

GC6/03
2.6'

Check Originals COPY
ORIGINAL FILED
Superior Court of California
Pasadena

FEB 05 2018

Shawn D. Carter, Executive Officer/Clerk
By: Rita Magallon, Deputy

1 BENJAMIN P. FAY
State Bar No. 178856
2 Email: bfay@jarvisfay.com
3 GABRIEL MCWHIRTER
State Bar No. 280957
4 Email: gmcwhirter@jarvisfay.com
5 JARVIS, FAY, DOPORTO & GIBSON, LLP
492 Ninth Street, Suite 310
6 Oakland, CA 94607
Telephone: (510) 238-1400

7 MICHELE BEAL BAGNERIS, City Attorney
State Bar No. 115423
8 JAVAN N. RAD, Chief Assistant City Attorney
State Bar No. 209722
Email: jrad@cityofpasadena.net
9 100 North Garfield Avenue, Room N210
Pasadena, California 91109
10 Telephone: (626) 744-4141

11 Attorneys for Defendant
CITY OF PASADENA

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF LOS ANGELES
15

16 EVE KOMESAR, an individual, on behalf of
herself and all others similarly situated,
17
18 Plaintiff,
19 v.
20 CITY OF PASADENA, and DOES 1 through
10,
21 Defendants.

CASE NO. BC 677632
DEFENDANT CITY OF PASADENA'S
ANSWER TO PLAINTIFF EVE
KOMESAR'S CLASS ACTION
COMPLAINT

Hon. Kenneth R. Freeman
Department 310

Action Filed: September 29, 2017

BY FAX

22
23
24
25
26
27
28

1 Defendant CITY OF PASADENA (the “City”) hereby answers the Class Action Complaint (“the
2 Complaint”) for (1) Violation of Proposition 218, (2) Declaratory Relief, (3) Injunctive Relief, and (4)
3 Tax Refunds brought by Plaintiff EVE KOMESAR, both individually and on behalf of the putative class
4 described in paragraph 19 of the Complaint, as follows:

5 **GENERAL DENIAL**

6 Pursuant to section 431.30(d) of the Code of Civil Procedure, the City denies each and every
7 allegation in the Complaint, including allegations made by Plaintiff individually and those made on
8 behalf of the putative class described in paragraph 19 of the Complaint.

9 **AFFIRMATIVE DEFENSES**

10 The City alleges that Plaintiff and the putative class described in paragraph 19 of the Complaint
11 are barred from recovering anything from the City under the Complaint and each cause of action therein,
12 by reason of the following affirmative defenses:

13 First Affirmative Defense

14 (Failure to State a Cause of Action)

15 As a first affirmative defense, the City alleges that the Complaint and each cause of action
16 therein, fails to allege facts sufficient to state a cause of action.

17 Second Affirmative Defense

18 (Statute of Limitations)

19 As a second affirmative defense, the City alleges that the Complaint and each cause of action
20 therein, is barred in whole or in part by section 10004.5(a) of the Public Utilities Code and section
21 338(a) of the Code of Civil Procedure.

22 Third Affirmative Defense

23 (Failure to Present a Timely Written Claim)

24 As a third affirmative defense, both in addition to and as an alternative to the second affirmative
25 defense, the City alleges that all causes of action in the Complaint seeking monetary relief are barred by
26 sections 911.2(a) and 945.4 of the Government Code to the extent they accrued more than one year
27 before Plaintiff presented a written claim for money or damages.

28 ///

1 Fourth Affirmative Defense

2 (Standing)

3 As a fourth affirmative defense, the City alleges that Plaintiff does not have standing to assert the
4 causes of action in the Complaint or to seek all of the relief sought in the Complaint because she does
5 not receive electric service from the City or does not receive electric service under all of the rate
6 schedules established in the City's rates for electric power set forth in chapter 13.04 of the Pasadena
7 Municipal Code and only began receiving electric service in Pasadena in March, 2017.

8 Fifth Affirmative Defense

9 (Grandfathering – Pasadena City Charter sections 1407 and 1408)

10 As a fifth affirmative defense, the City alleges that to the extent Plaintiff and the putative class
11 challenge components of the City's electric rates that recoup the cost of payments made from the Light
12 and Power Fund to the City's general fund under sections 1407 or 1408 of the City Charter, no recovery
13 is owed under the Complaint and each cause of action therein, because these rate components are proper
14 "grandfathered" charges. Article XIII C of the California Constitution does not bar these rate
15 components because they were established by legislative acts predating the adoption of article XIII C (as
16 part of Proposition 218), and article XIII C is not retroactive. (*Owens v. County of Los Angeles* (2013)
17 220 Cal.App.4th 107, 128-31.) Likewise, article XIII C, section 1(e) of the California Constitution does
18 not bar these rate components because they were established by legislative acts predating the adoption of
19 article XIII C, section 1(e) (as part of Proposition 26), and article XIII C, section 1(e) is not retroactive.
20 (*Brooktrails Township Community Services District v. Board of Supervisors of Mendocino County*
21 (2013) 218 Cal.App.4th 195, 204-08.) Accordingly, the inclusion of these components in the City's
22 electric rates does not trigger article XIII C's voter approval requirements.

23 Sixth Affirmative Defense

24 (Compliance with Article XIII C of the California Constitution – Reasonable Costs)

25 As a sixth affirmative defense, the City alleges that no recovery is owed under the Complaint and
26 each cause of action therein, because the City's electric rates fully comply with article XIII C of the
27 California Constitution. As set forth above in the fifth affirmative defense, the components of the City's
28 electric rates that recoup the cost of payments made from the Light and Power Fund to the City's general

1 fund under sections 1407 and 1408 of the City Charter are proper “grandfathered” charges that are not
2 barred by article XIII C, and the inclusion of these components in the City’s electric rates does not
3 trigger article XIII C’s voter approval requirements. The remaining components of the City’s electric
4 rates do not exceed the City’s reasonable costs of providing electric service, as prescribed by article XIII
5 C, section 1(e)(2) of the California Constitution, and therefore do not require voter approval under
6 article XIII C either.

7 Seventh Affirmative Defense

8 (Compliance with Article XIII C of the California Constitution – Voter Approval)

9 As a seventh affirmative defense, the City alleges that to the extent Plaintiff and the putative
10 class challenge any components of the City’s electric rates that recoup the cost of payments made from
11 the Light and Power Fund to the City’s general fund under sections 1407 or 1408 of the City Charter, no
12 recovery is owed under the Complaint and each cause of action therein, because these rate components
13 have been approved by a majority of the City’s voters at an election in full compliance with article XIII
14 C, section 2(b) of the California Constitution. Accordingly, the inclusion of these components in the
15 City’s electric rates is valid and lawful under article XIII C.

16 Eighth Affirmative Defense

17 (Laches)

18 As an eighth affirmative defense, the City alleges that the Complaint and each cause of action
19 therein, is barred in whole or in part by the doctrine of laches. The City’s payments from the Light and
20 Power Fund to the City’s general fund and its practice of recouping the cost of the payments in its
21 electric rates have been authorized by the City Charter for decades. These payments are a critical part of
22 the City’s finances, and they help the City fund vital public services, including police and fire protection
23 services, that are provided to and for the benefit of the City’s electric ratepayers and taxpayers. An
24 order invalidating the payments and/or requiring the City to refund money that has already been spent
25 will place great strain on the City’s ability to provide these public services moving forward.

26 ///

27 ///

28 ///

PRAYER FOR RELIEF

The City prays for relief as follows:

1. That class certification be denied;
2. That Plaintiff and the putative class take nothing in this action;
3. That judgment be entered in favor of the City;
4. That the City be awarded the costs of suit incurred herein;
5. That the City be awarded its reasonable attorneys' fees; and
6. That the City be granted such other relief as the Court may deem just and proper.

JARVIS, FAY, DOPORTO & GIBSON, LLP

Dated: February 5, 2018

By: 
Benjamin P. Fay
Attorneys for Defendant CITY OF PASADENA

1 **DECLARATION OF SERVICE**

2
3 I, the undersigned, declare as follows:

4 I am a citizen of the United States and employed in the County of Alameda; I am over the age of
5 eighteen years and not a party to the within entitled action; my business address is Jarvis, Fay, Doport
6 & Gibson, LLP, 492 Ninth Street, Suite 310, Oakland, California 94607.

7 On February 5, 2018, I served the within:

8 **DEFENDANT CITY OF PASADENA'S ANSWER TO PLAINTIFF EVE**
9 **KOMESAR'S CLASS ACTION COMPLAINT**

10 on the parties in this action, by placing a true copy thereof in a sealed envelope(s), each envelope
11 addressed as follows:

12 Prescott W. Littlefield
13 Kearney Littlefield, LLP
14 3436 N. Verdugo Road, Suite 230
15 Glendale, CA 91207

Attorneys for Plaintiff
EVE KOMESAR

16 Vincent D. Slavens
17 Eric J. Benink
18 Krause, Kalfayan, Benink & Slavens, LLP
19 550 WestC Street, Suite 530
20 San Diego, CA 92101

Attorneys for Plaintiff
EVE KOMESAR

21 () (By First Class Mail) I caused each such envelope, with postage thereon fully prepaid, to be
22 placed in the United States mail to be mailed by First Class mail at Oakland, California.

23 () (By Federal Express) I caused each such envelope to be sent by Federal Express to the offices of
24 each addressee above.

25 (X) (By Electronic Service) I caused a copy of the document to be sent to the parties listed above via
26 the Court-mandated vendor, Case Anywhere.

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

Executed on February 5, 2018, at Oakland, California.


Katherine Carr James