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Attorneys for Plaintiffs
Scott Simpson, Dvonne Pitruzzello, and
Kevin Dawson, on behalf of themselves
and all other similarly situated

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

DEC 19 2019

E. Escobedo



DEC 20 2019

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

SCOTT SIMPSON, an individual; DVONNE
PITRUZZELLO, an individual; and KEVIN
DAWSON, an individual,

Plaintiffs,

vs.

CITY OF RIVERSIDE; RIVERSIDE CITY
COUNCIL; RIVERSIDE DEPARTMENT OF
PUBLIC UTILITIES; RIVERSIDE PUBLIC
UTILITIES; RIVERSIDE BOARD OF
PUBLIC UTILITIES; and DOES 1 to 100
inclusive

Defendants.

) CASE NO. **RIC 19 061 68**
) Judge:
) **CLASS ACTION COMPLAINT FOR**
) **DAMAGES, DECLARATORY RELIEF,**
) **AND INJUNCTIVE RELIEF**
)
) 1) Breach of Contract;
) 2) Common Count: Money Had and
) Received;
) 3) Common Count: Open Book Account;
) 4) Declaratory Relief; and
) 5) Injunctive Relief
)
)
)

TO THE HONORABLE COURT, THE PARTIES, AND COUNSEL OF RECORD:

Plaintiffs, SCOTT SIMPSON, DVONNE PITRUZZELLO, and KEVIN DAWSON
(collectively "Plaintiffs"), on behalf of themselves and all others similarly situated, allege as
follows:

1. Plaintiff SCOTT SIMPSON is a long-time resident of the City of Riverside and
at all material times herein was a resident of the City of Riverside and obtained water for his

BY FAX

1 residence from the Riverside Public Utilities (“RPU”) and paid RPU for such water utilities
2 according to the rate schedule in place at the time.

3 2. Plaintiff DVONNE PITRUZZELLO is a long-time resident of the City of
4 Riverside and at all material times herein was a resident of Riverside and obtained water for
5 her residence from RPU and paid RPU for such water utilities according to the rate schedule
6 in place at the time.

7 3. Plaintiff KEVIN DAWSON is a long-time resident of the City of Riverside and
8 at all material times herein was a resident of Riverside and obtained water for his residence
9 from RPU and paid RPU for such water utilities according to the rate schedule in place at the
10 time.

11 4. Defendant CITY OF RIVERSIDE is now and at all times mentioned in this
12 complaint was a city within the State of California and is the county seat of the County of
13 Riverside.

14 5. Defendant RIVERSIDE CITY COUNCIL is now and at all times mentioned in
15 this complaint was the governing body of the City of Riverside, consists of up to seven
16 councilmembers, and serves as the executive and legislative body of the City of Riverside.

17 6. Defendant RIVERSIDE DEPARTMENT OF PUBLIC UTILITIES is now and
18 at all times mentioned in this complaint was the public water and electric utility for the City of
19 Riverside, and is a department of the City of Riverside that is managed and controlled by the
20 Riverside City Manager, except for matters that are within the powers and duties of the Board
21 of Public Utilities as specified in the Riverside City Charter.

22 7. Defendant RIVERSIDE PUBLIC UTILITIES is now and at all times
23 mentioned in this complaint was the public water and electric utility for the City of Riverside,
24 and is a department of the City of Riverside that is managed and controlled by the Riverside
25 City Manager, except for matters that are within the powers and duties of the Board of Public
26 Utilities as specified in the Riverside City Charter.

27 8. Defendant RIVERSIDE BOARD OF PUBLIC UTILITIES is now and at all
28

1 times mentioned in this complaint was a board appointed by the Riverside Mayor and City
2 Council that manages and controls the Riverside Department of Public Utilities as specified in
3 the Riverside City Charter. Collectively, RIVERSIDE CITY COUNCIL, RIVERSIDE
4 DEPARTMENT OF PUBLIC UTILITIES, RIVERSIDE PUBLIC UTILITIES, and
5 RIVERSIDE BOARD OF PUBLIC UTILITIES are collectively referred to herein as the
6 "City" and/or "Defendants."

7 9. The true names and capacities of the defendants DOES 1 through 100 inclusive,
8 whether individual, governmental, corporate, associate, or otherwise, are unknown to
9 Plaintiffs, who therefore sue these defendants by such fictitious names. Plaintiffs will seek
10 leave of this Court to amend this complaint to show their true names and capacities when the
11 same have been ascertained. Each and every reference to "Defendant," "Defendants," the
12 "City," or to each named defendant herein, shall also be considered a reference to a DOE
13 defendant such that it is not necessary to state, "and DOES" after every reference to
14 "Defendant," "Defendants," the "City," or the named defendant(s).

15 10. At all times herein mentioned, Defendants, and each of them, were the
16 principals, agents, owners, employees, directors, managing agents, and officers of each of the
17 remaining Defendants, and in doing the things hereinafter alleged were acting within the scope,
18 course, and purpose of such agency (ostensible, explicit, implicit, direct, or otherwise) and/or
19 employment; and with the permission, authorization, ratification, and consent of each of the
20 remaining Defendants. Moreover, each of the acts or omissions complained of herein were
21 authorized and/or ratified by each of the remaining Defendants, and each Defendant acted in
22 concert and conspiracy with each of the other Defendants to cause the damages and cause the
23 injuries to each of the Plaintiffs and all others similarly situated.

24 11. Each of the Defendants named herein were and are in some manner responsible
25 for the actions, acts, and omissions herein alleged and for the damage caused by the other
26 Defendants, and are therefore jointly and severally liable for the damages caused to each of the
27 Plaintiffs and all others similarly situated. All Defendants including, but not limited to,
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1 officers, directors, and managing agents of the governmental or business entities, corporate or
2 otherwise, entities ratified the actions and omissions of the other Defendants. Each of the
3 Defendants that were governmental or business entities, corporate or otherwise, were and are
4 the alter ego of the individual Defendants in that the business entity was thinly- or under-
5 capitalized, and was, among other reasons, operated in such a manner that it was
6 indistinguishable from the individual Defendants so that law and/or equity should not allow
7 them to be treated as separate parties, persons, and/or entities.

8 12. Venue is proper because the actions taken, the breaches and omissions that
9 occurred, and the damages suffered that are the subject of this dispute are and were located
10 within the County of Riverside, State of California.

11 OVERVIEW OF COMPLAINT

12
13 13. This complaint challenges the City's unconstitutional transfer to its general fund
14 of monies charged to and paid by the City's water utility customers, the City's unconstitutional
15 overcharging of its water utility customers, and the City's unconstitutional use of water utility
16 fees and charges, which are violations of Cal Const., art. XIII D, § 6 and other law. Historically,
17 municipalities had taken advantage of water utility customers by overcharging them because
18 elected officials learned that most water utility users would not closely analyze their bills.
19 Therefore, a municipality could generate more revenue without having to announce that it was
20 raising taxes, which is never a popular option with the electorate. But, the overcharging of
21 water utility users would make them solely responsible for paying the costs of services being
22 enjoyed by the entire population, and thus was an unfair method of allocating costs.

23 14. Eventually, Californians became wise to and fed up with such subterfuge, and
24 in 1996 enacted Proposition 218, codified under Articles XIII C and XIII D of the California
25 Constitution. Specifically, Proposition 218 prohibits the City from imposing fees or charges in
26 an amount such that "revenues . . . exceed the funds required to provide the [water] service."
27 Cal. Const., art. XIII D, § 6(b)(1). Additionally, Proposition 218 also prohibits the City from
28 imposing a fee or charge that exceeds "the proportional cost of the service attributable to the

1 parcel." Cal Const., art. XIII D, § 6(b)(3).

2 15. In addition to limiting how much the City may charge water utility customers,
3 Proposition 218 also further limited how the City can spend money paid by water utility
4 customers by mandating that "[n]o fee or charge may be imposed for general governmental
5 services including, but not limited to, police, fire, ambulance or library services, where the
6 service is available to the public at large in substantially the same manner as it is to property
7 owners." Cal Const., art. XIII D, § 6(b)(5). Proposition 218 further provides that the City shall
8 not use the revenues derived from fees or charges "for any purpose other than that for which the
9 fee or charge was imposed." Cal Const., art. XIII D, § 6(b)(2). In short, Proposition 218 made
10 it unconstitutional, and therefore illegal, for municipalities to use the monies that customers pay
11 for their water usage for general governmental services.

12 16. Despite the numerous prohibitions on such practices, the City has continuously
13 overcharged its water utility customers and transferred up to 11.5% of all water utility revenue
14 to the City's General Fund to be used for general governmental services in violation of
15 Proposition 218 since July 1, 1997. This is illegal, and this class action is seeking the return to
16 the City's water utility customers of all water utility fees and charges that were unconstitutionally
17 charged or spent.

18
19 **HISTORICAL SUMMARY OF THE CITY'S UNCONSTITUTIONAL USE AND**
20 **TRANSFERS OF WATER UTILITY REVENUE TO ITS GENERAL FUND AND TO**
21 **UNCONSTITUTIONALLY OVERCHARGE ITS WATER UTILITY CUSTOMERS**

22 17. Since July 1, 1997, up to and including today, approximately over \$100 million
23 (\$100,000,000.00) dollars have been unlawfully collected from the City's water utility
24 customers as rates for water utilities that violated Proposition 218 and the corresponding
25 constitutional provisions. The City has repeatedly, regularly, and unconstitutionally used RPU
26 to generate excess water revenues that can pay for general governmental services in clear
27 violation of Proposition 218. For example, since at least July 1, 1997, the City has

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1 continuously and unconstitutionally transferred up to 11.5% of the water utility revenue earned
2 by RPU to the City of Riverside's General Fund (hereinafter the "General Fund Transfer").

3 18. This unconstitutional act is admitted by the City's own Charter as Charter §
4 1204.1 states as follows (boldface added for emphasis):

5 Sec. 1204.1. - Water utility revenue.

6 The revenue of the water public utility for each fiscal year shall be kept separate
7 and apart from all other moneys of the City by deposit in the appropriate
8 revenue fund and shall be used for the purposes and in the order set forth in
9 Section 1204 and for the annual payment by the water utility into the general
10 fund in twelve equal monthly installments during each fiscal year, an amount
11 not to exceed 11.5 percent of the gross operating revenues, exclusive of
12 surcharges, of the water utility for the last fiscal year ended and reported upon
13 by independent public auditors. **The proceeds shall be used to maintain local**
14 **general purposes as the City Council may by budget or other appropriation**
15 **direct** such as 9-1-1 response, police patrols/fire protection, children's after-
16 school and senior/disabled services, and protect supplies of clean drinking water
17 from contamination.

18 19. Additionally, the City unconstitutionally charges its water utility customers for
19 various costs not associated with the cost of providing the water utilities including, but not
20 limited to, the capital investment and operating and maintenance costs of fire services such as,
21 without limitation, the fire hydrant/water pipe upgrade project. This also increases the gross
22 operating revenues subject to the 11.5% GFT, which increases the amount being transferred
23 unlawfully to pay for governmental services. The City also unconstitutionally uses water
24 utility revenues for purposes other than for which the fees or charges were imposed.

25 20. Worse, is that the City has no plans to halt its unlawful actions as reflected in
26 the City's Biennial Budget for the fiscal years 2018 through 2020, which anticipates transfers
27 to the City's General Fund of up to 11.5% of operating revenues from the RPU water fund,
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1 totaling \$6 million in the Fiscal Year 2017/18, \$6.5 million in 2018/19, and over \$7 million in
2 Fiscal Year 2019/20. Each transfer to the General Fund and each charge to its water utility
3 customers for various costs not associated with the cost of providing the water utility service
4 since July 1, 1997 are unconstitutional, have caused damage to the Class, and are compensable
5 in this action.

6 21. Moreover, each transfer of revenues from the RPU water fund to the City of
7 Riverside's General Fund, each usage of water utility fees and charges for purposes other than
8 for which the fees and charges were imposed, and each charge to its water utility customers for
9 various costs not associated with the cost of providing the water utility service is a separate
10 violation.

11 22. On May 22, 2019, each of the Plaintiffs filed a Government Claim for Damages
12 with the City of Riverside against the City for the claims, causes of action, and damages
13 alleged herein, which the City rejected on July 3, 2019. Plaintiffs have exhausted all
14 administrative remedies required, if any, in order to proceed with this action on behalf of
15 themselves and on behalf of those similarly situated.

16
17 **CLASS ACTION ALLEGATIONS**

18 23. Plaintiffs bring this action on their own behalf and on behalf of all persons
19 similarly situated. The class that Plaintiffs represent is composed of all customers who have
20 been unconstitutionally and otherwise unlawfully overcharged by the City for water utility
21 services in various ways starting on May 22, 2018 and continuing through today including, but
22 not limited to, the City's practice of transferring to the City of Riverside's General Fund monies
23 paid by customers for water utilities, imposing fees and charges for general governmental
24 services that are available to the public at large in substantially the same manner as they are to
25 property owners, using fees and charges for purposes other than for which the fees and charges
26 were imposed, and for charging customers for various costs not associated with the cost of
27 providing the water utilities including, but not limited to, the capital investment and operating
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1 and maintaining cost of fire services such as, without limitation, the fire hydrant/water pipe
2 upgrade project (hereinafter the "Class").¹ However, explicitly excluded from the Class are
3 any directors, officers, managing agents, and council members of the City of Riverside; any
4 directors, officers, and managing agents of the Riverside Department of Public Utilities; and
5 any directors, officers, managing agents, and board members of the RPU, as well as any judge
6 assigned to hear this case.

7 24. This action has been brought and may properly be maintained as a class action
8 under the provisions of C.C.P. §382 because the proposed Class is easily ascertainable and
9 there is a well-defined community of interest, as well as the presence of all other factors that
10 weigh in favor of an action proceedings as a class action.

11

12 **A. Numerosity**

13 25. The persons in the Class are so numerous that joinder of all such persons is
14 impracticable. The disposition of these claims in a class action rather than in individual actions
15 will benefit the parties and the Court. While the exact number of Class Members is unknown
16 to Plaintiffs at this time, Plaintiffs are informed and believe thereon that over 300,000 people
17 currently reside in the City of Riverside, and therefore the size of the Class is expected to be
18 tens of thousands if not over 100,000 members given Riverside's population and the fact that
19 commercial and other customers are included as well.

20 26. Plaintiffs allege Defendants' billing and meter records would provide
21 information as to the number and location of all members of the Class.

22

23 **B. Commonality**

24 27. There are questions of law and fact common to all members of the Class, which
25 predominate over any questions affecting solely individual members of the Class. These
26 questions of law and fact common to the Class include, but are not limited to:

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28 ¹ Plaintiffs reserve the right under California Rule of Court rule 3.765(b) to amend or modify the class
description with greater specificity or further division into subclasses or limitation to particular issues.

- 1 a. Whether the City is permitted to transfer water utility revenue derived from fees and
- 2 charges to the City's general fund;
- 3 b. Whether the water utility fees and charges that are imposed by the City are for
- 4 general revenue purposes;
- 5 c. Whether the City used fees and charges for purposes other than for which thee fees
- 6 and charges were imposed;
- 7 d. Whether the City's acts alleged herein violate Proposition 218, codified at Articles
- 8 XIII C and XIII D of the California Constitution; and
- 9 e. Whether the fees and charges set by the City exceed the reasonable and actual cost
- 10 of providing water service.

11 28. These questions of law and fact predominate over questions that affect only
12 individual class members. Proof of a common or single state of facts will establish the right of
13 each member of the class to recover.

14
15 **C. Typicality**

16 29. The claims of the Plaintiffs are typical of those claims that could be alleged by
17 any member of the Class, and the relief sought is typical of the relief that would be sought by
18 each member of the Class, if brought in a separate individual action. Plaintiffs and all
19 members of the Class sustained damages arising out of and caused by Defendants' common
20 course of conduct in violation of the California Constitution, laws, and regulations that have
21 the force and effect of law and statutes as alleged herein.

22
23 **D. Adequacy of Representation**

24 30. Plaintiffs will fairly and adequately represent and protect the interest of the
25 members of the Class. Counsel who represents Plaintiffs are competent and experienced in
26 litigating matters in general and specifically as against municipalities.

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1 E. Superiority of Class Action

2 31. A class action is superior to other available means for the fair and efficient
3 adjudication of this controversy. Individual joinder of all members of the Class is not
4 practicable, as the Class is expected to be composed potentially of over a hundred thousand
5 members. Moreover, questions of law and fact common to the Class predominate over any
6 questions affecting only individual members of the Class. Each member of the Class has been
7 damaged and is entitled to recovery by reason of the City's unconstitutional policy of
8 overcharging water utility customers, using water utility revenues for unconstitutional
9 purposes, and/or transferring water utility revenue to the City's general fund.

10 32. Class action treatment will allow those similarly situated to litigate their claims
11 in a manner that is most efficient and economical for the parties and the judicial system.
12 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of
13 this action that would preclude its maintenance as a class action. Additionally, the prosecution
14 of individual remedies by members of the Class would also present the potential for
15 inconsistent or contradictory judgments, not to mention an extreme drain on the Court's
16 resources.

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19 **FIRST CAUSE OF ACTION**

20 **Plaintiffs Claims' on behalf of themselves and the Class for Breach of**
21 **Contract as against All Defendants**

22 33. Plaintiffs incorporate and re-allege by this reference all allegations contained in
23 paragraphs 1 through 32 as though fully set forth herein.

24 34. Plaintiffs and each member of the Class entered into a contract with the City for
25 the City to provide water utility services in exchange for payment of fees and charges at the
26 applicable rate set by the City and subject to the constraints in the California Constitution,
27 Proposition 218, Proposition 26, and other laws. The parties to a contract cannot make
28 agreements that are unconstitutional and/or unlawful. California Civil Code §§ 1607 & 1667.

1 member of the Class, on one hand, and the City on the other hand with regard to respective rights,
2 duties, and obligations of the parties as described in this lawsuit, and with regard to the validity
3 and enforceability of portions of the City's Charter §1204.1. Accordingly, declaratory relief is
4 appropriate and necessary in the following respects:

5 a) To declare that the following language in the City's Charter §1204.1 is
6 unenforceable and is therefore set aside, voided, and annulled: "and for the annual
7 payment by the water utility into the general fund in twelve equal monthly
8 installments during each fiscal year, an amount not to exceed 11.5 percent of the
9 gross operating revenues, exclusive of surcharges, of the water utility for the last
10 fiscal year ended and reported upon by independent public auditors. The proceeds
11 shall be used to maintain local general purposes as the City Council may by budget
12 or other appropriation direct such as 9-1-1 response, police patrols/fire protection,
13 children's after-school and senior/disabled services, and protect supplies of clean
14 drinking water from contamination." (hereinafter the "Disputed Language").

15 51. The City denies and controverts the foregoing contentions and further contends
16 that the Disputed Language is lawful and enforceable. An actual controversy presently exists.
17 Plaintiffs and each member of the Class respectfully request a judicial determination and decree
18 establishing the respective rights, duties, and obligations of the parties, as set forth above.

19
20 **FIFTH CAUSE OF ACTION**

21 **Plaintiff's Claims on behalf of themselves and the Class for Injunctive Relief as**
22 **against All Defendants**

23 52. Plaintiffs hereby reincorporates and re-alleges each and every of the facts and
24 arguments set forth in paragraphs 1 through 51 as set forth in full herein by this reference.

25 53. The continued enforcement of the Disputed Language in the City's Charter
26 §1204.1 will cause great and irreparable injury to the Plaintiffs and each member of the Class
27 as their constitutional rights are being violated every day.

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- 4. Damages for all amounts paid by Plaintiffs and the members of the Class that were for fees and/or charges that were unconstitutional and/or unlawful, such amount to be proven at trial but in excess of this Court's jurisdictional limit;
- 5. Damages for all amounts paid by Plaintiffs and the member of the Class that were used by Defendants in a manner that was unconstitutional and/or unlawful, such amount to be proven at trial but in excess of this Court's jurisdictional limit;
- 6. Declare that the Disputed Language in the City's Charter §1204.1 is unenforceable and is therefore set aside, voided, and annulled;
- 7. Issue an injunction commanding the Defendants to set aside, vacate, rescind, and annul the Disputed Language in the City's Charter §1204.1;
- 8. Issue an injunction prohibiting Defendants from not setting aside, vacating, rescinding, and annulling the Disputed Language in the City's Charter §1204.1;
- 9. Pre-judgment interest;
- 10. Costs of this proceeding;
- 11. Reasonable attorney fees pursuant to Government Code §800, and/or Code of Civil Procedure §1021.5; and
- 12. Such other and further relief the Court considers proper.

Dated: December 18, 2019

Respectfully submitted,

SOLOMON, SALTSMAN & JAMIESON



Ryan M. Kroll
Attorneys for Plaintiffs
Scott Simpson, Dvonne Pitruzzello, and
Kevin Dawson, on behalf of themselves
and all other similarly situated

BY FAX