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CITY OF PALO ALTO

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SANTA CLARA**

15 MIRIAM GREEN, on behalf of herself, and
16 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
Unlimited Jurisdiction

**Consolidated for All Purposes with
Case No. 18CV336237**

(Case assigned to Hon. Sunil R. Kulkarni)

**ANSWER TO FIRST AMENDED
CONSOLIDATED VERIFIED PETITION
FOR WRIT OF MANDATE AND
CONSOLIDATED COMPLAINT [FOR]
DECLARATORY RELIEF AND REFUND
OF ILLEGAL TAX**

Complaint Filed: October 6, 2016

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**Exempt from Filing Fees
Government Code § 6103**

1 Respondent and Defendant City of Palo Alto (“City”) hereby answers the “First Amended
2 Consolidated Verified Petition for Writ of Mandate and Consolidated Complaint [for] Declaratory
3 Relief and Refund of Illegal Tax” (“Consolidated Petition”) filed by Petitioner and Plaintiff Miriam
4 Green (“Petitioner” or “Green”) on March 31, 2023, by admitting, denying, and alleging as follows:

5 **INTRODUCTION**¹

6 1. In response to Paragraph 1, the City admits voters enacted Proposition 218 in
7 November 1996 and avers Proposition 218 speaks for itself. Except as specifically admitted, the
8 remaining allegations in Paragraph 1 consist of legal theory, conclusions, and argument requiring no
9 response; however, to the extent Paragraph 1 contains any factual allegations the City does not
10 specifically admit, the City denies each and every such factual allegation.

11 2. In response to Paragraph 2, the City admits Proposition 218 amended the California
12 Constitution and avers Proposition 218 speaks for itself. Except as specifically admitted, the
13 remaining allegations in Paragraph 2 consist of legal theory, conclusions, and argument requiring no
14 response; however, to the extent Paragraph 2 contains any factual allegations the City does not
15 specifically admit, the City denies each and every such factual allegation.

16 3. In response to Paragraph 3, the City admits voters enacted Proposition 26 in
17 November 2010 and avers Proposition 26 speaks for itself. Except as specifically admitted, the
18 remaining allegations in Paragraph 3 consist of legal theory, conclusions, and argument requiring no
19 response; however, however, to the extent Paragraph 3 contains any factual allegations the City does
20 not specifically admit, the City denies each and every such factual allegation.

21 4. The allegations in Paragraph 4 consist of legal theory, conclusions, and argument not
22 directed at the City and thus require no response. However, to the extent Paragraph 4 contains any
23 factual allegations directed at the City, the City denies each and every such factual allegation.

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28 ¹ The City includes the headings and subheadings of the Consolidated Petition in this answer for
convenience of reference and not to admit the truth of the allegations stated in those headings.
Unless specifically admitted, the City denies all allegations in the Consolidated Petition’s headings
and subheadings.

PARTIES

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2 5. In response to Paragraph 5, the City admits Green holds accounts with the City’s
3 electric and natural gas utilities and that she did not vote on any change to her electricity and natural
4 gas service rates and avers the City was not required to obtain voter approval for the electricity and
5 natural gas service rate changes at issue in this case. The City lacks sufficient information or belief
6 with which to admit or deny the allegations in Paragraph 5 it does not specifically admit, and on that
7 basis the City denies them.

8 6. In response to Paragraph 6, the City admits it is a city in Santa Clara County and that
9 it owns and operates electric and natural gas utilities.

10 7. The allegations in Paragraph 7 consist of legal theory, conclusions, and argument not
11 directed at the City and thus require no response. However, to the extent Paragraph 7 contains any
12 factual allegations directed at the City, the City denies each and every such factual allegation.

GOVERNMENT CLAIM

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14 8. In response to Paragraph 8, the City admits it received a Claim for Tax Refund, Tax
15 Election and Other Relief of Miriam Green and Others Similarly Situated from Green’s counsel
16 dated September 23, 2016 (“First Claim”) and avers the First Claim speaks for itself. The City also
17 admits it received a Claim for Tax Refund, Tax Election and Other Relief of Miriam Green and
18 Others Similarly Situated from Green’s counsel dated September 6, 2018 but received September 19,
19 2018 (“Second Claim”) and avers the Second Claim speaks for itself. The City also admits it
20 received a Claim for Tax Refund, Tax Election and Other Relief of Miriam Green and Others
21 Similarly Situated on March 28, 2023 (“Third Claim”) and avers the Third Claim speaks for itself.
22 Except as specifically admitted, the remaining allegations in Paragraph 8 consist of legal theory,
23 conclusions, and argument requiring no response; however, to the extent that the remaining
24 allegations in Paragraph 8 contain any factual allegations, the City denies each and every such
25 allegation.

26 9. In response to Paragraph 9, the City admits its Office of the City Attorney sent
27 Green’s counsel a letter dated November 8, 2016 rejecting the First Claim and a letter dated
28 October 1, 2018 rejecting the Second Claim and avers the letters speak for themselves. The City

1 further admits that the Third Claim was deemed denied pursuant to the Parties' Settlement
2 Agreement.

3 **GENERAL ALLEGATIONS**

4 10. In response to Paragraph 10, the City admits it owns and operates electric and natural
5 gas utilities and collects fees from customers for those utility services on a monthly basis.

6 11. In response to Paragraph 11, the City denies it has illegally transferred funds from its
7 electricity enterprise funds to its general fund, and avers the City's Charter authorizes any such
8 transfer and use of those funds for general fund purposes, that the City complies with all applicable
9 laws, and that the City of Palo Alto Utilities' website speaks for itself. Except as specifically
10 admitted, the remaining allegations in Paragraph 11 consist of legal theory, conclusions, and
11 argument requiring no response; however, to the extent the remaining allegations not specifically
12 admitted by the City contain any factual allegations, the City denies each and every such factual
13 allegation.

14 12. In response to Paragraph 12, the City admits its City Council adopted resolutions
15 between June 2015 and June 2022 which affected the City's electric and natural gas service rates and
16 that it did not conduct an election of City voters on those resolutions, and avers those resolutions
17 speak for themselves. Except as specifically admitted, the remaining allegations in Paragraph 12
18 consist of legal theory, conclusions, and argument requiring no response; however, to the extent
19 Paragraph 12 contains any factual allegations the City does not specifically admit, the City denies
20 each and every such factual allegation.

21 13. The allegations in Paragraph 13 consist of legal theory, conclusions, and argument
22 requiring no response. However, to the extent Paragraph 13 contains any factual allegations, the City
23 denies each and every such factual allegation.

24 14. The allegations in Paragraph 14 consist of legal theory, conclusions, and argument
25 requiring no response. However, to the extent Paragraph 14 contains any factual allegations, the City
26 denies each and every such factual allegation.

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1 b. The allegations in Paragraph 20, subpart (b) consist of legal theory,
2 conclusions, and argument requiring no response. However, to the extent Paragraph 20, subpart (b)
3 contains any factual allegations, the City denies each and every such factual allegation.

4 c. The allegations in Paragraph 20, subpart (c) consist of legal theory,
5 conclusions, and argument requiring no response. However, to the extent Paragraph 20, subpart (c)
6 contains any factual allegations, the City denies each and every such factual allegation.

7 d. The allegations in Paragraph 20, subpart (d) consist of legal theory,
8 conclusions, and argument requiring no response. However, to the extent Paragraph 20, subpart (d)
9 contains any factual allegations, the City denies each and every such factual allegation.

10 e. The allegations in Paragraph 20, subpart (e) consist of legal theory,
11 conclusions, and argument requiring no response. However, to the extent Paragraph 20, subpart (e)
12 contains any factual allegations, the City denies each and every such factual allegation.

13 f. The allegations in Paragraph 20, subpart (f) consist of legal theory,
14 conclusions, and argument requiring no response. However, to the extent Paragraph 20, subpart (f)
15 contains any factual allegations, the City denies each and every such factual allegation.

16 g. The allegations in Paragraph 20, subpart (g) consist of legal theory,
17 conclusions, and argument requiring no response. However, to the extent Paragraph 20, subpart (g)
18 contains any factual allegations, the City denies each and every such factual allegation.

19 h. The allegations in Paragraph 20, subpart (h) consist of legal theory,
20 conclusions, and argument requiring no response. However, to the extent Paragraph 20, subpart (h)
21 contains any factual allegations, the City denies each and every such factual allegation.

22 21. The allegations in Paragraph 21 consist of legal theory, conclusions, and argument
23 requiring no response. However, to the extent Paragraph 21 contains any factual allegations, the City
24 denies each and every such factual allegation.

25 22. The allegations in Paragraph 22 consist of legal theory, conclusions, and argument
26 requiring no response. However, to the extent Paragraph 22 contains any factual allegations, the City
27 denies each and every such factual allegation.

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1 allegations the City does not specifically admit contain any factual allegations, the City denies each
2 and every such factual allegation.

3 30. The allegations in Paragraph 30 consist of legal theory, conclusions, and argument
4 requiring no response. However, to the extent Paragraph 30 contains any factual allegations, the City
5 denies each and every such factual allegation.

6 31. The allegations in Paragraph 31 consist of legal theory, conclusions, and argument
7 requiring no response. However, to the extent Paragraph 31 contains any factual allegations, the City
8 denies each and every such factual allegation.

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10 **SECOND CAUSE OF ACTION**

11 **Declaratory Relief**
12 **(By Plaintiff Against All Defendants)**

13 32. The City re-alleges and incorporates by reference each and every denial, admission,
14 and allegation set forth in Paragraphs 1 through 31 above.

15 33. The allegations in Paragraph 33 consist of legal theory, conclusions, and argument
16 requiring no response. However, to the extent Paragraph 33 contains any factual allegations, the City
17 denies each and every such factual allegation.

18 34. The allegations in Paragraph 34 consist of legal theory, conclusions, and argument
19 requiring no response. However, to the extent Paragraph 34 contains any factual allegations, the City
20 denies each and every such factual allegation.

21 35. The allegations in Paragraph 35 consist of legal theory, conclusions, and argument
22 requiring no response. However, to the extent Paragraph 35 contains any factual allegations, the City
23 denies each and every such factual allegation.

24 **THIRD CAUSE OF ACTION**

25 **Refund of Illegal Tax**
26 **(Plaintiff Against All Defendants)**

27 36. The City re-alleges and incorporates by reference each and every denial, admission,
28 and allegation set forth in Paragraphs 1 through 35 above.

1 37. The allegations in Paragraph 37 consist of legal theory, conclusions, and argument
2 requiring no response. However, to the extent Paragraph 37 contains any factual allegations, the City
3 denies each and every such factual allegation.

4 38. In response to Paragraph 38, the City admits it did not hold an election regarding any
5 of the resolutions adopted between June 2015 and June 2022 which affected the City’s electric and
6 natural gas service rates. Except as specifically admitted, the remaining allegations in Paragraph 38
7 consist of legal theory, conclusions, and argument requiring no response; however, to the extent the
8 remaining allegations contain any factual allegations, the City denies each and every such factual
9 allegation.

10 39. In response to Paragraph 39, the City avers Propositions 218 and 26 speak for
11 themselves. Except as specifically admitted, the remaining allegations in Paragraph 39 consist of
12 legal theory, conclusions, and argument requiring no response; however, to the extent the remaining
13 allegations contain any factual allegations, the City denies each and every such factual allegation.

14 40. In response to Paragraph 40, the City avers article XIII C of the Constitution speaks
15 for itself. Except as specifically admitted, the remaining allegations in Paragraph 40 consist of legal
16 theory, conclusions, and argument requiring no response; however, to the extent the remaining
17 allegations contain any factual allegations, the City denies each and every such factual allegation.

18 41. The allegations in Paragraph 41 consist of legal theory, conclusions, and argument
19 requiring no response. However, to the extent Paragraph 41 contains any factual allegations, the City
20 denies each and every such factual allegation.

21 42. The allegations in Paragraph 42 consist of legal theory, conclusions, and argument
22 requiring no response. However, to the extent Paragraph 42 contains any factual allegations, the City
23 denies each and every such factual allegation.

24 43. The allegations in Paragraph 43 consist of legal theory, conclusions, and argument
25 requiring no response. However, to the extent Paragraph 43 contains any factual allegations, the City
26 denies each and every such factual allegation.

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AFFIRMATIVE DEFENSES

Without admitting any allegations of the Petition or assuming the burden of proof as to any of the following claims, defenses, or issues, the City is informed and believes, and upon such information and belief, alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. The Consolidated Petition and each cause of action contained therein fail to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

(Petitioner Green Lacks Standing)

2. The Consolidated Petition is barred because Green lacks standing to pursue this action. By pleading the issue of standing as an affirmative defense, the City does not assume the burden of proof on the issue of standing, which is part of Green’s case in chief.

THIRD AFFIRMATIVE DEFENSE

(Statute of Limitations)

3. The Consolidated Petition and each and every purported cause of action contained therein are barred in whole or in part by any and all applicable statutes of limitation, including but not limited to Government Code sections 911.2, subdivision (a); 935, subdivision (a); and 945.6; Public Utilities Code section 10004.5, subdivision (a); and Palo Alto Municipal Code section 2.28.230, subdivision (c).

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FOURTH AFFIRMATIVE DEFENSE

(Laches)

4. The claims asserted in the Consolidated Petition and each and every purported cause of action contained therein are prohibited by the doctrine of laches because of Green’s prejudicial delay in asserting them.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

5. The Consolidated Petition is barred because Green failed to seek, pursue, or exhaust her administrative remedies and failed to comply with statutory claiming requirements.

SIXTH AFFIRMATIVE DEFENSE

(Claims Vary Impermissibly)

6. Assuming, arguendo, Green complied with statutory claiming requirements and exhausted her administrative remedies, Green’s claims in the Consolidated Petition are barred to the extent they vary impermissibly from the administrative claims she filed.

SEVENTH AFFIRMATIVE DEFENSE

(Acts in Accordance with Law and Substantial Evidence)

7. With respect to all actions referred to in the Consolidated Petition, the City (i) proceeded in the manner required by law; (ii) did not act arbitrarily, capriciously, or wholly without evidentiary support; (iii) did not abuse its discretion; and (iv) made all required findings, which supported the City’s actions and were themselves supported by substantial evidence.

EIGHTH AFFIRMATIVE DEFENSE

(Consent)

8. Green consented to the acts complained of in the Consolidated Petition, and said consent was express and/or implied.

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NINTH AFFIRMATIVE DEFENSE

(Waiver)

9. Green has waived the right to maintain the causes of action she asserts in this case.

TENTH AFFIRMATIVE DEFENSE

(Estoppel)

10. To the extent Green has made certain representations and agreements, and committed various acts and omissions, she is estopped, legally and equitably, to recover from the City.

ELEVENTH AFFIRMATIVE DEFENSE

(No Equitable Relief)

11. Green is not entitled to any relief in equity because the balance of harm does not warrant equitable relief.

TWELFTH AFFIRMATIVE DEFENSE

(Lack of Statutory Liability)

12. Green’s claims are barred in whole or in part because Green fails to allege a statutory basis for liability against the City.

THIRTEENTH AFFIRMATIVE DEFENSE

(Attorney Fees Not Recoverable)

13. The Consolidated Petition fails to set forth any facts that would constitute a basis for an award of attorneys’ fees against the City.

FOURTEENTH AFFIRMATIVE DEFENSE

(Costs of Suit Not Recoverable)

14. The Consolidated Petition fails to set forth any facts that would constitute a basis for an award of costs of suit against the City.

FIFTEENTH AFFIRMATIVE DEFENSE

(Immunity)

15. The Consolidated Petition is barred because the City is immunized from liability for failing to take a demanded legislative or quasi-legislative action.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Declaratory Relief When Writ Claim Pleaded)

16. Green is not entitled to declaratory relief because she pleaded a cause of action for writ of mandate seeking identical relief.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Additional Defenses)

17. The City has insufficient information and knowledge at present on which to form a belief as to whether it may have additional, as yet unstated, defenses available to it. The City reserves the right to assert additional defenses if further discovery indicates that such affirmative defenses would be appropriate.

WHEREFORE, the City prays for judgment as follows:

1. That the Court deny class certification;
2. That no writ issue;
3. That no refund, rebate, or any other compensatory relief issue;
4. That declaratory relief be issued in favor of the City that its electric and gas service rates and transfers from its utility funds to its general fund comply with the law;
5. That the Court issue judgment in favor of the City on the entire Consolidated Petition;
6. That Green’s action be dismissed with prejudice;
7. That Green take nothing from her Consolidated Petition;

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- 8. That the City be awarded costs of suit; and
- 9. For such other and further relief as the Court deems proper.

DATED: April 19, 2023

MOLLY S. STUMP, City Attorney
AMY W. BARTELL, Assistant City Attorney

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**



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PROOF OF SERVICE

Miriam Green v. City of Palo Alto

Santa Clara County Superior Court Case No. 16CV300760

I, Ashley A. Lloyd, declare:

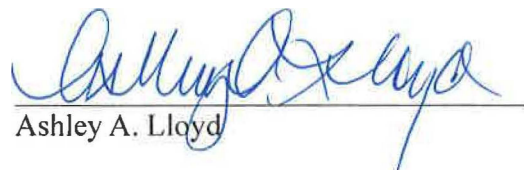
I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091. On April 19, 2023, I served the document(s) described as **ANSWER TO FIRST AMENDED CONSOLIDATED VERIFIED PETITION FOR WRIT OF MANDATE AND CONSOLIDATED COMPLAINT [FOR] DECLARATORY RELIEF AND REFUND OF ILLEGAL TAX** on the interested parties, in the method indicated, in this action addressed as follows:

SEE ATTACHED LIST

__XX__ 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, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on **April 19, 2023** from the court authorized e-filing service at OneLegal.com. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Executed on April 19, 2023, at Grass Valley, California.


Ashley A. Lloyd

Colantuono, Highsmith & Whatley, PC
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SERVICE LIST

Miriam Green v. City of Palo Alto

Santa Clara County Superior Court Case No. 16CV300760

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