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11 **Attorneys for Petitioner/Plaintiff**  
12 **MIRIAM GREEN, on behalf of herself and**  
13 **all others similarly situated**

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF SANTA CLARA**

16 MIRIAM GREEN, on behalf of herself, and  
all others similarly situated,

17                   Petitioner and Plaintiff,

18                   v.

19 CITY OF PALO ALTO, and DOES 1 through  
20 100,

21                   Respondents and Defendants.

Case No. 16CV300760 (Lead)  
Consolidated with Case No. 18CV336237

*Assigned for all purposes to the Hon. Sunil R.  
Kulkarni*

CLASS ACTION

FIRST AMENDED:

CONSOLIDATED VERIFIED PETITION  
FOR WRIT OF MANDATE

and

CONSOLIDATED COMPLAINT  
DECLARATORY RELIEF AND REFUND  
OF ILLEGAL TAX

1 Petitioner/Plaintiff Miriam Green (“Petitioner” or “Plaintiff”), on behalf of herself and the  
2 Classes of all other similarly situated persons defined below, alleges upon personal knowledge and  
3 information and belief as to all other matters based upon, *inter alia*, the investigation made by and  
4 through her attorneys, as follows:

5 **INTRODUCTION**

6 1. Proposition 218, the Right to Vote on Taxes Act, was passed by the people of  
7 California in November 1996. The measure stated its purpose “was intended to provide effective  
8 tax relief and to require voter approval of tax increases. However, local governments have  
9 subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate  
10 the purposes of voter approval for tax increases, but also threaten the economic security of all  
11 Californians and the California economy itself. This measure protects taxpayers by limiting the  
12 methods by which local governments exact revenue from taxpayers without their consent.”

13 2. By passing Proposition 218, the California Constitution was amended to add  
14 articles XIII C and XIII D. Article XIII C prohibits local government agencies from imposing,  
15 extending or increasing taxes unless and until the taxes are approved by a vote of the electorate.  
16 Article XIII D sets forth procedures for and restrictions on special assessments and fees for  
17 property related services. This action pertains to Article XIII C, sections 2(b) and (d) relating to  
18 Respondent/Defendants’ imposition, extension or increase of electric and gas utility fees and  
19 charges upon Petitioner and the putative class by various resolutions from 2012 through 2022.

20 3. In November 2010, California voters approved Proposition 26, which amended  
21 Article XIII C, section 1 to broadly define “tax” as “any levy, charge or exaction of any kind  
22 imposed by a local government” with certain exceptions. (art. XIII C, § 2(e).) Article XIII C,  
23 section 1, subdivision (e)(1) and (2) except from the definition of “tax” charges for a specific  
24 benefit conferred or privilege granted, or specific government service not provided to those not  
25 charged, so long as the charge does not exceed the reasonable cost to the government of  
26 conferring, granting or providing the benefit, privilege or service. It also shifted the burden to  
27 prove that the charge does not exceed the cost of conferring, granting or providing the benefit,  
28 privilege or service.



1 agent and/or employee of each of the remaining Defendants and was at all times acting within the  
2 purpose and scope of such agency and employment. In doing the acts alleged herein, each  
3 Defendant/Respondent, and its officers, directors, members, owners, principals, or managing  
4 agents (where the defendant is a corporation, limited liability company, or other form of business  
5 entity) authorized and/or ratified the conduct of each other Defendant and/or of his/her/its  
6 employees. Upon discovery of the fictitiously named Defendants/Respondents, Plaintiff will  
7 amend her FA Consolidated Petition to formally identify them.

8 **GOVERNMENT CLAIM**

9 8. On or about September 23, 2016, September 14, 2018 and March 28, 2023 counsel  
10 for Petitioner/Plaintiff provided to Respondent/Defendant City of Palo Alto a written Claim for  
11 Damages, on behalf of Petitioner/Plaintiff and all others similarly situated, pursuant to California  
12 Government Code section 910, *et seq.*, and *City of San Jose v. Superior Court*, 12 Cal. 3d 447  
13 (1974).

14 9. The City denied each Plaintiff's class-wide government claims.

15 **GENERAL ALLEGATIONS**

16 10. The City operates its utility known as the City of Palo Alto Utilities ("CPAU"),  
17 which provides electricity and natural gas services to paying customers. It imposes user fees and  
18 charges for these services on a monthly basis.

19 11. The City imposes fees and charges for each of its electricity and gas services in an  
20 amount that exceeds the reasonable cost of providing each service. For example, the City  
21 engineers each of its electric and gas utility service fees to generate sufficient surplus revenue to  
22 fund an annual transfer of millions of dollars from its utility enterprise funds to its general fund.  
23 The funds transferred are intended for use and are used to fund general government expenses  
24 unrelated and unnecessary to operate or otherwise provide gas or electric utility services. As has  
25 been stated by CPAU on its website: ". . . the electric, gas, and water utilities provided millions in  
26 financial support to community services such as libraries, parks, police and fire protection. These  
27 contributions to the community do not occur in areas served by private power companies. This  
28 makes Palo Alto a unique place to live and work."



1  
2 **2018 Gas Rate Class:** All gas utility customers of the City of Palo Alto  
Utilities whom the City billed for natural gas service between July 1, 2018  
and June 30, 2019;

3 **2018 Electric Rate Class:** All electric utility customers of the City of  
4 Palo Alto Utilities whom the City billed for electric service between July  
1, 2018 and June 30, 2019;

5 **2019 Gas Rate Class:** All gas utility customers of the City of Palo Alto  
6 Utilities whom the City billed for natural gas service between July 1, 2019  
and June 30, 2020; and

7 **2021 Gas Rate Class:** All gas utility customers of the City of Palo Alto  
8 Utilities whom the City billed for natural gas service between July 1, 2021  
and June 30, 2022;

9 Expressly excluded from the Classes are (a) all persons who timely elect to be excluded from the  
10 Classes, and (b) the judge(s) to whom this case is assigned and any immediate family members  
11 thereof. Putative members of the Classes are referred to as “Class Members.”

12 18. This action is properly maintainable as a class action.

13 19. The Classes consists of more than 10,000 City of Palo Alto Utilities customers,  
14 making each Class so numerous that joinder of all members is impracticable.

15 20. There are questions of law and fact which are common to Class Members and  
16 which predominate over any questions affecting only individual members of each Class. A class  
17 action will generate common answers to the below questions, which are apt to drive the resolution  
18 of the litigation:

19 a. What was the reasonable cost of the electricity and natural gas services  
20 provided to Plaintiff and the members of each class;

21 b. How was the reasonable cost of the electricity and natural gas services  
22 calculated;

23 c. Whether Defendants can meet their burden to prove their fees or charges for  
24 electricity and natural gas do not exceed the reasonable cost to Defendant in providing each  
25 service;

26 d. Whether Defendants’ fees and charges for electricity and natural gas are  
27 taxes;

28 e. Whether Defendants’ actions violate article XIII C of the California

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Constitution;

f. Whether Defendants obtained approval by a vote of the electorate before imposing, extending or increasing their fees and charges for electric and gas services;

g. Whether Plaintiff and other Class Members are entitled to a refund; and

h. Whether Plaintiff and other Class Members are entitled to injunctive relief.

21. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of other Class Members and Plaintiff has the same interests as other Class Members. Plaintiff has no interests that are antagonistic to, or in conflict with, the interests of the other members of the Classes. Plaintiff is an adequate representative of each Class and will fairly and adequately protect the interests of the Classes.

22. The prosecution of separate actions by individual Class members could create a risk of inconsistent or varying adjudications with respect to individual members of each Class, which could establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of each Class which would, as a practical matter, be dispositive of the interests of the members of each Class not parties to the adjudications.

23. Furthermore, as the damages suffered by some of the individual Class members may be small, the expense and burden of individual litigation make it impracticable for the individual members of each Class to redress the wrongs done to them individually. If a class action is not permitted, Class members will continue to suffer and Defendants' misconduct will continue without proper remedy.

24. Defendants have acted and refused to act on grounds applicable to the entire Class, thereby making appropriate relief with respect to the Class as a whole.

25. Plaintiff anticipates no unusual difficulties in the management of this litigation as a class action.

26. For the above reasons, a class action is superior to other available methods for the fair and efficient adjudication of this action.

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**FIRST CAUSE OF ACTION**  
**Petition for Writ of Mandate**  
**Pursuant to Code of Civil Procedure section 1085**  
**(By Petitioner Against All Respondents)**

27. Petitioner incorporates by reference each of the preceding allegations as though fully set forth herein.

28. Respondents have imposed, extended or increased fees and charges for electricity and gas service upon Petitioner and the Class. Respondents' fees and charges are taxes as defined by article XIII C, section 1, subdivision (e). Respondents have not obtained approval by a vote of the electorate prior to enacting its fees for electricity and natural gas utility service.

29. Respondents cannot meet their burden to prove that their fees and charges for electricity and/or gas services exclusively provided to those customers who are charged, does not exceed the reasonable cost to Respondents of providing the electricity and/or gas services. Thus, Respondents have violated, and continue to violate, article XIII C, section 2, subdivision (b) and (d).

30. The imposition and collection of the illegal taxes from Petitioner and the Class was, and is, improper because it is a violation of the State Constitution, Article XIII C and the imposition of the illegal taxes has caused Petitioner and the Class to suffer monetary damages in amounts according to proof at trial.

31. Accordingly, Petitioner is entitled to a writ of mandate pursuant to Code of Civil Procedure section 1085 so as to ensure compliance with the law by Respondents.

**SECOND CAUSE OF ACTION**  
**Declaratory Relief**  
**(By Plaintiff Against All Defendants)**

32. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth therein.



1 33. An actual, present, and substantial controversy exists between Plaintiff and  
2 Defendants. Plaintiff contends that Defendants have violated, and continue to violate, the  
3 California Constitution. Defendants contends they comply and have complied with the law.

4 34. Plaintiff and other Class members have no adequate remedy at law.

5 35. By reason of the foregoing, there is a present and ongoing controversy between the  
6 parties with respect to which this Court should enter a declaratory judgment determining the rights  
7 and obligations of each. Plaintiff contends that such judgment should determine that the conduct  
8 complained of herein is illegal.

9 **THIRD CAUSE OF ACTION**

10 **Refund of Illegal Tax**  
11 **(Plaintiff Against All Defendants)**

12 36. Plaintiff hereby incorporates by reference each of the preceding allegations as  
13 though fully set forth therein.

14 37. Plaintiff has substantially complied with all requirements to exhaust her  
15 administrative remedies pursuant to Government Code section 945.6.

16 38. Defendants never submitted the charges for electricity and natural gas that exceed  
17 costs to the electorate for a vote.

18 39. Propositions 218 and 26 were designed to “protect[] taxpayers by limiting the  
19 methods by which local governments exact revenue from taxpayers without their consent.” (Prop.  
20 218 § 2)

21 40. Local governments must submit to the electorate for approval by vote laws that  
22 “impose, extend, or increase” any tax. (Cal. Const., art. XIII C, § 2(b), (d).)

23 41. Defendants’ collection of electricity and gas rates without voter approval that  
24 exceed the costs of providing the service violates Propositions 218 and 26.

25 42. Because the rates are in violation of Propositions 218 and 26, they are  
26 unconstitutional under the California Constitution, are invalid and inapplicable.

27 43. For all of the foregoing reasons, Plaintiff and the Classes have overpaid for  
28 electricity and natural gas and thus are entitled to recovery in the form of a refund.

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**PRAYER FOR RELIEF**

WHEREFORE, Petitioner/Plaintiff, individually and on behalf of all others similarly situated, hereby prays that the Court determine that this action may be maintained as a class action and further prays that the Court enter judgment in her favor and against Defendants, as follows:

1. An order certifying the proposed Classes, designating Plaintiff as the named representative of the Class, and designating Plaintiff’s counsel as Class Counsel;
2. For the issuance of a writ of mandate directing Respondents to rescind, revoke or otherwise invalidate the resolution(s) imposing currently effective electric and gas utility fees and charges; cease further collection of the alleged taxes embedded in the currently effective electric and gas utility fees and charges; and ordering the refund of all illegal taxes collected during the class periods;
3. A refund to Plaintiff and the Class for all monies illegally collected in an amount to be proven at trial;
4. Injunctive relief;
5. An award of attorneys’ fees and costs, as allowed by law, including, but not limited to, common fund attorneys’ fees and fees awarded pursuant to California Code of Civil Procedure section 1021.5;
6. An award of pre-judgment and post-judgment interest, as provided by law; and
7. For such other, further, and different relief as the Court deems proper under the circumstances.

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DATED: March ~~28~~, 2023  
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Respectfully submitted,

**KEARNEY LITTLEFIELD, LLP**

By: Prescott W. Littlefield  
Thomas A. Kearney  
Prescott W. Littlefield

**STONEBARGER LAW**  
Gene J. Stonebarger  
Richard D. Lambert

**DAVIDOVITZ + BENNETT**  
Moris Davidovitz

**BENINK & SLAVENS, LLP.**  
Vincent D. Slavens (SBN 217132)  
Eric J. Benink (SBN 187434)

Attorneys for Petitioner/Plaintiff  
**MIRIAM GREEN**

**VERIFICATION**

I, Miriam Green, declare:

I am party to this Action, and I have read the foregoing First Amended Consolidated Petition and know its contents. With regard to myself, the matters stated are true based on my knowledge, and all other allegations are made based on information and belief, and as to those matters I believe them to be true.

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

Dated: March 29, 2023

Miriam Green  
MIRIAM GREEN

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 100 N. Brand Blvd., Suite 424, Glendale, California 91207.

On March 31, 2023, I served the following document(s) described as

**FIRST AMENDED: CONSOLIDATED VERIFIED PETITION FOR WRIT OF MANDATE and CONSOLIDATED COMPLAINT DECLARATORY RELIEF AND REFUND OF ILLEGAL TAX**


on the interested parties in this action at the following addresses (including fax numbers and e-mail addresses if applicable): **SEE ATTACHED LIST**

**BY MAIL:** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, California, on that same day following ordinary business practices. (C.C.P. § 1013 (a) and 1013a(3)). *See attached Service List.*

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be served via One Legal to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. *See Attached Service List*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 31, 2023, at Glendale, California.

  
\_\_\_\_\_  
**ANDREW J. KEARNEY**

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**SERVICE LIST**

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