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MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

THE CITY OF MISSOULA, a Montana municipal corporation,

Plaintiff,

v.

CARLYLE INFRASTRUCTURE PARTNERS, LP, a Delaware limited partnership; ROBERT DOVE, individually and as Managing Director of Carlyle Infrastructure Partners, LP; THE CARLYLE GROUP, LP, a Delaware limited partnership; THE CARLYLE GROUP EMPLOYEE CO., LLC, a Delaware limited liability company; BRYAN LIN, individually and as an officer of Carlyle Employee Company, LLC, JOHN DOES 1-10; and XYZ CORPORATIONS 1-10,

Defendants.

Cause No. DV-15-1020

Dept. No. 4

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

For its First Amended Complaint, Plaintiff City of Missoula ("City") alleges as follows:

I. OVERVIEW

This action arises out of Defendants' tortious conduct and their breach of duty to deal fairly and in good faith with the City in its efforts to acquire Missoula's potable water treatment and delivery system ("Water System") for the public good. Defendants' conduct caused the City to incur significantly higher costs to acquire the Water System than would have been incurred if Defendants had cooperated, as they had agreed to do, in transferring ownership to the City in a negotiated transaction. The purchase price the City ultimately was required to pay in 2017 to acquire ownership through condemnation was higher than the parties had anticipated when a sale to the City was discussed in 2011. The legal fees and costs of proceeding in condemnation would not have been incurred had Defendants done what they promised to do in 2011.

In 2011, Defendants Carlyle Infrastructure Partners, The Carlyle Group ("Carlyle") and Robert Dove ("Dove") approached the City and Missoula's Mayor John Engen and asked for the City's help in acquiring Missoula's Water System. According to Dove, Carlyle needed the City's support to obtain approval from the Montana Public Service Commission

(“PSC”) for its out-of-state purchase of Missoula’s privately owned water company, Mountain Water Company (“Mountain Water”). The City was on record as opposing Carlyle’s purchase of Mountain Water, and instead favored municipal ownership of the Water System. But Dove made an offer the City could not refuse.

Dove promised that if the City withdrew its previous opposition to Carlyle’s acquisition, and publicly supported a sale of Mountain Water to Carlyle, Dove would make sure that Carlyle would turn around within a short time and sell the Water System to the City. The offer was attractive to Mayor Engen because the original owner of Mountain Water, Sam Wheeler, had made it clear that he would never sell to the City, based on the City’s unsuccessful attempt to condemn the Water System 35 years prior.

Dove’s offer was persuasive. He urged that without Carlyle’s intervening ownership, there was no path to Missoula ever owning its own Water System based on Wheeler’s longstanding aversion to municipal ownership of Mountain Water. He told Mayor Engen that Carlyle was primarily interested in the two California water companies that Mountain Water’s parent company owned, but that Carlyle could not acquire them without taking Mountain Water too, as part of a three-company package

deal. This was because Sam Wheeler was not interested in selling the California companies by themselves. Dove told Mayor Engen that because Carlyle's interest was in longer term ownership of the California companies, he would be happy to unload Mountain Water just as soon as Wheeler rotated off the parent company's board of directors, two years after selling to Carlyle.

But, according to Dove, the City would have to patiently wait those two years before making its offer to purchase in 2013, at which time Carlyle would consider the City's offer "in good faith" and transfer ownership to the City at a price slightly above what it had paid Wheeler in 2011. Finally, Dove insisted the City keep confidential the commitment that the City would ultimately own the Water System if it helped Carlyle obtain PSC approval, lest Wheeler hear about it and back out of his sale to Carlyle.

The City accepted Carlyle's offer and agreed to help Carlyle win PSC approval for its purchase of Mountain Water. In return, Carlyle promised it would sell the Water System to the City two years later, on a standalone basis, at fair market value, and at a price that would be determined by good faith negotiation and utilization of various methods of business valuation as were discussed by the parties in 2011. Carlyle represented that the purchase price in 2013 would be based on the implied value that Carlyle

paid for Mountain Water Company in 2011 plus an additional premium for its brief period of ownership.

This express understanding was based on the parties' oral communications and was consistent with a letter agreement signed on September 22, 2011 ("Letter Agreement"). The Letter Agreement required the City to support Carlyle before the PSC. It also required Carlyle—as the *quid pro quo* for the City's support—to consider in good faith any offer by the City in 2013 or later to purchase Mountain Water or the Water System from Carlyle. At Carlyle's insistence, no more detailed reference to Carlyle's promise to sell, or the price at which the City would be permitted to purchase, was included in the Letter Agreement. This was because Dove was convinced that any greater visibility of Carlyle's promise to sell to the City would upset its transaction with Wheeler.

In reliance on Carlyle's oral promises and representations, and the Letter Agreement, the City performed its end of the bargain. The City reversed its previous opposition to Carlyle's acquisition of Mountain Water. Mayor Engen publicly supported Carlyle's application for PSC approval. Both the City and Mayor Engen appeared before the PSC and testified in favor of Carlyle's purchase of Mountain Water. As a result, the PSC

approved Wheeler's sale to Carlyle, and Carlyle became the owner of Mountain Water in late 2011.

Two years later, however, having obtained the benefit of the bargain they made with the City in 2011, Dove and Carlyle reneged on their promise to cooperate in transferring ownership to the City. Instead of acting in good faith to consummate a transaction with the City, Defendants did everything they could to prevent the City from acquiring Mountain Water or its Water System.

Beginning in February 2013, Defendants refused to deal in good faith, and took affirmative steps to frustrate the City's ability to acquire the Water System. First, when the City made a formal offer in 2013 to purchase the Water System for $65 million, a price 30% higher than the implied value of $50 million that Carlyle had paid in late 2011, Defendants falsely said that Mountain Water was simply "not for sale." In fact, the exact opposite was true, as Defendants were secretly planning to market Mountain Water for public auction. Second, Defendants refused to consider in good faith any offer from the City to purchase the Water System on a standalone basis, as they had promised in 2011. Their secret plans were focused exclusively on a sale of Mountain Water that would require any successful bidder to also purchase the two California water companies as well, something the City

could never do. Third, Defendants declined to consider in good faith the reasonableness of the City's $65 million offer. They refused to commission an independent valuation or appraisal of Missoula's Water System on a standalone basis to determine what it was worth. Fourth, Defendants declined to utilize any of the valuation methods discussed with the City in 2011 to calculate a sales price that would comport with what the parties agreed would set the price for a sale to the City two years later. Fifth, Defendants ignored the fact that the implied "fair market value" of Mountain Water on their certified financial statements filed with the federal government at the time the City made its offer was almost precisely the same, $65 million. Last, when responding to the City's $65 million offer, Dove told the Mayor that the City should "start at $120 million and work up from there," a prohibitively high price that was completely at odds with what had been discussed in 2011. Indeed, Carlyle had paid only about $150 million for all three water companies in 2011, had not invested any new money since taking ownership, and had taken more than $11 million in "administrative fees" from the three companies during the brief period of its ownership while neglecting to invest in needed repairs and improvements to maintain the value of the Water System's infrastructure. By 2014, Carlyle's neglect had resulted in leakage of more than 50% of the water

pumped out of the ground and treated, before it ever reached the customers' spigots.

When it received the City's offer, Carlyle made sure that Mountain Water's officers and directors never were permitted to consider it, were not allowed to conduct any due diligence on whether the City's offer was reasonable, and were not allowed to vote on whether to accept it or make a counteroffer. Mountain Water's Board of Directors had a fiduciary duty to consider the City's offers in 2013, but Carlyle prevented them from doing so. They never held a meeting, never performed any due diligence, and never took a vote on whether to accept, reject, or counter the City's offers.

Defendants also pretended in 2013 that there were "impediments" to any standalone sale to the City which made it impossible to do what they promised in 2011. But none of those impediments were ever discussed or disclosed to the City in 2011. They included such things as tax consequences and "make-whole" penalties that Carlyle said it would incur if it sold the Water System to any purchaser on a standalone basis. These issues were not genuine impediments and were either known to Carlyle or should have been known by Carlyle two years earlier when it made its promises. Regardless, from the outset Carlyle had control over these contrived impediments.

After Carlyle refused to make a counteroffer or negotiate in good faith, and in the absence of Mountain Water's Board of Directors ever being allowed to consider the City's offer, the City realized Defendants had totally reneged on the representations and promises made two years earlier. Dove and Carlyle had effectively fooled the City into doing what they wanted in 2011 without ever having any intent of doing in 2013 what they had promised to do. As a last resort, the City decided that it had no other option but to pursue a condemnation action to acquire the Water System by exercising its statutory power of eminent domain. That option, however, had risks and costs that would have been avoided if Carlyle had done what it promised to do in 2011.

In April 2014, the City filed its condemnation action. In response, Defendants continued to act in bad faith. They publicly stated that they would cause the condemnation process to be so expensive that the City could never afford to pay the price set by the Court. A few weeks after the condemnation lawsuit was commenced, Carlyle decided to tell the truth and publicly admitted that Mountain Water actually *was* for sale after all. Four months later, while the City's condemnation action was pending, Carlyle announced that a contract had been signed to sell Mountain Water and its

two California sibling companies to a foreign buyer—Algonquin Power and Utility Corp. of Canada ("Algonquin"), and Algonquin's wholly-owned subsidiary, Liberty Utilities Co. ("Liberty")—as a three-company package deal. Defendants' efforts to circumvent the condemnation process were in bad faith.

Mountain Water and Liberty promptly filed an application for PSC approval of the sale of Mountain Water Company, as such regulatory approval was required in 2014, just as it was when Carlyle purchased Mountain Water Company in 2011. The City's condemnation case proceeded apace while Mountain Water and Liberty's application for approval remained pending before the PSC.

In March and April, 2015, the public necessity phase of the City's condemnation action was tried in the District Court. On June 15, 2015, the Court ruled in the City's favor, finding that public necessity had been proven. The Court issued its Findings of Fact, Conclusions of Law, and Preliminary Order of Condemnation entitling the City to take possession of the Water System upon payment of "just compensation" to be determined in further court proceedings. Carlyle and Mountain Water were required to file within 30 days a Notice of Claim informing the City what price they would accept to transfer ownership of the Water System to the City, which

the City then could accept or reject. The Notice of Claim they filed 30 days later was geometrically higher than what Carlyle had paid in 2011 for a Water System they had allowed to fall into disrepair as a result of their ownership. Defendants' claim was not in good faith.

In November 2015, the valuation phase of the City's condemnation action was tried in the District Court before a three-person jury of commissioners charged with determining the amount of "just compensation" the City would pay, and which Carlyle and Mountain Water would be required to accept, for the Water System. On November 17, 2015, the jury returned its verdict setting Mountain Water Company's "just compensation" at $88.6 million and awarding Carlyle nothing. Neither Carlyle nor Mountain Water appealed the November 17, 2015, valuation award. The City was willing to pay $88.6 million and would have done so if Carlyle had been willing to negotiate in that range back in 2013.

On January 8, 2016, on the verge of the City taking ownership, Carlyle and Liberty secretly closed their purchase and sale of Mountain Water, making Liberty the owner of Mountain Water and Missoula's Water System. Liberty waived the contractual contingency that would have excused its obligation to close the transaction based on the absence of PSC approval. Before the PSC, Carlyle and Liberty then unilaterally

withdrew and abandoned their application for approval of the sale, even though such regulatory approval is mandatory in the State of Montana. In bad faith, they pretended PSC approval was no longer necessary, a ruse that angered the PSC Commissioners.

When they appeared in court the following Monday morning, January 11, 2016, Carlyle and Mountain Water deliberately failed to disclose to either the Court or the City that they had closed their purchase and sale without PSC approval three days prior. Their failure to do so was in bad faith and was designed to frustrate the City's ability to take ownership upon payment of the $88.6 million purchase price set by the Court in November. Carlyle's attorney had previously appeared in court on December 18, 2015, and affirmatively represented to the District Court that the PSC review would be ongoing. In fact, Carlyle and Liberty had signed a contract the previous day, December 17, 2015, in which they agreed to complete the sale without PSC approval. Defendants' deception had been perpetuated for almost a month.

By refusing to consider the City's 2013 offer in good faith, by declining throughout 2013 and 2014 to engage in any good faith negotiations to determine a fair price at which the City could purchase the Water System on a standalone basis, and by continuing to take actions for

several years thereafter designed to frustrate the City's efforts to obtain ownership at fair market value, Defendants reneged on their promises made in 2011 and tortiously caused the City to incur significantly higher costs to obtain ownership of the Water System than had been agreed in 2011.

In retrospect, it is clear that the City had been induced to support Carlyle's acquisition of Mountain Water Company in 2011 by false and fraudulent representations and by promises made by Carlyle and other Defendants that were designed to gain the City's support without ever intending to deliver on their promise to transfer ownership of the Water System to the City two years later. Defendants' bad-faith conduct deprived the City of any opportunity to acquire the Water System in an orderly transaction and at a price that was consistent with what had been promised in 2011. Defendants' bad-faith conduct also jeopardized the City's ability to acquire the Water System at all, given that condemnation is an uncertain means of acquisition. Last, Defendants' bad faith conduct unnecessarily delayed and deferred the orderly transfer of possession of the Water System to the City.

II. PARTIES

1. The City is a municipal corporation of the State of Montana, duly organized and existing under the Constitution and laws of the State of Montana. The City is a local government unit with self-government powers, authorized to exercise any power not prohibited by the Constitution, law, or charter.

2. Defendant Carlyle Infrastructure Partners, L.P. ("Carlyle") is a limited partnership with its principal place of business in Washington, D.C. Carlyle is in the business of investing in, and selling for profit, various private and public infrastructure projects and businesses, including water and wastewater treatment and water distribution systems. At all relevant times until it sold to Algonquin/Liberty, Carlyle was the General Partner or Managing Member of the companies or partnerships that owned and operated the Water System. As such, until it sold Mountain Water, Carlyle was the self-proclaimed "ultimate owner" of Mountain Water and its primary asset, the Water System. Carlyle exercised control over the affairs of Mountain Water, including decisions regarding sale of its assets. Management and the boards of directors of those companies or partnerships that are subsidiaries in the direct ownership chain, including Western Water Holdings, Park Water Company, and Mountain Water, all

served at the pleasure and took direction from Carlyle. The boards of directors of each of these companies was majority controlled by Carlyle.

3. Defendant Robert Dove ("Dove") is a resident and citizen of the Washington, D.C., metropolitan area. He was a managing director of The Carlyle Group with responsibility and authority to manage its Infrastructure Fund and execute decisions to acquire and dispose of assets in its portfolio. At all relevant times prior to the transfer of Mountain Water to Liberty, Dove acted as the person with apparent authority to speak on behalf of Carlyle Infrastructure and Mountain Water with regard to the City's efforts to acquire the Water System. He signed the 2011 Letter Agreement on behalf of The Carlyle Group as its Managing Director, and he issued other relevant correspondence on The Carlyle Group's letterhead, consistently describing Carlyle Infrastructure and The Carlyle Group as the "ultimate owners" of Mountain Water and the Water System. Dove is an individual investor in The Carlyle Group's Infrastructure Fund.

4. Defendant The Carlyle Group, L.P. ("The Carlyle Group") is one of the world's largest investment firms with more than 1,650 investors from 78 countries who expect it to achieve premium returns on their investment capital. The Carlyle Group controls more than $193 billion of assets across 130 funds and 156 "fund of funds" vehicles. The Carlyle Group directly

owns or manages Carlyle Infrastructure as well as other investment funds. The Carlyle Group is a limited partnership with its principal place of business in Washington, D.C. At all times, The Carlyle Group has been the parent company of Carlyle Infrastructure.

5. Defendant Carlyle Group Employee Co., L.L.C. ("Carlyle Employee Company") is a division of The Carlyle Group, separate and distinct from Carlyle Infrastructure.

6. Defendant Bryan Lin ("Lin") is a resident and citizen of New York City, New York, and an employee of The Carlyle Group Employee Co. At all relevant times, Lin had principal responsibility for overseeing the acquisition and ownership of Mountain Water for The Carlyle Group. Lin was the Carlyle employee with principal responsibility to verify under oath and on a quarterly basis the fair market value of assets held by Carlyle Infrastructure. He is an individual investor in The Carlyle Group's Infrastructure Fund. Lin assisted Dove at the time Carlyle received the City's offer to purchase the Water System, and he participated in Carlyle's decision not to consider that offer in good faith or to engage in any good faith negotiations to facilitate the City's acquisition of the Water System.

7. John Does 1-10 and XYZ Corporations are individuals and entities, including but not limited to employees, advisors, attorneys,

bankers and the like, who advised or participated in the acts and omissions set forth in the preceding paragraphs.

III. NON-PARTY PARTICIPANTS

8. Mountain Water is a Montana for-profit corporation with its principal place of business in Missoula, Montana. Prior to June 22, 2017, Mountain Water was the direct owner and operator of the Water System.

9. John A. Kappes ("Kappes") is a resident and citizen of Missoula County, Montana. Prior to June 22, 2017, Kappes was the president of Mountain Water and a member of its board of directors. He also is or was an individual owner of Class B equity shares in Western Water Holdings, LLC ("Western Water"), the parent company, twice removed, of Mountain Water.

10. Leigh Jordan ("Jordan") is a resident and citizen of California. At all relevant times, Jordan was vice president of Mountain Water and a member of its board of directors. He also is or was an individual owner of Class B equity shares in Western Water.

11. Christopher Schilling ("Schilling") is a resident and citizen of California. At all relevant times, Schilling was a member of the board of directors of Mountain Water. He also is or was an individual owner of Class B equity shares in Western Water.

12. Douglas Martinet ("Martinet") is a resident and citizen of California. At all relevant times, Martinet was a member of the board of directors of Mountain Water. He also is or was an owner of individual Class B equity shares in Western Water.

13. Park Water Company ("Park Water") is a California corporation with its principal place of business in Downey, California. At all relevant times, Park Water was the sole owner of Mountain Water. Park Water functions as a holding company whose only business involves the ownership of three operating companies in the business of selling and distributing water in three communities: East Los Angeles, California ("Central Basin Water Company"); the Town of Apple Valley, California ("Apple Valley Ranchos Water Company"); and the City of Missoula, Montana (Mountain Water).

14. Western Water is a limited liability company formed solely for the purpose of acquiring and selling as a "package deal" the assets of Park Water, namely Central Basin Water Company, Apple Valley Ranchos Water Company, and Mountain Water. At all relevant times, Western Water was the sole immediate owner of Park Water.

15. Western Water was originally created by Carlyle Infrastructure to facilitate its purchase of Park Water in December 2011, and most

recently was used by Carlyle Infrastructure to facilitate its sale of Carlyle's interests in the Water System Liberty Utilities through a stock transfer.

16. Algonquin is a Canadian corporation headquartered in Oakville, Ontario, Canada. Algonquin is in the business of owning and operating public utilities located in the United States and elsewhere in North America. Algonquin also was the successful bidder in the marketing of Mountain Water undertaken by Carlyle's investment banker, Wells Fargo, during the pendency of the City's condemnation action. On September 19, 2014, Algonquin announced that its subsidiary, Liberty, had entered into a contract to acquire Western Water and become the owner of Mountain Water. On January 11, 2016, Algonquin announced that its subsidiary, Liberty, had consummated its purchase of Western Water and become the owner of Park Water and Mountain Water as of January 8, 2016.

17. Liberty Utilities is a for-profit foreign corporation with its principal place of business in Fall River, Massachusetts. Liberty is wholly owned by Algonquin. Following Carlyle's January 2016, sale of Mountain Water to Liberty, and until the City acquired the Water System by a Final Order of Condemnation on June 22, 2017, Liberty and Algonquin were the ultimate owners of the Water System.

IV. FACTUAL ALLEGATIONS

18. As of 2011, the City had tried to acquire the Water System for well over three decades.

A. 1984 Condemnation

19. In 1984, the City attempted unsuccessfully to acquire the Water System by means of a condemnation lawsuit. That effort resulted in an aversion on the part of Park Water's prior owner, Sam Wheeler, to the City ever owning the Water System.

20. Over the years following that unsuccessful attempt, the City continued to have an interest in municipalizing its Water System but City leaders knew Mr. Wheeler would never agree to sell to the City.

B. Carlyle Enters the Picture

21. In December 2010, Dove, acting on behalf of Carlyle, visited Missoula's Mayor John Engen to inform him that Carlyle was attempting to buy Park Water, the holding company that owned Mountain Water and its two sibling water companies in California, Central Basin Water Company and Apple Valley Ranchos Water Company.

22. Dove stated that Carlyle's ability to acquire Mountain Water was dependent on obtaining regulatory approval from the PSC for the transfer of ownership. He indicated that he was aware the City opposed a sale of Mountain Water to Carlyle.

23. Dove was concerned the PSC would not approve the sale to Carlyle. He therefore sought Mayor Engen's help and the City's assistance in obtaining PSC approval.

24. Dove asserted that he believed the PSC would approve the sale to Carlyle if the City would publicly support the sale. Knowing of the City's longstanding interest in acquiring the Water System, Dove proposed that if the City would pledge its support, Carlyle would sell Mountain Water or the Water System to the City at a reasonable price after holding it as an asset in its Infrastructure Fund for a brief period of time. According to Dove, that brief holding period could be as short as a year or two, and would be designed to coincide with Sam Wheeler's completion of his final term as a member of the Park Water board of directors which would occur at the beginning of 2013. Dove led the City to believe that once Wheeler had departed Park Water's board, and his opposition to City ownership was no longer a factor, Carlyle would proceed with its sale to the City.

25. Mayor Engen understood from Dove's statements that Carlyle was willing to sell the Water System to the City, in part because Carlyle was primarily interested in owning the two California water companies operated by Park Water, and that Carlyle viewed Mountain Water as a less desirable and less profitable asset compared to the two California

companies. According to Dove, Carlyle expected to significantly grow and expand the two California water companies, but it did not have the same expectations for Mountain Water in Missoula. At trial in November 2015, Dove testified that Carlyle viewed its acquisition of Park Water as the "strategic platform for further investments" in the water sector in California, which he described as future "tuck-in" acquisitions of other California water companies that would follow Carlyle's initial acquisition of Park Water's two California water companies.

26. In the public necessity phase of the condemnation case the City later brought, it became clear that under Carlyle's ownership the three companies would be managed in a manner that preferred the interests of the two California companies over the interests of Mountain Water. Dove's stated preference in 2011 for the two California companies owned by Park Water was, in fact, proven true by Carlyle's subsequent behavior.

27. Mayor Engen and Dove spoke and negotiated throughout the first nine months of 2011. At all times in his communications with the City and with Mayor Engen, Dove had actual, ostensible, and implied authority to speak on behalf of Mountain Water and on behalf of Carlyle.

28. At every point during the negotiations and agreements that followed Dove's first meeting with Mayor Engen, the future sale of Mountain

Water to the City was always understood to be a sale of Mountain Water as a standalone entity, separate and apart from its sibling companies in California. At no time did Dove suggest that Carlyle might be constrained to sell all three water companies owned by Park Water on a consolidated basis or as a package deal.

29. At no time during the negotiations and agreements with Mayor Engen and the City, did Dove ever indicate that there might be tax implications or make-whole penalties that could be triggered by a standalone sale of Mountain Water.

30. In February 2011, at Mayor Engen's direction, the City's financial advisor, Roger Wood of Moelis & Company, suggested to Dove that Carlyle and the City enter into a written agreement or a written term sheet documenting the City's obligation to support the Carlyle purchase from Sam Wheeler in return for Carlyle's obligation to subsequently sell the Water System to the City. Dove resisted, insisting that such a detailed document could make Wheeler aware of Carlyle's intention to facilitate City ownership and that would, in turn, jeopardize Carlyle's ability to complete the purchase from Wheeler. Dove later testified that he was very concerned that if Carlyle entered into a detailed written agreement with the City in 2011, Wheeler would "renege on his promise or his agreement to

sell" to Carlyle. Dove also later explained in his testimony given in 2015 that he "had a great deal of concern that if we had a definitive agreement back in February 2011, then Wheeler would probably pull the opportunity" for Carlyle to acquire the business in the first place. This was the reason Defendants insisted their commitment not be described in more detail in any written document.

31. During their discussions in early 2011, although the City and Carlyle did not sign a definitive written contract or term sheet, they did reach an oral agreement on certain issues and they reached basic understandings of the arrangement by which the City would acquire the Water System. First, they agreed that Carlyle would sell the Water System to the City once its purchase of Mountain Water had been approved by the PSC and it had acquired all three water companies owned by Wheeler. Second, they agreed that Carlyle would sell the Water System to the City on a standalone basis separate and apart from its two sibling water companies in California. Third, they agreed that the City would not take any steps to present an offer prior to 2013, at which time Carlyle would be able to execute the transaction. Fourth, they agreed that the City would keep confidential until 2013 Carlyle's promise to sell the Water System to the City. Fifth, they agreed that the price to be paid by the City would be

"fair market value." Sixth, they discussed the framework for how they would later determine fair market value and the price to be paid by the City, and the methods that would be used to establish a price if one could not be agreed upon by the parties.

C. The City and Carlyle Reach an Agreement

32. One such valuation method the parties discussed would be for each side to appoint a financial advisor who would negotiate with each other to determine the price and, if agreement could not be reached, those two individuals would appoint a third financial advisor to set the price. Another method of valuation would involve engaging a professional appraiser or business valuation expert to determine fair market value. Another method would be to take a multiple of EBITDA (earnings before income tax, depreciation, and amortization) which was the way in which Carlyle had valued the business in 2011 when bidding on Park Water. (It also was one of the methods that Carlyle would use on a quarterly basis to update the fair market value of its investment in Mountain Water, once acquired.) Yet another method of valuation that could be utilized in 2013 would be for the parties to determine an implied value for Mountain Water in 2011 by (a) calculating what Carlyle had paid Wheeler for all three water companies; (b) attributing one-third of that total purchase price to establish

the value of Mountain Water alone because the three companies were roughly the same in revenues and size; and (c) adding a premium in order to compensate Carlyle for the time value of money during the two-year period of its ownership. Dove affirmatively suggested that the latter would be an appropriate method by which to set the 2013 price. The City agreed.

D. Value of Mountain Water in 2011

33. At the time of these conversations and agreements with the City in 2011, Carlyle had valued Park Water to be worth $148 to $157 million and had indicated to Sam Wheeler that Carlyle was prepared to bid the higher amount of $157 million. Because Carlyle would receive cash on account of approximately $9 million upon taking ownership of Park Water, the total transaction cost for Carlyle would be $148 million even though the stated purchase price was $9 million higher. This would imply a valuation of Mountain Water on a standalone basis of just under $50 million in 2011.

34. Based on their conversations with Dove, both Mayor Engen and Roger Wood understood, and had reason to believe, in 2011 that Carlyle would sell the Water System to the City in 2013 at a purchase price of approximately $50 million plus a premium for its two years of ownership.

E. Carlyle's Promises Were False and Meant to Trick the City into Supporting Carlyle's Acquisition of Mountain Water

35. The Letter Agreement and the promises and representations made by Carlyle and Dove were intended to induce the City into supporting Carlyle's purchase of the Water System. Unbeknownst to the City, those promises and representations were false. Carlyle and Dove never intended to sell the Water System on a standalone basis to the City at a price consistent with the parties' discussions and understandings in 2011. Instead Carlyle and Dove intended that their falsehoods and misrepresentations, and their failure to disclose accurate information regarding their intentions, would fraudulently induce the City to support Carlyle's purchase and to obtain PSC approval of the sale to Carlyle. Among Carlyle's and Dove's misrepresentations were the following:

- Defendants failed to disclose in 2011 that Carlyle had no intention to sell Missoula's Water System on a standalone basis, but would sell it only in a "package deal" as one of three water utilities jointly owned by Carlyle, two of which are located in California.
- Defendants failed to disclose in 2011 that Carlyle would not sell to the City because "make-whole" provisions in its loan or bond covenants would trigger a penalty if Missoula's Water System was sold on a standalone basis.
- Defendants failed to disclose in 2011 that Carlyle would not sell to the City because it would allegedly expose Carlyle to a double-taxation issue if Missoula's Water System was sold on a stand-alone basis.

- Defendants failed to disclose in 2011 that by utilizing an "Allocation Agreement" Mountain Water was paying one-third of Park Water's out-of-state overhead expenses which, in turn, generated out-of-state profits of $11.5 million that were distributed to the parent corporation during Carlyle's brief period of ownership, and that selling to the City would deprive Carlyle of that revenue stream from Missoula ratepayers and, in turn, negate those corporate profits generated by the scheme.

- Defendants failed to disclose in 2011 that Carlyle would not sell to the City because Carlyle had determined that a standalone sale of Missoula's Water System would impair its marketing of the other two water companies it owned.

- Defendants failed to disclose in 2011 that Carlyle would not undertake a valuation of Missoula's Water System on a standalone basis due to Carlyle's determination to sell it only as part of a three-company package deal.

- Defendants failed to disclose in 2011 that Carlyle would take the public position that Missoula's Water System was "not for sale" while secretly planning and implementing a marketing campaign to sell it only as part of a three-company package deal.

- Defendants failed to disclose in 2011 that Carlyle would limit bidders for the sale of Missoula's Water System only to those willing to bid on the three-companies as a package deal.

- Defendants failed to disclose in 2011 that, even if the City made a reasonable offer completely in line with Carlyle's prior representations of what price it would accept in order to sell Missoula's Water System to the City, Carlyle never would undertake any due diligence or valuation of the Water System in order to respond to the offer, never would propose a counteroffer, and never would engage in any good faith negotiations to sell the Water System to the City.

- Defendants failed to disclose in 2011 that if the City tried to acquire the Water System by exercising its power of eminent domain, Defendants would endeavor to make the process so expensive, so protracted, and so time-consuming the City would be forced to abandon its efforts or decide that it had become too expensive to proceed with its efforts to take possession of Missoula's Water System.

36. Legal counsel for Carlyle drafted the Letter Agreement. Prior to the drafting of the Letter Agreement, Carlyle knew it had no intention of selling Mountain Water to the City of Missoula. Yet, Carlyle's attorneys drafted provisions in the Letter Agreement (including Carlyle's obligation to consider offers from the City of Missoula in good faith) to require the City to support Carlyle before the PSC on the understanding that Carlyle would follow through on Dove's promise to sell Mountain Water to the City two years later.

37. Among the provisions Carlyle's attorneys drafted in the Letter Agreement was a requirement for Carlyle to notify the City if it intended to market the Water System to potential buyers at least 120 days prior to any sale. Despite knowing that Carlyle had no intention of selling Mountain Water to the City, Carlyle provided notice of intent to sell Mountain Company on May 21, 2014 – exactly 121 days before Carlyle and Liberty/Algonquin signed a Purchase and Sale Agreement.

38. Carlyle's attorneys continued to misrepresent Carlyle's position vis-à-vis the sale of Mountain Water, both to the City of Missoula and to the Fourth Judicial District. For example, in a hearing on December 18, 2015, Carlyle's attorney argued to Fourth Judicial District Judge Leslie Halligan that she should not stay the Public Service Commission's review of Carlyle's contemplated sale to Liberty/Algonquin. Carlyle's attorney contended that such a stay would unfairly postpone the contemplated sale. Carlyle's attorney did not tell the Court that Carlyle had already signed a contract to sell Mountain Water to Liberty/Algonquin (without PSC approval) the day before the hearing.

39. Carlyle's attorney knew during the December 18, 2015 hearing that Carlyle had secretly completed its sale of the Water System the previous day, as is evident from his cryptic suggestion to Judge Halligan that she allow dismissal of the PSC proceeding altogether (rather than granting the stay requested by the City). At the time, the City described the suggestion as "unintelligible," but in retrospect it is clear that Carlyle—acting through the drafter of the Letter Agreement—was trying to manufacture an escape from the PSC review process it had already unlawfully circumvented.

F. The City Performed Its Promise in Reliance on Carlyle's Promises

40. The City and Mayor Engen relied on Dove's promises, statements, and representations and, in reliance, agreed to withdraw its opposition to Carlyle's ownership and instead publicly support Carlyle's acquisition before the PSC and otherwise. Absent Dove's promises, statements, and representations, neither the City nor Mayor Engen would have done so.

41. Based on their prior discussions and negotiations, Mayor Engen and Dove both felt they were in a position as of September 2011 to implement their agreement, meaning the City would proceed to publicly support Carlyle's purchase of the Water System and assist in obtaining PSC approval in return for Carlyle's commitment to sell the Water System to the City after Wheeler left the Park Water board of directors in 2013.

42. Although Dove continued to insist that a detailed document not be prepared or executed, he and Mayor Engen did agree to the terms of the Letter Agreement executed on September 22, 2011, among Carlyle, the City, and the Clark Fork Coalition. The Clark Fork Coalition is a water conservation organization that also initially opposed Carlyle's purchase, and Carlyle reckoned its support could be influential with the PSC so it, too, was recruited to support Carlyle's purchase in return for Carlyle's

commitment to consider in good faith any subsequent offer to purchase Mountain Water or the Water System.

43. For its part, the Clark Fork Coalition agreed to support Carlyle's acquisition of the Water System because it also wanted the City to be able to acquire and own the Water System at a future date. The Clark Fork Coalition also would obtain from Carlyle what it considered to be critical protections regarding conservation measures for the Rattlesnake Creek watershed as well as a prohibition on Carlyle's, or any subsequent owner's, ability to bottle Missoula's water for distribution and sale outside the Missoula area.

44. The Letter Agreement was signed by Carlyle, the City, and the Clark Fork Coalition effective September 22, 2011.

45. A specific provision of the Letter Agreement required Carlyle to "consider in good faith" any future offer from the City to buy Mountain Water or Missoula's Water System. The Letter Agreement is a binding and enforceable written agreement, and it was so understood by both Carlyle and the City at the time it was executed.

46. The oral agreements and understandings between the City and Dove that gave rise to the Letter Agreement also were intended by the parties to be equally binding and enforceable.

G. Carlyle's Duty to Deal in Good Faith

47. Under Montana law, there is an implied covenant of good faith and fair dealing that accompanies any written or oral contract. By signing the Letter Agreement, Carlyle undertook a duty to deal fairly and in good faith with the City with respect to its acquisition of the Water System on terms that were fair and in compliance with the understandings reached in 2011.

H. The City Reversed Its Public Opposition, and Publicly Supported Carlyle's Purchase of Mountain Water

48. Once the Letter Agreement was signed, both the City and the Clark Fork Coalition reversed their previously announced opposition to Carlyle's acquisition of Mountain Water, and came out publicly in support of Carlyle's purchase.

49. Relying on Carlyle's assurances and promises, Mayor Engen set to work garnering community and public support for the sale of Mountain Water and the Water System to Carlyle. Among other supportive measures, Mayor Engen appeared in person before the PSC to testify in favor of Carlyle's purchase of Mountain Water.

50. At the time he signed the Letter Agreement, Mayor Engen apprised the Missoula City Council of his intention to publicly support Carlyle's purchase of Mountain Water in proceedings before the Montana

PSC in return for Carlyle's commitment to eventually sell the Water System to the City.

51. On Mayor Engen's recommendation, the Missoula City Council voted in 2011 to publicly support Carlyle's purchase of the Water System.

52. A resolution was passed and adopted by the Missoula City Council on September 26, 2011. The resolution specifically referred to "a clear path" to City ownership of the Water System if Carlyle's purchase was approved by the PSC, providing:

> BE IT FURTHER RESOLVED that, in the presence of a clear path to public ownership and conditioned on stipulations that protect the assets of Mountain Water as requested by Montana Consumer Counsel, the Missoula City Council finds the sale to Carlyle Group compatible with the public interest.

(Resolution Number 7657.)

53. The City fully performed its end of the bargain with Carlyle and fulfilled its promise to publicly support Carlyle's purchase of Mountain Water.

54. With the City's support, Carlyle was able to obtain PSC approval and successfully acquire the Water System. As a result, Carlyle took possession in December 2011.

I. Carlyle's Implied Purchase Price

55. The implied price that Carlyle paid for Mountain Water in 2011 was just under $50 million, representing one-third of the total net purchase price paid for all three water companies that Carlyle acquired from Park Water.

56. Although Mayor Engen had intended to approach Carlyle with an offer for the Water System as soon as Carlyle acquired Park Water, Dove represented that he had particular knowledge of Wheeler's views and advised the City to wait until Wheeler's term on the board had expired before making an offer to buy the Water System. The City, relying on Dove's particular knowledge, followed Dove's advice and did not make an immediate offer to purchase the Water System.

J. Carlyle Continued to Assure the City that It Would "Own the Water Company"

57. After taking ownership, Defendants continued to assure the City and Mayor Engen of their intention to sell the Water System to the City in 2013 on the terms and conditions previously discussed.

58. In February 2012, a dinner meeting was held in a restaurant owned by Dove in Washington, D.C. The meeting was attended by Dove, Carlyle Infrastructure principal John Flaherty, Mayor Engen, Missoula Chief Administrative Officer Bruce Bender, and bond counsel for the City, Roy

Koegen. At the meeting, Dove reconfirmed Carlyle's prior agreement to sell the Water System to the City when Wheeler finished his current term on the Park Water board of directors. Dove and the City reconfirmed 2013 as the target date for the sale to coincide with Wheeler's departure from the Park Water board.

59. Dove continued to insist throughout 2012 on total confidentiality regarding Carlyle's commitment to sell the Water System to the City, and he continued to admonish Mayor Engen that an offer received from the City before Wheeler completed his term on Park Water's board of directors would jeopardize Carlyle's ability to consummate the transaction. The City continued to accommodate Dove's request for secrecy and waited until 2013 to present its offer.

60. Over the next two years following execution of the Letter Agreement, the City continued to communicate with Dove regarding the timing and the preferred path to City ownership of the Water System. Dove continued to reassure the City and he reconfirmed on several occasions that the promised sale to the City would, in fact, occur in conformity with his previous discussions with Roger Wood and Mayor Engen.

K. The City Waited Until 2013 As Promised, and then Presented Its Offer

61. In anticipation of its purchase of the Water System, and in further reliance on Dove's and Carlyle's representations, early in 2013 the City augmented its team of advisors and professionals to include mergers and acquisition counsel, bond counsel, and Springsted Financial Advisors, in addition to Moelis & Company, all of whom met with City representatives beginning in January 2013 to plan for the transaction. Dove and Carlyle were aware that the City was incurring considerable expenses, including hiring experts, attorneys and advisors, in order to prepare for its purchase of the Water System.

62. During 2013, Roger Wood, the investment banker working with the City, participated in additional discussions about the price that Carlyle would accept for Mountain Water. Consistent with the valuation methods Dove and Carlyle had discussed in 2011, Wood recommended that the City make an initial offer for Mountain Water in the range of $65 million. Wood and the City understood that such an offer likely would be acceptable to Carlyle, as it implied a $15 million return on Carlyle's initial investment made less than two years prior. The offer, if made, would be entirely consistent with the parties' previous understanding that Carlyle would

recover the amount it had paid in 2011 plus some reasonable return for the period of its ownership.

63. Mayor Engen also understood from his conversations with Dove over the prior two years that an offer of $65 million in 2013 would be appropriate.

64. In March 2013, Dove sent an email to Roger Wood suggesting, for the very first time, that if the City were to make a formal offer of $65 million, Carlyle would not sell the Water System. Dove indicated that such a sale on a standalone basis would cause Carlyle to incur unanticipated taxes and make-whole penalties on its outstanding bonds. Dove's position was so completely at odds with all of the parties' previous agreements and understandings that the City was not deterred from proceeding with its plans. Accordingly, the City continued its plans to make a formal offer once it was in a position to consummate the transaction. By the Fall of 2013, the City was ready to purchase Mountain Water or the Water System as the parties had discussed in 2011.

65. On October 21, 2013, the Missoula City Council passed Ordinance 3509, authorizing acquisition of Mountain Water or the Water System.

66. The very next day, Dove sent an email to Mayor Engen:

> Thank you, John.
> I had heard the result of the vote.
> Have Roger call me and we will honor the commitment we made.
> RD.

67. What Mayor Engen understood from the email was that Dove intended to proceed to make arrangements for the City to acquire the Water System on the terms previously discussed. Unbeknownst to Mayor Engen, Dove did not intend to accept the City's offer or otherwise take steps to reach a negotiated price. Instead, Dove meant that he would "go through the motions" of saying Carlyle had considered the offer, but would not otherwise comply with what he had promised in 2011.

68. On October 29, 2013, the City sent a letter to Carlyle, formally offering to purchase the equity of Mountain Water for $65 million.

L. Carlyle Rejects the City's Offer

69. Carlyle replied to the City's $65 million offer in a letter dated November 4, 2013. Dove stated that Carlyle had no intention to sell either Mountain Water or the Water System. Before responding, however, the Carlyle Defendants had not made any attempt to value Mountain Water on a standalone basis, nor did Carlyle make a counteroffer at a price that it considered to account for its purported tax and make-whole issues. Dove did not convey or present the City's offer to Mountain Water's board of directors for consideration. Carlyle did not engage in any good faith

negotiations or otherwise communicate on what terms it would sell Mountain Water or the Water System to the City.

70. While telling the City that the Water System was not for sale, Dove and Carlyle were secretly planning to market and sell Mountain Water. In late 2013 or early 2014, Carlyle undertook what it called "Project X" (meaning a project to "exit" its ownership of Mountain Water Company), even as it simultaneously proclaimed to the City and to the people of Missoula that Mountain Water Company and the Water System were not for sale. While telling the City that it had "no plans" to sell Mountain Water Company, Carlyle secretly engaged an investment banker, Wells Fargo, to market Mountain Water Company and its two California sibling companies for sale as a three-company "package deal." Carlyle instructed Wells Fargo to restrict its marketing materials to only those interested buyers who would agree to bid on all three companies as one, and that no offers to purchase Mountain Water Company or the Water System on a standalone basis should be solicited because they would not be entertained.

71. In a letter dated November 26, 2013, Dove and Carlyle flatly rejected the City's $65 million offer for the equity of Mountain Water. Dove reiterated that the Water System was "not for sale" and characterized the City's offer as insufficient. Dove did so even though the City's offer was

well within the range of value suggested by Carlyle for the previous two years and was at a level that would allow Carlyle to make a return on its investment plus a reasonable premium for its 22-month period of ownership. Finally, Defendants indicated that the City's offer was not acceptable because Carlyle doubted the City could finance its purchase at $65 million.

72. In rejecting the City's $65 million offer, Defendants completely reneged on the commitments, promises, and agreements with the City which had been discussed and confirmed over the prior two years, and on which the City had relied to its detriment. Defendants refused to accept the offer, refused to counter the offer, refused to undertake a valuation as to what the Water System was worth on a standalone basis, refused to allow the Mountain Water board of directors to consider the offer, and refused to negotiate in good faith or otherwise act in good faith to facilitate the City's acquisition of the Water System. Carlyle refused to utilize any of the valuation methods discussed in 2011 to determine the fair market value of the Water System in 2013.

73. In rejecting the City's offer to purchase, Defendants cited various impediments to sale that they argued made a sale to the City impossible. Defendants indicated that there were unanticipated tax

consequences and make-whole provisions on their bond indenture that made a standalone sale of the Water System economically unattractive. Defendants indicated that a standalone sale would deprive Park Water of needed revenues from Mountain Water's Administrative Services Agreement that Carlyle needed to continue to dividend profits to Carlyle Infrastructure. All of these so-called impediments to sale were issues that Carlyle either knew or should have known prior to 2013 and well before entering into the Letter Agreement in 2011.

74. Evidence obtained in the condemnation proceedings demonstrated that Carlyle never actually intended to sell the Water System on a standalone basis. As stated in 2015 by one Member of Mountain Water Company's board of directors, "There is no plan, <u>and there never had been a plan to sell [Mountain Water or the other two companies] individually</u>." In fact, Defendants made a calculated and deliberate decision that they would not sell the Water System to the City because they determined that they would make more money if Mountain Water was sold as part of a three-company package deal than if it was sold on a standalone basis to any purchaser; that the sale of Mountain Water to the City would impair its ability to market the other two companies in California; and that Carlyle and its investors would earn more profits if Mountain Water

was sold to a strategic buyer who would pay a premium over and above fair market value.

75. Evidence obtained during the condemnation proceedings also demonstrated that the City's $65 million offer was well within the range of what Carlyle's internal, verified financial statements indicated was the fair market value of Mountain Water.

76. Carlyle indicated in 2013 and 2014 that the City's proposed price was too low. Yet the City's offer compared favorably with Carlyle's own internal records of the fair market value of Mountain Water Company. Carlyle began keeping such records of fair market value in 2011 when it acquired Mountain Water Company, and those valuations were updated on a quarterly basis over the next two years to reflect any appreciation in fair market value. Such updated figures were provided quarterly to investors and to the United Sates Securities & Exchange Commission, and were verified on penalty of perjury by Carlyle, Carlyle Infrastructure, and Brian Lin to be true and accurate representations of value. Unbeknownst to the City, its October 2013 offer to Carlyle was actually higher than the implied fair market value at which Carlyle carried Mountain Water Company on its internal books and records at that time.

M. Because Carlyle Refused to Sell, the City Is Forced to Seek to Acquire the Water System by Condemnation

77. Because the City was unable to acquire the Water System by negotiated agreement in 2013, the City had no choice but to pursue acquisition through its power of eminent domain, which it did in 2014.

78. With full knowledge of the City's announced plan to condemn the Water System, Carlyle took affirmative steps to transfer Mountain Water Company to a third-party rather than allow it to be condemned by the City while Carlyle owned it.

79. Notified that the City would initiate condemnation proceedings as a result of their refusal to act in good faith, Dove and Carlyle announced that they would make the City's condemnation process as difficult and as expensive as possible, and so costly that the City might not be able to afford to pay the condemnation award once it was obtained.

N. Carlyle Puts Mountain Water Out "for Bid"

80. After the condemnation lawsuit was initiated by the City in April 2014, Defendants and Wells Fargo announced in late May 2014 that Carlyle would solicit bids for the purchase of the Water System as part of a three-company package deal, and that qualified bidders would be restricted to only those who would submit an offer for all three companies together.

No offers for sale of Mountain Water alone or the Water System alone would be considered.

81. All the marketing materials and confidential investor memoranda for the auction explicitly provided that the Water System was available for purchase only as part of a package deal for all three companies.

82. In July 2014, the District Court set a trial date of March 2015 for the public necessity phase of the City's condemnation case.

O. Carlyle Sells to Liberty Utilities

83. On September 19, 2014, Carlyle signed a Purchase and Sale Agreement to sell Mountain Water and its sibling companies to Liberty, even while the very issue of whether the City would be entitled to acquire the property was pending before the Montana District Court. The Plan of Merger between Carlyle and Liberty contemplated a stock merger of Western Water with Liberty, which effectively would transfer to Liberty ownership of Park Water and Mountain Water, along with Central Basin Water Company and Apple Valley Ranchos Water Company. Algonquin, as the parent of Liberty, announced the acquisition by a press release issued on September 19, 2014.

84. Carlyle's sale to Algonquin/Liberty was contingent on obtaining PSC approval, as is required for any transfer of ownership of a public utility in Montana, just as it had been required when Carlyle purchased the Water System in 2011. The written agreement between Liberty and Carlyle provided that Liberty would not be obligated to close the transaction if the PSC failed to grant approval within one year (September 19, 2015). The agreement also provided that the date by which PSC approval had to be obtained could be extended by mutual consent to March 19, 2016.

85. Mountain Water and Liberty filed a Joint Application for PSC approval and attempted to obtain a favorable ruling from the PSC that would allow the sale to close before the District Court had an opportunity to rule on the issue of whether public necessity required the City's taking of the property at issue.

P. The City Wins the Public Necessity Trial

86. Following a trial on public necessity in March and April 2015, the District Court ruled on June 15, 2015, that public necessity had been proven and that the City was legally entitled to acquire the Water System from Carlyle and Mountain Water.

Q. The Parties Proceed to Valuation

87. Under statute, Carlyle and Mountain Water were required to specify the "just compensation" that they would accept from the City in

return for the property. On July 15, 2015, Defendants Carlyle and Mountain Water filed, under seal, a Statement of Claim for the amount of "just compensation" they would accept in return for transferring ownership of the Water System on a standalone basis. This amount was geometrically greater than the valuation that had been communicated to the City by Carlyle in 2011 and more than Carlyle had paid for all three water companies in 2011. Defendants' "price" set forth in the Notice of Claim also represented an implied valuation for all three water companies that was well in excess of what Liberty had bid and which Carlyle had accepted in 2014. Defendants' Notice of Claim was not made in good faith. To the extent Defendants' Notice of Claim could be considered a counteroffer to the City's $65 million offer two years prior, it was not based on any good faith consideration of the City's offer.

88. Despite the Court's explicit instruction to avoid disclosing their valuation claim to preserve the integrity of further proceedings, Defendants informed Algonquin of the amount that Carlyle and Mountain Water would claim in their confidential Notice of Claim of Just Compensation, which was a grossly excessive figure. Algonquin's President and CEO, Ian Robertson, then proceeded to publicly disclose that information during an earnings call with investors even though it was confidential, without

permission of the parties or leave of court, in order to create the impression that, as the purchaser of the Water System, Algonquin stood to receive far more than was actually realistic in compensation if the City prevailed in its eminent domain case. On information and belief, Robertson did so to influence potential jurors or commissioners in Missoula who would be setting the price at which the Water System would be transferred to the City in the condemnation case.

89. As of the one-year anniversary of their written agreement, Liberty and Carlyle had not obtained PSC approval for a transfer of ownership to Liberty. Accordingly, they mutually agreed to extend the deadline to March 19, 2016.

90. Prior to the valuation trial in November 2015, Kappes disclosed privately to one candidate for Missoula City Council that the City should not pay much more than approximately $70 million for the Water System because it was in need of substantial repair and capital expenditures that would be necessary to bring the System to industry standards. At trial, Kappes contended that he did not recall making such a statement.

91. At the valuation trial in November 2015, it was publicly disclosed that—despite Carlyle and Mountain Water's grossly excessive Statement of Just Compensation in the condemnation proceedings—

Carlyle's own internal appraisals and valuations of Mountain Water indicated a fair market value for the Water System as of the valuation date (May 9, 2014) that was within the range of $65 million that was offered by the City in October 2013.

92. In October 2013, Carlyle's internal valuation indicated a consolidated fair market value of $182 million for all three water companies owned by Park Water, implying a valuation for Mountain Water alone of about $60 million.

93. When asked on the witness stand to explain how these internal valuations should be considered when the commissioners set fair market value, Dove testified under oath that "FMV" as used in Carlyle's internal valuations did not mean "fair market value." His testimony was not credible:

> Q. Mr. Dove, will you please read the words, just two words, under the phrase "as of September 30th, 2012".
>
> A. Remaining FMV.
>
> Q. Is FMV something that you recognize?
>
> A. It can be used in different circumstances. . .
>
> Q. . . . But other than "fair market value" what might it mean here?
>
> A. It just means that this is the market value as of this date. . .

Q. Okay. But FMV means fair market value as used on this document, right?

A. No, I don't agree with that.

Q. There is something on here called Current FMV. What does FMV stand for there, do you think?

A. Just the market value.

Q. The fair market value?

A. No, just a market indication.

Q. What's the F stand for?

A. I don't know. It doesn't say. . . But the FMV again is this internal market valuation.

Q. I understand your testimony is that FMV does not stand for fair market value, although you can't remember today what it does stand for.

94. When he was on the witness stand during the condemnation trial, Kappes admitted that based on what he heard and understood from Dove in 2013, Carlyle never intended to put Mountain Water up for sale on a standalone basis or to entertain seriously any offer from the City to purchase Mountain Water on a standalone basis. According to Kappes, Dove stated that he never seriously considered selling either Mountain Water or the Missoula Water System individually, and that he would not negotiate with the Mayor of Missoula for a standalone sale nor provide a number (a purchase price or a counteroffer) to the Mayor for the sale of the System on a standalone basis.

95. In order “to align the long-term interests of the executives with the interests of Carlyle,” Dove and Carlyle bestowed upon individual executives and managers of Mountain Water and its sibling companies’ substantial rewards in the form of Class B equity shares in Western Water. These shares would be worth millions of dollars once Park Water’s assets were sold to Liberty.

96. Following the sale to Liberty, the Class B shareholders split 15 percent of the gain on the $327 million sale, after payment of transaction costs and a 10 percent preferred return distributed to Class A shareholders. Each of the “aligned” executives received hundreds of thousands to several millions of dollars. Thus, the Class B shares were intended to, and did, provide Mountain Water Board Members and executives, including Kappes, with a personal financial incentive to participate in or acquiesce to Carlyle’s wrongful conduct in reneging on its promise to sell the Water System to the City.

R. The City Accepts the Court’s $88.6 Million Valuation

97. Following the valuation trial in November 2015, the three-member valuation jury determined that just compensation for the Water System would be $88.6 million.

98. The City accepted the $88.6 million figure in January 2016 and began preparations to pay that amount in exchange for the assets of the Water System. Carlyle and Mountain Water did not appeal the valuation verdict and the determination of just compensation therefore became a final order that would be effective upon the Montana Supreme Court's affirmance of the District Court's June 15, 2015, decision finding that "public necessity" had been proven.

99. One day after the City had agreed to pay the $88.6 million, on January 8, 2016, Mountain Water and Liberty abruptly withdrew their Joint Application for PSC approval and closed the sale and purchase of Mountain Water. They did so without providing notice to the PSC, without informing the other parties to the PSC proceeding, and without informing the District Court presiding over the final stages of the condemnation case.

100. The PSC issued an Order on January 29, 2016, confirming its continuing jurisdiction over Carlyle's sale of the Water System despite withdrawal of Mountain Water's and Liberty's petition for approval. The PSC also ruled that Defendants' actions were in violation of the PSC's 2011 Order approving Carlyle's purchase of the Water System, and that fines and other remedies could be imposed until such time as Park Water

and Mountain Water reinstated their application for approval of the sale to Liberty.

101. On July 6, 2016, Mountain Water agreed to pay $150,000 to the Human Resources Council in consideration of the PSC agreeing not to impose any other fines for Mountain Water's failure to obtain PSC approval for the transfer. Mountain Water further agreed that it would not seek judicial review of the rate decrease the PSC imposed on Mountain Water following the transfer to Liberty ownership. Mountain Water further acknowledged that any future transfer or sale of Mountain Water, either directly or through the transfer of a parent company, required prior PSC approval.

102. In August, 2016, the Montana Supreme Court affirmed the District Court's June 15, 2015, Preliminary Order of Condemnation.

103. Even after selling Carlyle's entire interest in all assets subject to the condemnation action, Carlyle Infrastructure Partners, Dove, and Lin continued their attempts to thwart the City's efforts to acquire those assets. As one example, throughout 2016 and early 2017, Carlyle Infrastructure Partner's attorneys, at the direction of Dove and Lin, contributed to and supported a frivolous motion to dismiss the condemnation action even though the District Court judge had decided the City was entitled to

condemn the Water System assets, her ruling had already been affirmed by the Montana Supreme Court, and the fair market value had been conclusively established. Ultimately the motion was never filed, but Carlyle still attempted to recover over $7,000 in attorneys' fees incurred drafting he unfiled motion.

S. The City and Liberty Enter a Settlement Transferring the Water System to the City

104. In the spring and summer of 2017, the City of Missoula and Liberty negotiated a resolution of the condemnation action, in which the City agreed to pay certain sums to Mountain Water, and to assume certain liabilities of Mountain Water, in satisfaction of the just compensation awarded to Mountain Water. Carlyle attempted to discourage or influence Liberty's negotiations with the City by threatening Liberty with legal action during the negotiation process.

105. Despite Carlyle's interference, the City ultimately reached a settlement agreement with Liberty. Based on that settlement agreement, the District Court entered a Final Judgment in the condemnation action on June 15, 2017.

106. The City satisfied the Final Judgment on June 22, 2017, resulting in the Court entering a Final Order of Condemnation and ruling that the City would assume ownership of the Water System assets that

day. The City commenced municipal operation of the Water System on June 23, 2017.

107. From 2013 to through June 22, 2017, Defendants acted in concert to prevent the City from acquiring the Water System as contemplated by the parties in 2011, causing damage to the City in an amount to be proved at trial.

108. Even after the condemnation action was completed and the City had taken possession of the Water System, Carlyle continued to file legally unsupported motions, including a claim for litigation expenses that the Court determined was vastly beyond what was reasonable or necessary, and a redundant motion for prejudgment interest—an issue that had already been decisively resolved—which the Court described as "exasperating" and "conspicuous in its lack of merit."

109. As part of the settlement reached by the City and Liberty to transfer ownership of the Water System to the City, Liberty and its subsidiary Mountain Water were released from any claims that arose from conduct and acts prior to the date of settlement.

110. Defendants, however, were assigned certain of Mountain Water's claims for potential recovery of additional compensation. Defendants asserted such claims in bad faith or took steps to encourage

Mountain Water and Liberty to assert such claims. For instance, on information and belief, within minutes of the City filing its Voluntary Dismissal of Mountain Water from the condemnation case, Defendants encouraged and caused Mountain Water to file a lawsuit in Lewis & Clark County asserting a claim for reimbursement of property taxes from the Montana Department of Revenue. In that lawsuit, Mountain Water argued that the City should be held responsible for such property taxes incurred prior to the City's commencement of ownership of the Water System. In fact, that claim was asserted 19 minutes after the City filed its Notice of Voluntary Dismissal.

FIRST CAUSE OF ACTION
FRAUDULENT INDUCEMENT

111. The City repeats and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

112. Defendants made false or misleading representations of fact regarding their ability and willingness to sell the Water system to the City on a standalone basis, and by representing that Defendants would accept a reasonable offer from the City for the purchase of the Water System or would meaningfully negotiate with the City in pursuit of a mutually-agreeable purchase price.

113. Such representations were made with the intent to mislead the city, and to induce the city into assuming obligations and taking certain actions that otherwise would not have been taken.

114. Defendants' representations to the City were false.

115. Defendants' representations to the City were material.

116. Defendants knew or should have known the representations to the City were false, or were ignorant of whether the representations were true.

117. The City was ignorant of the falsity of the representations, and did not have the means to investigate the veracity of the representations prior to relying on them.

118. Defendants concealed the falsity of their actions from the City for as long as possible.

119. The City had a right to rely on the representations, and did so to its detriment.

120. The City was damaged by its reliance on the representations in an amount to be proved at trial.

121. Defendants acted with actual malice, entitling the City to an award of punitive damages.

SECOND CAUSE OF ACTION
COMMON LAW FRAUD, ACTUAL FRAUD AND MALICE

122. The City repeats and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

123. Defendants made representations to the City with the intent to mislead the City, and to induce the City into assuming obligations and taking certain actions that otherwise would not have been taken.

124. Defendants' representations to the City were false.

125. Defendants' representations to the City were material.

126. Defendants knew or should have known the representations to the City were false, or were ignorant of whether the representations were true.

127. Defendants' representations that it could sell Mountain Water to the City on a stand-alone basis were made with the intent to induce the City to rely on those representations and to induce the City to publicly support Carlyle's acquisition in proceedings before the Montana PSC.

128. The City was ignorant of the falsity of the representations, and did not have the means to investigate the veracity of the fraudulent representations prior to relying on them.

129. Defendants concealed the falsity of their actions from the City for as long as possible.

130. The City had a right to rely on the representations, and did so to its detriment.

131. The City was damaged by its reliance on the representations in an amount to be determined at trial.

132. Defendants knew when they enticed the City to support Carlyle's purchase of Park Water that Defendants would not actually consider in good faith an offer from the City to buy the Water System on a stand-alone basis.

133. When Defendants induced the City to support Carlyle's purchase of Park Water and later failed to negotiate in good faith, Defendants acted in conscious or intentional disregard to the high probability of injury to the City.

134. Defendants proceeded to act with indifference to the high probability of injury to the City.

135. Defendants made one or more representations to the City, to the effect that Carlyle could and would sell the Water System to the City as a stand-alone entity for just compensation, with knowledge of the falsity of the representations.

136. Defendants concealed one or more material facts with the purpose of causing the City injury.

137. The City had a right to rely on Defendants' representations and suffered injury as a result of that reliance.

138. Defendants acted with actual malice, entitling the City to an award of punitive damages.

139. On information and belief, Carlyle has a net worth of at least $12 billion. Pursuant to Montana law, the City requests punitive damages of up to 3 percent ($360 million) of Carlyle's net worth.

THIRD CAUSE OF ACTION
CONSTRUCTIVE FRAUD

140. The City repeats and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

141. Defendants, by words and conduct, created a false impression concerning their intention to sell the Water System to the City, and failed to disclose relevant facts that would have shown otherwise, despite a duty to do so. Such falsity was material and Defendants were aware of the falsity. The City relied on such statements and conduct, and had a right to do so.

142. Defendants breached their legal duties to the City by misleading the City about Defendants' true intentions, and by failing to timely disclose relevant facts to correct the false impressions created by Defendants' misleading words and conduct. That breach of duty, even

without an actually fraudulent intent, permitted Defendants to gain an advantage by misleading the City.

143. Defendants gained an advantage by misleading the City in that they obtained the City's support before the PSC in 2011 and, as a result, they ultimately were successful in purchasing Park Water and later reselling the company at a substantial profit.

144. The City was prejudiced by Defendants' misleading words and conduct, in that the City expended funds to prepare and submit offers to purchase the Water System, and ultimately to incur the time, burden, uncertainty and expense of pursuing its acquisition of the property by means of condemnation pursuant to its power of eminent domain.

145. Defendants took steps to conceal the falsity of their actions from the City as long as possible.

146. As a result of the constructive fraud of Defendants, the City has been damaged in an amount to be proved at trial.

FOURTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

147. The City repeats and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

148. Defendants represented to the City that Carlyle was willing and able to sell either the equity or the assets of Mountain Water to the City on

a standalone basis, and on terms consistent with the parties' understandings and agreements discussed in 2011.

149. Defendants represented to the City that Carlyle would sell the Water System to the City in 2013.

150. Defendants' representations were untrue, and Defendants had no reason to think otherwise.

151. Defendants' representations that Carlyle would sell Mountain Water to the City in 2013 on a standalone basis and on terms consistent with the parties' understandings and agreements in 2011 were made with the intent to induce the City to rely on those representations and to induce the City to publicly support Carlyle's acquisition of Mountain Water before the PSC.

152. The City was unaware of the falsity of Defendants' representations.

153. The City reasonably believed Defendants' representations.

154. The City acted in reliance upon the apparent truth of Defendants' representations by agreeing to publicly support Carlyle's purchase of Park Water, by waiting until 2013 to present an offer to purchase the Water System, and by foregoing other means of attempting to obtain the Water System.

155. The City was justified in acting in reliance on Defendants' representations.

156. Defendants took steps to conceal their acts from the City for as long as possible.

157. As a result of Defendants' negligent misrepresentations and the City's reliance on them, the City was damaged in an amount to be proved at trial.

FIFTH CAUSE OF ACTION
UNJUST ENRICHMENT

158. The City repeats and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

159. A benefit was conferred on Defendants by Carlyle's purchase of Park Water, the ownership of Park Water and the benefit of the revenue generated by Park Water's subsidiaries, and/or the sale of Park Water by Carlyle to Liberty.

160. Defendants had an appreciation or knowledge of the benefit or benefits conferred on them by Carlyle's purchase of Park Water, the period of ownership of Park Water, and/or the sale of Park Water by Carlyle to Liberty.

161. Defendants' acceptance and continued retention of benefits conferred upon them by Carlyle's purchase of Park Water, the operation of

Park Water, and/or the sale of Park Water by Carlyle to Liberty would be inequitable without Defendants' repayment of the value of those benefits.

162. The City requests an award of the amount by which Carlyle was unjustly enriched through the sale of Park Water, approximately $169 million.

163. The City is further entitled to over $17.7 million that Mountain Water Company channeled to investors through purported "loans" to upstream corporations that were never expected to be, and were not, repaid, and to $741,000 in post-retirement benefits accrued by former employees of Mountain Water, who have assigned such claims to the City.

SIXTH CAUSE OF ACTION
DECEIT

164. The City repeats and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

165. Defendants willfully asserted facts with respect to the sale of the Water System to the City that were not true, and which Defendants had no reasonable ground to believe to be true, with intent to induce the City to alter its position to its detriment.

166. Defendants suppressed and concealed facts that they were bound to disclose to the City, or provided information to the City that was

likely to mislead for want of communication of other facts, with intent to induce the city to alter its position to its detriment.

167. Defendants deceived the City by making a promise without any intention of performing it.

168. Defendants took steps to conceal their deception from the City for as long as possible.

169. The City has been damaged by Defendants' deceit and broken promises in an amount to be proved at trial.

170. Defendants acted with malice, entitling the city to an award of punitive damages.

SEVENTH CAUSE OF ACTION
BREACH OF ORAL CONTRACT OR VERBAL AGREEMENT

171. The City repeats and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

172. In their various discussions and negotiations with the City, Defendants made verbal promises that constitute an enforceable oral contract or verbal agreement.

173. By failing to act in good faith to sell the Water System to the City, Defendants breached their contractual duties and promises.

174. The City has been damaged by Defendants' breach of contract in an amount to be proved at trial.

EIGHTH CAUSE OF ACTION
TORTIOUS INTERFERENCE

175. The City repeats and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

176. Defendants were aware that the City was negotiating with Mountain Water and Liberty in 2016 and 2017 to attempt to resolve the condemnation action or otherwise effectuate a transfer of the water system assets by contract.

177. Defendants were aware that the City, Mountain Water, and Liberty executed a "term sheet" contract in April 2017. The term sheet contract provided for the execution of a more detailed final settlement agreement between the City, Mountain Water, and Liberty, which would finally resolve the condemnation action.

178. Following execution of the term sheet contract, the City, Mountain Water and Liberty attempted to carry out their contractual obligation to draft and execute a final settlement agreement by negotiating specific terms.

179. Defendants intentionally interfered with Mountain Water and Liberty's negotiations of the settlement agreement with the City.

180. Defendants' interference with performance of the term sheet contract was calculated to harm the City by delaying and jeopardizing

completion of the settlement agreement, and therefore completion of the condemnation action.

181. Starting in 2014 and continuing into 2017, the City attempted to negotiate with the Employees of Mountain Water for employment of the Employees by the City.

182. Defendants intentionally interfered with the City's negotiations with the Employees by providing false information to the Employees or otherwise discouraging the Employees from agreeing to work for the City.

183. Defendants' interference with the City's attempt to recruit the Mountain Water Employees was calculated to harm the City by delaying the City's ability to complete the condemnation action and/or operate the Water System after assuming control of the assets.

184. As a result of Defendants' interference with the City's business and contractual relationships, the City was injured in an amount to be proved at trial.

185. Defendants acted with malice, entitling the City to an award of punitive damages.

NINTH CAUSE OF ACTION
CONVERSION

186. The City repeats and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

187. The City obtained right and title to all assets of Mountain Water Company by way of a Final Order of Condemnation issued in the Fourth Judicial District on June 22, 2017. The City paid the fair market value for those assets the same day.

188. The assets of Mountain Water Company for which the City obtained right and title on June 22, 2017 include a right to repayment of a loan (or series of loans) that Mountain Water made to Carlyle (and/or wholly-owned subsidiaries of Carlyle) totaling at least $17.7 million.

189. Carlyle has refused to pay the $17.7 million or more that it owes, and instead has exercised unauthorized control over the $17.7 million or more rightfully owned by the City.

190. The City has been damaged by Carlyle's wrongful exertion of dominion over the $17.7 million or more to which the City obtained ownership on June 22, 2017.

191. The Employees of Mountain Water Company accrued certain post-retirement benefits other than pensions ("PBOP funds") through their work for Mountain Water Company and its upstream owners.

192. Carlyle and/or its subsidiaries have wrongfully withheld, and exercised unauthorized dominion over, PBOP funds owed to the Employees in the amount of approximately $741,000.

193. The Employees have been damaged by Defendants' wrongful exertion of dominion over the PBOP funds.

194. The Employees have assigned any and all claims they may have against Defendants with respect to the PBOP funds to the City.

195. The City is entitled to recover the funds wrongfully converted by Carlyle, and interest on those funds at the statutory rate beginning on the date of the conversion, and fair compensation for the time and money expended in pursuit of the funds.

TENTH CAUSE OF ACTION
ABUSE OF PROCESS

196. The City repeats and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

197. On December 15, 2014, Liberty, Liberty WWH, Inc., Western Water Holdings, LLC, and Mountain Water ("Applicants") jointly filed an *Application for Approval of Sale and Transfer of Stock* with the PSC. The application requested PSC approval for Carlyle to sell Mountain Water to Liberty (with both Carlyle and Liberty acting through wholly-owned intermediary corporations).

198. Western Water and Mountain Water were ultimately owned and controlled by Carlyle throughout the PSC application process.

199. Given the profound implications of foreign ownership and control over Missoula's sole source of potable water, the City of Missoula sought and obtained permission to intervene in the PSC docket.

200. For nearly a year, the City—along with the Montana Consumer Counsel, the Clark Fork Coalition, and the PSC itself—invested substantial resources to learn about and evaluate Carlyle's proposed sale of Mountain Water.

201. Finally, Defendants completed the sale of Mountain Water without obtaining PSC approval or otherwise completing the PSC application process in violation of Montana law, rendering the process—and the efforts by the City and others that had gone into it—moot.

202. Throughout the condemnation lawsuit, Defendants used litigation strategies and tactics beyond what was reasonable and necessary for legitimate litigation purposes, for the ulterior purpose of dissuading the City from continuing the condemnation lawsuit. Defendants intentionally incurred legal fees and costs in excess of what was necessary or reasonable in order to convince the Court, the City, and the public that the condemnation lawsuit should be abandoned because the ultimate cost, including reimbursement of Carlyle and Mountain Waters' attorney fees and

costs, would be so high that the City either could not afford to pay or would be unable to finance the transaction. Defendants' unreasonable and unnecessary litigation practices inflated the City's own litigations expenses and the expenses the City was obligated to pay the condemnees under Montana law.

203. Defendants' unreasonable and unnecessary litigation practices included, without limitation: use of a grossly excessive number of attorneys, including dozens of out-of-state attorneys not admitted to practice in Montana; extensive duplication of efforts between Carlyle and Mountain Water; litigating in multiple forums, including some (such as the PSC) that were eventually abandoned; and filing baseless motions, including motions described by a Montana court as "exasperating" and "conspicuous in [their] lack of merit."

204. As a result of Defendants' abuse of process, the City incurred excess attorney fees in the condemnation action and was otherwise damaged in an amount that will be established at the time of trial.

205. The Defendants active with actual malice, entitling the City to an award of punitive damages.

ELEVENTH CAUSE OF ACTION
CIVIL CONSPIRACY

206. The City repeats and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

207. Before, during, and after the condemnation action, Defendants communicated amongst themselves and others regarding the City's claims. On information and belief, these communications included a meeting between Carlyle and Liberty in December 2014, in which Carlyle and other entities are believed to have discussed the City's condemnation action and the PSC application process. When Carlyle and Mountain Water later submitted claims for litigation expenses in the condemnation lawsuit, they redacted their attorneys' narrative time entries related to that December 2014 meeting to prevent the City from learning about the meeting.

208. In meetings and other communications, Defendants and others conspired and agreed to attempt to defeat the City's condemnation of the Water System. On information and belief, Defendants agreed to impede the City's lawful condemnation action by increasing the cost and duration of litigation; manipulating public opinion; and inflating the fair market value of the Water System.

209. In furtherance of the plan to defeat the City's condemnation of the Water System, Defendants took a series of overt, unlawful acts, including:

a. Carlyle completed the transfer of the Water System prior to the jury trial scheduled to commence on January 11, 2016, despite their failure to obtain necessary PSC approval. On information and belief, this unlawful transfer was intended to bolster Mountain Water's argument that the sale constituted strong evidence of the fair market value of the Water System.

b. Carlyle withheld from the City the Closing Agreement evidencing the transfer of Mountain Water, despite Carlyle's obligation under Montana Rule of Civil Procedure 26 to timely produce that document in response to the City's previously-served discovery requests. Carlyle also failed to disclose that sale in a December 18, 2015 hearing in the Fourth Judicial District, and instead affirmatively represented to the City and the Court that the PSC application process would continue. On information and belief, Carlyle's unlawful failure to produce the document or disclose the sale was a deliberate attempt to preserve the element of surprise for trial.

c. Carlyle disclosed the amount of Carlyle and Mountain Water's Joint Statement of Claim (i.e. the amount they contended they were owed as compensation for the Water System) to Algonquin/Liberty, and Algonquin/Liberty disclosed that amount publicly, despite a Court Order prohibiting such disclosure. On information and belief, Defendants disclosed the number to influence potential jurors regarding the fair market value of the Water System and/or to manipulate public perception of the cost of condemnation to the City.

210. In June 2017, the City reached a settlement agreement with Mountain Water and Liberty that resolved certain disputed issues in the condemnation lawsuit. In that settlement agreement, Liberty and others agreed to forego any effort to recover from the City property tax expenditures that Mountain Water had paid under protest during the condemnation lawsuit.

211. On August 14, 2017, counsel for Liberty requested the City dismiss Mountain Water and Liberty from this lawsuit, pursuant to their settlement agreement. At 4:19 p.m. that day, the City emailed counsel for the parties that had been named in this action, including Carlyle, Liberty,

and Mountain Water, confirmation that Mountain Water and Liberty had been dismissed from this lawsuit for prior conduct.

212. At 4:38 p.m. on August 14, 2017, only 19 minutes after receiving the City's email, Mountain Water filed a lawsuit in Montana's First Judicial District, seeking to recover property tax expenditures from the City. The new lawsuit constituted a breach of the express terms of the settlement agreement, prompting the presiding judge to describe Mountain Water as "crafty" and attempting "to play fast and loose" with the settlement agreement. On information and belief, Carlyle compelled Mountain Water to file the property tax lawsuit through an agreement with Liberty, whereby Carlyle would be entitled to all, or a portion of, any funds recovered.

213. On information and belief, Carlyle colluded with others in June 2018, after Carlyle had obtained information about the City's legal theories in this lawsuit through the mediation process, in an attempt to frustrate the City's legal claims.

214. As a result of Defendants' civil conspiracy, the City was damaged in an amount to be determined at trial.

TWELFTH CAUSE OF ACTION
BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

215. The City repeats and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

216. The covenant of good faith and fair dealing was implied in the Letter Agreement signed by the parties in September 2011, as well as in the oral contracts and verbal agreements reached among the parties.

217. The covenant of good faith and fair dealing imposed on Carlyle and Dove, and on other Defendants affiliated with them, a duty to act with honesty, in fact, in all their dealings with the City, and to act in compliance with reasonable commercial standards of fair dealing.

218. Based on the promises and representations made by Carlyle and Dove, the City had justified expectations that Defendants would act in a reasonable manner, and would not use their discretion conferred by the Letter Agreement to act dishonestly or to act outside of accepted commercial practices to deprive the City of its opportunity to acquire the Water System on the basis discussed with Carlyle and Dove in 2011.

219. The City performed all obligations, conditions, and agreements it was obligated to perform.

220. The City had a justifiable expectation that, if it performed its end of the bargain by publicly supporting Carlyle before the PSC in 2011, then

Carlyle would perform its obligation to sell the Water System to the City in 2013 on terms consistent with the parties' understandings and agreements reached in 2011.

221. Defendants failed to act in good faith and acted unreasonably with the effect of denying the City an opportunity to purchase the Water System on terms that were consistent with the parties' 2011 understandings and agreements. Defendants acted arbitrarily, capriciously, unreasonably, and dishonestly, in fact, and did not abide commercial standards of fair dealing. Accordingly, Defendants breached their duty of good faith and fair dealing.

222. Defendants failed to act in good faith by litigating the condemnation action with an ulterior purpose of causing the litigation to be as expensive as possible for the City. Defendants acted willfully in their litigation practices to maximize the amount of time and money they expended, and the amount of time and money the City was required to expend. Defendants' purpose was to force the City to incur fees and costs that would make the condemnation case prohibitively expensive, so the City would be unwilling or unable to afford to complete its acquisition of the Water System by condemnation.

223. Defendants failed to act in good faith by litigating the condemnation action with the additional ulterior purpose of causing the litigation to be as time-consuming as possible. Defendants acted willfully in their litigation practices to maximize the amount of time that would transpire between commencement of the action and the Final Order of Condemnation. Defendants' purpose was to profit from, among other things, Montana's statutory opportunity to recover post-summons interest for the entire period of the litigation at the rate of ten percent per annum.

224. Defendants' breaches directly and proximately caused substantial and foreseeable injury to the City, entitling it to recover damages in an amount to be proved at trial.

225. Defendants' acts were willful and intentional and undertaken with indifference to the probability of injury to the City.

226. Defendants took steps to conceal their acts from the City as long as possible.

227. Carlyle's tortious delay of the City's purchase of the Water System inflated the fair market value of the utility by $23.5 million. Carlyle's tortious delay of the City's acquisition of the Water System further resulted in additional deferred maintenance of the utility, resulting in expense to the City of approximately $8 million. Carlyle's tortious conduct forced the City to

incur $12 million in litigation expenses (including both its own litigation expenses and those the City was statutorily obligated to pay the defendants) to obtain the Water System through condemnation.

PRAYER FOR RELIEF

WHEREFORE, the City prays for judgment against Defendants as follows:

1. For damages in an amount to be proved at trial to compensate the City for the costs of having to pursue purchase of the Water System through exercise of its power of eminent domain;

2. For damages in an amount to be proved at trial to compensate the City for expenses incurred in the condemnation action, including but not limited to its own fees and expenses in addition to the amount of any award of fees or costs in favor of the condemnees under Montana law;

3. For the difference in the amount paid or to be paid by the City pursuant to the Final Judgment in the condemnation action, and the $65 million offer that the City presented to Carlyle in 2013;

4. For lost revenue during the period in which the City was deprived of ownership of the Water System;

5. For damages representing the amount by which Carlyle was unjustly enriched through the profit it realized on the sale of Park Water to Liberty Utilities Co.;

6. For damages representing the amount by which Defendants were unjustly enriched through their conversion of "intercompany receivable" and "post-retirement benefits other than pension" funds;

7. For punitive and other exemplary damages in an amount to be determined at trial;

8. For pre- and post-judgment interest on all such amounts to the extent permitted by law.

9. For attorneys' fees and costs of suit; and

10. For such other and further relief as the Court deems proper.

DATED this 23rd day of July 2018.

Scott M. Stearns
Natasha Prinzing Jones
BOONE KARLBERG P.C.

Harry H. Schneider, Jr.
PERKINS COIE LLP

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all fact issues in the above-entitled case.

DATED this 23rd day of July, 2018.

Scott M. Stearns
Natasha Prinzing Jones
BOONE KARLBERG P.C.

Harry H. Schneider, Jr.
PERKINS COIE LLP
Pro Hac Vice Admission Pending

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by email upon the following counsel of record at their address this 23rd day of July 2018:

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