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(Hon. O'Donnell)

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JOHN A. CLARKE, CLERK

BY DAWN ALEXANDER, DEPUTY

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CHRISTOPHER MATTHEW SPENCER, an individual,

Petitioner and Plaintiff,

v.

CITY OF BURBANK; and DOES 1 through 10,

Respondents and Defendants.

Case No.: **BS145021**

VERIFIED PETITION FOR WRIT OF MANDATE

and

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

"BY FAX"

Petitioner / Plaintiff Christopher Matthew Spencer ("Plaintiff" or "Petitioner") alleges as follows:

I.

INTRODUCTION

1. Petitioner brings this action to compel Respondent / Defendant the City of Burbank ("Burbank") to comply with Proposition 218's mandates. Specifically, he seeks to enjoin Burbank from illegally transferring funds collected as water service fees and charges maintained in a water enterprise fund to Burbank's general fund. He also requests that Burbank be ordered to restore to the water enterprise fund, all prior illegal transfers.

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II.

PARTIES

2. Petitioner is a resident of Burbank and has paid the water utility fees and charges at issue herein during the past year.

3. The City of Burbank is a California charter city located in the County of Los Angeles.

4. Petitioner is unaware of the true names and capacities of respondents / defendants sued herein as DOES 1 through 10, inclusive, and therefore sues those respondents / defendants by such fictitious names. He is informed and believes, and thereon alleges, that each of said fictitiously-named respondents / defendants is in some manner responsible for the acts, violations, and injuries alleged herein. He will amend this petition and complaint to allege the true names and capacities of said fictitiously-named respondents / defendants when the same have been ascertained.

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

III.

GENERAL ALLEGATIONS

6. Burbank operates Burbank Water and Power ("BWP"), a department within the city. Through BWP, Burbank provides water services to its residents and businesses. It imposes fees and charges on such customers of BWP on a monthly basis. The water services Burbank provides are property-related services and the fees and charges are imposed by it upon parcels and persons as an incident of property ownership.

7. The fees and charges Burbank imposes are maintained and accounted for in a Water Utility Enterprise Fund ("Enterprise Fund.") Burbank has engaged in and intends to continue the practice of transferring water fees and charges from its Enterprise Fund to its general fund. The

1 funds transferred are not earmarked or designated for any specific purpose (i.e. for
2 reimbursement of shared costs), but instead are used for general governmental purposes. The
3 amount transferred each year is approximately 5 percent (5.0%) of the annual water revenues and
4 is not based on any calculation of the actual costs incurred for the benefit of water utility or in
5 connection with providing water services. Burbank has made the following transfers from the
6 Enterprise Fund to the general fund during the past three years:

| <u>FISCAL YEAR ENDING</u> | <u>AMOUNT</u> |
|---------------------------|--------------------|
| June 30, 2011 | \$1,018,000 |
| June 30, 2012 | \$1,153,000 |
| June 30, 2013 | <u>\$1,184,000</u> |
| | \$3,355,000 |

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13 8. As a direct consequence of these yearly transfers of funds from the Enterprise Fund,
14 Burbank has been required to impose on its water customers higher charges and fees than it
15 would otherwise have been required to impose had the transfers not been made. In other words,
16 the water fees and charges Burbank imposes exceed the reasonable costs to Burbank of providing
17 the water service.

18 **IV.**

19 **FIRST CAUSE OF ACTION**
20 **Petition for Writ of Mandate**
21 **C.C.P. § 1085**
22 **(Against All Respondents)**

23 9. Petitioner hereby incorporates by reference each of the preceding allegations as
24 though fully set forth therein.

25 10. Respondents refused and continue to refuse to comply with Cal. Const. art. XIID,
26 § 6(b)(1), (2) and (5). Specifically, they impose water utility fees and charges that exceed the
27 cost of providing water services, use such funds for purposes other than providing water service,
28 and use the funds for general governmental services.

1 11. There is a clear, present and ministerial duty upon the part of the Respondents to
2 comply with this constitutional mandate.

3 12. Petitioner has a clear, present and beneficial right to the performance of that duty.

4 13. Petitioner does not have an adequate remedy at law.

5 14. Accordingly, Petitioner is entitled to a writ of mandate pursuant to C.C.P. § 1085
6 as specified more fully below.

7 **V.**

8 **SECOND CAUSE OF ACTION**
9 **Declaratory Relief**
10 **(Against All Defendants)**

11 15. Plaintiff hereby incorporates by reference each of the preceding allegations as
12 though fully set forth herein.

13 16. An actual, present, and substantial controversy exists between Plaintiff and
14 Defendants. Plaintiff contends that Defendants have violated and will continue to violate Cal.
15 Const. art. XIII D, § 6(b)(1), (2), and (5). Defendants contend that they have complied, and will
16 continue to comply, with these Constitutional provisions.

17 17. A declaration as to the respective rights and duties of the parties is necessary and
18 appropriate.

19 **VI.**

20 **THIRD CAUSE OF ACTION**
21 **Injunction Pursuant to C.C.P. § 526a**
22 **(Against All Defendants)**

23 18. Plaintiff hereby incorporates by reference each of the preceding allegations as
24 though fully set forth herein.

25 19. Plaintiff is entitled to and seeks an injunction pursuant to C.C.P. § 526a to enjoin
26 Defendants from illegal expenditures of funds from the Enterprise Fund to the general fund and
27 to restore to the Enterprise Fund all previously-transferred funds.
28

PRAYER FOR RELIEF

WHEREFORE, Petitioner / Plaintiff prays for judgment as follows:

ON THE FIRST CAUSE OF ACTION AS TO ALL RESPONDENTS

For the issuance of a writ of mandate directing Respondents to (a) cease any and all transfers of funds maintained as Enterprise Funds to Burbank’s general fund and (b) restore to the Enterprise Fund, all previously-transferred funds.

ON THE SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS

For a declaratory judgment declaring that Defendants’ practices have violated and will continue to violate Cal. Const. art. XIIIID, § 6(b)(1), (2) and (5).

ON THE THIRD CAUSE OF ACTION AS TO ALL DEFENDANTS

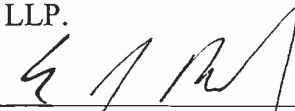
For a temporary restraining order, and preliminary and permanent injunction (a) enjoining Defendants from transferring funds from the Enterprise fund to Burbank’s general fund and (b) ordering Defendants to restore to the Enterprise Fund all previously-transferred funds.

ON ALL CAUSES OF ACTION AS TO ALL RESPONDENTS / DEFENDANTS

- 1. For attorney’s fees and costs, including those recoverable pursuant to California Code of Civil Procedure § 1021.5; and
- 2. For such other relief as the Court deems necessary and proper.

DATED: September 26, 2013

KRAUSE, KALFAYAN, BENINK, & SLAVENS, LLP.



Eric J. Benink Esq.
Attorneys for Petitioner / Plaintiff

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VERIFICATION

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and know the contents thereof. The matters stated therein are true and correct of my own knowledge and belief.

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

Executed on September 26, 2013 in Burbank, CA.



Christopher Matthew Spencer
Petitioner / Plaintiff