**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION**

KATHRYN FARMER., Individually, and as Representative of a Class of Similarly Situated Persons and Entities,

Plaintiff,

v.

CITY OF CHICAGO, an Illinois Municipal Corporation,

Defendant.

Case No. 2021 CH 04583

Judge Allen Price Walker

Calendar No. 3



**DEFENDANT'S ANSWER & AFFIRMATIVE DEFENSES TO PLAINTIFF'S FOURTH AMENDED COMPLAINT**

The City of Chicago ("City") answers Plaintiff's Fourth Amended Complaint as follows:

## INTRODUCTION

1. This is an action challenging a variety of unlawful taxes and charges the City imposes and collects from citizens whose properties in the City receive water and sewer services from the City. The City foists these illegal exactions upon its water and sewer customers in the City in order to collect—and then divert—hundreds of millions of dollars to general municipal purposes having nothing to do with providing water and sewer services.

**Answer: The City admits this action was brought as a challenge to the City's water and sewer rates and taxes and admits that it charges for water and sewer services received in the City. The City denies this paragraph's remaining allegations.**

2. The City also exempts tens of thousands of water and sewer customers from payment of water and/or sewer charges, which forces the non-exempt customers to pay more to cover the City's costs of providing water and sewer services to the exempt customers.

**Answer: The City admits that, pursuant to ordinance, it exempts certain customers from some or all water and sewer charges. The City denies this paragraph's remaining allegations.**

3. The City's actions have resulted in massive overcharges to its citizens for these most essential municipal services.

**Answer: The City denies this paragraph's allegations.**

4. Under governing water and sewer rate-making principles, the City's ordinances, and common law, the City may not treat its proprietary water and sewer funds as piggy-banks that

finance the City's general governmental obligations. Simply put, the City is **required** to charge its water and sewer customers **only** for the water and sewer services and use the resulting revenues only for water and sewer purposes. *See* City Ordinance Section 3-12-010, City Ordinance Section 11-12-260.

**Answer: The City admits it sells water and sewer services and is subject to the City's ordinances and the common law. The City denies that it treats the water and sewer funds as "piggy banks to finance the City's general governmental obligations." The City admits that Chicago Municipal Code section 3-12-010 states that "The revenues of the sewer revenue fund shall be reserved and utilized exclusively for the operation, maintenance, rehabilitation or reconstruction of the sewer system of the City of Chicago." The City denies that it has used water and sewer revenues for any improper purposes and denies this paragraph's remaining allegations.**

5. Each year, the City purports to determine how much it must spend to provide water and sewer service to residents and businesses. This is the City's water and sewer "Revenue Requirement."

**Answer: The City admits that as part of its annual budgeting process every City department prepares estimated operating and capital costs for upcoming year(s). The City denies this paragraph's remaining allegations.**

6. The City uses this Revenue Requirement as a starting point for setting its Water and Sewer Rates (hereinafter, sometimes simply referred to as the "Rates" or the "Charges").

**Answer: The City denies this paragraph's allegations.**

7. In this case, Plaintiff alleges that the City has improperly and unlawfully set its Revenue Requirement too high because the City is (1) collecting more money than it needs to provide water and sewer service (i.e., more than its actual Revenue Requirement), and (2) is collecting that money from too few people, which necessarily overburdens the people who pay for the benefit of the people who do not pay, without any legal justification for determining who pays more and why.

**Answer: The City admits that Plaintiff has alleged the City has improperly and unlawfully set its Revenue Requirement too high. The City denies this paragraph's remaining allegations.**

8. In FY 2022 alone, the City overcharged its paying water customers by at least $96 million by both grossly inflating the Revenue Requirement and recovering the Revenue Requirement from too few customers. *See* ¶¶ 59 through 62, *infra*. The amount of this overcharge that the City diverted to non-water related purposes exceeds $76 million. There were similar overcharges included in the City's Sewer Rates.

**Answer: The City denies this paragraph's allegations.**

9. A simplified analogy demonstrates the City's wrongdoing.

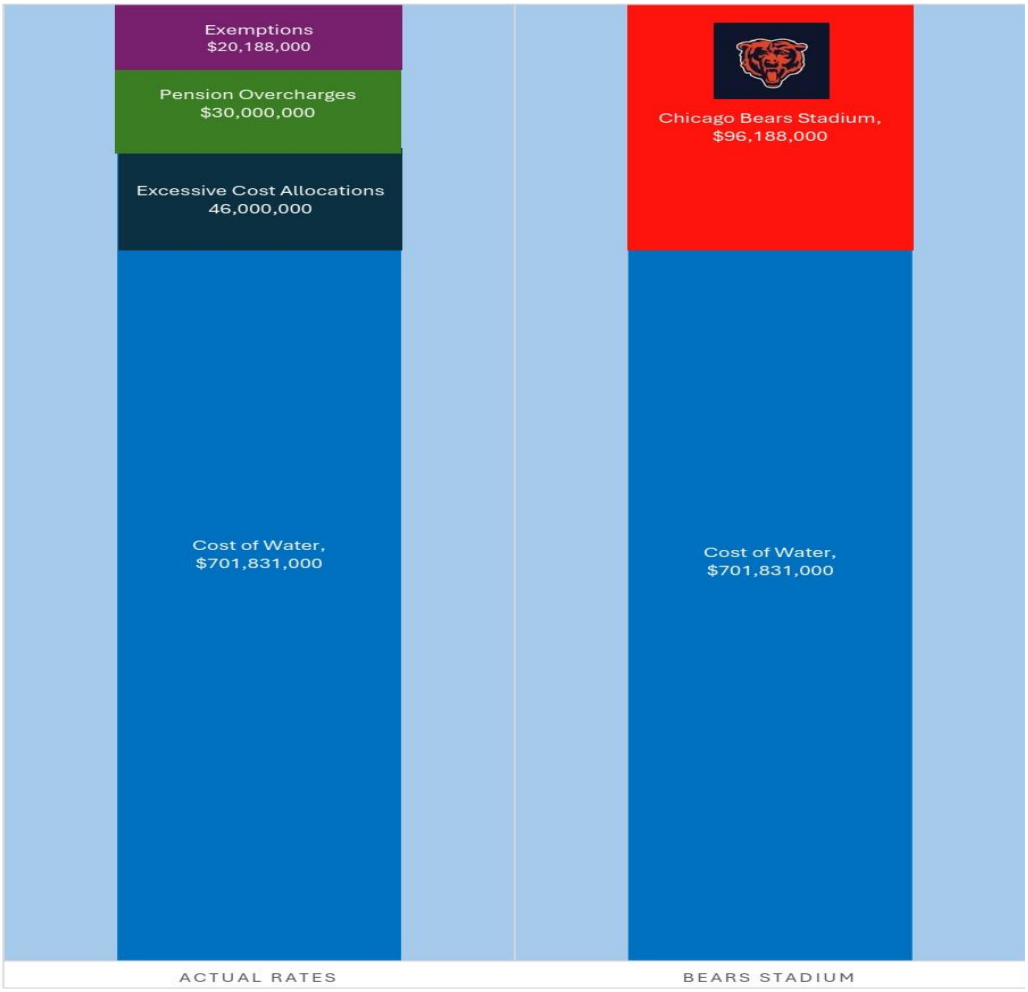
a. Imagine if the City decided to issue bonds to pay for a new stadium for the Chicago Bears at a cost of $76 million (interest and principal payments) per year.

b. Instead of using taxes or other revenue sources to pay the debt services on the bonds, the City directly allocated the $76 million annual cost to its Water Rates, thus forcing its water customers to fully fund the $76 million in annual costs to build the new stadium (a cost wholly unrelated to the City's water service costs). That would be an absurd abuse of power.

c. It is, however, no different from the circumstances facing Plaintiff and the Class. The overcharges Plaintiff complains about in this case are just as arbitrary, unreasonable, and unlawful as forcing Plaintiff and the Class to pay for a new football stadium by incorporating the cost into the Water Rates.

**Answer: Subsections a. and b. of this paragraph contain a hypothetical situation to which no response is required. To the extent a response is required, City denies these allegations and denies this paragraph's remaining allegations.**

10. Consider the following bar graph. The blue portion of each bar represents the total cost the City actually incurs to provide water service. The other portions represent the additional cost components the City includes in its water rates, which have nothing to do with providing water service:




**Answer: This paragraph contemplates a hypothetical situation, to which no response is required. To the extent a response is required, denies this paragraph's allegations.**

11. By way of another example, if the City needs $100 to pay for water, but it then adds a random $10 expense, that increases the per ratepayer cost by adding an arbitrary charge unrelated to water service. Similarly, if the City needs $100 to pay for water, but then decrees that 10% of the residents do not have to pay for that water, its decree necessarily increases the per-rate payer cost to those who do pay.

**Answer: This paragraph contemplates a hypothetical situation, to which no response is required. To the extent a response is required, the City denies this paragraph's allegations.**

12. The City knows what its actual Revenue Requirement for water service is at the time it sets its Rates each year**, yet it still implements Rates that overcharge its water and sewer customers in the methods described above**—first by incorporating costs unrelated to water and sewer service (in violation of its own ordinances and proper ratemaking practices) and second by arbitrarily reallocating these inflated rates so as to benefit certain water and sewer customers to the financial detriment of others, but nevertheless with an overall benefit to the City.

**Thus, the City's Water and Sewer Rates are unreasonable and excessive at the time they are set**, not merely in hindsight.

**Answer: The City denies this paragraph's allegations.**

13. The City is only able to implement and profit from these overcharges because of the unique status that municipal utilities enjoy in the State of Illinois, which allows them virtually unchecked power. Municipal utilities, like the City's Water and Sewer Department, enjoy completely unregulated monopolies over services that are essential to the health and welfare of the public. As the City informed prospective bond investors in 2023, "**[n]o regulation by any administrative agency applies to the Water System rates**." *See* Exhibit 1 hereto at p. 4 (emphasis added). Indeed, the City boasted in an April 2023 "Financial Update" that the City Council has "**unlimited home rule authority to raise rates**." *See* Exhibit 2 hereto at p. 13 (emphasis added).

**Answer: The City admits that the quoted language appears in the sources cited. The City denies this paragraph's remaining allegations. The City further denies the allegations in footnote 2 to this paragraph. The City is able to set water and sewer rates pursuant its home rule authority. Limitations as to the reasonableness of rates do not lessen or preempt home rule authority.**

14. Indeed, the City's water and sewer "customers" **must** buy their services and **must** pay the price set by the City's municipal monopoly. Customers have no realistic 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 *whatever price* the City requires for that "privilege." And if they don't "pay up" for these indispensable services, the City ultimately will take their house or business through a forced tax sale.

**Answer: The City admits that water service in the City is provided by the City's municipal water utility and that that Municipal Code of Chicago ("MCC") Section 18-29-701.2 states: "Every building in which plumbing fixtures are installed and every premises having drainage piping shall be connected to a public sewer, where available." The City further admits that customers are required to pay the rates for water and sewer service that are set by ordinance. The City denies this paragraph's remaining allegations.**

15. This compulsory and, from the City's perspective, extraordinarily lucrative financial relationship, is virtually unheard-of in the private sector. Indeed, outside of the municipal utility monopoly context, one would be hard-pressed to identify any sellers of goods and services that: (1) provide an essential good or service that their customers must have to survive, (2) have a customer base that is required to buy from them and cannot buy from another provider, (3) have the unfettered ability to charge the captive customers any price they determine, *and* (4) have a security interest in their customer's real property in order to ensure the full payment of the charges they unilaterally impose.

**Answer: The City admits that the City's waterworks system is the provider of water service to consumers of water in the City. The denies any implication that there is a "relationship"**

**that is "extraordinarily lucrative" and denies any implication that the City has "unfettered ability" to charge its customer any price or that it has an inherent "security interest" in its customers' real property. The City lacks knowledge or information sufficient to form a belief as to the truth this paragraph's remaining allegations. Therefore, the City neither admits nor denies this paragraph's remaining allegations.**

16. The Courts are the only line of defense for municipal utility customers. Plaintiff's challenge to the City's abuses of these awesome powers can be summarized as follows: **First**, Plaintiff challenges the "Water and Sewer Taxes" which are part of the "Water and Sewer Charges" imposed by the City. The City has extracted hundreds of millions of dollars from the payers of the Water and Sewer Taxes that it has used to finance the City's general governmental obligations unrelated to providing water and sewer services — namely, the funding of its general municipal pension obligations. Currently, the Water and Sewer Taxes imposed by the City exceed **$215 million** per year.

**Answer: The City admits Plaintiff has challenged the City's water and sewer taxes. The City admits payments collected since the taxes were implemented have funded the City's Municipal Employees Annuity and Benefit Fund, as required by ordinance. The City admits that for the most current full year (2024), the Water and Sewer Taxes collected were more than $215 million. The City denies this paragraph's remaining allegations.**

17. **Second**, independent of the Water and Sewer Taxes, the City's Water and Sewer Charges to Plaintiff and the Class have been unreasonably discriminatory because the City has illegally and arbitrarily exempted various types of similarly-situated water and sewer customers (owning or occupying tens of thousands of properties serviced by the City's water and sewer system) from their obligation to pay the City's Water and/or Sewer Charges (the "Exempt Customers"). This practice has resulted in dramatically higher Rates and Charges being assessed against Plaintiff and the Class (a/k/a the "Non-Exempt Customers"), who are not exempt from payment (the "Unjust Discrimination Claims" a/k/a the "Unreasonable Discrimination Claims"). Because of the Exemptions, Non-Exempt Customers pay over $50 million more per year for water and sewer services than they would pay in the absence of the Exemptions.

**Answer: The City denies this paragraph's allegations.**

18. **Third**, this action challenges the City's overcharges to Water and Sewer Customers and its improper transfer—without consideration—of tens of millions of dollars of revenues garnered from Water and Sewer Charges to the City's general corporate fund for general governmental use and to two of the City's pension funds to finance the City's obligations to those funds. The City accomplishes these overcharges and misappropriation of Water and Sewer Funds in at least two ways: (a) by grossly over-allocating the alleged indirect (but phantom) costs of other City departments to the Water and Sewer Fund (the "Excessive Cost Allocations"); and (b), by charging the Water & Sewer Funds tens of millions of dollars per year in additional phantom costs to allegedly cover the Water and Sewer Funds' proportionate share of the City's total annual contribution to the Municipal Employees' Annuity and Benefit Fund and the Laborers' and Retirement Board Annuity and Benefit Fund (the "Pension Overcharges").

**Answer: The City denies this paragraph's allegations.**

19. By virtue of the annual inclusion of tens of millions of dollars of these phantom expenses, the City's Water and Sewer Rates and Charges have been, and continue to be, completely untethered to the City's actual costs of providing water and sewer services to its citizenry. Collectively, the claims arising out of the Excessive Cost Allocations and the Pension Overcharges are referred to herein as the "Exorbitant Rate Claims."

**Answer: The City denies this paragraph's allegations.**

20. Collectively, the (a) Water and Sewer Taxes, (b) the subsidy provided to the Exempt Properties through the City's unreasonable rate discrimination, (c) the Excessive Cost Allocations, and (d) the Pension Overcharges have transformed the City's Water and Sewer Funds into an illicit financial engine which unlawfully generates a massive General Fund and pension fund revenue stream — while simultaneously rendering the necessities of water and sewer service oppressively unaffordable for many of the most vulnerable Chicagoans.

**Answer: The City denies this paragraph's allegations.**

21. These "regressive" taxes and charges fall most heavily on the City's lower income residents. The hardships visited upon the lower income residents of Chicago were extensively documented in a recent report compiled by media outlet WBEZ (Exhibit 5 hereto), and with interactive graphics at: *https://interactive.wbez.org/waterdebt/*), which provided the following grim statistics: Chicago homeowners have racked up over $421 million dollars in water debt. More than 60% of the debt is concentrated in the city's majority Black ZIP codes. [Exhibit 5, pp. 6, 11.]

> The city's debt collection system has moved delinquent water bills into the hands of private debt collectors, with little transparency. At least $60 million of the city's water revenue has gone to pay private debt collectors. *Id.* p. 11.
>
> Chicagoans have had millions of dollars in earnings garnished from their paychecks to help settle water debt and many others have faced judgments and statutory liens in an effort to collect water debt. *Id.*

**Answer: The City admits that Exhibit 5 contains the quoted language and described graphics and discusses the effect of taxes on certain City residents. The City denies this paragraph's remaining allegations.**

## SUMMARY OF THE CLAIMS BASED ON THE WATER AND/OR SEWER TAXES

22. Counts I through VIII of this Complaint challenge the Water and/or Sewer Taxes on various grounds. The claims in Counts I through VIII are collectively referred to herein as the "Unlawful Tax Claims."

**Answer: The Court granted summary judgment in the City's favor on counts I-VI on and dismissed Counts VII and VIII with prejudice. The City denies this paragraph's allegations.**

23. Counts I and II of Complaint allege that the Water Taxes are unlawful taxes imposed by the City in violation of Illinois statutory law because they are sales taxes or other taxes "on the use, sale or purchase of tangible personal property based on the gross receipts from such sales or the selling or purchase price of said tangible personal property," and thus are preempted by 65 ILCS 5/8-11-6a.

**Answer: The Court granted summary judgment in the City's favor on Counts I and II of the complaint. The City denies this paragraph's allegations.**

24. Counts III-IV of the Complaint allege that in addition to violating 65 ILCS 5/8-11-6a, the Water and Sewer Taxes violate common law principles applicable to municipal utility rates because the City includes the Water and Sewer Taxes in its water and sewer rate structure and then diverts those tax revenues to purposes unrelated to providing water and sewer services, and therefore the resulting Water and Sewer Rates are unreasonable.

**Answer: The Court granted summary judgment in the City's favor on Counts III-IV of the complaint. The City denies this paragraph's allegations.**

25. Counts V and VI of the Complaint assert that the City, by incorporating the Water and Sewer Taxes into its water and sewer charge structure, has violated 65 ILCS 5/11-139-8, which requires that the City only "charge the inhabitants thereof **a reasonable compensation** for the use and service of the combined waterworks and sewage system and to establish rates for that purpose" (emphasis added).

**Answer: The Court granted summary judgment in the City's favor on Counts V and VI of the complaint. The City denies this paragraph's allegations.**

26. Counts VII and VIII of the Complaint assert that the Water and Sewer Taxes violate the Uniformity Clause of the Illinois Constitution, which provides: "In any law classifying the subjects or objects of nonproperty taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable." Ill. Const. 1970, art. IX, Sec. 2. The Water and Sewer Taxes violate the Uniformity Clause because (1) they are not based on a real and substantial difference between the people taxed and those not taxed, and (2) they do not bear a reasonable relationship to the object of the Taxes or to public policy.

**Answer: The Court dismissed Counts VII and VIII with prejudice. The City denies this paragraph's allegations.**

**SUMMARY OF THE UNREASONABLE DISCRIMINATION CLAIMS**

27. Count IX of the Complaint alleges that, independent of the Water and Sewer Taxes, the City's Water and Sewer Charges to Plaintiff and the Class have been unreasonably

discriminatory because: (a) the City does not charge the Exempt Customers and therefore necessarily overcharges Plaintiff and the Class, and (b) there is no cost-based justification for creating a distinction between Plaintiff and the Class, on the one hand, and the Exempt Customers, on the other hand. Since September 2016, the unlawful Exemptions have forced Plaintiff and the Class to pay over $250 million more to the City for their water and sewer services than they would have paid in the absence of the Exemptions.

**Answer: The City denies this paragraph's allegations.**

## SUMMARY OF THE EXORBITANT RATE CLAIMS

28. Count X of the Complaint alleges that the City's incorporation of the Excessive Cost Allocations and Pension Overcharges into its Water and Sewer Rates necessarily means that these Rates are excessive and that Plaintiff and the Class are inherently overcharged in each water and sewer bill.

**Answer: The City denies this paragraph's allegations.**

29. Since September 2016, because the City has fraudulently incorporated these phantom expenses and overcharges into the City's water and sewer rate structure, Plaintiff and the Class collectively have overpaid the City for water and sewer services by at least $350 million in addition to the $250 million overcharge for their water and sewer services under the Unreasonable Discrimination claim.

**Answer: The City denies this paragraph's allegations.**

30. In sum, through the foregoing wrongful rate practices, Plaintiff and the Class have been forced to pay unreasonable Water and Sewer Rates.

**Answer: The City denies this paragraph's allegations.**

## SUMMARY OF THE RELIEF SOUGHT

31. The City must be enjoined from continuing to collect the Water and Sewer Taxes and must refund all Water and Sewer Taxes it has received since it began imposing the Water and Sewer Taxes in March 2017 as well as refund all Water and Sewer Taxes it receives during the pendency of this lawsuit.

**Answer: The City denies this paragraph's allegations.**

32. Moreover, the City should also be enjoined from continuing to unfairly discriminate against Plaintiff and the Class by arbitrarily excluding the Exempt Customers from the obligation to pay for water and sewer services and refund all Water and Sewer Charges it has received in excess of a lawful amount since September 9, 2016 – the date that is five years prior to the filing of this case – and any additional unlawful amounts it receives during the pendency of this lawsuit.

**Answer: The City denies this paragraph's allegations.**

33. Lastly, the City should also be enjoined from grossly over-allocating the indirect costs of the other City departments to its Water and Sewer Fund (Excessive Cost Allocations) and enjoined from imposing and collecting the Pension Overcharges. The City should be required to refund all Water and Sewer Charges it has received in excess of a lawful amount since September 9, 2016 and any additional unlawful amounts it receives during the pendency of this lawsuit.

**Answer: The City denies this paragraph's allegations.**

## VENUE AND JURISDICTION

34. Plaintiff is a water and sewer customer residing in the City who receives water and sewer service from the City, has directly paid the Water and Sewer Charges at issue, including the Water and Sewer Taxes, is a "customer" within the meaning of City Ordinance 3-80, and seeks to act as class representative for all similarly situated persons.

**Answer: The City denies Plaintiff was a water or sewer customer before 2019. The City denies Plaintiff is a proper class representative. The City admits this paragraph's remaining allegations.**

35. Defendant City of Chicago (the "City") is a home rule municipality located in Cook County, Illinois.

**Answer: The City admits this paragraph's allegations.**

36. Venue and jurisdiction are proper in the Cook County Circuit Court pursuant to 735 ILCS 5/2-103 because the City's principal offices are located in Cook County and because the actions which give rise to Plaintiff' claims occurred in Cook County.

**Answer: The City admits venue and jurisdiction are proper but denies it engaged in any wrongdoing Plaintiff alleges in her pleadings.**

## THE CITY'S WATERWORKS SYSTEM

37. The City operates a water and sewer utility, the Chicago Waterworks System, under the statutory authority provided to it pursuant to 65 ILCS 5/11-139-1 *et seq*.

**Answer: The City admits it operates a water and sewer utility, sometimes referred to as the Chicago Waterworks System. The City denies this paragraph's remaining allegations.**

38. The City's water supply system serves customers within the City itself, as well as approximately 125 suburban communities, referred to as "wholesale customers." The total annual revenues received by the City from its the water supply system operations are roughly split equally between charges imposed upon the City customers and the wholesale customers.

**Answer: The City admits this paragraph's allegations.**

39. The City's sewer system provides sewage and drainage collection and conveyance for a service area roughly 230 square miles inhabited by approximately 2.67 million people. The sewer system is not responsible for, and does not include any facilities for, the treatment or disposal of sewage. It is limited to collecting and conveying wastewater to the interceptor sewers of the Metropolitan Water Reclamation District (the "MWRD"), an independent government entity with exclusive responsibility for sewage treatment, sewage disposal and flood control in the City and neighboring suburbs. The MWRD finances its operations primarily through the imposition of an ad valorem tax in the area that it serves.

**Answer: The City admits this paragraph's allegations.**

40. The City's sewer system serves only customers within the City itself. All (or virtually all) of the revenues received by the City from its sewer system operations are paid by the sewer customers in the City. The City admits that "[t]here are no significant areas of the City without sewer service and, except for a very limited number of industrial users who have direct connections to the Water Reclamation District's interceptors, connection to the sewer system is the only feasible means of wastewater disposal for nearly all City users." *See* Exhibit 13 hereto (Preliminary Official Statement dated March 28, 2024 at p. 24).

**Answer: The City denies that the quoted language appears in Exhibit 13. The City admits this paragraph's remaining allegations.**

41. The City holds a monopoly over water and sewer service in the City, sells water and sewer services in a proprietary, not governmental, capacity and is subject to the same rules that apply to a privately owned utility—including the requirement that utility rates be reasonable and not exorbitant. *See e.g. Village of Niles v. City of Chicago*, 82 Ill App 3d 60, 68; 37 Ill Dec 142; 401 NE2d 1235 (1980); *Austin View Civic Ass'n v City of Palos Hts*, 85 Ill App 3d 89, 94-95; 40 Ill Dec 164; 405 NE2d 1256 (1980).

**Answer: The City admits the Department sells water and sewer services in a proprietary, not governmental capacity, and is subject to some of the same rules that apply to a privately owned utility, including the requirement that utility rates be reasonable and not excessive or exorbitant. The City denies this paragraph's remaining allegations.**

42. The City has admitted that it "sells water and sewer services in a proprietary, not governmental, capacity and is subject to the same rules that apply to a privately owned utility – including the requirement that utility rates be reasonable and not exorbitant." *See* City's Answer to Paragraph 9 of the original Complaint. *See also Id*. at ¶ 12 ("The City admits that pursuant to governing common law, the Department's water and sewer rates may not be excessive").

**Answer: The City admits this paragraph's allegations.**

43. In addition, by law, the City is precluded from imposing unjustly discriminatory rates and charges on certain of its water and sewer customers. A utility rate scheme is unjustly

discriminatory when differences in rates assessed to two groups of customers are not justified by differences in costs to serve those two groups of customers. *Austin View Civic Ass'n v City of Palos Hts*, 85 Ill App 3d 89; 40 Ill Dec 164; 405 NE2d 1256 (1980). The test used for deciding the validity of the difference in rates is to determine whether the difference is reasonable, and not arbitrary, based on a consideration of such factors as differences in the amount of the product used, the time when used, the purpose for which used, or any other relevant factors reflecting a difference in costs. If the difference in rates is not reasonably related to a difference in the costs of providing the service, there is unreasonable discrimination. *Austin View* at p. 99.

**Answer: The City admits that under Illinois common law, water and sewer rates must be reasonable and not excessive. The City denies that operating costs are the only basis for determining whether a difference in rates is reasonable and not excessive and denies this paragraph's remaining allegations.**

44. The City's ordinances, Chapter 11-12, entitled Water Supply and Service, govern the City's operation and maintenance of its waterworks system, including determining the rates for water and service. *See* Ordinance 11-12-260 *et seq*. The City's ordinance, Chapter 3-12-010 et seq., entitled Sewer Revenue Fund, governs the rates and charges for sewer service.

**Answer: The City admits this paragraph's allegations.**

45. 65 ILCS 5/11-139-8 authorizes the City to establish rates for water and sewer services to the City's water and sewer customers and imposes the express limitation that the City only "charge the inhabitants thereof a reasonable compensation for the use and service of the combined waterworks and sewage system and to establish rates for that purpose."

**Answer: The City admits 65 ILCS 5/11-139-8 authorizes municipalities to establish rates for water and sewer services to their water and sewer customers, and that it imposes the express limitation that a municipality "charge the inhabitants thereof a reasonable compensation for the use and service of the combined waterworks and sewage system and to establish rates for that purpose." The Court has granted summary judgment on Plaintiff's claim that the limitations contained in 65 ILCS 5/11-139-8 restrict the authority of home-rule units. The City denies this paragraph's remaining allegations.**

46. Pursuant to 65 ILCS 5/11-139-8 and governing common law, the City's water and sewer rate revenues cannot be excessive, and the charges imposed upon the City's water and sewer customers must be for the actual use of the City's water and sewer system. *See e.g. Ross v Geneva*, 43 Ill App 3d 976, 980-81; 2 Ill Dec 609; 357 NE2d 829 (1976); *Norwick v Winfield*, 81 Ill App 2d 197, 200; 225 NE2d 30 (1967).

**Answer: The City admits that pursuant to governing common law, the Department's water and sewer rates may not be excessive. The City denies this paragraph's remaining allegations.**

47. The City's methodology for establishing Water and Sewer Rates is completely arbitrary. This allegation is demonstrated by the fact that eschewing industry rate-making standards, the City has never conducted a true "cost of service" study.

**Answer: The City denies this paragraph's allegations.**

48. Such "cost of service" studies are routinely utilized by municipal utilities to determine the "Revenue Requirements" of their water and sewer systems – *i.e.*, the costs and expenses the City incurs to operate, maintain and improve those systems – and to derive fair and equitable Rates and Charges to cover the Revenue Requirements.

**Answer: The City lacks knowledge or information sufficient to form a belief as to the practices of other municipal utilities. The City neither admits nor denies this paragraph's allegations.**

49. Instead of performing a "cost of service" study as industry standards would dictate, like clockwork, since June 2016, the City has merely increased its Water and Sewer Rates by the lesser of 5% or the rate of inflation every year. This fact alone demonstrates the arbitrary nature of the City's Rates—and specifically shows that the City's increases to its Water and Sewer Rates are completely untethered to the actual expenses of the City's Water and Sewer Funds.

**Answer: The City admits that, pursuant to ordinance, it has increased its water and sewer rates by 5% or the rate of inflation, whichever is less, each year since 2016. The City denies this paragraph's remaining allegations.**

50. In 2023, the City represented that, beginning in 2030, the City would start to charge its suburban water customers (but not water customers in the City) a "Cost-of-Service Water Rate" based upon the "M1 Manual" published by the American Water Works Association ("AWWA"). *See* Exhibit 14 hereto at p. 42. By doing so, the City again admitted facts that go to the core of Plaintiffs claims by acknowledging the efficacy of a "cost of service" study.

**Answer: The City denies this paragraph's allegations.**

51. Here, the City admits that the "**M1 Manual is considered to be the industry standard for setting water rates by public water suppliers nationally** and is used by peer entities such as Great Lakes Water Authority, Metropolitan Water District of Southern California, the City of Houston, the City of Philadelphia, San Francisco Public Utilities Commission, and San Diego County Water Authority." *Id.* (emphasis added). The City further admitted that:

> **AWWA provides transparency** to customers; cost of service requires detailed accounting of components of the system and allocates cost of service to each customer. *See* Exhibit 2 hereto at p. 23 (City's "Financial Update" dated April 23, 2023) (emphasis in original).

**Answer: The City denies that the following quoted language ("M1 Manual is considered to be the industry standard for setting water rates by public water suppliers nationally and is used by peer entities such as Great Lakes Water Authority, Metropolitan Water District of**

**Southern California, the City of Houston, the City of Philadelphia, San Francisco Public Utilities Commission, and San Diego County Water Authority." appears in the source cited (Ex. 14). The City admits that the following quoted language ("AWWA provides transparency to customers; cost of service requires detailed accounting of components of the system and allocates cost of service to each customer.") appears in the sources cited (Ex. 2). The City denies this paragraph's remaining allegations.**

52. Notwithstanding the City's admissions, the City has never conducted a true cost-of-service study for its Water or Sewer Systems, much less utilized the M1 Manual or implemented rates and charges that were consistent with the methodology set forth in the M1 Manual. Stated simply, the City has never even attempted to devise Water and Sewer Rates that comply with the "industry standard."

**Answer: The City admits it has not completed a cost of service study for its water and sewer systems. The City denies this paragraph's remaining allegations.**

## THE REASONS THAT THE EXEMPTIONS AND THE OVERCHARGES HAVE CAUSED PLAINTIFF AND THE CLASS TO PAY EXORBITANT RATES

53. The first step in establishing Water and Sewer Rates and Charges is to determine the total Revenue Requirement associated with the municipality's water supply system and sewage disposal system (i.e., the revenues necessary to cover the costs of the entire system). The Revenue Requirement is a summation of the operation, maintenance and capital costs that a utility must recover during the time period for which the Rates will be in place.

**Answer: The City admits rates need to produce revenues necessary to cover the costs of the water and sewer system. The City denies any suggestion that the City has not taken the revenue needed to cover the costs into account in setting the rates and denies this paragraph's remaining allegations.**

54. The City's ordinances require the City's Department of Water Management to prepare an annual budget ordinance setting forth the Rates for the water and sewer service for the coming year. *See, e.g.*, Ordinance Section 11-12-260 (Exhibit 3 hereto) ("The department shall … prepare an ordinance, for submission to the city council, establishing the rates to be charged for water service in the following year"); Ordinance Section 3-12-010 (Exhibit 4 hereto) (proving that "the sewer revenue fund shall be supported by sewer usage fees established from time to time by the city council").

**Answer: The City denies the paragraph's selectively edited and inaccurately quoted language sets forth the City's obligations regarding setting rates for water and sewer services. The City denies the paragraph's remaining allegations.**

55. Another City Ordinance Section 2-32-180 (Exhibit 6 hereto) confirms that the improper expenses that form the basis for Plaintiff's Exorbitant Rate claims necessarily are included in the City's Water and Sewer Rates on a prospective basis:

> The comptroller shall, on or before the first day of December of each year preceding the year for which the estimates are made, **submit to the city council a report of the estimates of the funds necessary to defray the expenses of the city government during the fiscal year about to begin**. **He shall in such report classify the different objects and branches of the city expenditures, giving, as nearly as may be, the amount required for each.** …
>
> > He shall, in such report, show the aggregate income of the preceding fiscal year from all sources, the amount of liabilities outstanding upon which interest is to be paid, and of bonds and city debts payable during the coming year, when due and where payable, **together with all such information as may be necessary to enable the city council to prepare and pass the annual appropriation ordinance in the manner prescribed by statute**, and so that the city council may fully understand the money exigencies and demands of the city **for the year for which appropriations are to be made**. [emphasis added].

**Answer: The City admits that the quoted language appears in the source cited. The City denies this paragraph's remaining allegations.**

56. The foregoing ordinance provisions make clear that all Water and Sewer expenses for each coming year must be reflected in the "annual appropriation ordinance" enacted by the City for each coming year. The improper charges that form the basis for the Exorbitant Rate claims **are** set forth in the City's annual appropriation ordinances.

**Answer: The City admits that Water and Sewer Fund expenses are reflected in the City's annual appropriation fund ordinance and denies this paragraph's remaining allegations.**

57. The City seemingly complies with the foregoing ordinance provisions in paragraphs 54 and 55 above by including line-item financial information for the Water and Sewer Fund in its Annual Appropriation Ordinances. The Rates and Charges imposed by the City pursuant to the Annual Appropriation Ordinance are intended to recover the Revenue Requirement for the coming year. The higher the Revenue Requirement, the higher the Rates and Charges imposed on paying customers have to be in order to recover the Revenue Requirement.

**Answer: The City admits that its annual appropriation ordinances include line items for the Water and Sewer Funds. The City admits that its water and sewer rates are set at a level that, when taken with the other variables in its revenue-requirement formula, is sufficient to recover its revenue requirement each year. The City denies this paragraph's remaining allegations.**

58. Importantly however, in establishing Rates, the City's Ordinances also prohibit the City from using water and sewer revenues for purposes unrelated to providing water and sewer service. *See* City Ordinance Section 3-12-010 ("The revenues of the sewer revenue fund shall be reserved and utilized **exclusively** for the operation, maintenance, rehabilitation or reconstruction of the sewer system of the City of Chicago") (emphasis added) and City Ordinance Section 11-12-260 ("The fees, charges, and rates established by said ordinance shall be sufficient in all times to

pay the cost of operation and maintenance of the water system, to make principal and interest payments on any outstanding bonds, and to establish and maintain any reserve funds and accounts as may be covenanted for in bond ordinances authorizing the issuance of the bonds").

**Answer: The City admits the quoted language appears in the sources cited. The City denies any suggestion that the City is using water and sewer revenues for any improper purpose and denies this paragraph's remaining allegations.**

59. The Rates actually imposed by the City have traditionally garnered revenues consistent with the **purported** Revenue Requirements determined by the City. For example, in 2022, the City's budget for the Water Fund projected $777,831,000 in revenues from Water Charges and the City's financial statements for the Water Fund for that year show $779,814,000 in revenues from Water Charges. *See* Exhibit 7 hereto at p. 23 (excerpts from 2022 Annual Appropriation Ordinance) and Exhibit 8 hereto at p. 14 (excerpts from Water Fund 2022 Financial Statements).

**Answer: The City admits that the Water Fund's total operating revenue in 2022 was $779,814,000 (Ex. 8). The City denies this paragraph's remaining allegations.**

60. The problem is that the City grossly inflates its Revenue Requirement by including tens of millions of dollars of expenses **unrelated** to providing water and sewer services in contravention of City Ordinance Section 3-12-010 and City Ordinance Section 11-12-260. These improper, unrelated expenses are listed as line-items in the budgets of the Water and Sewer Funds which are included in the Annual Appropriation Ordinances and are **actually paid** by the Water and Sewer Funds to other City funds. *See* Exhibits 9 and 10 hereto (Summary General Ledgers for Water Fund and Sewer Fund for 2021 showing "actual YTD activity" and demonstrating that the Pension Overcharges and the Excessive Cost Allocations were actually paid from those Funds). Thus, there is no question that these improper unrelated expenses are intentionally included on a prospective basis annually in the City's Water and Sewer Rates and therefore are actually paid by Plaintiff and the Class.

**Answer: The City denies this paragraph's allegations.**

61. Then, the City causes Plaintiff and the Class (i.e., the Non-Exempt Customers) to pay the portion of the Revenue Requirement applicable to the cost of servicing Exempt Customers, which further increases the overcharges to Plaintiff and the Class.

**Answer: The City denies this paragraph's allegations.**

62. The following illustrates the minimum Water Overcharge to Plaintiff and the Class and the City's other customers for 2022 (this does not include Sewer Overcharges):

Total Budgeted Water Charge Revenues – $777,831,000. *See* Exhibit 7 hereto.
Total actual Water Charge Revenues – $779,814,000. *See* Exhibit 8 hereto.

Overcharges included in Water Rates:

Excessive cost allocations – $46,000,000. *See* paras. 239-274 *infra*.
Pension overcharges – $30,000,000. *See* paras. 294-315 *infra*.

Actual Water Revenue Requirement for 2022 – $701,831,000

Value of exemptions (i.e., costs to serve Exempt Customers covered by Non-Exempt Customers – $20,188,000. *See* Exhibit 11 hereto at p. D021258.

Total charges to Non-Exempt customers in 2022 should have been – $681,643,000
Total 2022 Revenue Requirement Used By City – $777,831,000

Total Water Overcharge for 2022 – **$96,188,000**

**Answer: The City denies this paragraph's allegations.**

63. The foregoing facts amply demonstrate that "the rates exceed the legitimate costs of providing these services," and that "they were unreasonable or discriminatory **at the time of their establishment.**" *See* March 25 Order at p. 5 (emphasis added).

**Answer: The City denies this paragraph's allegations.**

64. The fact that, effective June 2016, the City implemented a policy of annually increasing its water and sewer rate by the rate of inflation does not translate to reasonable Rates or otherwise demonstrate that the Rates imposed were not discriminatory "at the time of their establishment" for a number of reasons.

**Answer: The City denies this paragraph's allegations.**

65. First, all of the Overcharges claimed in this Complaint were already included in the City's Rates as of January 2016 – before the City's new policy went into effect. *See* Exhibit 12 hereto (City's Annual Appropriation Ordinance for 2016 at pp. 267-268 and 332-333). *See also* Paragraphs 224-225, 288 and 297-298 *infra*. The City's application of an inflation factor in subsequent years merely continued the Overcharges that were already baked-into the Rates, albeit at ever increasing amounts.

**Answer: The City denies this paragraph's allegations.**

66. Second, the City's new policy did not obviate the requirements in its Ordinance requiring the Department of Water Management to "prepare an ordinance, for submission to the city council, establishing the rates to be charged for water service in the following year." Ordinance Section 11-12-260. Consistent with those requirements, the City's annual appropriation ordinances specifically include the Overcharges in the City's water and sewer fund budgets, which are recovered through the Rates and Charges paid by Plaintiff and the Class.

**Answer: The City denies this paragraph's allegations.**

67. Third, the City admits that "the City Council may take action at any time to alter the then-current schedule of water rates." *See* Exhibit 13 hereto (Preliminary Official Statement dated March 28, 2024 at p. 3).

**Answer: The City admits this paragraph's allegations.**

68. Fourth, the City's Rate ordinance tying annual increases to the rate of inflation cannot trump the City's common law obligations to impose reasonable and nondiscriminatory rates. *See, e.g., Niles I*, 82 Ill App 3d at 68 ("Municipal officers . . . cannot discriminate in rates or make exorbitant and unjust rates to consumers . . . . **All their rates and charges fixed by ordinances or resolutions are subject to review by the courts** . . . .") (emphasis added) (quoting *Springfield Gas & Elec. Co. v. City of Springfield*, 292 Ill. 236, 253, 126 N.E. 739 (1920)). In fact, the City's failure to conduct a legitimate cost-of-service study – and its blind reliance on inflation rates instead of actual cost data to annually increase the Water and Sewer Rates – are themselves arbitrary, capricious and unreasonable practices.

**Answer: The City admits that the quoted language appears in the authority cited. The City denies the rates are unreasonable and discriminatory and denies this paragraph's remaining allegations.**

## CLASS ALLEGATIONS

69. Plaintiff brings this action as a class action, pursuant to 735 ILCS 5/2-801 et seq., individually and on behalf of two proposed classes: (1) for Counts I through VIII a class consisting of all persons or entities who have received water and/or sewer services in the City and who/which are "purchasers" under Ordinance 3-80 and who/which have incurred or paid Water and/or Sewer Taxes on or after March 1, 2017 and (2) for Counts IX through X a class consisting of all persons or entities who have received water and/or sewer service within the City and who/which have incurred or paid Water and/or Sewer Rates and Charges on or after September 9, 2016 and who are not "Exempt Customers."

**Answer: On September 2, 2022, The Court granted summary judgment in the City's favor on Counts I-VI of the complaint. The Court dismissed Counts VII and VIII with prejudice on March 25, 2024. The City thus denies that Counts I-VIII can be the basis for class allegations. The City further denies Plaintiff is a proper representative for water and sewer customers before 2019 and Plaintiff was not a water and sewer customer before 2019. The City denies it engaged in any wrongdoing and denies Plaintiff or any putative class members are entitled to any relief. The City admits that Plaintiff purports to be bringing class allegations pursuant to 735 ILCS 5/2-801 et seq.,**

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

**Answer: The City admits that the proposed members of the proposed class would be so numerous that joinder of all members would be impracticable.**

71. Plaintiff's claims are typical of the claims of members of the Class. Plaintiff is a member of the Class she seeks to represent, Plaintiff was injured by the same wrongful conduct that injured the other members of the Class, and the City has acted wrongfully in the same basic manner as to the entire class.

**Answer: The City lacks knowledge or information sufficient to admit or deny the allegations that Plaintiff's claims are typical of the claims of proposed members of the proposed class and that Plaintiff is a member of the class she seeks to represent. The City denies this paragraph's remaining allegations.**

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

a. whether Ordinance 3-80, which establishes the Water and Sewer Taxes, is preempted by Illinois statute and thus unlawful and unauthorized;
b. whether the Water and/or Sewer Taxes imposed by the City are unlawful and unauthorized under Illinois common law;
c. whether the Water and Sewer Taxes are imposed for, or related to, the actual use of the City's waterworks and sewer systems;
d. whether the Water Taxes have been imposed in violation of 65 ILCS 5/8-11-6a;
e. whether the Water and Sewer Taxes violate the Uniformity Clause of the Illinois Constitution, Ill. Const. 1970, art. IX, Sec. 2;
f. whether the City's exemption of the Exempt Properties from payment of the Water and Sewer Rates and Charges constitutes unfair discrimination, rendering the City's Water and Sewer Rates unreasonably discriminatory;
g. whether the City grossly over-allocates the indirect costs of the City's other departments to the Water and Sewer Fund;
h. whether the City's unfair cost allocation methods have rendered the Water and Sewer Rates unreasonable or exorbitant;
i. whether the City's Pension Overcharge render the Water and Sewer Rates unreasonable or exorbitant; and
j. whether the City should be required to disgorge and refund to its water and sewer customers all Water and Sewer Taxes, and the other wrongfully collected Water and Sewer Charges described herein.

**Answer: The City denies the allegations in this paragraph.**

73. 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.

**Answer: The City denies this paragraph's allegations.**

74. 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 lawsuit as a class action.

**Answer: The City denies this paragraph's allegations.**

**COUNT I**

**ASSUMPSIT-MONEY HAD AND RECEIVED FOR VIOLATION OF 65 ILCS 5/8-11-6a**

**WATER TAX**

**[Summary Judgment was granted on Count I in Plaintiff's original Complaint ("Complaint"). To the extent Plaintiff's improperly amended allegations are an attempt to preserve Count I, the City incorporates it Answers to Complaint, Count I]**

75. Plaintiff incorporates each of the preceding paragraphs 1, 16, 20 through 26, 31, and 34-40, inclusive, as if fully set forth herein.

76. In 2016, the City was in dire financial straits due to the gross underfunding of the City's pension obligations. Actuaries for the City had reported that if the City did not increase its payments to the City's Municipal Employees' Annuity and Benefit Fund (the "Benefit Fund"), that the Benefit Fund would be out of money by 2025.

77. On September 14, 2016, the City's Council approved a tax on water and sewer usage in order to increase its payments to the Benefit Fund. As stated by the City:

> The Chicago City Council and Mayor Emanuel approved a four-year phase-in of a water and sewer utility tax. The revenue from this tax will be used to make certain mandated pension payments. These mandated pension payments will support the retirements of many municipal employees, including our snow plow drivers, our librarians, and CPS non-teaching staff, such as classroom aides. *See* Exhibit 14, the City's Water-Sewer Tax FAQ.

78. To implement the new tax, the City's Council passed Ordinance 3-80, entitled "Chicago Water and Sewer Tax." Under the ordinance, the tax is expressly imposed upon: "(1) the use and consumption in the City of water that is purchased from the Department of Water Management and (2) the transfer of wastewater to the City sewer system from property located in the City. The ultimate incidence and liability for payment of the tax is upon the Purchaser." *See* Exhibit 3, Ordinance 3-80 at § 3-80-030.

79. Pursuant to Ordinance 3-80 the Water and Sewer Taxes were to be phased in over a period of four years. Exhibit 14, the City's Water-Sewer Tax FAQ; Exhibit 15, Ordinance 3-80 at § 380-040.

80. Specifically, starting in March 2017, the City began to impose the Water and Sewer Taxes at the rate of $.295 per 1,000 gallons of water and per 1,000 gallons of sewer—for a total of $.59 per 1,000 gallons of water-sewer use. Over the next three years the Water and Sewer Taxes climbed to $2.51 per 1,000 gallons of water and per 1,000 gallons of sewer used.

Rate per 1,000 gallons (approximately)

| YEAR | TAX ON WATER PORTION | TAX ON SEWER PORTION | TOTAL TAX (WATER & SEWER) | Y-O-Y TAX RATE INCREASE |
|---|---|---|---|---|
| 2017 | $.295 | $.295 | $.59 | 7.7% |
| 2018 | $.64 | $.64 | $1.28 | 8.4% |
| 2019 | $1.005 | $1.005 | $2.01 | 8.2% |
| 2020 | $1.255 | $1.255 | $2.51 | 5.2% |
| 2021 | $1.255 | $1.255 | $2.51 | 0.0% |

*See* Exhibit 14, the City's Water-Sewer Tax FAQ; Exhibit 15, Ordinance 3-80 at § 3-80-040.

81. If water-sewer customers, like Plaintiff, fail to pay the Water and Sewer Taxes, a penalty accrues at a rate of 1.25% per month. Exhibit 14, the City's Water-Sewer Tax FAQ; Exhibit 15, Ordinance 3-80 at § 3-80-060. Moreover, Article V of the City's Water and Sewer Ordinances, § 11-12-330 *et seq.* entitled Assessing and Collecting Charges permits the City to, among other actions: pursue unpaid water and sewer charges via collection action (§ 11-12-330); assess late payment penalties (§ 11-12-420); and authorizes the City to terminate service and shut off water should the customer fall into arrears on water bills that are unpaid after a period of 30 days (§ 11-12-480). *See* Exhibit 4 hereto.

82. In addition, state statutes provide the City with broad powers to enforce and collect unpaid water and sewer charges. 65 ILCS 5/11-139-8 creates a lien in favor of a municipality to secure payment of water and sewer charges, and further authorizes municipalities to bring civil actions to recovery unpaid water and sewer charges and gives the municipalities the right to recover their attorneys' fees in such actions. Payment of the Water and Sewer Taxes therefore is not voluntary.

83. The City began imposing the Water and Sewer Taxes upon its water and sewer customers expressly as a means of generating additional revenue to finance its general governmental obligation of funding its pension benefit obligations.

84. Thus, the Water and Sewer Taxes imposed by Ordinance No. 3-80 are not for or related to Plaintiff's actual use of the City's water and sewer system. Accordingly, the Water and Sewer Taxes are unlawful and unauthorized charges upon Plaintiff and those water and sewer customers in the City who/which have incurred or paid the Water and Sewer Taxes and are similarly situated.

85. Pursuant to Ill Const. art. VII § 6(a), the City is automatically conferred "home rule" status because it has a population of more than 25,000 residents.

86. Traditional municipalities are political subdivisions of the state and may only exercise the authority the state expressly grants to them. In contrast, home rule municipalities like the City govern more independently from the state and may exercise any power and perform any function unless it is expressly prohibited from doing so by state law. *See generally* Ill Const. art. VII § 6 and specifically Ill Const. art. VII § 6 (i).

87. Thus, as a home rule municipality, the City enjoys legislative autonomy and has the power to tax, subject to express state laws that regulate the type of taxes the City may impose.

88. Illinois statute 65 ILCS 5/8-11-6a, entitled "Home Rule Municipalities; Preemption of Certain Taxes" provides in relevant part:

> Except as provided in Sections 8-11-1, 8-11-5, 8-11-6, 8-11-6b, 8-11-6c, 8-11-23, and 11-74.3-6 on and after September 1, 1990, no home rule municipality has the authority to impose, pursuant to its home rule authority, a retailer's occupation tax, service occupation tax, use tax, **sales tax or other tax on the use, sale or purchase of tangible personal property based on the gross receipts from such sales or the selling or purchase price of said tangible personal property**.
>
> Notwithstanding the foregoing, this Section does not preempt any home rule imposed tax such as the following:

****

> (7) other taxes not based on the selling or purchase price or gross receipts from the use, sale or purchase of tangible personal property.

****

This Section is a limitation, pursuant to subsection (g) of Section 6 of Article VII of the Illinois Constitution, on the power of home rule units to tax. [emphasis added].

89. The overarching legislative purpose of § 8-11-6a is to restrict a home rule municipality's power to tax. *See Iwan Ries & Co v City of Chicago*, 160 NE3d 916, 922 (2019) ("clear legislative intent to limit a home rule unit's authority to impose certain taxes").

90. The Water Tax is a tax on the purchase of tangible personal property—water—that is based on the cost of the amount of water purchased by the City's water customers, and thus is a tax based upon the gross receipts from the sale of, or the selling or purchase price of, water by the City to its water customers in violation of 65 ILCS 5/8-11-6a.

91. The City's Ordinance No. 3-80 is thus preempted by 65 ILCS 5/8-11-6a and as such, the Water Tax is an unlawful and unauthorized tax upon Plaintiff and those of the City's water customers that have incurred or paid the Water Tax and are thus similarly situated.

92. 65 ILCS 5/8-11-6a restricts the City's power to tax, expressly prohibiting imposition of a use tax, sales tax or other tax on the use, sale, or purchase of tangible personal property based on the gross receipts from such sales or the sales price.

93. The Water Tax, first imposed by the City in March 2017, is a use tax, sales tax and/or other tax on the use, sale, and/or purchase of tangible personal property (water) that is also based on the gross receipts from such sales and/or the sales price.

94. 65 ILCS 5/8-11-6a preempts the Water Tax's enacting ordinance, Ord. No. 3-80.

95. The Water Tax is unlawful, invalid, and unauthorized under Illinois law, specifically 65 ILCS 5/8-11-6a.

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

97. 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.

98. By virtue of the City's imposition of the Water Tax, 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.

99. 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 Water Tax, Plaintiff and the Class have conferred a benefit upon on [sic.] the City.

100. Under equitable principles, the City should be required to disgorge the amounts it unlawfully collected through its unlawful imposition of the Water Tax.

## COUNT II

## UNJUST ENRICHMENT FOR VIOLATION OF 65 ILCS 5/8-11-6a

## WATER TAX

**[Summary Judgment was granted on Count II in Plaintiff's original Complaint ("Complaint"). To the extent Plaintiff's improperly amended allegations are an attempt to preserve Count I, the City incorporates it Answers to Complaint, Count II]**

101. Plaintiff incorporates each of the preceding paragraphs 1, 16, 20 through 26, 31, 34 through 40, and 76-96, inclusive, as if fully set forth herein.

102. 65 ILCS 5/8-11-6a, restricts the City's power to tax, expressly prohibiting imposition of a use tax, sales tax or other tax on the use, sale, or purchase of tangible personal property based on the gross receipts from such sales or the sales price.

103. The Water Tax, first imposed by the City in March 2017, is a use tax, sales tax and/or other tax on the use, sale, and/or purchase of tangible personal property (water) that is also based on the gross receipts from such sales.

104. 65 ILCS 5/8-11-6a preempts the Water Tax's enacting ordinance, Ord. No. 3-80.

105. The Water Tax is unlawful, invalid, and unauthorized under Illinois law, specifically 65 ILCS 5/8-11-6a.

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

107. By virtue of the City's imposition of the Water Tax, the City has collected amounts in excess of amounts it was legally entitled to collect.

108. 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 Water Tax, Plaintiff and the Class have conferred a benefit upon on [sic.] the City and it would be inequitable for the City to retain that benefit.

109. Under equitable principles, the City should be required to disgorge the amounts it unlawfully collected through its unlawful imposition and collection of the Water Tax.

## COUNT III

## ASSUMPSIT-MONEY HAD AND RECEIVED – UNREASONABLE WATER AND SEWER RATES

## WATER AND SEWER TAXES

**[Summary Judgment was granted on Count III in Plaintiff's original Complaint ("Complaint"). To the extent Plaintiff's improperly amended allegations are an attempt to preserve Count III, the City incorporates it Answers to Complaint, Count III]**

110. Plaintiff incorporates each of the preceding paragraphs 1, 16, 20 through 26, 31, 34 through 40, and 76 through 96, inclusive, as if fully set forth herein.

111. Under Illinois common law, Water and Sewer Rates must be reasonable and all charges imposed must relate to the actual use of the water and sewer system. *See e.g. Village of Niles v. City of Chicago*, 82 Ill App 3d 60, 68; 37 Ill Dec 142; 401 NE2d 1235 (1980); *Austin View Civic Ass'n v City of Palos Hts*, 85 Ill App 3d 89, 94-95; 40 Ill Dec 164; 405 NE2d 1256 (1980).

112. Water and Sewer Taxes are not for or related to Plaintiff's actual use of the City's water and sewer system, but are imposed to increase payments to the City's Municipal Employees' Annuity and Benefit Fund.

113. The City's Water and Sewer Taxes, when incorporated into the City's Water and Sewer Rates, render these rates arbitrary, capricious, and unreasonable.

114. 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.

115. The right to "reparations" under these circumstances was recognized by the Court in *West v. City of Batavia*, 155 Ill. App. 3d 925, 508 N.E.2d 1124 (2d Dist. 1987):

> We agree with plaintiff that a cause of action for reparations may lie against a municipally owned utility. **At common law, there existed a right to recover reparations for unreasonable charges by a utility or common carrier**. (*Terminal R.R. Association v. Public Utilities Com.* (1922), 304 Ill. 312, 317, 136 N.E. 797; *Chicago, Burlington & Quincy R.R. Co. v. Jones* (1894), 149 Ill. 361, 374.) **This action was based upon the theory that the defendant had funds which in right and justice belonged to the plaintiff and which it ought to restore because it received the funds by charging a rate in excess of the lawful rate.** (*A.L. Jones Co. v. Chicago, Milwaukee & St. Paul Ry. Co.* (1919), 213 Ill. App. 283, 288.) Although the common law right to recover reparations from a public utility has been superseded by the Public Utilities Act … that act was not intended to apply to municipally owned utilities (*Springfield Gas & Electric Co. v. City of Springfield* (1920), 292 Ill. 236, 240, 126 N.E. 739, *aff'd* (1921), 257 U.S. 66, 66 L. Ed. 131, 42 S. Ct. 24). **We conclude that a cause of action for reparations may lie against Batavia based upon the operation of its utility**. [155 Ill. App. 3d at 928 (emphasis added).]

116. By virtue of the City's imposition of the Water and Sewer Taxes, 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.

117. 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 Water and Sewer Taxes, Plaintiff and the Class have conferred a benefit upon on [sic.] the City.

## COUNT IV

## UNJUST ENRICHMENT – UNREASONABLE WATER AND SEWER RATES

## WATER AND SEWER TAXES

**[Summary Judgment was granted on Count IV in Plaintiff's original Complaint ("Complaint"). To the extent Plaintiff's improperly amended allegations are an attempt to preserve Count IV, the City incorporates it Answers to Complaint, Count IV]**

118. Plaintiff incorporates each of the preceding paragraphs 1, 16, 20 through 26, 31, 34 through 40, and 76 through 96, inclusive, as if fully set forth herein.

119. Under Illinois common law, Water and Sewer Rates must be reasonable and all charges imposed must relate to the actual use of the water and sewer system. *See e.g. Village of Niles v. City of Chicago*, 82 Ill App 3d 60, 68; 37 Ill Dec 142; 401 NE2d 1235 (1980); *Austin View Civic Ass'n v City of Palos Hts*, 85 Ill App 3d 89, 94-95; 40 Ill Dec 164; 405 NE2d 1256 (1980).

120. The Water and Sewer Taxes are not for or related to Plaintiff's actual use of the City's water and sewer system but are imposed to increase payments to the City's Municipal Employees' Annuity and Benefit Fund.

121. The City's Water and Sewer Taxes, when incorporated into the City's Water and Sewer Rates, render these rates arbitrary, capricious, and unreasonable.

122. 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 Water and Sewer Taxes, Plaintiff and the Class have conferred a benefit upon on [sic.] the City.

123. By virtue of the City's inclusion of the Water and Sewer Taxes in its water and sewer rates, the City has collected amounts in excess of the amounts it was legally entitled to collect.

124. The City has been unjustly enriched because it received the Water and Sewer Tax revenues to which it was not entitled, and it would be unfair for the City to retain the Water and Sewer Taxes under the circumstances.

125. The right to "reparations" under these circumstances was recognized by the Court in *West v. City of Batavia*, 155 Ill. App. 3d 925, 508 N.E.2d 1124 (2d Dist. 1987):

> We agree with plaintiff that a cause of action for reparations may lie against a municipally owned utility. **At common law, there existed a right to recover reparations for unreasonable charges by a utility or common carrier**. (*Terminal R.R. Association v. Public Utilities Com.* (1922), 304 Ill. 312, 317, 136 N.E. 797; *Chicago, Burlington & Quincy R.R. Co. v. Jones* (1894), 149 Ill. 361, 374.) **This action was based upon the theory that the defendant had funds which in right and justice belonged to the plaintiff and which it ought to restore because it received the funds by charging a rate in excess of the lawful rate.** (*A.L. Jones Co. v. Chicago, Milwaukee & St. Paul Ry. Co.* (1919), 213 Ill. App. 283, 288.) Although the common law right to recover reparations from a public utility has been superseded by the Public Utilities Act … that act was not intended to apply to municipally owned utilities (*Springfield Gas & Electric Co. v. City of Springfield* (1920), 292 Ill. 236, 240, 126 N.E. 739, *aff'd* (1921), 257 U.S. 66, 66 L. Ed. 131, 42 S. Ct. 24). **We conclude that a cause of action for reparations may lie against Batavia based upon the operation of its utility**. [155 Ill. App. 3d at 928 (emphasis added).]

126. The City should be required to disgorge the amounts by which it has been unjustly enriched.

## COUNT V

## ASSUMPSIT-MONEY HAD AND RECEIVED – VIOLATION OF 65 ILCS 5/11-139-8

## WATER AND SEWER TAXES

**[Summary Judgment was granted on Count V in Plaintiff's original Complaint ("Complaint"). To the extent Plaintiff's improperly amended allegations are an attempt to preserve Count V, the City incorporates it Answers to Complaint, Count V]**

127. Plaintiff incorporates each of the preceding paragraphs 1, 16, 20 through 26, 31, 34 through 40, and 76 through 96, inclusive, as if fully set forth herein.

128. 65 ILCS 5/11-139-8 authorizes the City to establish rates for water and sewer services to the City's water and sewer customers, and imposes the express limitation that the City only "charge the inhabitants thereof a reasonable compensation for the use and service of the combined waterworks and sewage system and to establish rates for that purpose."

129. By including the Water and Sewer Taxes in the City's water and sewer rates, the City has failed to charge its inhabitants "a reasonable compensation for the use and service of the combined waterworks and sewage system" in violation of 65 ILCS 5/11-139-8.

130. The City's Water and Sewer Taxes, when incorporated into the City's Water and Sewer Rates, render these rates arbitrary, capricious, and unreasonable.

131. 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.

132. The right to "reparations" under these circumstances was recognized by the Court in *West v. City of Batavia*, 155 Ill. App. 3d 925, 508 N.E.2d 1124 (2d Dist. 1987):

> We agree with plaintiff that a cause of action for reparations may lie against a municipally owned utility. **At common law, there existed a right to recover reparations for unreasonable charges by a utility or common carrier**. (*Terminal R.R. Association v. Public Utilities Com.* (1922), 304 Ill. 312, 317, 136 N.E. 797; *Chicago, Burlington & Quincy R.R. Co. v. Jones* (1894), 149 Ill. 361, 374.) **This action was based upon the theory that the defendant had funds which in right and justice belonged to the plaintiff and which it ought to restore because it received the funds by charging a rate in excess of the lawful rate.** (*A.L. Jones Co. v. Chicago, Milwaukee & St. Paul Ry. Co.* (1919), 213 Ill. App. 283, 288.) Although the common law right to recover reparations from a public utility has been superseded by the Public Utilities Act … that act was not intended to apply to municipally owned utilities (*Springfield Gas & Electric Co. v. City of Springfield*

(1920), 292 Ill. 236, 240, 126 N.E. 739, *aff'd* (1921), 257 U.S. 66, 66 L. Ed. 131, 42 S. Ct. 24). **We conclude that a cause of action for reparations may lie against Batavia based upon the operation of its utility**. [155 Ill. App. 3d at 928 (emphasis added).]

133. By virtue of the City's imposition of the Water and Sewer Taxes, 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.

134. 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 Water and Sewer Taxes, Plaintiff and the Class have conferred a benefit upon on [sic.] the City.

**COUNT VI**

**UNJUST ENRICHMENT – VIOLATION OF 65 ILCS 5/11-139-8**

**WATER AND SEWER TAXES**

**[Summary Judgment was granted on Count VI in Plaintiff's original Complaint ("Complaint"). To the extent Plaintiff's improperly amended allegations are an attempt to preserve Count VI, the City incorporates it Answers to Complaint, Count VI]**

135. Plaintiff incorporates each of the preceding paragraphs 1, 16, 20 through 26, 31, 34 through 40, 76 through 96, and 128 through 134, inclusive, as if fully set forth herein.

136. 65 ILCS 5/11-139-8 authorizes the City to establish rates for water and sewer services to the City's water and sewer customers and imposes the express limitation that the City only "charge the inhabitants thereof a reasonable compensation for the use and service of the combined waterworks and sewage system and to establish rates for that purpose."

137. By including the Water and Sewer Taxes in the City's water and sewer rates, the City has failed to charge its inhabitants "a reasonable compensation for the use and service of the combined waterworks and sewage system" in violation of 65 ILCS 5/11-139-8.

138. The City's Water and Sewer Taxes, when incorporated into the City's Water and Sewer Rates, render these rates arbitrary, capricious, and unreasonable.

139. 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 Water and Sewer Taxes, Plaintiff and the Class have conferred a benefit upon on [sic.] the City.

140. By virtue of the City's inclusion of the Water and Sewer Taxes in its water and sewer rates, the City has collected amounts in excess of the amounts it was legally entitled to collect.

143. The right to "reparations" under these circumstances was recognized by the Court in *West v. City of Batavia*, 155 Ill. App. 3d 925, 508 N.E.2d 1124 (2d Dist. 1987):

> We agree with plaintiff that a cause of action for reparations may lie against a municipally owned utility. **At common law, there existed a right to recover reparations for unreasonable charges by a utility or common carrier**. (*Terminal R.R. Association v. Public Utilities Com.* (1922), 304 Ill. 312, 317, 136 N.E. 797; *Chicago, Burlington & Quincy R.R. Co. v. Jones* (1894), 149 Ill. 361, 374.) **This action was based upon the theory that the defendant had funds which in right and justice belonged to the plaintiff and which it ought to restore because it received the funds by charging a rate in excess of the lawful rate.** (*A.L. Jones Co. v. Chicago, Milwaukee & St. Paul Ry. Co.* (1919), 213 Ill. App. 283, 288.) Although the common law right to recover reparations from a public utility has been superseded by the Public Utilities Act … that act was not intended to apply to municipally owned utilities (*Springfield Gas & Electric Co. v. City of Springfield* (1920), 292 Ill. 236, 240, 126 N.E. 739, *aff'd* (1921), 257 U.S. 66, 66 L. Ed. 131, 42 S. Ct. 24). **We conclude that a cause of action for reparations may lie against Batavia based upon the operation of its utility**. [155 Ill. App. 3d at 928 (emphasis added).]

142. The City has been unjustly enriched because it received the Water and Sewer Tax revenues to which it was not entitled, and it would be unfair for the City to retain the Water and Sewer Taxes under the circumstances.

143. The City should be required to disgorge the amounts by which it has been unjustly enriched.

## COUNT VII

## ACTION FOR REPARATIONS-MONEY HAD AND RECEIVED FOR VIOLATION OF UNIFORMITY CLAUSE OF ILLINOIS CONSTITUTION

## WATER AND SEWER TAXES

**[Count VII has been dismissed with prejudice]**

144. Plaintiff incorporates each of the preceding paragraphs 1, 16, 20 through 26, 31, 34 through 40, and 76 through 96, inclusive, as if fully set forth herein.

145. The Uniformity Clause of the Illinois Constitution provides: "In any law classifying the subjects or objects of nonproperty taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable." Ill. Const. 1970, art. IX, Sec. 2.

146. The Water and Sewer Taxes are not property taxes. For a nonproperty tax classification to survive scrutiny under the uniformity clause, the classification must (1) be based on a real and

substantial difference between the people taxed and those not taxed, **and** (2) bear some reasonable relationship to the object of the legislation or to public policy. *Milwaukee Safeguard Ins. Coc. v. Selcke*, 179 Ill.2d 94, 98, 688 N.E.2d 68 (1997). The tax "must meet **both** prongs of the uniformity test to pass constitutional muster." *U.S.G. Italian Marketcaffe v. City of Chicago*, 332 Ill. App. 3d 1008, 1015, 775 N.E.2d 47 (1st Dist. 2002) (emphasis added).

147. The Uniformity Clause was intended to be a broader limitation on legislative power to classify for nonproperty tax purposes than the limitation of the equal protection clause (*Searle Pharmaceuticals, Inc. v. Dept. of Revenue*, 117 Ill.2d 454, 469, 512 N.E.2d 1240 (1987)) and was meant to insure that taxpayers would receive added protection in the state constitution based upon a standard of reasonableness that is more rigorous than that contained in the federal constitution (*Milwaukee Safeguard*, 179 Ill.2d at 102). As a result, the party attacking a tax classification is not required to negate every conceivable basis that might support it. *Searle*, 117 Ill.2d at 468. The reasonable relationship test requires some meaningful linkage between the tax and the object of the legislation establishing the tax.

148. The Water and Sewer Taxes violate the Uniformity Clause because (1) they are not based on a real and substantial difference between the people taxed and those not taxed, and (2) they do not bear a reasonable relationship to the object of the legislation or to public policy.

149. First, there is no "real and substantial" difference between water and sewer customers who pay the Taxes, and other groups of citizens and property owners in the City who do not pay the Taxes. The Taxes are used to fund the City's pension obligations owed to the Municipal Employees' Fund, which includes employees whose employment services benefit the City and its citizens generally. Water and Sewer customers do not cause or contribute to the City's need to fund pensions in any manner different than other citizens in the City who are not water and sewer customers, including but not limited to the owners and occupiers of properties (like vacant lots and parking lots) that do not have water and sewer service.

150. The City's decision to finance hundreds of millions of dollars of pension contributions to the Municipal Employees' Fund through taxes imposed only on water and sewer customers is completely arbitrary. The City clearly cannot justify the tax classification by arguing that the Taxes support **only** the pensions of employees of the Water Fund or Sewer Funds. Indeed, Water Fund employees represent just 6.4% of the covered payroll of all employees covered by the Municipal Employees' Fund and Sewer Fund employees represent just 3.1% of that covered payroll. Therefore, over 90% of the employees covered by the Municipal Employees' Fund – representing 90% of the expense of that Fund – are not associated with the Water or Sewer Funds.

151. Even worse for the City, the annual contributions to the Municipal Employees' Fund attributable to the Water and Sewer Funds are already funded by the City's water and sewer usage Charges, which are completely separate from the Water and Sewer Taxes. According to the City, the pension costs are to be allocated based upon each City fund's percentage of the total "covered payroll" of all City funds with employees in the Municipal Employees' Fund. For 2020, the total "covered payroll" of all of the applicable City funds was $1,861,905,000. *See* Exhibit 16 hereto. In 2022, for example, the City allocated $59,725,000 of the total City contribution to the Municipal Employees' Fund to the Water Fund. *See* Exhibit 7 hereto. That $59,725,000 – which,

again, was **in addition to** the $200+ million in Water and Sewer Taxes currently being paid by the very same group of water and sewer customers – was incorporated into the City's Water Rates being paid by its water customers.

152. All properties and citizens in the City that are not water or sewer customers of the City are not subject to the Water and Sewer Taxes. While it may be tempting to equate the class of water and sewer customers in the City with the class of all property owners in the City, that would be a mistake. Among the Chicago citizens who do not pay Water and Sewer Taxes are owners of parking lots, vacant land and any other properties or structures that are not hooked up to the City's water and sewer system. Those properties receive the benefit of the City's increased pension funding for City employees in the Municipal Employees' Fund. Yet, the City proffers no justification for its exemptions extended to those properties and citizens.

153. In addition, there is no "real and substantial" difference between water and sewer customers who pay the Taxes and the Exempt Customers. Both groups receive the very same treated water from the City and both groups receive the very same sewage disposal services. The only difference between the two groups is that the City has arbitrarily chosen to excuse the Exempt Customers from their obligation to pay the Taxes.

154. Second, the City's method of imposing and collecting the Taxes does not bear a reasonable relationship to the object of the legislation or to public policy.

155. The "object" of the City's ordinance imposing the Water and Sewer Taxes is to finance pension benefits for general employees of the City. *See* "Water and Sewer Tax FAQ (Exhibit 14 hereto) ("The revenue from this tax will be used to make certain mandated pension payments" that "will support the retirements of many municipal employees, including our snow plow drivers, our librarians, and CPS non-teaching staff, such as classroom aides"); City Ordinance Section 3-80-070 (Exhibit 3 hereto) ("All proceeds resulting from the imposition of the tax imposed by this chapter, including any interest or penalties relating to the tax, shall be deposited in the City's Corporate Fund and shall be used to meet the City's funding obligations to the Municipal Employees' Annuity and Benefit Fund of Chicago").

156. A tax on only some water and sewer customers has no "reasonable relationship" to that object – *i.e.*, there is no linkage between water and sewer usage by the City's water and sewer customers who incur and pay the Water and Sewer Taxes and the City's obligation to fund the pensions. This is particularly true given that the amount of the Water and Sewer Taxes paid by the persons subject to the tax is based upon how much water they use. Not only does water usage in general have no reasonable relationship to the object of funding municipal pensions but the fact that the amount each water and sewer customer must contribute to the funding of the pensions based upon, for example, how long they shower every morning and/or how much they water their lawn makes the relationship even more attenuated. In sum, the class of taxpayers subject to the tax is not part of the class which is regulated or benefitted by the pension contributions financed with the tax proceeds and the measure of the Tax renders the claimed relationship even more unreasonable. This is particularly true given that water and sewer customers already finance the pension benefits of retired water and sewer employees through their water and sewer rates.

157. In order to be "reasonably related" to the object of the Taxes, each payer of the Taxes need not personally benefit from the use of the tax proceeds and it is permissible for persons who do not pay the tax to benefit, but the class of taxpayers subject to the tax must be part of the class which is regulated or benefitted by the program financed (at least in part) with the tax proceeds.

158. The Water and Sewer Tax is unlawful, invalid, and unauthorized under Illinois law, specifically the Uniformity Clause.

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

160. 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.

161. The right to "reparations" under these circumstances was recognized by the Court in *West v. City of Batavia*, 155 Ill. App. 3d 925, 508 N.E.2d 1124 (2d Dist. 1987):

> We agree with plaintiff that a cause of action for reparations may lie against a municipally owned utility. **At common law, there existed a right to recover reparations for unreasonable charges by a utility or common carrier**. (*Terminal R.R. Association v. Public Utilities Com.* (1922), 304 Ill. 312, 317, 136 N.E. 797; *Chicago, Burlington & Quincy R.R. Co. v. Jones* (1894), 149 Ill. 361, 374.) **This action was based upon the theory that the defendant had funds which in right and justice belonged to the plaintiff and which it ought to restore because it received the funds by charging a rate in excess of the lawful rate.** (*A.L. Jones Co. v. Chicago, Milwaukee & St. Paul Ry. Co.* (1919), 213 Ill. App. 283, 288.) Although the common law right to recover reparations from a public utility has been superseded by the Public Utilities Act … that act was not intended to apply to municipally owned utilities (*Springfield Gas & Electric Co. v. City of Springfield* (1920), 292 Ill. 236, 240, 126 N.E. 739, *aff'd* (1921), 257 U.S. 66, 66 L. Ed. 131, 42 S. Ct. 24). **We conclude that a cause of action for reparations may lie against Batavia based upon the operation of its utility**. [155 Ill. App. 3d at 928 (emphasis added).]

162. By virtue of the City's imposition of the Water and Sewer Taxes, 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 to recover back the amount of the illegal exaction.

163. 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 Water Tax, Plaintiff and the Class have conferred a benefit upon on [sic.] the City.

164. Under equitable principles, the City should be required to disgorge the amounts it unlawfully collected through its unlawful imposition of the Water Tax.

## COUNT VIII

## UNJUST ENRICHMENT FOR VIOLATION OF UNIFORMITY CLAUSE OF THE ILLINOIS CONSTITUTION

## WATER AND SEWER TAXES

**[Count VIII has been dismissed with prejudice]**

165. Plaintiff incorporates each of the preceding paragraphs 1, 16, 20 through 26, 31, 34 through 40, 76 through 96, and 145 through 164, inclusive, as if fully set forth herein.

166. The Water and Sewer Tax is unlawful, invalid, and unauthorized under Illinois law, specifically the Uniformity Clause.

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

168. By virtue of the City's imposition of the Water and Sewer Taxes, the City has collected amounts in excess of amounts it was legally entitled to collect.

169. 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.

170. The right to "reparations" under these circumstances was recognized by the Court in *West v. City of Batavia*, 155 Ill. App. 3d 925, 508 N.E.2d 1124 (2d Dist. 1987):

> We agree with plaintiff that a cause of action for reparations may lie against a municipally owned utility. **At common law, there existed a right to recover reparations for unreasonable charges by a utility or common carrier**. (*Terminal R.R. Association v. Public Utilities Com.* (1922), 304 Ill. 312, 317, 136 N.E. 797; *Chicago, Burlington & Quincy R.R. Co. v. Jones* (1894), 149 Ill. 361, 374.) **This action was based upon the theory that the defendant had funds which in right and justice belonged to the plaintiff and which it ought to restore because it received the funds by charging a rate in excess of the lawful rate.** (*A.L. Jones Co. v. Chicago, Milwaukee & St. Paul Ry. Co.* (1919), 213 Ill. App. 283, 288.) Although the common law right to recover reparations from a public utility has been superseded by the Public Utilities Act … that act was not intended to apply to municipally owned utilities (*Springfield Gas & Electric Co. v. City of Springfield* (1920), 292 Ill. 236, 240, 126 N.E. 739, *aff'd* (1921), 257 U.S. 66, 66 L. Ed. 131, 42 S. Ct. 24). **We conclude that a cause of action for reparations may lie against Batavia based upon the operation of its utility**. [155 Ill. App. 3d at 928 (emphasis added).]

171. Plaintiff and the Class have conferred a benefit upon the City and it would be inequitable for the City to retain that benefit.

172. Under equitable principles, the City should be required to disgorge the amounts it unlawfully collected through its unlawful imposition and collection of the Water Taxes.

## COUNT IX

## UNJUST DISCRIMINATION IN WATER AND SEWER RATES AND CHARGES

173. Plaintiff incorporates each of the preceding paragraphs 1 through 21, and 27 through 74, inclusive, as if fully set forth herein.

**Answer: The City incorporates its answers to each of the preceding paragraphs 1 through 21, and 27 through 74, inclusive, as if fully set forth herein.**

174. This Count sets forth a single cause of action – unjust rate discrimination in violation of Illinois common law and 65 ILCS 5/11-139-8, which imposes the express limitation that the City only "charge the inhabitants thereof a reasonable compensation for the use and service of the combined waterworks and sewage system and to establish rates for that purpose."

**Answer: The City admits that Count IX is a single cause of action. The City denies this paragraph's remaining allegations.**

175. Separate and independent of the Water and Sewer Taxes, the City's Water and Sewer Charges to Plaintiff and the Class have been unreasonably discriminatory because the City has illegally exempted thousands of similarly-situated water and sewer customer locations from their obligation to pay the City's Water and Sewer Rates and Charges, which has resulted in dramatically higher Rates and Charges being assessed against Plaintiff and the Class.

**Answer: The City denies this paragraph's allegations.**

176. Plaintiff's unfair discrimination claims described in this Count are based upon common law principles (described in detail below) which prohibit unreasonable rate discrimination and not upon the equal protection provisions of the Illinois Constitution. *See, e.g., Greater Peoria Sanitary & Sewage Disposal Dist. v. Kellstedt*, 130 Ill. App. 3d 1002, 1004-1005, 474 N.E.2d 1267 (3d Dist. 1985) (explaining that common law unreasonable discrimination claims are different than equal protection claims and subject to a more lenient standard).

**Answer: The City admits that the claims describing in the count purports to be based on the common law and not equal protection but denies that they adequately set forth a cause of action. The City denies the parenthetical's description of *Kellstedt*'s rule being that common-law unreasonable discrimination claims are "subject to a more lenient standard" than equal-protection claims are.**

177. Further, while the Uniformity Clause claims in Counts VII and VIII are based upon the City's imposition of the Water and Sewer **Taxes**, and therefore the "exemptions" that are part of the uniformity challenge are "exemptions" from those **Taxes**, the Unfair Discrimination Claims are based upon City exemptions of various users, including certain senior citizens, from payment of **water and/or sewer usage charges**. The Unfair Discrimination Claims are not judged by or subject to the standards of the Uniformity Clause, but rather by the common law principles and other limitations applicable to water and sewer charges imposed by municipal utilities.

**Answer: The City admits that dismissed counts VII and VIII were based on Water and Sewer Taxes and further admits that this Count does not reference the Uniformity Clause. The City denies that the standards applicable to claims of discrimination under the Uniformity Clause are irrelevant to the claims in this count or that this paragraph accurately states the applicable standards for Plaintiff's claims.**

178. The City is precluded from imposing unjustly discriminatory rates and charges on certain of its water and sewer customers. A utility rate scheme is unjustly discriminatory when differences in rates assessed to two groups of customers are not justified by differences in costs to serve those two groups of customers. *Austin View Civic Ass'n v City of Palos Hts*, 85 Ill App 3d 89; 40 Ill Dec 164; 405 NE2d 1256 (1980). The test used for deciding the validity of the difference in rates is to determine whether the difference is reasonable, and not arbitrary, based on a consideration of such factors as differences in the amount of the product used, the time when used, the purpose for which used, or any other relevant factors reflecting a difference in costs. If the difference in rates is not reasonably related to a difference in the costs of providing the service, there is unreasonable discrimination. *Austin View* at p. 99.

**Answer: The City denies that this paragraph accurately states the elements of a rate discrimination claim. The City admits Plaintiff is complaining about the City's water and sewer rates but denies it engaged in any wrongdoing and denies this paragraph's remaining allegations.**

179. The City's Ordinance creates a number of total and partial payment exemptions (the "Exemptions") for various types of properties which receive water and/or sewer services from the City (the "Exempt Customers"). The Exempt Customers include the City itself, the Chicago Public Schools, City College, certain hospitals and certain nonprofit organizations. Section 11-12-540 of the Ordinance (Exhibit 4 hereto) creates these exemptions and provides as follows:

> (a) The comptroller shall exempt from the payment of water rates the property enumerated in this subsection (a) if the account for such property is controlled by meter, as follows. If the account for such property is not controlled by meter, no exemption shall apply.
>
> (1) Any property of the State of Illinois that is used as an armory by the state or federalized national guard shall be exempt from payment of 100% of the water service charge.
> (2) All property owned or leased or occupied by the City of Chicago shall be exempt from payment of 100% of the water service charge, unless said City,

either as lessee or lessor, shall enter into an agreement for the payment of rates by the other party.

(3) All property owned or leased or occupied by the Chicago Public Schools shall be exempt from payment of 100% of the water service charge, unless said entity, either as lessee or lessor, shall enter into an agreement for the payment of rates by the other party.

(4) All property owned or leased or occupied by the City Colleges of Chicago shall be exempt from payment of 100% of the water service charge, unless said entity, either as lessee or lessor, shall enter into an agreement for the payment of rates by the other party.

(5) Hospitals located within the corporate limits of the City that are operated by the Cook County government shall be exempt from payment of 100% of the water service charge.

(6) Except as otherwise provided in paragraph (5) of this subsection (a), not-forprofit disproportionate share hospitals located within the corporate limits of the City shall be exempt from payment of 60% of the water service charge in 2012, 40% of the water service charge in 2013, and at least 25% of the water service charge in 2014 and thereafter, if such not-for-profit hospital qualifies for a disproportionate share adjustment consistent with Section 148.120 of Subchapter d of Chapter I of Title 89 of the Illinois Administrative Code, as amended, codified at 89 Ill. Adm. Code § 148.120. Provided, however, that in 2014 and thereafter, if such disproportionate share hospital has net assets or fund balances of:

(i) Less than One Million Dollars ($1,000,000.00) at the end of the tax year or calendar year immediately preceding the calendar year in which the exemption from payment of the water service charge is being claimed, such disproportionate share hospital shall be exempt from payment of 100% of the water service charge:

(ii) One Million Dollars ($1,000,000.00) or more but less than Ten Million Dollars ($10,000,000.00) at the end of the tax year or calendar year immediately preceding the calendar year in which the exemption from payment of the water service charge is being claimed, such disproportionate share hospital shall be exempt from payment of 60% of the water service charge.

(7) Public museums shall be exempt from payment of 20% of the water service charge, if such public museum is eligible to receive funds for capital development under subdivision (7) of § 1-25 of the Department of Natural Resources Act, as amended, codified at 20 ILCS 801/1-1 et seq.

(8) Not-for-profit organizations as defined in subparagraph (8)(v) of this subsection (a), other than any entity identified in paragraphs (1) through (7) of this subsection (a), that adopt a water conservation plan and perform within the corporate limits of the city charitable work benefiting the public shall be exempt in 2013 and thereafter from payment of the water service charge for water supplied to premises owned and used and occupied exclusively by such not-for-profit organization, as follows:

(i) If the not-for-profit organization has net assets or fund balances of less than One Million Dollars ($1,000,000.00) at the end of the tax year or calendar year immediately preceding the calendar year in which the exemption from payment of the water service charge is being claimed, such not-for-profit organization shall be exempt from payment of 100% of the water service charge;
(ii) If the not-for-profit organization has net assets or fund balances of One Million Dollars ($1,000,000.00) or more but less than Ten Million Dollars ($10,000,000.00) at the end of the tax year or calendar year immediately preceding the calendar year in which the exemption from payment of the water service charge is being claimed, such not-for-profit organization shall be exempt from payment of 60% of the water service charge;
(iii) If the not-for-profit organization has net assets or fund balances of Ten Million Dollars ($10,000,000.00) or more but less than Two Hundred Fifty Million Dollars ($250,000,000.00) at the end of the tax year or calendar year immediately preceding the calendar year in which the exemption from payment of the water service charge is being claimed, such not-for- profit organization shall be exempt from payment of 25% of such water service charge;
(iv) If the not-for-profit organization has net assets or fund balances of Two Hundred Fifty Million Dollars ($250,000,000.00) or more at the end of the tax year or calendar year immediately preceding the calendar year in which the exemption from payment of the water service charge is being claimed, such not-for- profit organization shall be not be* entitled to any exemption from payment of the water service charge and shall be required to pay 100% of the water service charge.
(v) As used in this paragraph (8), the term "not-for-profit organization" means an Illinois corporation organized and existing under the General Not For Profit Corporation Act of 1986 in good standing with the State and having been granted status as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

(b) (1) The supply to all premises enumerated in this section on which water may be taken from the waterworks system of the City of Chicago shall be controlled by meter, and the cost of meter, its installation, connections and vaults thereof, and the erection, construction and maintenance thereof shall be paid for and be borne by the institution or owner thereof. Nothing contained in this paragraph shall be held to exempt property of the United States, of the State of Illinois, or of any of its political subdivisions except as hereinbefore mentioned.

(2) If, at the determination of the City, a vault is required to be built on the public right of way prior to the installation of a water meter at a location owned by a not-forprofit organization as defined in subparagraph (8)(v) of subsection (a) of this section, and such not-for- profit organization demonstrates to the satisfaction of the comptroller that the organization will suffer undue financial hardship if the organization is required to pay the costs associated with installing the vault and water meter, including any additional costs that may be incurred by the City in connection with the excavation of the associated structure, the comptroller may enter into a written installment plan agreement with such not- for-profit

organization allowing the organization to pay such costs over an extended period of time in substantially equal installments. Failure to comply with the terms of the installment plan agreement may result, if applicable, in loss of the not-for-profit organization's exemption under paragraph (8) of subsection (a) of this section from payment of the water service charge.

Each installment plan shall be in a form prescribed by the comptroller, and shall state the organization's total indebtedness to the City for such costs, the amount of the initial installment, the amount of each subsequent installment, the date by which each installment is due, the penalty for delinquency under the installment plan, and such other provisions as the comptroller may require. Provided, however, that the comptroller may deny any application where it is determined that the applicant has committed fraud or has failed to make a good faith effort to comply with this section. Any recommendation, action or decision of the comptroller regarding the existence of financial hardship or the financial hardship process shall be within the sole discretion of the comptroller. Nothing in this subsection (b)(2) shall be construed to prohibit a not-for-profit organization from voluntarily making an initial minimum payment or monthly installment payment in an amount greater than provided in the installment plan agreement.

As used in this subsection (b)(2), the term "comptroller" means the comptroller of the City of Chicago or the comptroller's designee.

(c) The comptroller may fix such reasonable amounts of water as the comptroller, following consultation with the commissioner of water management, may deem to be sufficient for the requirements of said premises, and the exemption from payment of water rates shall be limited to said reasonable amounts so fixed. All use of water in excess of said reasonable amounts shall be paid for at the rates for metered water hereinafter fixed in Section 11-12-310.

(d) Accounts against the property of any entity exempted under the provisions of items (1), (2), (3), (4), (5), (6), (7) or (8) of subsection (a) of this section shall be kept in the usual manner. Upon receipt of the initial application for such exemption, such account, which shall be metered, shall be inspected by authorized personnel from the department of water management, who shall certify to the comptroller whether the entity so inspected is eligible for the exemption under this section being claimed by such entity.

**Answer: The City admits that it provides exemptions from water and sewer taxes to certain individuals and entities in Chicago Municipal Code Section 11-12-540. The City denies that Section 11-12-540 contains the exact language quoted.**

180. In all, over 6800 water accounts receive partial or total Exemptions from the payment of Water Charges. *See* Exhibit 11 hereto. The partial or total Exemptions are not based on a consideration of such factors as differences in the amount of the product used, the time when used, the purpose for which used, or any other relevant factors reflecting a difference in costs to

serve the Exempt Customers and the Non-Exempt Customers. *Austin View Civic Ass'n v City of Palos Hts*, 85 Ill App 3d 89; 40 Ill Dec 164; 405 NE2d 1256 (1980).

**Answer: The City lacks knowledge sufficient to form a belief as to truth of the allegations in the first sentence of this paragraph and therefore neither admits or denies the allegations. The City's investigation continues. The City denies that this paragraph sets forth the relevant factors for granting, by ordinance, partial or total exemptions from the payment of water charges and therefore denies this paragraph's remaining allegations.**

181. First, the treated water provided to the Exempt Customers is of the same quality as the treated water provided to Non-Exempt Customers. Thus, the Exemptions from Water Charges cannot be justified on the grounds that the treated water supplied to Exempt Customers is less valuable or of a lower quality than the treated water provided to Non-Exempt Customers.

**Answer: The City admits the first sentence of this paragraph. The City admits that a difference in water quality would not be a basis for the Exemptions. The City denies the implication that the City must justify the Exemptions based on a difference in service and denies the remaining allegations in this paragraph.**

182. Similarly, the operations, maintenance and capital expenses incurred by the City to supply a gallon of water are the same for all water customers. The City's financial statements for its Water Fund identify the following types of operating and maintenance expenses: (1) "Source of Supply," (2) "Power and Pumping," (3) "Purification," (4) "Transmission and Distribution," (5) "Customer Accounting and Collection," (6) "Administrative and General," (7) "Central Services and General Fund Reimbursements," and (8) "Pension expense." *See* Exhibit 8 hereto.

**Answer: The City denies that it calculates the operations, maintenance, and capital expenses needed to supply one gallon of water to one customer. The City admits that page 15 of the Annual Comprehensive Financial Report for the City of Chicago Department of Water Management Water Fund for the year ended December 31, 2022 (Ex. 8) lists the expenses Plaintiff cites, but that list of operating expenses is a mere summary of the Water Fund's operating expenses in total for that year and explains nothing about the costs of supplying water to different types of customers. To the extent further response is required, the City denies this paragraph's allegations.**

183. The City's Source of Supply expenses on a per gallon basis are the same for Exempt and Non-Exempt Water Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

184. The City's Power and Pumping expenses on a per gallon basis are the same for Exempt and Non-Exempt Water Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

185. The City's Purification expenses on a per gallon basis are the same for Exempt and Non-Exempt Water Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

186. The City's Transmission and Distribution expenses on a per gallon basis are the same for Exempt and Non-Exempt Water Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

187. The City's Customer Accounting and Collection expenses on a per gallon basis are the same for Exempt and Non-Exempt Water Customers.

**Answer: The City denies that it calculated expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

188. The City's Administrative and General expenses on a per gallon basis are the same for Exempt and Non-Exempt Water Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

189. The City's Central Services and General Fund Reimbursement expenses on a per gallon basis are the same for Exempt and Non-Exempt Water Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

190. The capital costs associated with the City's Water System on a per gallon basis are the same for Exempt and Non-Exempt Water Customers.

**Answer: The City denies that it allocates costs on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

191. The monetary value of the Exemptions from Water Charges is enormous:

**Answer: The City denies this paragraph's allegations.**

192. In 2017, the Exempt Properties received partial or total Exemptions from Water Charges in the total amount of $19,789,872.91.

**Answer: The City lacks knowledge sufficient to form a belief as to the truth of this allegation and therefore does not admit or deny it. The City's investigation continues.**

193. In 2018, the Exempt Properties received partial or total Exemptions from Water Charges in the amount of $19,141,084.44.

**Answer: The City lacks knowledge sufficient to form a belief as to the truth of this allegation and therefore does not admit or deny it. The City's investigation continues.**

194. In 2019, the Exempt Properties received partial or total Exemptions from Water Charges in the amount of $19,096,680.69.

**Answer: The City lacks knowledge sufficient to form a belief as to the truth of this allegation and therefore does not admit or deny it. The City's investigation continues.**

195. In 2020, the Exempt Properties received partial or total Exemptions from Water Charges in the total amount of $15,665,355.84.

**Answer: The City lacks knowledge sufficient to form a belief as to the truth of this allegation and therefore does not admit or deny it. The City's investigation continues.**

196. In 2021, the Exempt Properties received partial or total Exemptions from Water Charges in the total amount of $20,188,266.78.

**Answer: The City lacks knowledge sufficient to form a belief as to the truth of this allegation and therefore does not admit or deny it. The City's investigation continues.**

197. The total monetary value of the Exemptions from Water Charges between January 1, 2017 and December 31, 2021 exceeds $93 million. *See* Exhibit 11 hereto.

**Answer: The City lacks knowledge sufficient to form a belief as to the truth of this allegation and therefore does not admit or deny it. The City's investigation continues.**

198. Section 3-12-020 of the Ordinance further exempts the Exempt Customers (fully or partially) from payment of Sewer Charges. *See* Exhibit 3 hereto. The total monetary value of all of these Exemptions between January 1, 2017 and December 31, 2021 exceeds $40 million. *See* Exhibit 11 hereto.

**Answer: The City admits that Section 3-12-020 provides total and partial exemptions from payment of sewer charges to certain customers who are also exempt, totally or partially, from payment of water charges. The City lacks knowledge sufficient to form a belief as to the truth of this paragraph's remaining allegations and therefore does not admit or deny them. The City's investigation continues.**

199. Finally, Section 3-12-050 totally exempts qualified sewer customers 65 and over from payment of the Sewer Charges (the "Senior Sewer Exemption"). *See* Exhibit 3 hereto. In order to receive the Senior Sewer Exemption, a person must (1) be 65 years of age or older, (2) be the owner of the residential unit receiving sewer service, (3) occupy the residence as his or her

principal place of residence and (4) have a residence with a separate water meter or assessed account. *Id*.

**Answer: The City admits this paragraph's allegations.**

200. The Senior Sewer Exemption is in no way based on financial need – *i.e.*, wealth or income. In fact, it requires that the person claiming the exemption OWN the residence receiving sewer service and also use it as their principal residence. This means they are a homeowner (and not a renter), which is a further indication that they are not indigent. This also leads to the nonsensical result that an 85-year old low-income renter must pay for sewer services but a 65-year old high-income homeowner is Exempt from the obligation to pay for those same services.

**Answer: The City denies the first sentence of this paragraph. The City admits that one of the necessary conditions for qualifying for the exemption is ownership of the property that would be assessed sewer charges. The City denies the remaining allegations of this paragraph, including the assertion that a person cannot be "indigent" simply because they own a home and the suggestion that a renter, rather than the renter's landlord, would necessarily be responsible for sewer charges for a rental property.**

201. Persons who receive the Senior Sewer Exemption are included within the definition of "Exempt Customers" herein.

**Answer: The City admits Plaintiff purports to include persons receiving the Senior Sewer Exemption in its defined term "Exempt Customers" as Plaintiff uses that term in this paragraph of the complaint.**

202. Over 62,000 sewer customers of the City receive the Senior Sewer Exemption. Between January 1, 2017 and December 31, 2021, the monetary value of the Senior Sewer Exemption has exceeded $110 million. *See* Exhibit 11 hereto.

**Answer: The City lacks knowledge sufficient to form a belief as to the truth of this allegation and therefore does not admit or deny it. The City's investigation continues.**

203. Like the Exemptions for Water Charges, the partial or total Exemptions for Sewer Charges (including for customers who receive the Senior Sewer Exemption) are not based upon any differences in costs to serve the Exempt Customers and the Non-Exempt Customers. *Austin View Civic Ass'n v City of Palos Hts*, 85 Ill App 3d 89; 40 Ill Dec 164; 405 NE2d 1256 (1980).

**Answer: The City denies this paragraph accurately cites or summarizes the referenced authority. The City denies this paragraph accurately sets forth the process water customers seeking partial or total exemptions must undergo to be considered for and ultimately receive a partial or total exemption. The City admits Exemptions for Sewer Charges are not based on costs but denies a difference in costs is determinative in deciding whether Exemptions are illegal. *Village of Niles v. City of Chicago*, 201 Ill. App. 3d 651, 680 (1st Dist. 1980 ("if the rates charged to plaintiffs are not excessive, there is no unreasonable discrimination").**

204. First, the assumed characteristics of the sewage generated by Exempt Customers is the same as the assumed characteristics of the sewage generated by Non-Exempt Customers. Thus, the Exemptions cannot be justified on the grounds that sewage generated by Non-Exempt Customers is more costly to collect, convey or treat. This is particularly true because the City incurs no treatment costs for the sewage that originates in the City. All the City's sewage is ultimately conveyed to the Metropolitan Water Reclamation District of Greater Chicago (the "MWRD"), a public utility not affiliated with the City, which provides the treatment. The MWRD treatment costs for the inhabitants of Chicago (including Plaintiff and the Class) are not included in the City's Sewer Rates but are instead financed through separate property taxes.

**Answer: The City denies the implication that the City must justify the Exemptions based on "assumed characteristics" and a difference in cost and therefore denies the allegations in the first two sentences of this paragraph. The City admits the MWRD provides the treatment for the City's sewage but denies that it makes anything "particularly true." The City admits that MWRD costs are financed by property taxes and not by the Sewer Fund.**

205. The City's Sewer Fund incurs only the costs associated with collecting and conveying the sewage to the MWRD and operating, maintaining and improving the physical infrastructure (sewer pipes, etc.) that are used to collect and convey the sewage from structures in the City to the MWRD.

**Answer: The City admits this paragraph's allegations.**

206. The operations, maintenance and capital expenses incurred by the City to dispose of a gallon of sewage are the same for all customers. The City's financial statements for the Sewer Fund set forth the following types of operating and maintenance expenses: (1) "Repairs," (2) "General Fund Reimbursements," (3) "Pension Expense," (4) "Maintenance," (5) "Engineering," and (6) "Administrative and General." *See* Exhibit 17 hereto.

**Answer: The City does not calculate the operations, maintenance and capital expenses to transfer waste on a per gallon basis and denies the allegations in the first sentence of this paragraph. The City admits that in the Statement of Revenues, Expenses, and Changes in Net Position for the Year Ended December 31, 2022 (Ex. 17), the listed expenses are included under "Operating Expenses."**

207. The City's Repair expenses on a per gallon basis are the same for Exempt and Non-Exempt Sewer Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

208. The City's General Fund Reimbursement expenses on a per gallon basis are the same for Exempt and Non-Exempt Sewer Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

209. The City's Pension Expense on a per gallon basis are the same for Exempt and Non-Exempt Sewer Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

210. The City's Maintenance expenses on a per gallon basis are the same for Exempt and Non-Exempt Sewer Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

211. The City's Engineering expenses on a per gallon basis are the same for Exempt and Non-Exempt Sewer Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

212. The City's Administrative and General expenses on a per gallon basis are the same for Exempt and Non-Exempt Sewer Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

213. The capital costs associated with the City's Sewer System on a per gallon basis are the same for Exempt and Non-Exempt Sewer Customers.

**Answer: The City denies that it calculates expenses on a per gallon basis. To the extent further response is required, the City denies this paragraph's allegations.**

214. The total monetary value of all of the Exemptions for 2017 through 2021 is as follows:

2017 -- $54,060,941
2018 -- $53,146,258
2019 -- $44,217,399
2020 -- $45,067,146
2021 -- $54,789,761 [Exhibit 11 hereto]

**Answer: The City lacks knowledge sufficient to form a belief as to truth of the allegations in this paragraph and therefore neither admits or denies the allegations. The City's investigation continues.**

215. The total monetary value of all of the Exemptions for the time period from January 1, 2017 through December 31, 2021 exceeds $250 million. Obviously, the harm to Plaintiff and the Class from the unlawful Exemptions has continued after December 31, 2021, and will continue until the Court prohibits the City from granting these illegal Exemptions.

**Answer: The City lacks knowledge sufficient to form a belief as to truth of the allegations in the first sentence in this paragraph and therefore neither admits or denies the allegations. The City's investigation continues. City denies this paragraph's remaining allegations.**

216. The payment Exemptions provided by the City's Ordinances are arbitrary and capricious and in no way is the difference in Water and Sewer Rates and Charges reasonably related to any difference in the cost of providing service to the Exempt Customers. In all material respects, the Exempt Customers are similarly-situated to the Non-Exempt Customers.

**Answer: The City denies its exemptions are arbitrary and capricious. The City admits that the Exemptions are not based on a difference in cost but denies that the Exemptions have caused unreasonable or excessive rates and denies this paragraph's remaining allegations.**

217. The Exemptions are not based on a consideration of such factors as differences in the quality or amount of the product used, the time when used, the purpose for which used, or any other relevant factors reflecting a difference in costs. Because the difference in rates created by the Exemptions is not reasonably related to a difference in the costs of providing the service, there is unreasonable discrimination.

**Answer: . The City admits that the Exemptions are not based on a difference in costs but denies that the Exemptions have caused unreasonable or excessive rates The City denies it engages in "unreasonable discrimination" and denies this paragraph's remaining allegations.**

218. "When it comes to the extent of plaintiffs' protection under their common law right, our supreme court has noted that consumers of municipally owned utilities 'are just as completely protected from exorbitant rates and unjust discrimination as the consumers are under the Public Utilities Act' [Ill. Rev. Stat. 1977, ch. 111 2/3, par. 1 *et seq*.]. (*Springfield Gas & Electric Co. v. City of Springfield* (1920), 292 Ill. 236, 252-53, 126 N.E. 739, 746). *See also Greater Peoria Sanitary & Sewage Disposal Dist. v. Kellstedt*, *supra*, 130 Ill. App. 3d at 1004-1005 ("a city operating a utility is in the same position as a private utility and is precluded from unjust discrimination in ratemaking"). Thus, the test to be applied in determining whether there has been a violation of plaintiffs' common law right is **the same test** used to determine whether a privately owned utility company is acting in an unreasonably discriminatory manner in violation of the Public Utilities Act when it charges different rates to different consumers." *Austin View Civic Ass'n v City of Palos Hts*, 85 Ill App 3d 89, 94-95; 40 Ill Dec 164; 405 NE2d 1256 (1980) (emphasis added).

**Answer: The City denies that all the quoted language in the first sentence of this paragraph appears in the source cited. The City admits that the quoted language in the *Greater Peoria Sanitary* citation sentence appears in *Greater Peoria Sanitary*. The City admits that the language beginning from "Thus, the test to be applied" and ending with the closing quotation marks immediately before the *Austin View* citation appears in *Austin View*. The City admits that under common law, Plaintiff must establish that the rates are not excessive. The City denies this paragraph's remaining allegations.**

219. Section 9-241 of the Public Utility Act provides:

> **No public utility shall, as to rates or other charges, services, facilities or in other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage**. No public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service. [220 ILCS 5/9-241 (emphasis added)]

**Answer: The City admits that the quoted language appears in the source cited.**

220. In *Mountain States Legal Foundation v. Public Utilities Commission*, 197 Colo. 56, 590 P.2d 495 (Colo. 1979) (Exhibit 18 hereto), the Colorado Supreme Court, interpreting a nearly identical provision of the Colorado Public Utilities Act, held that the Colorado Public Utilities Commission engaged in unlawful rate discrimination by requiring certain utilities to provide discounted rates to low-income elderly and disabled customers of the utilities: Section 40-3-106(1), C.R.S. 1973, prohibits public utilities from granting preferential rates to any person, and section 40-3-102, C.R.S. 1973, requires the PUC to prevent unjust discriminatory rates. **When the PUC ordered the utility companies to provide a lower rate to selected customers unrelated to the cost or type of the service provided, it violated section 40-3-106(1)'s prohibition against preferential rates. In this instance, the discount rate benefits an unquestionably deserving group, the low-income elderly and the low-income disabled. This, unfortunately, does not make the rate less preferential**. To find otherwise would empower the PUC, an appointed, non-elected body, to create a special rate for any group it determined to be deserving. The legislature clearly provided against such discretionary power when it prohibited public utilities from granting "any preference." In addition, section 40- 3-102, C.R.S. 1973, directs the PUC to prevent unjust discriminatory rates. Establishing a discount gas rate plan which differentiates between economically needy individuals who receive the same service is unjustly discriminatory. [197 Colo. at 59-60 (emphasis added).]

**Answer: The City admits the cited authority held as alleged but denies that the cited authority involves a "nearly identical provision." The City admits the language beginning "Section 4-3-106(1), C.R.S.1973, prohibits public utilities" to the end of the paragraph appears in the source cited. The City denies the cited authority supports Plaintiff's claims. The City denies this paragraph's remaining allegations.**

221. By arbitrarily exempting the Exempt Customers from payment of the Water and Sewer Charges, the City has established unfair preferences and therefore has unjustly discriminated against Plaintiff and the Class in violation of the City's common law obligations.

**Answer: The City denies this paragraph's allegations.**

222. Plaintiff and the Class have been harmed by the illegal discrimination because they have necessarily paid higher Water and Sewer Charges by being forced to subsidize the system costs associated with the Exempt Customers.

**Answer: The City denies this paragraph's allegations.**

223. The City incurs costs in providing water and sewer services to the Exempt Customers, which costs necessarily are part of the City's actual Revenue Requirement for water and sewer services. Because the City does not receive payments from the Exempt Customers to cover those costs, those costs are necessarily covered by the Rates paid by the Non-Exempt Customers.

**Answer: The City admits that it incurs costs to provide water and sewer services to all its customers, including customers exempt from water or sewer charges. The City denies this paragraph's remaining allegations.**

224. The fact that, effective June 2016, the City implemented a policy of annually increasing its Water and Sewer Rates by the rate of inflation does not mean that the Rates were not discriminatory "at the time of their establishment" because, among other reasons, the Exemptions were already in place and therefore were part of the City's Rate structure long before June 2016. In fact, the Water and Sewer Exemptions have been in place since at least 2012. *See* Exhibit 19 hereto (December 12, 2012 amendment to Ordinance 11-12-540). The Senior Sewer Exemptions have been in place since at least 2014. *See* Exhibit 20 hereto (October 8, 2014 amendment to Ordinance 3-12-050).

**Answer: The City admits that the water and sewer exemptions were in place before June 2016. The City admits that exemptions from water charges have been in place since at least 2012. The City admits that the exemption provided by Section 3-12-050 has been in place since at least 2014. The City denies that the rates were first established in June 2016 and denies this paragraph's remaining allegations.**

225. The City's application of an inflation factor in subsequent years merely increased the monetary value of the Exemptions and therefore continued the Overcharges that were already baked into the Rates, albeit at ever increasing amounts.

**Answer: The City denies this paragraph's allegations.**

226. During the Class Period through 2021, the Exempt Customers have been excused from paying over $250 million that they should have paid for water and sewer services. If the City had charged the Exempt Customers during that period of time, the City would have been required to charge the Non-Exempt Customers over $250 million less during that period of time. By excusing the Exempt Customers from payment, the City has forced the Non-Exempt Customers to overpay for their water and sewer services by over $250 million.

**Answer: The City denies that it has forced any customers to overpay for their water and sewer services at any time. The City lacks knowledge or information sufficient to form a belief as to the truth this paragraph's remaining allegations and thus neither admits nor denies this paragraph's remaining allegations. The City's investigation continues.**

227. The excessiveness of the City's charges to Plaintiff and the class—*i.e.*, the disfavored customers—is proven by the example the City itself provided at pp. 10-11 of its Motion to Dismiss (filed on July 21, 2022), which illustrates the unlawful subsidy almost perfectly. The City posits a water utility with annual costs of $100,000 and 100 residents, each of whom uses the same amount of water. Absent any exemptions, each of the 100 residents would pay $1000 for their water. If, however, as the City further posits, 20 of the 100 residents were exempt, "each of the 80 non-exempt residents would have to pay $1,250 a year in order to cover the department's costs." City Motion at pp. 10-11. While the implications of its example appear to be lost on the City, the example shows that, in the absence of the unfair discrimination each customer would pay $1000, but because of the unfair discrimination, the 80 disfavored Non-Exempt Customers must pay $1250 to cover the costs of providing water to the 20 Exempt Customers. The additional $250 is thus excessive because that amount does not pay for the water provided to the Non-Exempt Customers but instead pays for the water provided to the Exempt Customers.

**Answer: The City denies this paragraph's allegations.**

228. At the end of the day, it is just math. Given a certain Revenue Requirement for, say, the Water Fund, the fewer customers who must finance the Revenue Requirement, the more those customers must pay.

**Answer: The City denies this paragraph's allegations.**

229. 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.

**Answer: The City denies this paragraph's allegations.**

230. The City has been unjustly enriched by the Exemptions because, among other reasons, the City does not pay for the water and sewer services it receives for its own facilities. Because of the Exemptions, the City has not paid for millions of dollars of water and sewer services it has received during the Class Period. As a result, the costs associated with the City's own water and sewer services have been paid by the Non-Exempt Customers. Clearly, Plaintiff and the Class have conferred an unjust benefit on the City through such payments which the City should not be allowed to retain.

**Answer: The City denies this paragraph's allegations.**

231. Even if the City has not been unjustly enriched in the aggregate by the Exemptions, Illinois law still requires the City to refund the excess monies it collected from Non-Exempt customers. Because of the Exemptions, the City has funds which in right and justice belong to Plaintiff and the Class and which it ought to restore because it received the funds by charging a rate in excess of the lawful rate. The right to the remedy of "reparations" under these circumstances was recognized by the Court in *West v. City of Batavia*, 155 Ill. App. 3d 925, 508 N.E.2d 1124 (2d Dist. 1987):

> We agree with plaintiff that a cause of action for reparations may lie against a municipally owned utility. **At common law, there existed a right to recover reparations for unreasonable charges by a utility or common carrier**. (*Terminal R.R. Association v. Public Utilities Com.* (1922), 304 Ill. 312, 317, 136 N.E. 797; *Chicago, Burlington & Quincy R.R. Co. v. Jones* (1894), 149 Ill. 361, 374.) **This action was based upon the theory that the defendant had funds which in right and justice belonged to the plaintiff and which it ought to restore because it received the funds by charging a rate in excess of the lawful rate.** (*A.L. Jones Co. v. Chicago, Milwaukee & St. Paul Ry. Co.* (1919), 213 Ill. App. 283, 288.) Although the common law right to recover reparations from a public utility has been superseded by the Public Utilities Act … that act was not intended to apply to municipally owned utilities (*Springfield Gas & Electric Co. v. City of Springfield* (1920), 292 Ill. 236, 240, 126 N.E. 739, *aff'd* (1921), 257 U.S. 66, 66 L. Ed. 131, 42 S. Ct. 24). **We conclude that a cause of action for reparations may lie against Batavia based upon the operation of its utility**. [155 Ill. App. 3d at 928 (emphasis added).]

**Answer: The City admits that the quoted language appears in the source cited but denies that cited source supports Plaintiff's claims. The City denies this paragraph's remaining allegations**

232. By virtue of the City's unfair discrimination, 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 to recover back the amount of the illegal exaction.

**Answer: The City denies this paragraph's allegations.**

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

**Answer: The City denies this paragraph's allegations.**

## COUNT X

## UNREASONABLE AND EXORBITANT WATER AND SEWER RATES

234. Plaintiff incorporates each of the preceding paragraphs 1 through 21, and 27 through 74, inclusive, as if fully set forth herein.

**Answer: The City incorporates its answers to each of the preceding paragraphs 1 through 21, and 27 through 74, inclusive, as if fully set forth herein.**

235. This Count sets forth a single cause of action – unreasonable and exorbitant Rates imposed in violation of the common law and 65 ILCS 5/11-139-8, which imposes the express limitation that the City only "charge the inhabitants thereof a reasonable compensation for the use

and service of the combined waterworks and sewage system and to establish rates for that purpose."

**Answer: The City admits that this Count purports to state a common law claim for unreasonable and exorbitant rates. The City states that the Court has previously held that the quoted language in 65 ILCS 5/11-139-8 does not establish a cause of action against the City and denies this paragraph's remaining allegations.**

236. A municipality, such as the City, which sells water and sewer service, does so in a proprietary rather than in a governmental capacity. The business of supplying water belongs to that class of enterprises upon which the public interest is impressed. The City is subject to the same rules that would apply to a privately owned utility including those forbidding unreasonableness and discrimination in utility rates.

**Answer: The City admits it sells water and sewer services in a proprietary capacity and that some of the rules that apply to privately owned utilities apply to municipal utilities including a prohibition against discrimination that results in unreasonably excessive and exorbitant rates. The City admits the statement "The business of supplying water belongs to that class of enterprises upon which the public interest is impressed, which" is quoted from *Austin View Civic Ass'n v. City of Palos Heights.*, 85 Ill. App. 3d 89, 94 (1st Dist. 1980). The City denies this paragraph's remaining allegations.**

237. Under Illinois common law, Water and Sewer Rates must be reasonable and all charges imposed must relate to the actual use of the water and sewer system. *See e.g. Village of Niles v. City of Chicago*, 82 Ill App 3d 60, 68; 37 Ill Dec 142; 401 NE2d 1235 (1980); *Austin View Civic Ass'n v City of Palos Hts*, 85 Ill App 3d 89, 94-95; 40 Ill Dec 164; 405 NE2d 1256 (1980). The City's Ordinances also impose this requirement. *See* City Ordinance Sections 3-12-010 and 11-12-260.

**Answer: The City admits that, under Illinois common law, water and sewer rates must be reasonable and not excessive. The City denies the remaining allegations of this paragraph and denies the cited sources support Plaintiff's claims.**

238. The City's Water and Sewer Rates have been unreasonable and exorbitant because (1) the City fraudulently allocates the alleged indirect costs of other City departments to its Water and Sewer Fund, recovers those phantom expenses through Water and Sewer Rates and then transfers those monies to other City funds to be used for purposes unrelated to the water and sewer system (the "Excessive Cost Allocations") and (2) the City overcharges the Water Fund and Sewer Fund tens of millions of additional dollars per year, purportedly to cover the Water Fund's and the Sewer Fund's proportionate share of the City's total annual contribution to the Municipal Employees' Annuity and Benefit Fund (the "Municipal Employees' Fund") and the Laborers' and Retirement Board Annuity and Benefit Fund (the "Laborers' Fund") which overcharges are also incorporated into the Water and Sewer Rates (the "Pension Overcharges").

**Answer: The City denies this paragraph's allegations.**

## THE EXCESSIVE COST ALLOCATIONS

239. The Excessive Cost Allocations are included in the City's Rates on a prospective basis and the City intends to collect the revenues associated with the Excessive Cost Allocations on an annual basis. In the absence of the Excessive Cost Allocations, the City's Water and Sewer Charges could be set to generate tens of millions of dollars less in annual revenues.

**Answer: The City denies this paragraph's allegations.**

240. The City has persisted in diverting hundreds of millions of dollars of water and sewer funds to uses unrelated to water and sewer utility services.

**Answer: The City denies this paragraph's allegations.**

241. For example, the City included $69,335,000.00 in its 2022 Water Fund budget "to reimburse the Corporate Fund for Indirect Costs Chargeable to the Fund." *See* Exhibit 7 hereto at p. 277.

**Answer: The City admits this paragraph's allegations.**

242. Similarly, the City included $37,658,000.00 in its 2022 Sewer Fund budget "to reimburse the Corporate Fund for Indirect Costs Chargeable to the Fund.

**Answer: The City admits this paragraph's allegations.**

243. The City's Water and Sewer Funds transfer money to the City's Corporate Fund annually to cover the allocations of purported indirect costs. In addition to the transfers "to reimburse the Corporate Fund for indirect costs chargeable" to the Water and Sewer Funds, the City also allocates tens of millions of dollars of "direct" expense of other City departments to the Water and Sewer Funds.

**Answer: The City admits that the Water and Sewer Funds transfer money to the Corporate Fund to cover the indirect costs for services chargeable to the Water and Sewer Funds and admits that the City also allocates direct expense of other City Departments in varying amounts to the Water and Sewer Funds as shown in the annual Budget Ordinances. The City denies this paragraph's remaining allegations.**

244. On a periodic basis, the City engages an outside consultant, Maximus, to prepare a "cost allocation plan." The purpose of a cost allocation plan is distribute the so-called "indirect" costs of "central services" departments to other City funds and departments which benefit from goods or services provided by the "central services" departments. Central services are those administrative units that mainly provide service to other government departments and not to the general public. Examples include finance, treasury, human resources, information technology and building maintenance.

**Answer: The City admits that it regularly engages Maximus as a consultant and that one of the services Maximus provides to the City is the preparation of indirect cost allocation plans for use in the City budgeting process. The City admits that "central services" refers to government services provided by government departments to other government departments and admits the departments in the last sentence are examples of departments that can provide "central services." The City admits that Maximus's full cost allocation plans in each year are prepared to enable the City to allocate central services costs to other city funds and departments. The City denies this paragraph's remaining allegations.**

245. Maximus prepared a Central Services Cost Allocation study (which was completed in 2022 but covered the year 2020). Maximus determined that, at most, the City may properly allocate $21,709,348 in indirect "central services" costs (as opposed to the $69 million the City actually allocated) to the Water Fund and may only allocate $1,509,684 in indirect "central services" costs (as opposed to the $37 million the City actually allocated) to the Sewer Fund for 2022. *See* Exhibit 21 hereto at page C-6.

**Answer: The City denies the allegations of this paragraph.**

246. Thus, for **just 2022**, even after applying a 2% annual inflation factor to Maximus' 2020 indirect cost calculation, the City has allocated over $46 million in phantom "indirect costs" to the Water Fund and has further allocated over $35 million in phantom "indirect costs" to the Sewer Fund. There are similar phantom cost allocations in prior years.

**Answer: The City denies this paragraph's allegations.**

247. Collectively, the Excessive Cost Allocations to the Water and Sewer Funds for 2017 through 2023 that were funded by the Rates and Charges imposed just upon water and sewer customers in the City (including Plaintiff and the Class) and other customers exceeded $400 million.

**Answer: The City denies this paragraph's allegations.**

248. It potentially can be appropriate to charge and recover from the Water and Sewer Funds the so-called "indirect" costs of "central services" departments which provide goods and services to the Water and Sewer Funds. Central services are those administrative units that mainly provide service to other government departments and not to the general public. Examples include finance, treasury, human resources, information technology and building maintenance. The problem is that the City's transfers are grossly excessive because they do not reflect the proper "indirect" costs that should be attributable to the Water and Sewer Funds.

**Answer: The City admits that "central services" refers to government services provided by government departments to other government departments and admits the departments in the last sentence are examples of departments that can provide "central services." The City admits that it is appropriate to allocate to the Water and Sewer Funds the indirect costs of departments that provide services to the Water and Sewer Funds. The City denies this paragraph's remaining allegations.**

249. The City's allocation of phantom "indirect expenses" violates well-established principles of water and sewer utility rate-making. The American Water Works Association's policy statement on Financing, Accounting and Rates states that '**Water and wastewater utility funds should not be diverted to uses unrelated to water and wastewater utility services**. Reasonable taxes, payments in lieu of taxes, and/or payments for services rendered to the water utility by a local government or other divisions of the owning entity may be included in the utility's revenue requirements after taking into account the contribution for fire protection and other services furnished by the utility to the local government or to other divisions of the owning entity' (AWWA 2015)." [AWWA Manual of Water Supply Practices M1 (Seventh Ed) (the "M1 Manual") at p. 13 (emphasis added)]]

**Answer: The City admits that the quoted language, without the bold typeface, appears in the General Concepts section of the M1 Manual at p. 13. The City denies this paragraph's remaining allegations.**

250. "Accordingly, payments made to a municipality's general fund should reimburse the general fund for the **necessary cost** of goods and/or services required by the water utility to provide water service." *Id*. (emphasis added).

**Answer: The City admits that the quoted language, without the bold typeface, appears in the M1 Manual at p. 13.**

251. The City admitted that the "**M1 Manual is considered to be the industry standard for setting water rates by public water suppliers nationally** and is used by peer entities such as **Great Lakes Water Authority, Metropolitan Water District of Southern California, the City of Houston, the City of Philadelphia, San Francisco Public Utilities Commission, and San Diego County Water Authority." *See* Exhibit 1 at p. 42 (emphasis added). The City stated:**

> **AWWA provides transparency** to customers; cost of service requires detailed accounting of components of the system and allocates cost of service to each customer. *See* Exhibit 2 hereto at p. 23 (City's "Financial Update" dated April 23, 2023) (emphasis in original).

**Answer: The City admits that in the Official Statement (Ex. 1), it made the quoted statement, without the bold typeface. The City admits that in the Financial Update (Ex. 2), included the quoted statement. The City denies this paragraph's remaining allegations.**

252. Notwithstanding the City's admissions, the City has never conducted a true cost-of service study for its Water or Sewer Systems, much less utilized the M1 Manual or implemented rates and charges that were consistent with the methodology set forth in the M1 Manual. Stated simply, the City has never even attempted to devise Water and Sewer Rates that comply with the "industry standard."

**Answer: The City admits that it has not finalized a cost of service study and denies this paragraph's remaining allegations.**

253. A major reason the City's cost allocations are excessive is because the City allocates tens of millions of dollars of the expenses of its Police and Fire Departments to the Water and Sewer Fund each year. The methodology used to derive the cost allocations is set forth in certain Full Cost Allocation Plans authored by Maximus, which are separate from the Central Services Cost Allocation Plans.

**Answer: The denies this paragraph's allegations.**

254. The Cost Allocation Plans have historically been based on the City's actual financial results and then used to compile future budgets. For example, the Cost Allocation Plans the City used for its 2022 Budget were prepared by Maximus based upon the City's results for 2019. *See* Exhibit 22 hereto. The City applies a 2% annual inflation factor to the prior years' numbers in order to reflect presumed increases in costs in later years. *See* Exhibit 29 hereto. The City annually transfers to other City funds all or substantially all of the amounts that Maximus determines are allocable to the Water and Sewer Funds.

**Answer: The City admits the allegations in the first two sentences of this paragraph except that it denies Exhibit 22 makes any reference to allocations for the City's 2022 budget. The City denies the allegations in the third sentence of this paragraph. The City admits that the Water and Sewer Funds reimburse the Corporate Fund for indirect costs and that the amounts are determined using Maximus's reports. The City denies this paragraph's remaining allegations.**

255. Maximus allocates the police and fire costs to the Water and Sewer Fund based upon the "Plant Value" of the City's water and sewer infrastructure assets as a percentage of the City's "full property value." Using this methodology, the City allocates 1.327% of certain purported Police and fire expenses to the Water Fund and 0.9929% of certain purported Police and Fire expenses to the Sewer Fund. *See* Exhibit 22 at p. C-639, C-642 and C-736.

**Answer: The City admits that this paragraph accurately summarizes the referenced portions of the cited exhibit, and admits this paragraph describes the process used to allocate police and fire funds to the Water and Sewer Funds for year 2019. The City denies this paragraph's remaining allegations.**

256. For 2019, Maximus allocated $35.8 million of police expenses and $13.1 million of fire department expenses to the Water Fund, and further allocated $26.8 million of police expenses and $9.8 million in fire expenses to the Sewer Funds. *See* Exhibit 22 hereto at pp. C-643 and C-737. All or substantially all of these amounts were included in the Water and Sewer Rates, and the revenues derived were actually transferred from the Water and Sewer Funds to the City's Corporate Fund. Because these funds were not restricted, or even earmarked, the City was able to use the monies for general municipal purposes.

**Answer: The City admits the paragraph's first sentence accurately summarizes Maximus's determinations on the cited pages of Exhibit 22 to the complaint. The City admits that the indirect costs for Police and Fire in Exhibit 22 were among the costs used to determine amounts to be transferred to the Corporate Fund in 2022. The City admits that the funds**

**were not restricted but denies any implication that the funds were used improperly. The City denies this paragraph's remaining allegations.**

257. The City's allocation of police and fire expenses to the Water Fund and the Sewer Fund is illegal and improper for the following reasons.

**Answer: The City denies this paragraph's allegations.**

258. First and foremost, the allocation of **any** police and fire expense to the Water and Sewer Funds is arbitrary and capricious because it is improper ratemaking to allocate the costs of funds or departments which serve the general public to enterprise funds. Maximus itself has recognized this. In a presentation it authored, Maximus included in "unallowed costs," the "General Costs of Government," which are the "costs of other general types of government services normally provided to the general public, **such as fire and police**, unless provided for as a direct cost under a program statute or regulation." *See* Exhibit 23 hereto.

**Answer: The City denies this paragraph's allegations.**

259. In addition, the City already directly allocates over $1 million of police expenses annually to the Water Fund. *See* Exhibit 24 hereto (excerpts from City's 2023 Water Fund budget) at p. 279. This amount – determined by the City via an unknown methodology – presumably reflects the fair value of the services provided by the Police Department to the Water Fund. As Maximus has stated (Exhibit 22 at p. A-4), directly-paid costs must be credited in the cost allocation methodology, but the City does not do so.

**Answer: The City admits that the 2023 Budget Ordinance appropriated $1,470,301 from the Water Fund under the line item "Transfer for Services Provided by the Department of Police." The City denies this paragraph's remaining allegations.**

260. It is also arbitrary and capricious for the City to create non-existent departments – *i.e.*, "Police General" and "Fire General,"— pack those departments with billions of dollars of police and fire expenses, and then allocate a percentage of those costs to only the Water and Sewer Funds. Maximus states that the purpose of the Full Costs Allocation Plan is to allocate the costs of "central services departments" to other departments (*see* Exhibit 22 at p. A-4), but the Police Department and the Fire Department are in no sense "central services departments" providing indirect services to the Water and Sewer Fund.

**Answer: The City denies this paragraph's allegations.**

261. Second, assuming that the allocation of **some** police and fire expense to the Water and Sewer Funds is appropriate, the City's methodology for allocating those costs is arbitrary and capricious because it does not result in a fair allocation to Water and Sewer. This is true for at least two reasons: (1) the methodology uses a nonsensical assumption about asset values to allocate police and fire expenses to the Water and Sewer Funds and (2) the alleged police and fire expenses allocated to the Water and Sewer Fund are grossly inflated.

**Answer: The City denies this paragraph's allegations.**

262. Initially, the Maximus methodology uses the total water and sewer "plant value" as a percentage of the total value of all real property in the City. *See* Exhibit 22 at pp. C-639 and C-647. But that is a nonsensical methodology because the purpose of cost allocation is to allocate the costs in reasonable proportion to each benefited fund's actual use of the service.

**Answer: The City admits that the Water and Sewer Funds cost-allocation analysis in the cited exhibit was based on "the ten-year historical average of utility plant value for the Water and the Sewer Funds to the City's full market value, adjusted for the current Water and Sewer fund size relative to the historical ten-year average fund size." Ex. 22, p. C-639. The City denies this paragraph's remaining allegations.**

263. Maximus states that the allocations should be made using "a statistical measure that is relevant to the service provided and the benefit received." 2019 Maximus Report (Exhibit 22 hereto) at p. A-4. *See also Id*. ("Consideration is given to determining the measurement that most appropriately demonstrates its relationship to the receiving units").

**Answer: The City denies the allegation that Exhibit 22 states how allocations *should* be made when it states how the allocations *were* made. The full sentence Plaintiff quotes reads: "The costs are then broken into subparts or activities such that each activity can be allocated on a statistical measure that is relevant to the service provided and the benefit received." Ex. 22, p. A-4. Additionally, the sentence preceding the sentence Plaintiff quotes in parentheses provides critical context: "MAXIMUS evaluates available statistical measurements to establish the most equitable and meaningful basis for allocating each activity within each Central Service Department. Consideration is given to determining the measurement that most appropriately demonstrates its relationship to the receiving units." Ex. 22, p. A-4. Ultimately, pages A-1 through A-6 of Exhibit 22 are an explanation of Maximus's allocation methodology, not a statement of allocation rules, and the City denies the suggestion that the statements on those pages should be interpreted as anything other than an explanation of Maximus's allocation methodology. The City denies this paragraph's remaining allegations.**

264. The City's allocation of police and fire expenses to the Water and Sewer Funds has no connection to any service provided or benefit received by those Funds. There is no basis to believe that the Water and Sewer Funds "use" $60 million worth of police services and $35 million of fire services every year. In comparison, the City has over 200 full-time police officers dedicated to O'Hare Airport, yet the City charges the Water Fund more than twice the amount that the City charges O'Hare for police "services." *See* Exhibit 7 hereto at p. 12 (showing Police Department charges of $27,559,020 to O'Hare for 2022).

**Answer: The City denies this paragraph's allegations, including the allegation that Exhibit 7 has information about how many police officers were dedicated to O'Hare Airport in 2022 or includes the amount alleged for police charges.**

265. Further, assuming that the allocation of **some** police and fire expense to the Water and Sewer Funds is appropriate, the City's methodology for allocating those costs is arbitrary and capricious for several reasons.

**Answer: The City denies this paragraph's allegations.**

266. First, the City uses inflated budget numbers for both the Police and Fire Departments in allocating a percentage of each budget to the Water and Sewer Funds. For example, the Maximus cost allocation plan for 2019 allocates a portion of purported expenses the City characterizes as "Police General" to the Water Fund. The City allocates 1.327 percent of the "Police General" expenses to the Water Fund. Thus, the higher the total "Police General" expenses, the higher the allocation of those expenses to the Water Fund. The City, through Maximus, allocates expenses from the following City departments in the following amounts:

"Emerg Mngmt & Comm 58" -- $58,705,450
"Police-Administration" -- $10,586,804
"Police-Patrol Svcs" -- $2,114,954,119
"Police-Detectives" -- $358,635,803
"Police-Organized Crime" -- $156,601,398
Total -- **$2,699,483,575** [Exhibit 22 hereto at p. C-640]

**Answer: The City admits Maximus's 2019 full cost allocation contains the calculation of Police General expenses at page C-640. The City denies this paragraph's remaining allegations.**

267. The City thus allocates $2.7 billion in purported annual Police Department costs to "Police General."

**Answer: The City admits Maximus calculated $2,699,483.575, which is approximately $2.7 million, was to be allocated for Police-General in the 2019 full cost allocation plan Maximus. The City denies this paragraph's allegation as to other years and denies any implication that the allocation in 2019 was incorrect.**

268. The City's financial statements for 2019, however, paint a very different picture.

**Answer: The City denies this paragraph's allegations.**

269. According to Maximus' own cost allocation plan, based on the City's financial statements, here are the City's corresponding actual costs for these same departments for 2019:

"Emerg Mngmt & Comm 58" -- $25,379,768
"Police-Administration" -- $113,679,641
"Police-Patrol Svcs" -- $1,094,154,983
"Police-Detectives" -- $194,339,632
"Police-Organized Crime" -- $85,206,499
**Total -- $1,512,760,523** [Exhibit 22 at p. C-16]

**Answer: The portion of Ex. 22 cited in this paragraph makes no reference to "actual cost" but is an excerpt from the Summary of Allocated Costs. The City admits the quoted portions were taken directly from the cited section of Exhibit 22 but denies that Plaintiff has accurately characterized those cited portions' meaning and thus denies this paragraph's allegations.**

270. The total costs the City stuffs into its fictitious "Police General" department are grossly inflated because (1) the City includes hundreds of millions of annual pension fund contributions in the expenses; and (2) the City "double-dips" by including certain police expenses twice in the calculation.

**Answer: The City denies this paragraph's allegations.**

271. The inclusion of pension fund contributions in the calculation is improper because the City already funds those contributions through dedicated tax revenues and through direct contributions from other funds, including the O'Hare Airport Fund and the Midway Airport Fund. The inclusion of the same expenses twice has the effect of charging Water and Sewer customers twice to recover the same purported cost, further increasing the overcharge.

**Answer: The City denies this paragraph's allegations.**

272. Further, the types of police-related costs the City includes in its allocations to the Water Fund are on their face ridiculous and unfounded. For example, the City charges Water and Sewer customers over $3.3 million per year to pay the costs of the Police Department's Organized Crime Division (approximately 2.3% of $156,601,398)—a charge that is completely untethered to reality unless the mafia had somehow infiltrated the City's water and sewer system, and this infiltration somehow necessitated the dedication of the resources of this division. But clearly, the City's Water and Sewer Department has had no need for the investigative services of the City's Organized Crime Division.

**Answer: The City denies this paragraph's allegations.**

273. The City imposes similar overcharges based upon fictitious and duplicative "Fire General" charges.

**Answer: The City denies this paragraph's allegations.**

274. In addition to the improper "indirect" cost allocations, the City also fraudulently inflates the cost allocations by **directly** charging portions of the budgets of other departments to the Water and Sewer Funds. These allocations ostensibly are intended to reflect direct services provided by those other departments to the Water and Sewer Funds. But these direct allocations, like the indirect allocations, are grossly inflated because they do not reflect the fair value of any services provided by those departments to the Water and Sewer Funds.

**Answer: The City denies this paragraph's allegations.**

275. For example, the City includes the costs of **19** full time employees of the OIG in the Water and Sewer Fund budgets (12 to the Water Fund and 7 to the Sewer Fund). The total cost is **$2 million** per year, paid by W&S customers through their water and sewer rates.

**Answer: Th City admits that some of its budgets include the costs of 19 employees of the OIG in the Water and Sewer Fund budgets (12 to the Water Fund; 7 to the Sewer Fund). The City denies this paragraph's remaining allegations.**

276. The OIG is basically the "watchdog" for the entire City, charged with ferreting out bad behavior by the City's employees, agents and representatives. The OIG's "mission" is described as follows: "OIG's mission is to promote economy, effectiveness, efficiency, and integrity in the administration of programs and the operation of City government. OIG accomplishes its mission through investigations of misconduct, performance audits, evaluations and reviews, data analysis and visualization, and other inquiries."

**Answer: The City admits this paragraph's allegations.**

277. Allocation of $2 million of annual OIG costs to W&S could only be justified if the OIG actually devoted 19 full time employees to "investigations of misconduct, performance audits, evaluations and reviews, data analysis and visualization, and other inquiries" relating to the Water and Sewer Funds. But this is clearly not the case.

**Answer: The City denies this paragraph's allegations.**

278. The OIG issues quarterly reports detailing its activities.

**Answer: The City admits the OIG issues quarterly reports. The City denies the quarterly reports fully detail the OIG's activities.**

279. The OIG reports divide its activities into four categories: (1) Intakes, (2)

Investigations, (3) Public Safety, and (4) Reports and Monitoring Activity.

**Answer: The City denies that all OIG reports are divided into these four categories and thus denies this paragraph's allegations.**

280. Intakes are reports of misconduct by City officials and employees. The OIG typically refers intakes it deems worthy of further consideration to the affected City department.

**Answer: The City admits that an intake can include the reports stated in first sentence of this paragraph. The City admits the OIG occasionally will refer an intake to a separate department. The City denies this paragraph's remaining allegations.**

281. Investigations are OIG investigations into the conduct of City officers, employees, and other entities, including contractors, subcontractors, and lobbyists. "Sustained Administrative Investigations" are detailed in the reports.

**Answer: The City admits the OIG has authority pursuant to ordinance to conduct investigations into City officers, employees, and other entities, including contractors, subcontractors, and lobbyists. The City admits the OIG issues reports containing summaries of its sustained administrative investigations. The City denies this paragraph's remaining allegations.**

282. The OIG's Public Safety activities consist of conducting independent, objective evaluations and reviews of Chicago Police Department, Civilian Office of Police Accountability ("COPA") and the Police Board, as well as inspections of closed disciplinary investigations conducted by COPA and the Police Department's Bureau of Internal Affairs.

**Answer: The City admits that the "Public Safety" section of the OIG Quarterly Reports detail the OIG's recent efforts conducting independent, objective evaluations and reviews of CPD, COPA, and the Police Board, as well as inspections of closed disciplinary investigations conducted by COPA and CPD's Bureau of Internal Affairs. The City denies this paragraph's remaining allegations.**

283. Reports and Monitoring Activity consists of (a) audits and follow-ups, (b) advisories and department notification letters, and (c) other reports and activities.

**Answer: The City admits that the OIG Quarterly Reports' "Reports and Monitoring Activity" sections contain sub-sections called "Audits and Follow-Ups," "Advisories and Department Notification Letters," and "Other Reports and Activities," in addition to a sub-section called "Monitoring Employment Actions." The City denies this paragraph's remaining allegations.**

284. Here are what the reports reveal about the activities of the OIG relating to Water and Sewer:

1. Fourth Quarter 2022
   A. Intakes – **1,842** received. **6** referred to Department of Water Management
   B. Investigations – **227** open investigations. **None** identified relating to Water or Sewer
   C. Public Safety – **No** activities identified relating to Water or Sewer
   D. Reports and Monitoring Activity – OIG monitored **one** "hiring sequence" of the Department of Water Management.
2. First Quarter 2023
   A. Intakes – **2,397** received. **14** referred to Department of Water Management
   B. Investigations – **231** open investigations. **One** identified as relating to Water or Sewer. A W&S employee was caught living outside of the City, in violation of residency restrictions.
   C. Public Safety – **No** activities identified relating to Water or Sewer
   D. Reports and Monitoring Activity – **No** activities identified relating to Water or Sewer.
3. Second Quarter 2023
   A. Intakes – **1,986** received. **2** referred to Department of Water Management
   B. Investigations – **242** open investigations. **None** identified as relating to Water or Sewer.
   C. Public Safety – **No** activities identified as relating to Water or Sewer

D. Reports and Monitoring Activity – OIG monitored **2** "hiring sequences" of the Department of Water Management.

4. Third Quarter 2023
   A. Intakes – **2098** received. **None** referred to the Department of Water Management.
   B. Investigations – **249** open investigations. **One** identified as relating to Water or Sewer. Another W&S employee was caught living outside of the City, in violation of residency restrictions.
   C. Public Safety – **No** activities identified as relating to Water or Sewer.
   D. Reports and Monitoring Activity – **No** activities identified as relating to Water or Sewer.

**Answer: The City denies that the four quarterly reports referenced in this paragraph accurately capture all of the OIG's functions related to City personnel and departments involved in ensuring the City's provision of water and sewer services to its customers. The City admits that the Fourth Quarter 2022 OIG Quarterly Report shows the OIG had 1,482 intakes, six of which it referred to the Department of Water Management. The City admits that the Fourth Quarter 2022 OIG Quarterly Report shows the OIG had 227 open investigations, none of which are identified as specifically relating to water or sewer operations or personnel. The City admits that in the "Public Safety" section of the Fourth Quarter 2022 OIG Quarterly Report, neither of the summaries of the two selected Public Safety reports concerned water or sewer operations or personnel. The City admits that in the "Public Safety" section of the Fourth Quarter 2022 OIG Quarterly Report, nothing in the "Review of Closed Disciplinary Investigations" sub-section, which details BIA and COPA cases, is noted as concerning any water or sewer operations or personnel. The City admits that in the "Reports and Monitoring Activity" section of the Fourth Quarter 2022 OIG Quarterly Report, one of the summaries of the three selected reports concerned water or sewer operations or personnel.**

**The City admits that the First Quarter 2023 OIG Quarterly Report shows the OIG had 2,397 intakes, 14 of which it referred to the Department of Water Management. The City admits that the First Quarter 2023 OIG Quarterly Report shows the OIG had 231 open investigations, one of which is identified as specifically relating to a Department of Water Management employee violating the City's residency requirement. The City admits that in the "Public Safety" section of the First Quarter 2023 OIG Quarterly Report, nothing in the summary of the selected Public Safety report concerned water or sewer operations or personnel. The City admits that in the "Public Safety" section of the First Quarter 2023 OIG Quarterly Report, nothing in the "Review of Closed Disciplinary Investigations" sub-section, which details BIA and COPA cases, is noted as concerning any water or sewer operations or personnel. The City admits that in the "Reports and Monitoring Activity" section of the First Quarter 2023 OIG Quarterly Report, none of the summaries of the two selected reports concerned water or sewer operations or personnel.**

**The City admits that the Second Quarter 2023 OIG Quarterly Report shows the OIG had 1,986 intakes, two of which referred to the Department of Water Management. The City admits that the Second Quarter 2023 OIG Quarterly Report shows the OIG had 242 open investigations, none of which are identified as specifically relating to water or sewer**

**operations or personnel. The City admits that in the "Public Safety" section of the Second Quarter 2023 OIG Quarterly Report, none of the summaries of the three selected Public Safety reports concerned water or sewer operations or personnel. The City admits that in the "Public Safety" section of the Second Quarter 2023 OIG Quarterly Report, nothing in the "Review of Closed Disciplinary Investigations" sub-section, which details BIA and COPA cases, is noted as concerning any water or sewer operations or personnel. The City admits that the "Reports and Monitoring Activity" section of the Second Quarter 2023 OIG Quarterly Report shows that the OIG monitored two "interview sets" in the Department of Water Management.**

**The City admits that the Third Quarter 2023 OIG Quarterly Report shows the OIG had 2,098 intakes, none of which it referred to the Department of Water Management. The City admits that the Third Quarter 2023 OIG Quarterly Report shows the OIG had 249 open investigations, one of which is identified as specifically relating to a Department of Water Management employee violating the City's residency requirement. The City admits that in the "Public Safety" section of the Third Quarter 2023 OIG Quarterly Report, none of the summaries of the three selected Public Safety reports concerned water or sewer operations or personnel. The City admits that in the "Public Safety" section of the Third Quarter 2023 OIG Quarterly Report, nothing in the "Review of Closed Disciplinary Investigations" sub-section, which details BIA and COPA cases, is noted as concerning any water or sewer operations or personnel. The City admits that in the "Reports and Monitoring Activity" section of the Third Quarter 2023 OIG Quarterly Report, none of the summaries of the three selected reports concerned water or sewer operations or personnel.**

**The City denies this paragraph's remaining allegations.**

285. So, to summarize, in the one-year period ending September 30, 2023, the OIG referred only **22** intakes to the Department of Water Management, identified only **2** investigations relating to water and sewer, had **zero** public safety activities involving water and sewer, and identified only **3** instances of reports and monitoring activity relating to W&S. Yet water and sewer customers paid $2 million to support the OIG.

**Answer: The City denies that the four quarterly reports referenced in paragraphs 284 and 285 accurately capture all of the OIG's functions related to City personnel and departments involved in ensuring the City's provision of water and sewer services to its customers. The City admits that from the fourth quarter of 2022 to the third quarter of 2023, the OIG referred 22 intakes to the Department of Water Management and had two open investigations identified as specifically relating to Department of Water Management employees. The City admits that from the fourth quarter of 2022 to the third quarter of 2023, none of the selected Public Safety reports published in the Quarterly Reports concerned water or sewer operations or personnel, that one of the Reports and Monitoring summaries concerned water or sewer operations or personnel, and that the OIG monitored two "interview sets" in the Department of Water Management. The City denies this paragraph's remaining allegations.**

286. And it gets worse. The OIG published in January 2023 its "Audit and Program Review Section Annual Plan." The Plan identified "potential projects for the upcoming fiscal year" which were "based on OIG's prioritization criteria." The Plan shows that the OIG did not plan **any** audit or program review activities for all of 2023 relating to water and sewer. So, the City not only did not actually conduct any audits of the Water and Sewer Fund in the last year, but the City never even **planned** to conduct any such audits. Yet, 5 full time employees were supposedly dedicated to "audit and program review" of the Water and Sewer Funds.

**Answer: The City denies the annual plan referenced in this paragraph accurately captures all the OIG's functions related to City personnel and departments involved in ensuring the City's provision of water and sewer services to its customers. The City admits that in January 2023 the OIG published its Audit and Program Review Section 2023 Annual Plan. The City admits that the Plan identified potential projects for the upcoming fiscal year based on OIG's prioritization criteria. The City admits that while the Plan shows that the OIG's audit and review agenda, subject to change, included an audit to determine "whether the City responds appropriately to [water-usage] overbilling cases and also [to] examine the City's management of water service disconnection for vacant properties," it did not include any audit or program review activities relating to the Water or Sewer Funds for 2023. The City denies this paragraph's remaining allegations.**

287. The OIG divides its personnel into six categories: (1) Operations, (2) Legal, (3) Investigations, (4) Audit and Program Review, (5) Public Safety Audit, and (6) Information Technology and Analytics.

Total "Legal" employees -- 24

Total "Legal" employees charged to W&S – 6

Percent charged to W&S – 24%

Total "Audit and Program Review" employees – 16

Total "Audit and Program Review" employees charged to W&S – 5

Percent charged to W&S – 31% (yet no audits done)

Total "Investigations" employees – 28

Total "Investigations" employees charged to W&S – 5

Percent charged to W&S – 18% (yet only 2 investigations)

**Answer: The City admits the OIG does categorize its employees into the six categories listed. The City lacks knowledge sufficient to form a belief as to the truth of the remaining allegations in this paragraph as this paragraph contains no information as to where this data originated.**

288. The fact that, effective June 2016, the City implemented a policy of annually increasing its water and sewer Rates by the rate of inflation does not mean that the Rates were reasonable "at the time of their establishment" because the Excessive Cost Allocations were already included in the City's Rates long before June 2016 – before the City's new policy went into effect. *See* Exhibit 12 hereto (City's Annual Appropriation Ordinance for 2016 at pp. 267-268 and 332-333) and Exhibit 25 hereto (Maximus cost allocation plan utilizing actual 2015 expenditures and showing Excessive Cost Allocations for Police and Fire). The City's application of an inflation factor in subsequent years merely continued the Overcharges that were already baked-into the Rates, albeit at ever increasing amounts.

**Answer: The city denies the "Rates" (as used in this paragraph of the complaint) were established in 2016 and denies that the 2016 Appropriations Ordinance and the 2015 Maximus cost allocation plan establish that cost allocations that were in effect when the rates were established. The City denies this paragraph's remaining allegations.**

289. The City's over-allocation of the City's purported general fund expenses is fraudulent because it has no factual basis, grossly inflates the Water and Sewer Rates imposed upon Plaintiff and the Class, and as such, necessarily renders these Rates as arbitrary, capricious and unreasonable.

**Answer: The City denies this paragraph's allegations.**

290. With respect to the Exorbitant Rate Claims, the City's own ordinances confirm that the City is precluded from imposing Water Rates to finance the general costs of government unrelated to providing water and sewer services. In this regard, City Ordinance Section 3-12-010 provides that "revenues of the sewer revenue fund shall be reserved and utilized exclusively for the operation, maintenance, rehabilitation or reconstruction of the sewer system of the City of Chicago." *See* Exhibit 3 hereto. Further, with respect to Water Rates and Charges, City Ordinance Section 11-12-260 provides:

> **11-12-260 Annual statement – Rate establishment.**
>
> At the close of each fiscal year, the department of water management shall prepare a statement of the revenues and expenditures of the water system of the city and a balance sheet thereof. The department shall then prepare an ordinance, for submission to the city council, establishing the rates to be charged for water service in the following year. **The fees, charges, and rates established by said ordinance shall be sufficient in all times to pay the cost of operation and maintenance of the water system, to make principal and interest payments on any outstanding bonds, and to establish and maintain any reserve funds or accounts as may be covenanted for in bond ordinances authorizing the issuance of outstanding bonds**. [Exhibit 4 hereto]

**Answer: The City admits that the quoted language appears in the sources cited. The City denies that it imposed water rates for any improper purpose and denies this paragraph's remaining allegations.**

291. In *Ross v. Geneva*, 43 Ill. App. 3d 976, 357 N.E.2d 829 (1976), the Court held that a charge imposed on a municipal electric utility's customers to finance a parking garage was an unlawful exaction. The court described the nature of the contested charge as follows:

> [T]he charge made of each commercial user is, with minor variations in the formula, directly linked to the amount of electricity used by the commercial customer. The narrow question presented by this case is, therefore, whether a municipally owned utility has the authority to charge its commercial electric customers a fee, based on their electrical consumption, to be used solely for city parking facilities.

**Answer: The City admits that the quoted language appears in the source cited at page 979. The City denies this paragraph's remaining allegations and denies the cited source supports Plaintiff's claims.**

292. In holding that the charge was illegal, the *Ross* court relied upon a state statute, which closely mirrored the City's Ordinance Section 11-12-260. The Court found that, because the statute – like the City's Ordinance here – required the municipality to use utility charges only for utility purposes, the city there could not finance the parking garage with utility charges. The Court stated:

> The charging for services was formerly governed by section 49 -- 12 of the Revised Cities and Villages Act (Ill. Rev. Stat. 1959, ch. 24, par. 49 -- 12) which has been succeeded by section 11 -- 117 -- 2 of the Illinois Municipal Code (Ill. Rev. Stat. 1973, ch. 24, par. 11 -- 117 -- 12). Both sections contain the following language:
>
> "The *charges fixed for the product supplied or the service rendered* by any municipality *shall be sufficient at least* to bear all costs of *maintenance* and *operation*, to meet *interest charges* on the bonds and certificates issued on account thereof, and to permit the accumulation of a surplus or *sinking fund* to meet all unpaid bonds or certificate at maturity." (Emphasis added.)
>
> **We find no statutory authority whatever therein to charge fees for the creation of an isolated fund unrelated to the cost of the products supplied or the services rendered. The parking fund in this case is just such an unrelated, isolated fund.** The trial court correctly found the ordinances purporting to create it void for want of statutory authority. [Emphasis added]

**Answer: The City admits that the authority cited contains substantially the same language as quoted. The City admits that the language of the statute at issue in *Ross* is similar to the language of Section 11-12-260. The City denies this paragraph's remaining allegations and denies the cited source supports Plaintiff's claims.**

293. Plaintiff and the Class have been harmed by the City's practice of grossly over allocating indirect costs from the City's general fund budgets to the Water and Sewer Funds. Initially, they have necessarily paid higher Water and Sewer Charges and have been forced to

subsidize tens of millions of dollars of general fund expenses that should be paid for through general taxation revenues. The City's practice has unjustly enriched the City at the expense of Plaintiff and the Class.

**Answer: The City denies this paragraph's allegations.**

## THE PENSION OVERCHARGE

294. Separate and apart from the wrongdoing described in the foregoing paragraphs, the City overcharges the Water Fund and Sewer Fund tens of millions of additional dollars per year, purportedly to cover the Water Fund's and the Sewer Fund's proportionate share of the City's total annual contribution to the Municipal Employees' Annuity and Benefit Fund (the "Municipal Employees' Fund") and the Laborers' and Retirement Board Annuity and Benefit Fund (the "Laborers' Fund").

**Answer: The City denies this paragraph's allegations.**

295. The Pension Overcharges are included in the City's Rates on a prospective basis and the City intends to collect the revenues associated with the Pension Overcharges on an annual basis.

**Answer: The City denies this paragraph's allegations.**

296. In the absence of the Pension Overcharges, the City's Water and Sewer Charges could be set to generate tens of millions of dollars less in annual revenues.

**Answer: The City denies this paragraph's allegations.**

297. The fact that, effective June 2016, the City implemented a policy of annually increasing its water and sewer rate by the rate of inflation does not mean that the Rates were not unreasonable or discriminatory "at the time of their establishment" because the Pension Overcharges claimed in this Complaint were already included in the City's Rates as of January 2016 – before the City's new policy went into effect. *See* Exhibit 12 hereto (City's Annual Appropriation Ordinance for 2016 at pp. 24-25).

**Answer: The City denies this paragraph's allegations.**

298. The City's application of an inflation factor in subsequent years merely continued the Pension Overcharges that were already baked-into the Rates, albeit at ever increasing amounts.

**Answer: The City denies this paragraph's allegations.**

299. The Water and Sewer Funds annually transfer money to the Municipal Employees' Fund and the Laborers' Fund to cover the required annual contributions set forth in the City's budgets, which budgeted contributions greatly exceed the amounts the Water and Sewer Funds should be contributing to the Funds.

**Answer: The City admits that the Water and Sewer Funds annually transfer money to the Municipal Employees' Annuity and Benefit Fund and the Laborers' and Retirement Board Annuity and Benefit Fund to cover the funds' shares of the statutorily required annual contributions. The City denies the Water and Sewer Funds' budgeted contributions exceed the amounts the Funds should be contributing to the pension funds. The City denies this paragraph's remaining allegations.**

300. This "Pension Overcharge" to the Water and Sewer Funds, which is then incorporated into the Water and Sewer Rates, is wholly independent from and imposed in addition to the wrongful and inflated cost allocations described above. The Pension Overcharge is also wholly independent from and imposed in addition to the Water and Sewer Taxes, which also finance the City's contributions to the Municipal Employees' Fund.

**Answer: The City denies it overcharged the funds for their contribution to the City's pension liability and thus denies this paragraph's allegations.**

301. Here, pension costs for the Municipal Employees' Fund and the Laborers' Fund are to be allocated based upon each department's percentage of the total "covered payroll" of all departments with employees in the Municipal Employee's Fund and the Laborers' Fund.

**Answer: The City admits that the annual allocation of the City's Municipal Employees Fund's and Laborer's Fund's pension liability to the Water and Sewer Funds has its basis in the Funds' proportionate shares of the total covered payroll of the employees in those funds for the year at issue. The City denies this paragraph's remaining allegations.**

302. For example, the City's financial statements provide that the Water Fund's allocation to the City's net pension liability should be "determined based on the rates of Water Fund salaries within each corresponding pension plan to the total budgeted salaries for 2020 and 2019." *See* Exhibit 26 hereto at pp. 42-43 (2020 Water Fund financial statement excerpts).

**Answer: The City admits that the quoted language quoted appears in the source cited and admits that the source states how the Water Fund's allocation to the City's net pension liability in 2019 and 2020 should be and was determined.**

303. As of December 31, 2020 and 2019, the Water Fund's proportion was 6.6% and 7.2% of the Municipal Employees plan, respectively. *See* Exhibit 26 hereto at p. 43. These percentages are used to determine the Water Fund's percentage of the total City contribution to the Plan.

**Answer: The City admits that the first sentence is quoted directly from page 43 of Exhibit 26. The City admits that the percentages represent the Water Fund's percentage shares of the City's total required contribution to the Plan. The City denies this paragraph's remaining allegations.**

304. For 2022, the City's budget forecasted that the total contributions to the Municipal Employees Fund to be $967,016,000. *See* Exhibit 7 hereto at p. 4.

**Answer: The City admits that, for 2022, $967,016,000 was the City's statutorily required contribution to the Municipal Employees' Annuity and Benefit Fund in 2022. The City denies this paragraph's remaining allegations.**

305. In 2022, the City allocated $59,725,000 to the Water Fund (Exhibit 7 at p. 277) which represents approximately 6.2% of the **total** contributions and thus, seemingly approximates the appropriate Water Fund percentage.

**Answer: The City admits that $59,725,000 was appropriated from the Water Fund for the Municipal Employees' Annuity and Benefit Fund in 2022. The City admits that $59,725,000 is approximately 6.2% of $967,016,000. The City denies this paragraph's remaining allegations.**

306. However, the City's allocation is grossly excessive because it fails to consider that almost $500 Million of the $967 Million of total annual contributions to the Municipal Employees Fund is contributed from taxes (including the Water and Sewer Taxes) and employee contributions. *See* Exhibit 28 hereto at p. 25.

**Answer: The City denies that Exhibit 28 contains a page 25. The City denies its allocations are grossly excessive. In particular, the City denies that the Water and Sewer Funds' allocation should be based on anything less than the City's 2022 liability to the Municipal Employees' Fund and denies this paragraph's remaining allegations.**

307. Here, specifically, only $470 Million is being contributed by the City using its operating funds. Put another way, only $470 Million is being contributed from the City itself from non-tax sources—and thus, the proper amount that should be allocated among the various City funds, including the Water Fund and the Sewer Fund, for contribution to the Municipal Employees Fund is $470 Million.

**Answer: The City denies this paragraph's allegations.**

308. When the appropriate amount of $470 Million is used for the contribution calculation, the Water Fund's proportionate share of its contribution for 2022 is dramatically reduced. Indeed, the allocation to the Water Fund drops to just $29,177,200, instead of $59,725,000. This means that for 2022, the City's Pension Overcharge to the Water Fund exceeded $30 Million. Even if one used the 6.6% percentage set forth in the financial statements, the 2022 Pension Overcharge to the Water Fund exceeded $28 million.

**Answer: The City denies this paragraph's allegations.**

309. Again, the pension costs are to be allocated based upon each City fund's percentage of the total "covered payroll" of all City funds with employees in the Municipal Employees' Fund. For 2020, the total "covered payroll" of all of the applicable City funds was $1,861,905,000. The total covered payroll of the Water Fund was $123,184,000 or 6.6% of the total "covered payroll" of all applicable City funds. Therefore, the Water Fund at most should have been allocated 6.6%

of the total contribution to the Fund **not covered by tax revenues** – *i.e.,* 6.6% of $470,600,000 or $31,059,600.

**Answer: The City denies this paragraph's allegations.**

310. The City's budget documents show that the City is over-allocating pension costs to enterprise and other funds (e.g., the Water Fund, Sewer Fund, Midway Fund, O'Hare Fund and the Emergency Communication Fund) in order to reduce the pension cost allocation to the City's Corporate Fund. The total covered payroll of the Corporate Fund and other funds not listed above represents over 80% of the total covered payroll of all City funds with employees in the Municipal Employees' Fund. Again, the total covered payroll of the Water Fund is just 6.6% of the total. Yet, in 2021, the City allocated just $49,773,000 of the pension costs for the Municipal Employees' Fund to the Corporate Fund, while it allocated $36,954,000 of those costs to the Water Fund. *See* Exhibit 27 hereto at p. 27.

**Answer: The City denies the allegation that the Corporate Fund's allocation was the total amount that the Corporate Fund contributed to the City's statutorily-required pension liability in 2021 and denies this paragraph's remaining allegations.**

311. The City's records show that between January 1, 2018 and December 31, 2022, the Pension Overcharges for the Municipal Employees' Fund to just the Water Fund total over $110 million. At least half of that amount was funded by Rates and Charges paid by water customers in the City (*i.e.,* Plaintiff and the Class).

**Answer: The City this paragraph's allegations.**

312. A computation of the Pension Overcharges for the Municipal Employees Fund to just the Water Fund since 2018 (assuming the Water Fund is properly charged 6.6% of the total pension charges not covered by tax revenues or employee contributions) is based upon Exhibit 28 hereto and appears below:

**2018**

Total City Contribution – $402,200,000
Total Contribution Funded by Taxes – $247,022,000
Total Remaining Contribution To Be Funded By All City Departments -- $155,178,000
Water Fund required 6.6% Contribution -- $10,241,748
Water Fund Actual Contribution – $24,451,000
Overcharge to Water Fund -- **$14,209,252**

**2019**

Total City Contribution – $471,002,000
Total Contribution Funded by Taxes -- $298,840,000
Total Remaining Contribution to be funded By All City Departments -- $172,162,000
Water Fund required 6.6% Contribution -- $11,362,692

Water Fund Actual Contribution – $30,353,000
Overcharge to Water Fund -- **$18,990,308**

**2020**

Total City Contribution – $524,534,000
Total Contribution Funded By Taxes -- $341,274,000
Total Remaining Contribution to be funded by All City Departments -- $183,260,000
Water Fund required 6.6% Contribution -- $12,095,160
Water Fund Actual Contribution – $33,014,000
Overcharge to Water Fund -- **$20,918,840**

**2021**

Total City Contribution – $582,886,000
Total Contribution Funded by Taxes and Employee Contributions-- $415,431,000
Total Remaining Contribution to be funded by All City Departments -- $167,455,000
Water Fund required 6.6% Contribution -- $11,052,030
Water Fund Actual Contribution – $36,954,000
Overcharge to Water Fund -- **$25,901,970**

**2022**

Total Contribution – $967,016,000
Total Contribution Funded by Taxes and Employee Contributions -- $496,416,000
Total Remaining Contribution to be funded by All City Departments - $470,600,000
Water Fund required 6.6% Contribution -- $31,059,600
Water Fund Actual Contribution – $59,725,000
Overcharge to Water Fund -- **$28,665,400**

**Answer: The City denies this paragraph's allegations.**

313. These overcharges have continued through filing of this Complaint, and will continue in the future unless enjoined by this Court.

**Answer: The City denies this paragraph's allegations.**

314. The City also imposes additional overcharges to the Water Fund relating to the Laborers' Fund, because that Fund also is tax-supported and the City's allocations do not consider those tax revenues.

**Answer: The City denies this paragraph's allegations.**

315. In addition, the City imposes similar Pension Overcharges to fund contributions to both the Municipal Employees' Plan and the Laborers' Plan by the Sewer Fund. Finally, the City also includes tens of millions of dollars in unexplained "indirect" pension costs in the Water and

Sewer Rates, further increasing the amount of the Pension Overcharge. All of those Overcharges were funded by Rates and Charges paid by sewer customers in the City.

**Answer: The City this paragraph's allegations.**

316. Inclusion of the Pension Overcharges (which are untethered to the actual cost of providing water and sewer service) in the Water and Sewer Rates necessarily renders these Rates arbitrary, capricious and unreasonable.

**Answer: The City denies this paragraph's allegations.**

317. Plaintiff and the Class have been harmed by the City's practice of including the Pension Overcharges in the Water and Sewer Rates. Plaintiff and the Class have necessarily paid higher Water and Sewer Charges and have been forced to over-subsidize the City's pension expenses. The City's practice has unjustly enriched the City at the expense of Plaintiff and the Class.

**Answer: The City denies this paragraph's allegations.**

318. The City's Excessive Allocations and Pension Overcharges, when incorporated into the City's Water and Sewer Rates, render these rates arbitrary, capricious, and unreasonable because the City's rates include cost components that are untethered to the customer's actual use of the water and sewer system.

**Answer: The City denies this paragraph's allegations.**

319. Plaintiff and the Class have been harmed by the City's Excessive Allocation and Pension Overcharge practice. Plaintiff and the Class have necessarily paid higher Water and Sewer Charges and have been forced to subsidize general fund expenses that should be paid for through general taxation revenues.

**Answer: The City denies this paragraph's allegations.**

320. The City has been unjustly enriched by the Excessive Cost Allocations and the Pension Overcharges because the City has been able to use those monies – hundreds of millions of dollars – to fund governmental functions and activities unrelated to providing water and sewer services. In the absence of the Excessive Cost Allocations and/or the Pension Overcharges, the City would be required to find other sources of funding for the functions and activities paid for by the revenues generated by the Excessive Cost Allocations and the Pension Overcharges. Instead, the City has impermissibly foisted those costs upon its Water and Sewer customers, including Plaintiff and the Class. Plaintiff and the Class therefore have conferred an unjust benefit upon the City and the City should not be allowed to retain that benefit.

**Answer: The City denies this paragraph's allegations**.

321. Even if the City has not been unjustly enriched, Illinois law still requires the City to refund the excess monies it collected from Plaintiff and the Class. Because of the Excessive Cost Allocations and Pension Overcharges, the City has funds which in right and justice belong to Plaintiff and the Class and which it ought to restore because it received the funds by charging a rate in excess of the lawful rate. The right to "reparations" under these circumstances was recognized by the Court in *West v. City of Batavia*, 155 Ill. App. 3d 925, 508 N.E.2d 1124 (2d Dist. 1987):

> We agree with plaintiff that a cause of action for reparations may lie against a municipally owned utility. **At common law, there existed a right to recover reparations for unreasonable charges by a utility or common carrier**. (*Terminal R.R. Association v. Public Utilities Com.* (1922), 304 Ill. 312, 317, 136 N.E. 797; *Chicago, Burlington & Quincy R.R. Co. v. Jones* (1894), 149 Ill. 361, 374.) **This action was based upon the theory that the defendant had funds which in right and justice belonged to the plaintiff and which it ought to restore because it received the funds by charging a rate in excess of the lawful rate.** (*A.L. Jones Co. v. Chicago, Milwaukee & St. Paul Ry. Co.* (1919), 213 Ill. App. 283, 288.) Although the common law right to recover reparations from a public utility has been superseded by the Public Utilities Act … that act was not intended to apply to municipally owned utilities (*Springfield Gas & Electric Co. v. City of Springfield* (1920), 292 Ill. 236, 240, 126 N.E. 739, *aff'd* (1921), 257 U.S. 66, 66 L. Ed. 131, 42 S. Ct. 24). **We conclude that a cause of action for reparations may lie against Batavia based upon the operation of its utility**. [155 Ill. App. 3d at 928 (emphasis added).]

**Answer: The City denies it has collected excess monies from Plaintiff or the putative class, denies it has charged an unlawfully excessive rate. The City admits that the authority cited contains substantially the same language as quoted. The City denies the cited authority supports Plaintiff's claims. The City denies the remaining allegations of this paragraph.**

322. 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 Water and Sewer Rates and Charges, Plaintiff and the Class have conferred a benefit upon on the City.

**Answer: The City denies this paragraph's allegations.**

## AFFIRMATIVE DEFENSES

### First Defense: Lack of Standing

1. Plaintiff was not a City water and sewer customer prior to 2019.

2. "A challenge to standing in a civil case is an affirmative defense." *U.S. Bank, N.A. v. Kosterman*, 2015 IL App (1st) 133627, ¶ 10.

3. The doctrine of standing requires that a party have a "real interest" in the resolution of the case. *In re Estate of Wellman*, 174 Ill. 2d 335, 344 (1996).

4. Because Plaintiff was not paying water or sewer rates before 2019, she does not have a real interest in the resolution of this case to the extent it concerns water and sewer rates for years before 2019, and therefore, does not have standing to challenge the City's water or sewer rates for years 2016, 2017 and 2018.

**Second Defense: Statute of Limitations**

1. The statute of limitations on Plaintiff's claims is five years.

2. Plaintiff cannot seek relief for claims prior to 2019 because she was not a City water and sewer customer prior to 2019.

3. Claims about water and sewer rates in 2016, 2017 and 2018 are now more than five years old

4. Plaintiff's claims for 2016, 2017, and 2018 are barred by the statute of limitations.

Dated: September 9, 2025

Respectfully submitted,

Mary Richardson-Lowry, Corporation Counsel for the City of Chicago

By:

Attorney No. 90909

*/s/ Susan P. Jordan*
*/s/ Scott M. Crouch*
*/s/ Sunny Tompkins Baxter*

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Chicago, Illinois 60602

Counsel for Defendant, City of Chicago

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, CHANCERY DIVISION**

| | | |
|---|---|---|
| KATHRYN FARMER, Individually, and as Representative of a Class of Similarly-Situated Persons and Entities, | ) | Case No. 2021 CH 04583 |
| Plaintiff, | ) | |
| v. | ) | |
| CITY OF CHICAGO, an Illinois Municipal Corporation, | ) | Judge Allen Price Walker |
| Defendant. | ) | |

AFFIDAVIT PURSUANT TO 735 ILCS 5/2-610(B)

I, Susan Jordan, state as follows:

1. I am Deputy Corporation Counsel for the Revenue Litigation Division of the City of Chicago ("City") Department of Law. I represent the City in this matter and speak on its behalf in this affidavit.

2. The City's Answer to the Plaintiff's Fourth Amended Complaint ("Complaint') contains responses to several of Plaintiff's allegations that state the City lacks knowledge sufficient to admit or deny the allegations contained in the Complaint.

3. The City's statements in its Answer that it lacks knowledge sufficient to admit or deny the allegations contained in the Complaint are true.

4. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify by my signature below that the statements set forth in this instrument are true and correct, except as to matters herein stated to be on the information and belief, and as to such statements, I certify that as aforesaid I verily believe the same to be true.

Date: 9/9/25

Susan Jordan