STATE OF MICHIGAN

OAKLAND COUNTY CIRCUIT COURT

DANIEL BRUNET,
individually and as representative of a class of similarly-situated persons and entities,

Plaintiff,

v.

CITY OF ROCHESTER HILLS,
a municipal corporation,

Defendant.

Case No. 18-164764-CZ
Hon. Shalina Kumar

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PLAINTIFF'S SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiff Daniel Brunet (hereinafter, "Plaintiff"), by his attorneys, Kickham Hanley PLLC and Olson PLLC, individually and on behalf of a class of similarly situated class members, states the following for his Second Amended Class Action Complaint against the Defendant City of Rochester Hills (the "City"):

INTRODUCTION

1. This is a class action challenging the water rates (the "Water Rates") and the sewage disposal rates (the "Sewer Rates") (collectively, the "Rates") imposed by the City of Rochester Hills (the "City") on citizens who draw water from City's water supply system and who use the City's sewer system. Plaintiff challenges two separate cost components included in the Rates – (a) a "Fire Service Charge," and (b) a "Reserve Charge," both of which are described in detail below. Plaintiff contends that these practices result in unlawful overcharges (the "Overcharges") to the City's water and sewer customers

JURISDICTION AND VENUE

2. Plaintiff is a water and sewer customer of the City, has paid the Charges at issue, and seeks to act as class representative for all similarly situated persons.

3. Defendant City is a municipality located in Oakland County, Michigan.

4. Venue and Jurisdiction are proper with this Court because all parties are present here and the actions which give rise to Plaintiff's claims occurred in this County.

GENERAL ALLEGATIONS CONCERNING THE FIRE SERVICE CHARGES

5. The City maintains and operates a municipal water supply system. Such systems have two distinct functions: (1) to supply treated water for the personal use of a municipality's inhabitants (the "Water Supply Function") and (2) to provide capacity and flow for fire protection through public hydrants (the "Fire Protection Function."). Both Functions cost money.

6. The Water Supply Function of the City's system admittedly confers a unique benefit on the Township's water rate payers. The Fire Protection Function, however, confers a benefit upon the general public and not only upon persons who purchase treated water from the Township.

7. The City includes an illegal fire service charge (the "Fire Service Charge") in the retail water rates (the "Water Rates") imposed by the City on citizens who draw water from the City's water

supply system. The City has systematically garnered millions of dollars from its water customers that it has used not to cover the actual expenses of providing treated water for consumption to those customers, but rather to fund the City's general governmental obligations to provide fire protection services to the general public through its water supply system.

8. The City establishes Water Rates from time to time through enacted ordinances. *See* City Ordinance Section 102-62. The City maintains a Water and Sewer Enterprise Fund (the "Water and Sewer Fund") and prepares financial statements for that Fund. Revenues derived from the Water Rates are deposited into the Water and Sewer Fund.

9. Public fire protection service is essentially a standby service that the water utility makes available on demand. Although most fire hydrants are rarely used, a water utility must be ready to provide adequate water quantities and pressures at all times throughout the distribution system.

10. The costs associated with maintaining the supply, treatment, pumping, storage and distribution capacity for fire protection includes a portion of the operating and maintenance costs and capital costs invested in facilities that are sized larger than necessary for non-firefighting purposes. Public fire protection costs also include the expenses associated with the installation, repair and maintenance of fire hydrants. The City has over 4800 fire hydrants in its jurisdiction.

11. The provision of public fire protection services is a governmental function which confers a benefit upon the general public, and not merely the City's water and sewer customers, and therefore cannot be financed through Water Rates.

12. In recognition of the fact that the Fire Protection Function confers a public benefit, the Township imposed upon itself the obligation to pay the costs associated with the Fire Protection Function and prohibited itself from imposing those costs on the City's water customers. In this regard, City Ordinance Section 102-124 provides in relevant part as follows:

Sec. 102-124. - Service to city.

...

(b) *Fire service fee.* As a fire service fee for providing a water system with extra capacity available for fighting fires and protecting property in the city, the city shall be charged based on a base-extra capacity approach attributing to fire protection the difference between total system capacity and capacity required by other customer classes. The fire service fee shall be reviewed and adjusted annually to reflect actual versus budgeted revenue requirement for the water fund for the previous year.

(c) *Quarterly billing.* Charges against the City shall be payable in quarterly installments from the current city's fire fund or from the proceeds of taxes which the city, within constitutional limitations, is authorized and required to levy in an amount sufficient for this purpose.

13. In violation of Ordinance Section 102-124, the City does not pay the Water and Sewer Fund for public fire protection services. Instead, the City includes the costs it incurs for public fire protection as a component of the Rates it charges to its water customers. Worse, the amount of the Fire Service Charge is based upon the volume of treated water each user draws from the tap, and has **no** relationship to any actual use of the Fire Protection Function of the water system.

14. The City incorporated the above Fire Service Charge into the Rates and therefore the members of the class paid the Charge when they paid their water bill. Plaintiff has received water service from the City and paid the Water Rates imposed by the City. Plaintiff is required by Michigan law, City Ordinances, and other public health laws and regulations to utilize the City's Water Supply System where that system is available.

15. In addition to violating the City's own ordinances, the Fire Service Charge is precisely the types of exaction the Michigan Supreme Court found constitutes an unlawful tax in the seminal case of *Bolt v. City of Lansing*, 459 Mich. 152, 587 N.W.2d 264 (1998). The Fire Service Charge is not a legitimate user fee but rather constitutes an unlawful tax under the *Bolt* decision; it is motivated by a revenue-raising and not a regulatory purpose because the amount charged to Plaintiff and the Class is grossly disproportionate to the City's actual costs of providing the purported benefits for which the Fire Service Charge is purportedly imposed, and payment of the Fire Service Charge is not voluntary.

As a tax, the Fire Service Charge violates MCL 141.91, which prohibits the City from imposing any taxes, other than ad valorem property taxes, unless those taxes were being imposed by the City on January 1, 1964. The Fire Service Charge, although a tax, is not an ad valorem property tax and was not being imposed by the City on January 1, 1964.

16. The Fire Service Charge also is arbitrary, capricious and unreasonable, and has been imposed in violation of state statutes, and common law rate-making principles. Therefore, the Fire Service Charge is invalid even if it does not constitute an unlawful tax.

GENERAL ALLEGATIONS ABOUT THE RESERVE CHARGE

17. Municipal water and sewer utilities enjoy an actual monopoly. They provide essential services to their inhabitants with no competition. Customers have no alternative. Residents whose homes and businesses are serviced by the City's water and sewer lines are required to hook up to those facilities. As a result, people who want to use their showers, sinks and toilets must pay the City for that "privilege."

18. The City is allowed its monopoly, but various state laws governing water and sewer rates place clear and reasonable limits on the City's right to charge for the service. The trade-off is that a municipal utility is required to set Rates at a level that recovers no more than its actual "cost of service." The City is not Apple Inc., tasked with maximizing the profits for its shareholders. Instead, the City is required to impose Rates that are designed to pay for the current expenses associated with its water and sewer function, and no more. Unfortunately, the City has disregarded this fundamental principle of municipal rate-making, to the detriment of its citizens.

19. Since at least 2012, the City has set its Rates at a level far in excess of the rates that were necessary to finance the actual costs of providing water and sewage disposal services and which were intended to generate millions of dollars of additional, unnecessary cash reserves (the "Reserve Charge"). The Rates during this period were established in contravention of established water and

sewer rate-setting methodologies, and resulted in the creation of cash reserves far in excess of those necessary to support the City's water and sewer function. Indeed, between January 1, 2012 and December 31, 2017, the City increased its unrestricted cash and investments in the Water and Sewer Fund from an already excessive $27 million to almost $43 million through its imposition of the Reserve Charge.

20. By no later than 2013, the City concluded that the cash balances in the W&S Fund were more than sufficient. Nonetheless, the City intentionally planned to continue to accumulate cash reserves in the future without any plan in place for the use of those additional reserves. Specifically, the City determined that, as of December 31, 2012, the City's "water division" had $8.2 million in reserves when it only needed $5.6 million. *See* CRH-0004705. Similarly, the City determined that, as of December 31, 2012, the City's "sewer division" had $6.1 million in reserves when it only needed $4.1 million. *See* CRH-0004708.

21. Instead of reducing its Rates going forward to reflect the past overcharges, the City adopted a plan in May 2013 to continue imposing unduly-high Rates in order to drastically **increase** the cash reserves by 2019. *See* CRH-0004719. The City's planning document indicates that the City had about $21 million in cash reserves for capital projects at that point and that the City intended to increase that fund balance to nearly $40 million by 2019. *Id.* Notably the City planned to increase the fund balance by that drastic amount even **after** paying for all of the capital improvements financed through cash during that period.

22. Fast forward to the spring of 2018. The City has more than achieved its improper goal. The City's Water and Sewer Fund cash balance was $43 million (as of the end of 2017). Internally, the City splits the Water and Sewer Fund cash balance between the "Water and Sewer Operating Fund" and the "Water and Sewer Capital Fund." The City's financial statements, however, report only a single fund.

23. In May 2018, the City reported that the Water and Sewer Capital Fund had $30.7 million. *See* CRH-0007600. The City admitted that up until that time, the City had "no policy" concerning the target balance for that Fund. *Id.* The City proposed a "Target Balance Policy" for the Fund of 15% of accumulated depreciation of the Water and Sewer capital assets.

24. Under the new policy, the City determined that it should have no more than $14.94 million in the Capital Fund. *Id.* With over $30.7 million in the Fund at that time, the City has conceded that it has almost $16 million more than it needs, and therefore the City has overcharged its water and sewer customers by at least that amount. Remarkably, that $16 million corresponds almost exactly to the increase in cash in the Water and Sewer Fund between January 1, 2012 and December 31, 2017.

25. The excessive Reserves, almost $16 million more than the City itself admits it needs, render the City's Rates arbitrary, capricious and unreasonable.

26. By virtue of the Reserve Charge described above, the City has accumulated cash reserves in the Water and Sewer Fund far beyond those necessary to ensure the continued provision of water and sewage disposal service to its residents.

27. Under established water and sewer rate-making methodologies and by the City's own belated determination of reasonableness, the $26 million dollars of cash the City had as of January 1, 2012 was already greatly more than a lawfully sufficient reserve. Accordingly, there was no justification for including the Reserve Charge in the subsequent fiscal years in order to increase the amount of those reserves.

28. Because the Reserve Charge was included in the Water and Sewer Rates imposed by the City, each class member paid the Reserve Charge when they paid their water and sewer bill.

29. The Reserve Charges are unlawful because (a) they are arbitrary, capricious and/or unreasonable under common law; (b) they constitute "taxes" which violate the the Prohibited Taxes by Cities and Villages Act, MCL 141.91; and (c) they violate the City's own Ordinance, Sec. 33-265.

THE CHARGES ARE TAXES

30. Both of the Charges are taxes, which have been imposed in violation of MCL 141.91.

31. In *Bolt v. City of Lansing*, 459 Mich. 159 (1998), the Court identified "three primary criteria to be considered when distinguishing between a fee and a tax" (459 Mich. at p. 161):

1. A user fee must serve a regulatory purpose rather than a revenue-raising purpose;
2. User fees must be proportionate to the necessary costs of the service; and
3. Payment of the fee is voluntary. [459 Mich. at pp. 161-62]

32. The Charges serve a revenue-raising purpose because, among other reasons, the Fire Service Charges are being used to finance the City's general governmental obligations unrelated to providing treated water for consumption by Plaintiff and the Class and the Reserve Charges allow the City to accumulate cash reserves far in excess of those necessary to support the water and sewer functions of the City.

33. The Charges are not proportionate to the necessary costs of the use of the City's water supply and sanitary sewer services by Plaintiff and the Class.

34. Payment of the Charges is not voluntary but at the very least is effectively compulsory. The City requires or effectively requires all dwellings in the City to be connected to the public water supply and sewage disposal system, where available, and, by virtue of that connection, to pay the City's charges for water and sewer services.

35. Pursuant to the City's ordinances, charges for water and/or sewer services shall be a lien on the premises served. *See* City Ordinance Section 102-92 ("The charges for water and/or sewer services and debt service charges which are, under section 21 of Public Act No. 94 of 1933 (MCL 141.121), made a lien on all premises served thereby....").

CLASS ALLEGATIONS

36. Plaintiff brings this action as a class action, pursuant to MCR 3.501, individually and on behalf of a proposed class consisting of all persons or entities who/which have paid the City for water service during the relevant class periods.

37. The members of the Class are so numerous that joinder of all members is impracticable.

38. Plaintiff's claims are typical of the claims of members of the Class. Plaintiff is a member of the Class he seeks to represent because Plaintiff was injured by the same wrongful conduct that is common to and injured all other members of the Class.

39. The City has acted wrongfully in the same basic manner as to the entire class.

40. There are questions of law and fact common to all Class Members that predominate over any questions, which, if they exist, affect only individual Class Members, including:

a. whether the Charges imposed by the City are taxes;

b. whether the Charges are arbitrary, capricious and/or unreasonable;

c. whether the Charges violated MCL 141.91;

d. whether the Fire Service Charge violates MCL 123.141;

e. whether the Fire Service Charge violates MCL 141.118; and

f. whether by virtue of including the Charges in the Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect.

41. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has no interests antagonistic to those of the Class. Plaintiff is committed to the vigorous prosecution of this action, and has retained competent and experienced counsel to prosecute this action.

42. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The prosecution of

separate actions would create a risk of inconsistent or varying adjudications. Furthermore, the prosecution of separate actions would substantially impair and impede the ability of individual class members to protect their interests. In addition, since individual refunds may be relatively small for most members of the class, the burden and expense of prosecuting litigation of this nature makes it unlikely that members of the class would prosecute individual actions. Plaintiff anticipates no difficulty in the management of this action as a class action.

COUNT I
ASSUMPSIT FOR MONEY HAD AND RECEIVED –
VIOLATION OF THE PROHIBITED TAXES BY
CITIES AND VILLAGES ACT, MCL 141.91

43. Plaintiff incorporates each of the preceding allegations as if fully set forth herein.

44. The Prohibited Taxes by Cities and Villages Act, MCL 141.91, provides: "Except as otherwise provided by law and notwithstanding any provision of its charter, a city or village shall not impose, levy or collect a tax, other than an ad valorem property tax, on any subject of taxation, unless the tax was being imposed by the city or village on January 1, 1964."

45. The City did not impose either of the Charges on or before January 1, 1964.

46. Although the Charges are taxes, they are not ad valorem property taxes.

47. Because the Charges are taxes that were not being imposed on January 1, 1964, they are unlawful under MCL 141.91.

48. As a direct and proximate result of the City's unlawful and improper conduct in collecting the Charges, the City has collected millions of dollars to which it is not entitled.

49. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

50. By virtue of the City's imposition of the Charges, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiff is entitled to maintain an

equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

51. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Charges, Plaintiff and the Class have conferred a benefit upon on the City.

52. Under equitable principles, the City should be required to disgorge the revenues attributable to the Charges imposed or collected by the City during the six-year period prior to the filing of this action and during the time this action is pending and refund the Charges to Plaintiff and the Class.

COUNT II
UNJUST ENRICHMENT –
VIOLATION OF THE PROHIBITED TAXES BY CITIES AND VILLAGES ACT, MCL 141.91

53. Plaintiff incorporates each of the preceding allegations as if fully set forth herein.

54. The Prohibited Taxes by Cities and Villages Act, MCL 141.91, provides: "Except as otherwise provided by law and notwithstanding any provision of its charter, a city or village shall not impose, levy or collect a tax, other than an ad valorem property tax, on any subject of taxation, unless the tax was being imposed by the city or village on January 1, 1964."

55. The City did not impose either of the Charges on or before January 1, 1964.

56. Although the Charges are taxes, they are not ad valorem property taxes.

57. Because the Charges are taxes that were not being imposed on January 1, 1964, they are unlawful under MCL 141.91.

58. As a direct and proximate result of the City's unlawful and improper conduct in collecting the Charges, the City has collected millions of dollars to which it is not entitled.

59. By paying the Charges, Plaintiff and the Class have conferred a benefit upon the City and it would be inequitable for the City to retain that benefit.

60. Under equitable principles, the City should be required to disgorge the revenues attributable to the Charges imposed or collected by the City during the six-year period prior to the filing of this action and during the time this action is pending and refund the Charges to Plaintiff and the Class.

COUNT III
ASSUMPSIT/MONEY HAD AND RECEIVED
UNREASONABLE WATER AND SEWER RATES

61. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

62. Even if the Charges are not taxes, the City's Rates must still be reasonable. *Mapleview Estates v. Township of Brown Township*, 258 Mich. App. 412 (2003).

63. By virtue of the City's inclusion of the Charges in the Rates, the Rates are arbitrary, capricious, and unreasonable. *See, e.g., Trahey v. Inkster*, 2015 Mich. App. Lexis 1609 (August 18, 2015) (observing that "clear evidence of illegal or improper expenses included in a municipal utility's rates" is sufficient for a court to conclude that a utility rate is unreasonable).

64. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

65. By virtue of the City's inclusion of the Charges in the Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiff is entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

66. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Charges, Plaintiff and the Class have conferred a benefit upon on the City.

67. Under equitable principles, the City should be required to disgorge the revenues attributable to the Charges imposed or collected by the City during the six-year period prior to the

filing of this action and during the time this action is pending and refund the Charges to Plaintiff and the Class.

COUNT IV
UNJUST ENRICHMENT
UNREASONABLE WATER AND SEWER RATES

68. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

69. Even if the Charges are not taxes, the City's Rates must still be reasonable. *Mapleview Estates v. Township of Brown Township*, 258 Mich. App. 412 (2003).

70. By virtue of the City's inclusion of the Charges in the Rates, the City's Rates are arbitrary, capricious, and unreasonable. *See, e.g., Trahey v. Inkster*, 2015 Mich. App. Lexis 1609 (August 18, 2015) (observing that "clear evidence of illegal or improper expenses included in a municipal utility's rates" is sufficient for a court to conclude that a utility rate is unreasonable.

71. The City has collected amounts in excess of the amounts it was legally entitled to collect.

72. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Charges, Plaintiff and the Class have conferred a benefit upon the City and it would be inequitable for the City to retain that benefit.

73. Under equitable principles, the City should be required to disgorge the revenues attributable to the Charges imposed or collected by the City during the six-year period prior to the filing of this action and during the time this action is pending and refund the Charges to Plaintiffs and the Class.

COUNT V
ASSUMPSIT/MONEY HAD AND RECEIVED – VIOLATION OF MCL 141.118

74. Plaintiff incorporates each of its preceding allegations as if fully set forth herein.

75. The City is subject to the requirements of the Revenue Bond Act, including MCL 141.118.

76. The Revenue Bond Act is clear in its prohibition that "free service shall not be furnished by a public improvement to a person, firm, or corporation, public or private, or to a public agency or instrumentality." MCL 141.118(1). Under MCL 141.118(1), "[t]he reasonable cost and value of any service rendered to a public corporation, including the borrower [the City] by a public improvement shall be charged against the public corporation and shall be paid for as the service accrues from the public corporation's current funds or from the proceeds of taxes which the public corporation, within constitutional limitations, is hereby authorized and required to levy in an amount sufficient for that purpose, or both, ..."

77. The "free service" prohibition set forth in MCL 141.118 applies to public fire protection services. *See Farmington Township v. Warrenville State Bank*, 185 F.2d 260, (6th Cir. 1950) (holding that MCL 141.118 required a township to pay the costs associated with public fire hydrants and recognizing that "[f]ire protection is a service which accrues from day to day to the public that is thereby safe-guarded").

78. The City has violated MCL 141.118 because it does not impose any public fire protection charge upon itself, but instead, imposes the cost of public fire protection upon its water customers through the Fire Service Charge.

79. The City is receiving a free service that is prohibited by MCL 141.118 by imposing its public fire protection costs upon its water customers.

80. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

81. By virtue of the City's inclusion of the Fire Service Charge in the Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiff is entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

82. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Fire Service Charge, Plaintiff and the Class have conferred a benefit upon on the City.

83. Under equitable principles, the City should be required to disgorge the revenues attributable to the Fire Service Charges imposed or collected by the City during the six year period prior to the filing of this action and during the time this action is pending and refund the Fire Service Charges to Plaintiffs and the Class and, pursuant to MCL 141.118, should be enjoined to impose a charge upon itself for public fire protection services provided by the City's Water and Sewer Fund.

COUNT VI
UNJUST ENRICHMENT
VIOLATION OF MCL 141.118

84. Plaintiff incorporates each of its preceding allegations as if fully set forth herein.

85. The City is subject to the requirements of the Revenue Bond Act, including MCL 141.118.

86. The Revenue Bond Act is clear in its prohibition that "free service shall not be furnished by a public improvement to a person, firm, or corporation, public or private, or to a public agency or instrumentality." MCL 141.118(1). Under MCL 141.118(1), "[t]he reasonable cost and value of any service rendered to a public corporation, including the borrower [the City] by a public improvement shall be charged against the public corporation and shall be paid for as the service accrues from the public corporation's current funds or from the proceeds of taxes which the public corporation, within constitutional limitations, is hereby authorized and required to levy in an amount sufficient for that purpose, or both, ..."

87. The "free service" prohibition set forth in MCL 141.118 applies to public fire protection services. *See Farmington Township v. Warrenville State Bank*, 185 F.2d 260, (6th Cir. 1950) (holding that MCL 141.118 required a township to pay the costs associated with public fire hydrants

and recognizing that "[f]ire protection is a service which accrues from day to day to the public that is thereby safe-guarded").

88. The City has violated MCL 141.118 because it does not impose any public fire protection charge upon itself, but instead, imposes the cost of public fire protection upon its water customers through the Fire Services Fee.

89. The City is receiving a free service that is prohibited by MCL 141.118 by imposing its public fire protection costs upon its water customers.

90. By virtue of the City's inclusion of the Fire Service Charge in the Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect.

91. By paying the Fire Service Charge, Plaintiff and the Class have conferred a benefit upon on the City.

92. Under equitable principles, the City should be required to disgorge the revenues attributable to the Fire Service Charges imposed or collected by the City during the six year period prior to the filing of this action and during the time this action is pending and refund the Fire Service Charges to Plaintiffs and the Class, and, pursuant to MCL 141.118, should be enjoined to impose a charge upon itself for public fire protection services provided by the City's Water and Sewer Fund.

COUNT VII
ASSUMPSIT/MONEY HAD AND RECEIVED – VIOLATION OF MCL 123.141

93. Plaintiff incorporates each of the preceding allegations as if fully set forth herein.

94. During the class period, the City purchased water directly or indirectly from the City of Detroit and the Great Lakes Water Authority ("GLWA").[1] The City of Detroit and GLWA are

[1] Effective in 2016, the Great Lakes Water Authority ("GLWA"), pursuant to agreements with the City of Detroit, became the wholesale supplier of water to the City. Notwithstanding that change, the City's public water supply still is provided by DWSD facilities and the DWSD water plant.

authorized to supply wholesale water to local government units in Southeastern Michigan, and derive that authority from MCL 123.141(1). At some point during the class period, the City became a wholesale customer of the North Oakland County Water Authority ("NOCWA"), which authority obtains a water supply from the City of Detroit/GLWA.

95. Local government units which purchase water from the City of Detroit/GLWA establish their own Water Rates and directly bill end users. However, Michigan state law prohibits a municipality which purchases its water from the City of Detroit/GLWA or from an authority which purchases its water from the City of Detroit/GLWA and which supplies that water to its residents from charging a retail rate that exceeds the municipality's "actual cost of providing the service."

96. In this regard, MCL 123.141 provides that "[t]he retail rate charged to the inhabitants of a city, village, township or authority which is a contractual customer as provided by subsection (2) shall not exceed the actual cost of providing the service." MCL 123.141(3).

97. The City is bound by the provisions of MCL 123.141(3).

98. The City has violated MCL 123.141(3) by including the Fire Service Charge in the rates, and thus, selling water to Plaintiff and the Class at a retail rate in excess of the City's actual cost of providing water service.

99. MCL 123.141(3) was enacted for the purpose of protecting retail consumers of water, like Plaintiff and the Class, from being overcharged for water service.

100. Plaintiff and the Class have been injured as a direct and proximate result of the City's violation of MCL 123.141(3) because they have paid or incurred amounts in excess of the amounts they should have paid for water service had the City established Water Rates that did not exceed the City's actual costs of providing water service.

101. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

102. By virtue of the City's inclusion of the Fire Service Charge in the Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiff is entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

103. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Fire Service Charge, Plaintiff and the Class have conferred a benefit upon on the City.

104. Plaintiff and the Class are entitled to receive a refund corresponding to the total Fire Service Charges imposed or collected by the City during the six-year period prior to the filing of this action and during the pendency of this action.

105. Under equitable principles, the City should be required to disgorge the revenues attributable to the Fire Service Charges imposed or collected by the City during the six-year period prior to the filing of this action and during the pendency of this action and refund the Fire Service Charges to Plaintiff and the Class.

COUNT VIII
UNJUST ENRICHMENT
VIOLATION OF MCL 123.141

106. Plaintiff incorporates each of the preceding allegations as if fully set forth herein.

107. During the class period, the City purchased water directly or indirectly from the City of Detroit and the GLWA. The City of Detroit and GLWA are authorized to supply wholesale water to local government units in Southeast Michigan, and derive that authority from MCL 123.141(1). At some point during the class period, the City became a wholesale customer of the North Oakland County Water Authority ("NOCWA"), which authority obtains a water supply from the City of Detroit/GLWA.

108. Local government units which purchase water from the City of Detroit/GLWA establish their own Water Rates and directly bill end users. However, Michigan state law prohibits a municipality which purchases its water from the City of Detroit/GLWA or from an authority which purchases its water from the City of Detroit/GLWA and which supplies that water to its residents from charging a retail rate that exceeds the municipality's "actual cost of providing the service."

109. In this regard, MCL 123.141 provides that "[t]he retail rate charged to the inhabitants of a city, village, township or authority which is a contractual customer as provided by subsection (2) shall not exceed the actual cost of providing the service." MCL 123.141(3).

110. The City is bound by the provisions of MCL 123.141(3).

111. The City has violated MCL 123.141(3) by including the Fire Service Charge in the rates, and thus, selling water to Plaintiff and the Class at a retail rate in excess of the City's actual cost of providing water service.

112. MCL 123.141(3) was enacted for the purpose of protecting retail consumers of water, like Plaintiff and the Class, from being overcharged for water service.

113. Plaintiff and the Class have been injured as a direct and proximate result of the City's violation of MCL 123.141(3) because they have paid or incurred amounts in excess of the amounts they should have paid for water service had the City established Water Rates that did not exceed the City's actual costs of providing water service.

114. By virtue of the City's inclusion of the Fire Service Charge in the Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect.

115. By paying the Fire Service Charge, Plaintiff and the Class have conferred a benefit upon on the City.

116. Plaintiff and the Class are entitled to receive a refund corresponding to the total amount of Fire Service Charges imposed or collected by the City during the six-year period prior to the filing of this action and during the pendency of this action.

117. Under equitable principles, the City should be required to disgorge the revenues attributable to the Fire Service Charges imposed or collected by the City during the six-year period prior to the filing of this action and during the time this action is pending and refund the Fire Service Charges to Plaintiff and the Class.

COUNT IX
ASSUMPSIT/MONEY HAD AND RECEIVED
VIOLATION OF CITY ORDINANCE § 102-124

118. City Ordinance § 102-124 provides that "[a] a fire service fee for providing a water system with extra capacity available for fighting fires and protecting property in the city, the city shall be charged based on a base-extra capacity approach attributing to fire protection the difference between total system capacity and capacity required by other customer classes." The Ordinance requires the City to pay the fire service fee out of the City's Fire Fund or through general tax revenues.

119. The City is legally required to comply with its own Ordinances.

120. The City does not pay to the Water and Sewer Fund the amounts required by Ordinance Section 102-124 in the manner required by the Ordinance, but instead recovers those costs through the Fire Service Charge included in the Water Rates. The City therefore violates the Ordinance.

121. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

122. By recovering the cost of the Fire Protection Function of the water supply system through Fire Service Charge included in the Rates, City has collected amounts in excess of the amounts

it was legally entitled to collect. Therefore, Plaintiff is entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

123. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Fire Service Charge, Plaintiff and the Class have conferred a benefit upon on the City.

124. Under equitable principles, the City should be required to disgorge the revenues attributable to the Fire Service Charges imposed or collected by the City during the six year period prior to the filing of this action and during the time this action is pending and refund the Fire Service Charges to Plaintiff and the Class.

COUNT X
UNJUST ENRICHMENT
VIOLATION OF CITY ORDINANCE § 102-124

125. City Ordinance § 102-124 provides that "[a] a fire service fee for providing a water system with extra capacity available for fighting fires and protecting property in the city, the city shall be charged based on a base-extra capacity approach attributing to fire protection the difference between total system capacity and capacity required by other customer classes." The Ordinance requires the City to pay the fire service fee out of the City's Fire Fund or through general tax revenues.

126. The City is legally required to comply with its own Ordinances.

127. The City does not pay to the Water and Sewer Fund the amounts required by Ordinance Section 102-124 in the manner required by the Ordinance, but instead recovers those costs through the Fire Service Charge included in the Water Rates. The City therefore violates the Ordinance.

128. By recovering the cost of the Fire Protection Function of the water supply system through Fire Service Charge included in the Rates, City has collected amounts in excess of the amounts it was legally entitled to collect.

129. By paying the Fire Service Charge, Plaintiff and the Class have conferred a benefit upon on the City.

130. Under equitable principles, the City should be required to disgorge the revenues attributable to the Fire Service Charges imposed or collected by the City during the six-year period prior to the filing of this action and during the time this action is pending and refund the Fire Service Charges to Plaintiff and the Class.

PRAYER FOR RELIEF

WHEREFORE Plaintiff requests that the Court grant the following relief:

A. Certify this action to be a proper class action with Plaintiff certified as the Class Representative and Kickham Hanley PLLC designated as Class Counsel;

B. With respect to Counts I through X, define the Class to include all persons or entities which have paid the City for Water and/or Sewer Service at any time in the six years preceding the filing of this lawsuit or which pay the City for Water and/or Sewer Service during the pendency of this action;

C. Enter judgment in favor of Plaintiff and the Class and against the City, and order and direct the City to disgorge and refund all Charges collected during the class period and to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of Charges to which Plaintiff and the Class are entitled;

D. Appoint a Trustee to seize, manage and distribute in an orderly manner the common fund thus established;

E. Find and declare that the Charges violates the MCL 141.91, are unlawful and unreasonable, and permanently enjoin the City from imposing or collecting the Charges;

F. Award Plaintiff and the Class the costs and expenses incurred in this action, including reasonable attorneys', accountants', and experts' fees; and

G. Grant any other appropriate relief.

KICKHAM HANLEY PLLC

/s/ Gregory D. Hanley
Gregory D. Hanley (P51204)
Jamie Warrow (P61521)
Edward F. Kickham Jr. (P70332)
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Counsel for Plaintiff and the Class

Date: January 2, 2019

/s/ Christopher S. Olson
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Co-Counsel for Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2019, I electronically filed the foregoing pleadings with the Clerk of the Court using the court's electronic filing system.

/s/ Kim Plets
Kim Plets

Kim Plets

From: truefilingadmin@truefiling.com
Sent: Wednesday, January 02, 2019 2:16 PM
To: Kim Plets
Subject: E-NOTICE: Servicing Notification for 2018-164764-CZ

The document listed below has been filed and is being electronically served to you for case **2018-164764-CZ** for **OAKLAND COUNTY 6TH CIRCUIT COURT** by **Attorney Name Not Specified** from **OAKLAND COUNTY 6TH CIRCUIT COURT**.

- Document Title: CC - Complaint - 2018-164764-CZ - AMC - AMENDED COMPLAINT FILED - 1/2/2019 1:27:19 PM
- Case Number: 2018-164764-CZ
- Description: BRUNET,DANIEL,, VS. ROCHESTER HILLS CITY
- Link: Click to download document

The following people were electronically served this document.

- **Caroline Giordano**
- **John Staran**
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OAKLAND COUNTY 6TH CIRCUIT COURT

Kim Plets

From: info@truefiling.com
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Subject: Subject: MI Oakland County 6th Circuit Court - Document Filed - Case No. 2018-164764-CZ

The MI Oakland County 6th Circuit Court has **FILED** your document into Case No. 2018-164764-CZ, BRUNET,DANIEL,, vs. ROCHESTER HILLS CITY.

Filing Details

- Filing Name: Plaintiff's Second Amended Complaint
- Document Type: MISCELLANEOUS
- Filed: 1/2/2019 1:27 PM
- Filed By: Gregory Hanley (P51204)
- Link to view stamped document: Download

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MI Oakland County 6th Circuit Court

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The following filing in BRUNET,DANIEL,, vs. ROCHESTER HILLS CITY, No. 2018-164764-CZ has been updated by the MI Oakland County 6th Circuit Court:

Your filing (MISCELLANEOUS) has been received by the court. Tracking ID: 8722cd71-1c74-49b8-bfa3-1f081c564687

- Filing Name: Plaintiff's Second Amended Complaint
- Document Type: MISCELLANEOUS
- Submitted: 1/2/2019 1:27 PM
- Filed By: Gregory Hanley (P51204)

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MI Oakland County 6th Circuit Court

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Kim Plets

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The document filed into Case No. 2018-164764-CZ, BRUNET,DANIEL,, vs. ROCHESTER HILLS CITY has been **PAID**.

Filing Details

- Submitted: 1/2/2019 1:27 PM
- Document Type: MISCELLANEOUS
- Filing Name: Plaintiff's Second Amended Complaint
- Filed By: Gregory Hanley (P51204)
- Payment Amount: 0.00
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• John Staran (jstaran@hsc-law.com)
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• Kimberly Plets (kplets@kickhamhanley.com)
• Irene Dieters (idieters@hsc-law.com)
• Jamie Warrow (jwarrow@kickhamhanley.com)
• Edward Kickham (ekickhamjr@kickhamhanley.com)
• Christopher Olson (colson@olsonpllc.mygbiz.com)
• Katie Witkowski (witkowski@millercanfield.com)

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