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20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 FOR THE COUNTY OF LOS ANGELES

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22 EVE KOMESAR, an individual, on behalf of)
23 herself and all others similarly situated)

24 Plaintiff,

25 v.

26 CITY OF PASADENA; and DOES 1 through)
27 10,)

28 Defendants.)

Case No.:

CLASS ACTION

COMPLAINT FOR:

1. Violation of Proposition 218
2. Declaratory Relief
3. Injunctive Relief
4. Tax Refunds

1 Plaintiff Eve Komesar ("Plaintiff") brings this action on behalf of herself and all others
2 similarly situated, by and through her counsel and alleges as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff alleges that Defendant the City of Pasadena ("City") violates California
5 Constitution article XIII section 2 ("Proposition 218"), by imposing fees and charges for its electric
6 utility service that exceed the cost of providing electric utility service without voter approval.

7 2. In 2010, Proposition 26 amended California Constitution article XIII C expanding
8 the definition of "tax" to include all local government agency service fees, unless the agency
9 proves that the fees do not exceed the reasonable cost of providing its service.

10 3. The City cannot prove that it imposes electric fees and charges in an amount that
11 is no more than reasonably necessary to operate its electric utility. This is because the fees and
12 charges are designed to fund transfers to its General Fund to pay for general governmental
13 services which are unrelated to the provision of electric services. The City has not obtained
14 voter approval of its electric utility fees and charges. Thus, the City has violated Proposition
15 218.

16 3. Plaintiff brings this action against the City, for herself and all other similarly
17 situated, seeking a) refunds of all unconstitutional taxes imposed; b) a declaration that the City's
18 electric utility fees and charges are taxes as defined by Proposition 26; c) a judgment enjoining
19 the City's further imposition of the illegal taxes unless and until it obtains voter approval as
20 required by Proposition 218.

21 **PARTIES**

22 4. Plaintiff Eve Komesar resides, and has resided at all relevant times, in the City of
23 Pasadena, California and has paid and continues to pay the electric utility taxes at issue herein.

24 5. Defendant City of Pasadena is a California charter city located in Los Angeles
25 County.

26 6. Plaintiff is unaware of the true names and capacities of defendants sued herein as
27 DOES 1 through 10, inclusive, and therefore sues those defendants by such fictitious names. She
28 is informed and believes, and thereon alleges, that each of said fictitiously-named defendants is
in some manner responsible for the acts, violations, and injuries alleged herein. She will amend

1 this complaint to allege the true names and capacities of said fictitiously-named defendants when
2 the same has been ascertained.

3 7. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, each of the defendants was the agent, employee, representative, partner, joint
5 venturer, and/or alter ego of each of the other defendants and, in doing the things alleged herein,
6 was acting within the course and scope of such agency, employment, representation, on behalf of
7 such partnership or joint venture, and/or as such alter ego, with the authority, permission,
8 consent, and/or ratification of each of the other defendants.

9 **SATISFACTION OF GOVERNMENT CLAIMS REQUIREMENT**

10 8. On or about September 20, 2017, Plaintiff presented a class-wide claim to the
11 City on behalf of herself and all others similarly situated for a refund of the taxes, alleged herein,
12 that she and all Class members have paid and will pay.

13 9. Plaintiff's class-wide government claim was presented pursuant to, and in
14 compliance with California Government Code sections 910 et seq. and California Constitution
15 article XIII section 32.

16 10. On September 27, 2017, the City notified counsel for Plaintiff of its rejection of
17 Plaintiff's claim.

18 **GENERAL ALLEGATIONS**

19 11. The California Constitution prohibits a local government like the City from imposing,
20 extending, or increasing any general or special tax unless it is first approved by voters. (Cal. Const.
21 art. XIII C, § 2 subds. (b) and (d).)

22 12. On November 2, 2010, California voters adopted Proposition 26, which amended
23 article XIII C of the California Constitution to add section 1, subdivision (e), *inter alia*.

24 13. Article XIII C, section 1 subdivision (e) expanded the definition of "tax" to
25 include "any levy, charge, or exaction of any kind imposed by a local government." It
26 enumerated seven exceptions, including a "charge imposed for a specific government service or
27 product provided directly to the payor that is not provided to those not charged, and which does
28

1 not exceed the reasonable costs to the local government of providing the service or product.”
2 (Art. XIII C, § 1, subd. (e)(2)).

3 14. Article XIII C section 1 further provides that “[t]he local government bears the
4 burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not
5 a tax, that the amount is no more than necessary to cover the reasonable costs of the
6 governmental activity, and that the manner in which those costs are allocated to a payor bear a
7 fair or reasonable relationship to the payor's burdens on, or benefits received from, the
8 governmental activity.”

9 15. The City, by and through its Department of Water and Power, provides electric
10 utility service to customers in the City, including to Plaintiff and the Class. Each month, the City
11 imposes upon Plaintiff and the Class electric utility fees and charges for its electric utility
12 services. The fees and charges exceed the reasonable cost of providing electric service. The
13 City sets electric fees and charges at rates that include an amount expected to finance the City's
14 anticipated transfer of funds from its electric utility enterprise fund to its General Fund. The City
15 expends the transferred funds on general government services and general municipal
16 improvements unrelated to the provision of electric service. Such transfers include, but are not
17 limited to, an approximately 8% general fund transfer used for any municipal purpose and an
18 additional 8% general fund transfer to be used for general municipal improvements. Thus, the
19 amounts transferred represent proceeds of a tax that was not approved by voters.

20 16. The City has the power and authority to cease imposition of the illegal taxes at
21 any time, but instead, has elected to continue to impose, extend, and increase the taxes.

22 17. The City cannot meet its burden of proof that its electric utility fees and charges
23 do not exceed the cost of providing electric utility service. (Cal. Const. art. XIII C, § 1.) The
24 electorate has never voted to approve the tax at issue in this action.

25 CLASS ACTION ALLEGATIONS

26 18. Plaintiff has paid and continues to pay the electric utility fees and charges at issue
27 in this action.

1 19. Plaintiff brings this action pursuant to section 382 of the California Code of Civil
2 Procedure, on behalf of herself and on behalf of all others similarly situated. Plaintiff seek to
3 represent a class (the "Class") defined as:

4 All customers of City of Pasadena Department of Water and Power who were
5 billed for electric utility service during the Class Period (the "Class").

6 20. Expressly excluded from the Class are any judicial officers assigned to this action
7 and any of their immediate family members.

8 21. The "Class Period" is the period on and after September 20, 2014 through and
9 including the date of entry of final judgment in this action.

10 22. The Class is so numerous that their individual joinder herein is impracticable. The
11 Class is estimated to include more than 10,000 Pasadena Department of Water and Power customers.

12 23. The community of interest among putative Class members is well-defined and the
13 proposed Class is ascertainable from objective criteria. The identity of Class members is available
14 from Pasadena Department of Water and Power's business records. Class members can be notified
15 of the pendency of this action by email, mail and published notice.

16 24. There is a well-defined community of interest in the questions of law and fact
17 involved affecting the parties to be represented. These common questions of law and fact exist as to
18 all members of the putative Class and predominate over any questions affecting only individual
19 members, including, but not limited to:

- 20 • Whether the City imposed the alleged taxes upon Class members during the
21 Class Period;
- 22 • Whether the City has met its burden to prove that its electric utility fees and
23 charges are in an amount that does not exceed its cost of providing service;
- 24 • Whether the electric utility fees and charges are taxes;
- 25 • Whether the City obtained voter approval of the electric utility fees and
26 charges;
- 27 • Whether Class members are entitled to a refund of electric utility fees and
28 charges paid.

1 29. Defendants' electric utility fees, rates and charges are either special or general
2 taxes as defined by California Constitution article XIII C section 1, subdivisions (a) and (b).

3 30. Defendants' electric utility fees, rates and charges are a tax, as defined by California
4 Constitution article XIII C section 1, subdivisions (e) because the fees, rates and charges are
5 imposed in an amount that exceeds the reasonable cost to the Defendants of providing electricity to
6 customers.

7 31. Defendants have imposed, and continue to impose or otherwise extend, the electric
8 utility fees, rates and charges upon Plaintiff and Class members.

9 32. Defendants have not obtained voter approval of the alleged taxes.

10 33. As a direct and proximate result of Defendants' unconstitutional imposition of a tax,
11 Plaintiff and the Class members have paid and the City has wrongfully collected funds derived from
12 an illegal tax. As such, Plaintiff and the Class members have been damaged and are entitled to
13 recover amounts paid in the form of a refund.

14 **SECOND CAUSE OF ACTION**
15 **(Declaratory Relief)**
16 **(Against All Defendants)**

17 34. Plaintiff refers to and incorporates by reference paragraphs 1 through 33 as though
18 fully set forth herein.

19 35. An actual, present, and substantial controversy exists between Plaintiff and the
20 Class members, and Defendants. Plaintiff contends that the electric utility fees, rates and charges
21 Defendant imposes upon its customers are a tax that must be approved by a vote of the electorate
22 prior to imposition. Plaintiff further contend that Defendants have violated and continue to
23 violate California Constitution article XIII C section 2, subdivision (d), or alternatively (b),
24 because Defendants have imposed and continue to impose the tax without voter approval.
25 Defendants contends that the electric utility fees, rates and charges are not taxes, and thus, need
26 not be approved by the electorate.

27 36. A declaration as to the respective rights and duties of the parties is necessary and
28 appropriate. Plaintiff, for themselves and the Class, ask that the court enter judgment declaring
Defendants' electric utility fees, rates and charges to be illegal taxes.

THIRD CAUSE OF ACTION
(Injunction)
(Against All Defendants)

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3 37. Plaintiff refers to and incorporates by reference paragraphs 1 through 36 as though
4 fully set forth herein.

5 38. Plaintiff and the Class have no adequate remedy at law to address Defendants'
6 future imposition of the illegal taxes.

7 39. Plaintiffs and the Class are entitled to a permanent injunction directing
8 Defendants to cease imposition of the illegal taxes until such time it is passed by a vote of the
9 electorate.

FOURTH CAUSE OF ACTION
Tax Refund
(Cal. Const. art. XIII, Section 32)
(Against All Defendants)

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12 40. Plaintiffs refer to and incorporate by reference paragraphs 1 through 39 as though
13 fully set forth herein.

14 41. Defendants at all relevant times have continuously imposed the alleged
15 unconstitutional taxes each month upon electric utility customers, including Plaintiff and the Class.

16 42. Regardless of whether the taxes are a "special" or "general" tax, it is unconstitutional
17 because the taxes have never been submitted to the voters for approval as mandated by California
18 Constitution article XIII C, section 2, subdivisions (b) and (d).

19 43. Plaintiff and the Class have paid and continue to pay the taxes.

20 44. Plaintiff and the Class are entitled to a refund of the illegal taxes paid pursuant to
21 California Constitution article XIII, section 32, or other applicable statute, constitutional
22 provision or common law.

23 45. Plaintiff and the Class may further obtain a refund of the illegal taxes paid pursuant to
24 Government Code sections 910 et seq. and other applicable law.

25 46. Plaintiff and the Class are entitled to a refund the illegal taxes paid.

PRAYER FOR RELIEF

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27 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

28 A. For an order certifying this case as a class action.

1 B. For an order appointing Plaintiff as class representative and appointing her attorneys
2 as class counsel.

3 C. For declaratory judgment declaring that Defendants have violated and continue to
4 violate substantive and procedural directives of article XIII C of the California Constitution.

5 D. For judgment enjoining Defendants from continuing to impose the alleged taxes
6 without voter approval in violation of substantive and procedural directives of article XIII C of the
7 California Constitution.

8 E. For a refund of taxes paid by Plaintiff and the Class in an amount to be proven at trial.

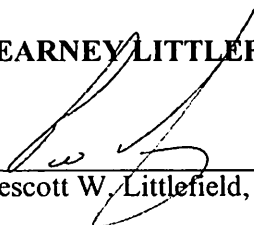
9 F. For payment of attorneys' fees and costs, including those recoverable pursuant to
10 California Code of Civil Procedure § 1021.5, and/or pursuant to the "common fund" doctrine and/or
11 pursuant to equitable principles or contribution and/or other applicable method of awarding
12 attorney's fees and costs;

13 G. Interest pursuant to Civil Code section 3287 and California Constitution article
14 XV section 1 and any other applicable statute or law; and

15 H. For such further relief as may be permitted by law and/or that this court deems
16 equitable, just and proper.

17
18 September 29, 2017

KEARNEY LITTLEFIELD, LLP

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Prescott W. Littlefield, Esq.

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24 Vincent D. Slavens, Esq.
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25 Attorneys for Plaintiff
26 **EVE KOMESAR**