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5 Attorneys for Plaintiffs

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 HOWARD JARVIS TAXPAYERS ASSN.; )  
11 LINNEA WARREN; THOMAS WOLFE; )  
EDWARD HENRY; AND ALL OTHERS )  
12 SIMILARLY SITUATED, )

13 Plaintiffs, )

14 v. )

15 CITY OF PASADENA, )

16 Defendant. )  
17

Case No. BC550394

**CLASS ACTION**

FIRST AMENDED COMPLAINT  
FOR DECLARATORY RELIEF  
AND REFUNDS

18 INTRODUCTION

19 1. Plaintiffs bring this action to challenge two components of the rates charged by the  
20 City of Pasadena for water service to nonresidents. On behalf of themselves and all members  
21 of the class they represent, plaintiffs seek a declaration that both components are invalid, and  
22 a refund of the amounts charged for each component beginning March 24, 2013. Plaintiffs  
23 allege as follows:

24 PARTIES

25 2. Plaintiff Howard Jarvis Taxpayers Association ("HJTA") is a nonprofit public benefit  
26 corporation with over 200,000 California taxpaying members. HJTA was organized under the  
27 laws of California for the purpose, among others, of advocating the reduction of taxes and  
28 engaging in civil litigation on behalf of its members and all California taxpayers to achieve its

1 tax reduction goals. HJTA has members who are Pasadena residents and nonresident water  
2 customers subject to the charges challenged herein, who have paid the charges, and who were  
3 represented in the administrative refund claim submitted to the City on March 24, 2014.

4 3. Plaintiff Linnea Warren is a Pasadena water customer. Her residence and service  
5 address is 3497 Yorkshire Road, Pasadena, California, which is outside the city limits. She has  
6 paid the charges challenged herein, and was represented in the administrative refund claim  
7 submitted to the City on March 24, 2014.

8 4. Plaintiff Thomas Wolfe is a Pasadena water customer. His residence and service  
9 address is 1821 Coolidge Avenue, Altadena, California, which is outside the city limits. He has  
10 paid the charges challenged herein, and was represented in the administrative refund claim  
11 submitted to the City on March 24, 2014.

12 5. Plaintiff Edward Henry is a Pasadena water customer. His residence and service  
13 address is 2121 El Sereno Avenue, Altadena, California, which is outside the city limits. He has  
14 paid the charges challenged herein, and was represented in the administrative refund claim  
15 submitted to the City on March 24, 2014.

16 6. Defendant City of Pasadena ("City") is a charter city. It levies and collects the  
17 charges that are the subject of this litigation. The City is a "local government" as defined in  
18 Article XIII C, section 1(b), an "agency" as defined in California Constitution article XIII D,  
19 section 2(a), and a "public entity" as defined in Government Code section 811.2. The City may  
20 sue and be sued under Government Code section 34501.

#### 21 CLASS ACTION ALLEGATIONS

22 7. Plaintiffs bring this action on their own behalf and on behalf of all persons similarly  
23 situated. The class that plaintiffs represent is composed of property owners and tenants whose  
24 owned or rented real property is located outside the boundary of territory incorporated as the  
25 City of Pasadena, whose owned or rented real property receives water service from the City  
26 of Pasadena, who are subject to the water rates and charges challenged herein, and who have  
27 paid said rates and charges at any time since March 24, 2013.

28 8. The members in the class are so numerous that their joinder is impractical. The

1 disposition of their claims in a class action, rather than in individual actions, will benefit the  
2 parties and the Court.

3 9. There is a well-defined community of interest in the questions of fact and law  
4 affecting the plaintiff class. As to community of interest, all members of the class reside in  
5 property they own or rent outside the city limits. All members of the class receive water service  
6 from the City for which they are billed by the City; therefore all members of the class are  
7 subject to the rates and charges challenged herein. All members of the class have paid the  
8 rates and charges, and all members of the class were represented in the administrative refund  
9 claim submitted to the City on March 24, 2014. There are common questions of fact as to  
10 whether the City's cost to provide water service is substantially different from one side of the  
11 City's boundary line to the other, and whether the City's annual withdrawal of revenue from the  
12 Water Fund for deposit into its General Fund is justifiable based on General Fund costs for  
13 water related services to nonresidents. There are common questions of law, therefore, as to  
14 whether the City may lawfully charge nonresidents higher rates for water service and whether  
15 the City may lawfully mark up those rates in order to generate a Water Fund surplus that can  
16 be transferred to the City's General Fund.

17 10. Plaintiffs' claims are typical of those of the class and plaintiffs will fairly and  
18 adequately represent the interests of the class.

19 11. There is no plain, speedy, or adequate remedy other than by this class action since  
20 the damage suffered by the vast majority of class members is relatively small, making it  
21 economically infeasible to pursue remedies other than by class action. Even were it  
22 economically feasible for individual members of the class to each pursue his own remedy, the  
23 Court would be overwhelmed with a multiplicity of suits, potentially establishing inconsistent  
24 results and inconsistent standards of conduct for the defendant. Consequently, there would  
25 be a failure of justice but for this class action.

26 FIRST CAUSE OF ACTION (DECLARATORY RELIEF)

27 12. The City of Pasadena operates its own utility, designated Pasadena Water and  
28 Power, for the provision of water and electricity to its residents and nonresident subscribers.

1 Pasadena Water and Power is not an independently governed separate entity, but is a  
2 department of the City.

3 13. The City's service territory overlies the Raymond Groundwater Basin, which has  
4 been adjudicated to establish a maximum annual "safe yield" that the City and other producers  
5 may extract through wells. In addition to pumping its own well water, the City purchases water  
6 imported by the Metropolitan Water District from the Colorado River and the Sacramento-San  
7 Joaquin Delta. A small amount of the City's water comes from storm water reclamation and  
8 recycling.

9 14. The City bills its customers a fixed monthly "distribution and customer charge"  
10 based on their meter size, plus a tiered "commodity rate" based on the amount of water they  
11 consume during the month.

12 15. Under Pasadena Municipal Code section 13.20.020, the City classifies its water  
13 customers based on the location of their real property. "Area A" customers are those who  
14 receive water on property they own or rent inside the city. "Area B" customers are those who  
15 receive water on property they own or rent outside the city.

16 16. Under Pasadena Municipal Code section 13.20.030, Area B customers (those  
17 outside the city) are charged approximately twenty-five percent (25%) more than Area A  
18 customers (those inside the city) for both "distribution and customer charges" and "commodity  
19 rates."

20 17. Plaintiffs are informed and believe and therefore allege that this 25% surcharge is  
21 not justified by a 25% greater cost to the City in providing water service to nonresidents, but is  
22 an arbitrary mark-up imposed on nonresidents, who cannot vote in city elections, for the  
23 purpose of subsidizing the water rates and charges paid by city residents.

24 18. Under Pasadena Municipal Code section 13.20.035, the City also adds a "Capital  
25 Improvements Charge" to its water rates to recover capital costs related to the water distribution  
26 system. Although it too is 25% higher for nonresidents, the Capital Improvements Charge is  
27 not contested in this litigation.

28 19. Under Pasadena City Charter section 1408, the City annually transfers from the

1 Water Fund to its General Fund an amount equal to six percent (6%) of the gross revenue  
2 received during the preceding fiscal year from the sale of water to its customers. The amount  
3 transferred “may be expended for any municipal purpose.”

4 20. Claimants are informed and believe and therefore allege that the City’s annual  
5 transfer of revenue from the Water Fund to its General Fund, including the nonresidents’ share  
6 of revenue transferred, is not justified as recovering costs incurred by the General Fund for  
7 water related services—particularly water related services to nonresidents. To the extent this  
8 revenue is expended for non-water related general municipal services, the practice is unfair  
9 to nonresidents in that the City of Pasadena is not their provider of general municipal services.

10 21. Article XIII D, section 6 of the California Constitution requires that in setting rates  
11 and charges for property-related services, including water service: (1) the amount of any fee  
12 or charge shall not exceed the funds needed to provide the property related service; (2)  
13 revenues derived from the fee or charge shall not be used for any purpose other than that for  
14 which the fee or charge was imposed; and (3) the fee or charge on any parcel shall not exceed  
15 the proportional cost of the service attributable to that parcel. By imposing a 25% surcharge  
16 on nonresidents, and by padding rates and charges in order to annually transfer 6% of the  
17 Water Fund to the General Fund, the City is violating article XIII D, section 6.

18 22. An actual controversy exists between the parties in that plaintiffs believe the 25%  
19 surcharge imposed on nonresident customers for "distribution and customer charges" and  
20 "commodity rates" is invalid; whereas the City believes the surcharge is valid in all respects.

21 23. An actual controversy exists between the parties in that plaintiffs believe the annual  
22 transfer of 6% of the gross revenue derived from the City’s sale of water, including the sale of  
23 water to nonresidents, from the Water Fund to the General Fund “for any municipal purpose”  
24 is invalid; whereas the City believes the transfer is valid in all respects.

25 24. Plaintiffs desire a judicial determination of the rights and duties of the parties,  
26 including a declaration as to whether the 25% surcharge on nonresidents, and the universal  
27 overcharge that facilitates the annual 6% transfer, are valid.

28 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

1 SECOND CAUSE OF ACTION (REFUNDS)

2 25. Plaintiffs repeat the allegations contained in Paragraphs 1 through 24 above as  
3 though fully set forth herein.

4 26. All members of the class have been billed by the City and have paid the rates and  
5 charges contested herein.

6 27. On March 24, 2014, plaintiffs submitted a Claim for Refund to the City Clerk on  
7 behalf of all members of the class as authorized by the Pasadena City Charter, article X,  
8 section 1011(A) and/or California Code of Civil Procedure section 313, and Government Code  
9 section 900 *et seq.*

10 28. The City took no action on plaintiffs' Claim for Refund, which was therefore deemed  
11 denied by operation of law on May 8, 2014, pursuant to Government Code section 911.6(c).  
12 Accordingly, the City on June 19, 2014, served notice to plaintiffs by mail that their Claim for  
13 Refund had been denied through inaction by operation of law.

14 29. Members of the class who paid the contested rates and charges and who were  
15 represented in the Claim for Refund are entitled to the return of their money if this Court  
16 declares the contested rates and charges invalid.

17 WHEREFORE, plaintiffs pray for judgment as set forth below:

18 PRAYER

19 Based on the foregoing allegations, plaintiffs pray for judgment against defendant City  
20 of Pasadena as follows:

21 1. For a declaration that the 25% surcharge imposed on Area B customers (those  
22 outside the city) for "distribution and customer charges" and "commodity rates" is invalid;

23 2. For a declaration that the practice of setting rates and charges higher than the  
24 amount needed to provide service, for the purpose of annually transferring 6% of the gross  
25 revenue received from the sale of water, including the sale of water to Area B customers, from  
26 the Water Fund to the General Fund for expenditure on "any municipal purpose," is invalid;

27 3. For a refund, to every member of the class, of the contested rates and charges that  
28 he/she/it paid from March 24, 2013, to the date refunds are paid.

- 1 4. For costs of suit including reasonable attorney fees; and  
2 5. For such other or further relief as the Court deems just and proper.

3 DATED: February 18, 2015.

4 Respectfully submitted,

5 JONATHAN M. COUPAL  
6 TIMOTHY A. BITTLE  
7 J. RYAN COGDILL

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TIMOTHY A. BITTLE  
10 Attorneys for Plaintiffs

11  
12 VERIFICATION

13 I, Timothy A. Bittle, declare:

14 I am one of the attorneys of record for the plaintiffs in this action. I am authorized to  
15 verify this complaint on behalf of Howard Jarvis Taxpayers Association. The other plaintiffs are  
16 absent from the County of Sacramento where I have my office, and I make this verification for  
17 that reason as well.

18 I have read the attached complaint. Except as to matters stated on information and  
19 belief, the allegations contained therein are true of my own knowledge and, with regard to those  
20 matters stated on information and belief, I believe them to be true.

21 I certify, upon penalty of perjury under the laws of the State of California, that the  
22 foregoing is true and correct and that this verification was executed on the date shown below  
23 in the City of Sacramento, California.

24 DATED: February 18, 2015.

25 

26 

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TIMOTHY A. BITTLE  
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I, Lorice Strem, declare:

4 I am employed in the County of Sacramento, California. I am over the age of 18 years,  
5 and not a party to the within action. My business address is: 921 11<sup>th</sup> Street, Suite 1201,  
6 Sacramento, California 95814.

7 On February 18, 2015, pursuant to the Court's Order Authorizing Electronic Service of  
8 Documents dated November 13, 2014, I instituted service of the foregoing document described  
9 as: **FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF AND REFUNDS**  
10 on the interested parties below, using the following means:

11 **SEE ATTACHED SERVICE LIST**

12  
13  
14 **BY ELECTRONIC MAIL:** I electronically transmitted a copy of the foregoing document in a  
15 PDF or word processing format to those persons noted on the attached list at the respective  
16 electronic mailbox addresses using *CaseHomePage* in accordance with the Cal. Rules of Court  
17 rule 2.251(g) on the date set forth above.

18  
19 I declare under penalty of perjury under the laws of the State of California that the above  
20 is true and correct.

21  
22 Executed on February 18, 2015, at or around 3:00 P.M.

23  
24 Lorice Strem  
25 Print Name of Person Executing Proof

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27   
28 Signature



**SERVICE LIST**

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