. As a direct and proximate result of the foregoing, Plaintiff has been damaged in an amount according to proof at trial.

COUNT FOUR: TAKING OF PROPERTY IN VIOLATIONS OF GEORGIA LAW AND THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

106. Plaintiff hereby incorporates and re-alleges the allegations in paragraphs 1 to 47 as if fully set forth herein.

107. At a minimum, the "intent" of the SDS Law, *see* O.C.G.A. § 36-70-20, the specific requirements in the SDS Law, *see* O.C.G.A. § 36-70-21, -23, -24(2), -24(4), and how such rights are reflected in the Carroll County SDS

Agreement, namely, establishing under Georgia law that the City is the only provider of sanitary sewer services to the Property, Plaintiff has a sufficient property interest under Georgia law preventing Defendants' withholding of sanitary sewer service to the Property because "[t]he City would consider sewer service to a project outside the City [only] if such a project had regional impact and significant positive impact on the City of Carrollton itself."

108. Defendants have withheld Plaintiff sanitary sewer service based on reasoning explicitly forbidden under Georgia law, *see* O.C.G.A. §§ 36-70-23, -24(2), -24(4), while further arbitrarily and capriciously discriminating against Plaintiff and similarly-situated property owners outside the City's municipal boundary, but inside the City's essential services area under the SDS Agreement.

109. In accordance with the December 2020 Carroll County Zoning Letter, December 2020 Sewer Authorization, the Availability Letter, and the LDP, Plaintiff further obtained a constitutionally protectible property right in the specific proposed development on the Property, a property right lost when development of the Property was impossible following the actions of Defendants described herein.

110. Defendants' actions set forth herein deprive Plaintiff or damage its constitutionally guaranteed property rights without just and adequate compensation and constitute a violation of the rights and privileges secured by Article I, Section

III, Paragraph I of the 1983 Constitution of the State of Georgia.

111. Defendants' actions set forth herein destroyed or damaged Plaintiff's property rights and interests without paying fair, adequate, and just compensation for such rights and interests, in violation of Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the 1983 Constitution of the State of Georgia and the Just Compensation Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

112. Defendants' arbitrary, capricious, unconstitutional, unlawful, ultra vires, oppressive, malicious, corrupt, and bad faith actions include, but are not limited, the refusal to recognize Plaintiff's vested rights and reliance interests set forth and established in, at a minimum, the December 2020 Carroll County Zoning Letter, the December 2020 Sewer Authorization, the Availability Letter, and the LDP.

113. Defendants' actions set forth herein result in no benefit to the public in general, fail to promote the public health, safety, morals, and welfare, constitute a complete or substantial taking, damage, and infringement of Plaintiff's property values, and are confiscatory and void.

114. The Constitution and laws of the State of Georgia and the United States provide and require that just and adequate compensation be paid prior to any taking,

damaging, or interfering with the property rights of Plaintiff.

115. Defendants' actions set forth herein constitute an unconstitutional taking from Plaintiff because Defendants acted without authority under Georgia or other applicable law to withhold sanitary sewer service to the Property based on whether the Property or the proposed development thereon is determined by the City to have "regional impact and significant positive impact on the City . . . itself," thereby discriminating against Plaintiff as a utility customer, and otherwise withholding service in an arbitrary, capricious, unconstitutional, unlawful, ultra vires, oppressive, malicious, corrupt, and bad faith manner.

116. As a direct and proximate result of the foregoing, Plaintiff has been damaged in an amount according to proof at trial.

COUNT FIVE: VIOLATIONS OF VESTED RIGHTS

117. Plaintiff hereby incorporates and re-alleges the allegations in paragraphs 1 to 47 as if fully set forth herein.

118. Under Georgia law, a vested right to use property for a particular purpose can arise from the issuance of a building permit, as well as various other forms of administrative approval.

119. At a minimum, the "intent" of the SDS Law, *see* O.C.G.A. § 36-70-20, the specific requirements in the SDS Law, *see* O.C.G.A. § 36-70-21, -23, -24(2),

-24(4), and how such rights are reflected in the Carroll County SDS Agreement, namely, establishing under Georgia law that the City is the only provider of sanitary sewer services to the Property, Plaintiff has a sufficient property interest under Georgia law preventing Defendants' withholding of sanitary sewer service to the Property because "[t]he City would consider sewer service to a project outside the City [only] if such a project had regional impact and significant positive impact on the City of Carrollton itself."

120. Defendants have withheld and continue to withhold from Plaintiff and Plaintiff's Property sanitary sewer service based on reasoning explicitly forbidden under Georgia law, *see* O.C.G.A. §§ 36-70-23, -24(2), -24(4), while further arbitrarily and capriciously discriminating against Plaintiff in favor of similarly situated owners of property outside the City's municipal boundary, but inside the City's essential services area under the SDS Agreement.

121. In accordance with the December 2020 Carroll County Zoning Letter, December 2020 Sewer Authorization, the Availability Letter, and the LDP, Plaintiff further obtained a constitutionally protectible property right in the specific proposed development on the Property, a property right lost when development of the Property was impossible following the actions of Defendants described herein.

122. Based on the foregoing, Plaintiff, as a landowner of the Property,

acquired vested rights in accordance with the December 2020 Carroll County Zoning Letter, December 2020 Sewer Authorization, the Availability Letter, Plaintiff's acquisition of the Property and Plaintiff's substantial change in position by expenditures in good faith in reliance on the foregoing and the LDP.

123. Based on the foregoing, Plaintiff, as a landowner of the Property, relied in good faith upon some act or omission of the government, has made a substantial change in position or incurred such extensive obligation and expenses that it would be highly inequitable and unjust to destroy the rights it has acquired.

124. As a direct and proximate result of the foregoing, Plaintiff has been damaged in an amount according to proof at trial.

COUNT SIX: INTERLOCUTORY/TEMPORARY INJUNCTION

125. Plaintiff hereby incorporates and re-alleges the allegations in paragraphs 1 to 47 as if fully set forth herein.

126. Contrary to equity and good conscience, Defendants actions set forth herein have or will damage the value of the Property.

127. At a minimum, Defendants actions set forth herein discriminated against Plaintiff as compared to other similarly situated utility customers in violation of Plaintiff's right to equal protection under Article I, Section I, Paragraph II of the 1983 Constitution of the State of Georgia and the Equal Protection Clause of the

Fourteenth Amendment to the Constitution of the United States in an arbitrary, capricious, unconstitutional, unlawful, ultra vires, oppressive, malicious, corrupt, and bad faith manner.

128. Plaintiff has no adequate remedy at law.

129. Granting injunctive relief to Plaintiff against Defendants will not disserve the public interest, and the potential harm to Plaintiff if Defendants are not enjoined from further withholding Plaintiff utility services will greatly outweigh the potential harm to the Defendants or any other person or entity from enjoining Defendants.

130. Plaintiff will suffer immediate and irreparable injury, loss, and damage if Defendants are not enjoined from further withholding from Plaintiff utility services and from taking further actions that are detrimental to Plaintiff's property rights and interests.

131. Plaintiff has a substantial likelihood of success on the merits because, at a minimum, Defendants acted under the color of state law in an arbitrary, capricious, unconstitutional, unlawful, ultra vires, oppressive, malicious, corrupt, and bad faith manner by withholding sanitary sewer service to the Property and causing Plaintiff substantial damages while informing Plaintiff that "[t]he City would consider sewer service to a project outside the City [only] if such a project

had regional impact and significant positive impact on the City of Carrollton itself."

132. Plaintiff is entitled to injunctive relief ordering Defendants to take action consistent with, and no action inconsistent with, Plaintiff's right to be served by the City with sanitary sewer service and interconnect the Property to the City's sanitary sewer system for development pursuant to the LDP.

COUNT SEVEN: PERMANENT INJUNCTION

133. Plaintiff hereby incorporates and re-alleges the allegations in paragraphs 1 to 47 as if fully set forth herein.

134. Contrary to equity and good conscience Defendants actions set forth herein have or will damage the value of the Property.

135. Defendants' arbitrary, capricious, unconstitutional, unlawful, ultra vires, oppressive, malicious, corrupt, and bad faith actions include, but are not limited, refusing to recognize Plaintiff's vested rights and reliance interests set forth and established in, but not limited to, the December 2020 Carroll County Zoning Letter, the December 2020 Sewer Authorization, the Availability Letter, and the LDP.

136. At a minimum, Defendants actions set forth herein discriminated against Plaintiff as compared to other similarly situated utility customers in violation of Plaintiff's right to equal protection under Article I, Section I, Paragraph II of the

1983 Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States in an arbitrary, capricious, unconstitutional, unlawful, ultra vires, oppressive, malicious, corrupt, and bad faith manner.

137. Plaintiff has no adequate remedy at law.

138. Granting injunctive relief to Plaintiff against Defendants will not disserve the public interest, and the potential harm to Plaintiff if Defendants are not enjoined from further withholding from the Property and Plaintiff utility services will greatly outweigh the potential harm to the Defendants or any other person or entity from enjoining Defendants.

139. Plaintiff will suffer immediate and irreparable injury, loss, and damage if Defendants are not enjoined from further withholding from the Property and Plaintiff utility services and from taking further actions that are detrimental to Plaintiff's property rights and interests.

140. Plaintiff has a substantial likelihood of success on the merits, at a minimum, because Defendants acted under the color of state law in an arbitrary, capricious, unconstitutional, unlawful, ultra vires, oppressive, malicious, corrupt, and bad faith manner by withholding sanitary sewer service to the Property and causing Plaintiff substantial damages while informing Plaintiff that "[t]he City

would consider sewer service to a project outside the City [only] if such a project had regional impact and significant positive impact on the City of Carrollton itself."

141. Plaintiff is entitled to injunctive relief ordering Defendants to take action consistent with, and no action inconsistent with, Plaintiff's right to be served by the City with sanitary sewer service and interconnect the Property to the City's sanitary sewer system for development pursuant to the LDP.

COUNT SIX: VIOLATIONS OF O.C.G.A. § 36-33-4

142. Plaintiff hereby incorporates and re-alleges the allegations in paragraphs 1 to 47 as if fully set forth herein.

143. Pursuant to O.C.G.A. § 36-33-4, Members of the Council[1] and other officers[2] of the City are "personally liable to one who sustains special damages as the result of any official act of such [persons] if done oppressively, maliciously, corruptly, or without authority of law."

144. Defendants acted oppressively, maliciously, corruptly, and without authority because, at a minimum, Defendants acted without authority under Georgia or other applicable law to withhold sanitary sewer service to the Property based on, at a minimum, declining such utility service based on whether the Property or the

1 Specifically, the Mayor, Councilwoman Bridges, Councilman Ledbetter, Councilman Watters, and Councilman Uglum.

2 Specifically, the City Manager Brooks and Cite Engineer Holland.

proposed development thereon is determined by the City to have "regional impact and significant positive impact on the City . . . itself", thereby discriminating against Plaintiff as a utility customer, and otherwise withholding service in an arbitrary, capricious, unconstitutional, unlawful, ultra vires, oppressive, malicious, corrupt, and bad faith manner.

145. Defendants' arbitrary, capricious, unconstitutional, unlawful, ultra vires, oppressive, malicious, corrupt, and bad faith actions include, but are not limited, the denial and refusal to recognize Plaintiff's vested rights and reliance interests set forth and established in, but not limited to, the December 2020 Carroll County Zoning Letter, the December 2020 Sewer Authorization, the Availability Letter, and the LDP.

146. As a result of the foregoing, Plaintiff has suffered special damages as a result of Defendants' conduct in an amount to be proved at trial.

COUNT NINE: ATTORNEYS' FEES

147. Plaintiff hereby incorporates and re-alleges the allegations in paragraphs 1 to 47 as if fully set forth herein.

148. Defendants have acted in bad faith, have been stubbornly litigious, and have caused Plaintiff unnecessary trouble and expense.

149. By reason of the foregoing, Plaintiff is entitled to recover reasonable

and necessary attorneys' fees and expenses from the Defendants pursuant to 42 U.S.C. § 1988 and O.C.G.A. § 13-6-11.

COUNT TEN: PUNITIVE DAMAGES

150. Plaintiff hereby incorporates and re-alleges the allegations in paragraphs 1 to 47 as if fully set forth herein.

151. Defendants' conduct, as described in detail herein, was undertaken with the specific intent to cause economic harm to Plaintiff.

152. Defendants' conduct, as described in detail herein, was outrageous, willful, wanton, and/or reckless.

153. Defendants' conduct, as described in detail herein, demonstrates a willful, wanton, and/or reckless disregard of the rights of Plaintiff.

154. As a consequence of the foregoing, Plaintiff is entitled to an award of punitive damages in accordance with its claims set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Q Hayward Holdings, LLC respectfully requests that this Court grant it the following relief:

1. That this Court award injunctive relief to the Plaintiff ordering Defendants to take action consistent with, and no action inconsistent with, Plaintiff's right to be served by the City with sanitary sewer service and interconnect the

Property to the City's sanitary sewer system for development pursuant to the LDP.

2. That this Court enter judgment in favor of Plaintiff against Defendants in an amount sufficient to compensate Plaintiff for the damages suffered as a result of Defendants' actions.

3. That Plaintiffs recover from Defendants punitive or additional damages based on applicable law.

4. That Plaintiffs recover from Defendants reasonable and necessary attorneys' fees and expenses incurred in connection with this action, as provided by 42 U.S.C. § 1988, O.C.G.A. §§ 13-6-11, 13-6-9, and/or other applicable law.

5. That Plaintiffs be awarded prejudgment and post-judgment interest, as provided by O.C.G.A. § 13-11-7, or other applicable law.

6. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand trial by jury on all claims and issues so triable.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted this July 21, 2022.

TAYLOR ENGLISH DUMA LLP

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/s/ STEVEN L. JONES
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of L.R. 5.1, using font type of Times New Roman and a point size of 14.

Dated: July 21, 2022.

/s/ DANIEL H. WEIGEL
Daniel H. Weigel
Georgia Bar No.: 956419
Counsel for Plaintiff