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,	)	Case No. 2021 CH 04583 Jury Demand
CITY OF CHICAGO, an Illinois Municipal Corporation,	)	**Hearing Date**: April 20, 2026 @ 2 p.m.
Defendant.	)	

REPLY BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

I. INTRODUCTION

Certification of a class action in Illinois is governed by section 2-801 of the Code of Civil Procedure, which sets forth four prerequisites for maintaining a class action:

(1) the class is so numerous that joinder of all members is impracticable;
(2) there are questions of fact or law common to the class that predominate over any questions affecting only individual members;
(3) the representative parties will fairly and adequately protect the interest of the class; and
(4) the class action is an appropriate method for the fair and efficient adjudication of the controversy. [735 ILCS 5/2-801]

Citing just three cases, the City's six-page Opposition to Plaintiff's Motion for Class Certification (the "City's Response") is a half-hearted attempt to delay the inevitable certification of the entirety of Plaintiff's proposed Class. In the "Conclusion" of its Response, the City states: "For the reasons stated above, the class should not be certified under the current definition of the class. The class must be redefined to account for the issues raised." City Resp. at p. 6. This confirms that the City does not contest whether **some** Class should be certified, but only whether Plaintiff's proposed class **definition** should be amended to narrow the number of Class members.

Notably, the City's Response does not even address, much less contest, Plaintiff's showing

that (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of fact or law common to the class that predominate over any questions affecting only individual members; and, (3) a class action is an appropriate method for the fair and efficient adjudication of the controversy. The City's sole contention is that Plaintiff is not adequate to represent the Class **as currently defined** for the following reasons:

(1) Plaintiff was not a water and sewer customer until 2019, so she cannot adequately represent water and sewer customers who paid the City for water and sewer services before 2019;

(2) Plaintiff's water usage is metered, so she cannot adequately represent water and customers whose usage is estimated because their properties are unmetered;

(3) Plaintiff does not participate in the City's Utility Billing Relief ("UBR") program, so she cannot represent low-income customers who pay lower water and sewer under the UBR program; and

(4) Plaintiff's "aims" in this lawsuit are antagonistic to those of certain members of the Class.

Reduced to its essentials, the City's adequacy challenge is really a challenge to Plaintiff's standing to assert claims on behalf of certain groups or types of water and sewer customers. In Section II below, Plaintiff dismantles each of these contentions, which are contrary to fact and law.

The City's tepid Response confirms that this is a paradigm case for class certification, because a huge number of similarly situated persons and entities have been injured by a defendant's systematic and uniform conduct. The Court should grant the Motion.

II. PLAINTIFF WILL FAIRLY AND ADEQUATELY PROTECT THE RIGHTS OF THE CLASS, AS IT IS CURRENTLY DEFINED.

"The test of adequate representation is whether the interests of the named parties are the same as the interests of those who are not as those who are not joined and whether the litigating parties fairly represent those not joined." *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14, 428 N.E.2d 478 (1981). Moreover, "to adequately represent the class, plaintiff must be a member of the class." *Eshaghi v. Hanley Dawson Cadillac Co*., 214 Ill. App. 3d 995, 999, 574 N.E.2d 760 (1991).

The City does not allege that Plaintiff is inadequate in general (because, for example, she doesn't understand her role as class representative or is not willing or able to vigorously prosecute case), but rather that Plaintiff is an inadequate representative for certain groups of customers in the currently defined Class because she does not fit into those groups. For the reasons set forth below, the City's arguments are easily dispatched.

A. PLAINTIFF NEED NOT PAY THE CONTESTED CHARGES FOR THE ENTIRE CLASS PERIOD TO REPRESENT THE INTERESTS OF CLASS MEMBERS WHO PAID IN DIFFERENT PERIODS.

First, there is no question that Plaintiff is a member of the Class, because she has consistently paid the City's Water and Sewer Rates and Charges from 2019 through the present. *See* Exhibit 1 hereto, City's Answer to ¶ 34 of the FAC (admitting that Plaintiff is a water and sewer customer of the City that has received water and sewer service and has directly paid the Water and Sewer Charges at issue). Because this case was filed on September 9, 2021 and Plaintiff's claims are subject to a five-year statute of limitations,[1] Plaintiff's proposed Class period is September 9, 2016 through the date of final judgment in this matter.

The City contends that, because Farmer did not become a water and sewer customer until 2019, she cannot represent those who paid Water and Sewer Rates before 2019. For the reasons discussed below, however, the Court should reject this contention because it is contrary to the established facts and principles applicable to class definitions.

1. The City's Overcharge Practices Were Continuous and Consistent Throughout The Class Period.

First, the City's argument could only potentially have merit if there were some fundamental differences between the City's Overcharge practices from 2019 through the present and the City's Overcharge practices prior to 2019, but that is not the case. Plaintiff's Fourth Amended Complaint

[1] *Frederickson v. Blumenthal*, 271 Ill. App. 3d 738, 742, 648 N.E.2d 1060 (1995) (claim for unjust enrichment is subject to the five-year statute of limitations as set forth in 735 ILCS 5/13-205).

(the "FAC") (which is supported by the documentary exhibits attached thereto) specifically alleges that the Exemptions underlying the Unjust Discrimination Claims in Count IX, and the Excessive Cost Allocations and the Pension Overcharges underlying the Exorbitant Rate Claims in Count X, existed prior to 2016 and were continuous throughout the Class Period. *See, e.g.*, FAC at para. 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 also* FAC, Paragraphs 224-225, 288 and 297-298.

Moreover, in its July 11, 2025 Order denying the City's Motion to Dismiss, the Court recognized that Plaintiff has amply alleged that the City has consistently engaged in a uniform practice of Overcharging since at least 2016. In the Order, the Court observed:

> **The FAC meets the applicable pleading standard by alleging that the City's rates were unreasonable at the time of their adoption and remain unreasonable due to the embedded cost inflators**. Plaintiff alleges that by 2016, the City had already included excessive indirect costs and pension allocations in its rate structure, and those costs were carried forward under the inflation-indexed increases adopted by ordinance. FAC paras. 60-66, 224-225, 288, 297-298. The 2016 Appropriation Ordinance included specific line items for "General Fund Reimbursements" and "Pension Expense" in the water and sewer budgets, demonstrating that the challenged categories were part of the rates as originally set. [*Id*. at p. 5 (emphasis added).]

In sum, the City's practice of imposing Overcharges not only has continued throughout the entire Class Period, but the nature and extent of those Overcharges have remained the same throughout the Class Period. The City makes no showing to the contrary.

2. As Long As The Representative Plaintiff Suffers Some Injury From A Defendant's Common Practice During The Class Period, The Representative Is Adequate To Represent The Interests Of Class Members Who Were Injured By That Common Practice At Different Times During The Class Period.

In support of its argument that Farmer can only represent class members who paid for water and sewer services between 2019 and the present, the City cites a single inapposite case — *Griffith v. Wilmette Harbor Ass'n*, 378 Ill. App. 3d 173, 184 (1st Dist. 2007) — to argue that "if a putative class action plaintiff has not suffered the injury that he alleges other members of the putative class have

suffered, that purported plaintiff cannot represent the class." But *Griffith* dealt with a situation where, unlike here, the plaintiff **was not injured <u>at all, at any time</u>** by the defendant's challenged conduct, and the decision was based upon a lack of standing. The *Griffith* Court stated:

> In the instant case, Greenberg purported to bring a class action on behalf of all people on the waiting list for moorings at Wilmette harbor. However, **Greenberg himself is not on the waiting list and has never been on the waiting list**. Accordingly, Greenberg's claim, which is premised on being a member of the waiting list, must fail and his attempt to serve as a purported class representative on behalf of those on the waiting, must likewise fail. [378 Ill. App. 3d at 184 (emphasis added)].

Here, in contrast, Farmer has suffered an injury by paying water and sewer bills containing Overcharges since 2019. The fact that she did not suffer injuries for the entire class period back to September 2016 does not render her inadequate. In fact, Farmer's payment of a single water bill during the class period would have allowed her to represent the Class for the entire Class Period.

The Illinois courts have recognized that, where representative plaintiffs allege a continuing course of wrongful conduct that injured them and continued throughout the proposed class period, the representative plaintiff need not suffer his or her own injury for the entire class period. For example, in *Meier v. Rohrman*, 2020 IL App (1st) 192401-U, 2020 Ill. App. Unpub. LEXIS 1029 (1st Dist 2020) (Exhibit 2 hereto), the defendants sought to defeat class certification in an action by their employees alleging that defendants had systematically underpaid them. Defendants claimed that the representative plaintiffs failed to satisfy the adequacy requirement because they were not employed by defendants during the entire class period. In rejecting this argument, the Court observed:

> Finally, defendants claim that the trial court abused its discretion in certifying the class "from July 14, 2004 to the present" when Meier and Oslance's employment terminated in 2014 and 2012, respectively. See *Lee v. Buth-Na-Bodhaige, Inc.*, 2019 IL App (5th) 180033, ¶ 74, 143 N.E.3d 645 (quoting 735 ILCS 5/2-801(4) (West 2016)) ("class period is an important factor in determining whether certification of a class is 'an appropriate method for the fair and efficient adjudication of the controversy.'") Defendants argue that Meier and Oslance were inadequate class representatives because they were not subject to the "Money Due" policy for the entire class period. However, defendants do not claim that the "Money Due" policy has been eliminated. Indeed, the deposition and affidavit evidence establish that the disputed policy was still in effect when the class was certified. Moreover, Meier and Oslance are adequate class representatives because the class consists of "employees who

> work or worked" at a respective dealership. Thus, the trial court did not abuse its discretion in certifying the class period "to the present." [2020 Ill. App. Unpub. LEXIS 1039 at 19-20.]

Many other Courts have applied this principle. *See, e.g., Andrews Farms v. Calcot, Ltd*, 258 F.R.D. 640, 654-655 (E.D. Cal. 2009) (recognizing that "named representatives need not be members of the class throughout the entire time period to be adequate representatives," and finding that class representatives were adequate "so long as they were members at some point of the duration of the time period and their interests are not adverse to other class members"). *See also* federal authorities cited in Plaintiff's Brief in Support of her Motion for Class Certification at p. 12.[2]

Here, again, Plaintiff alleges, with ample supporting facts, that the City's policies and practices which resulted in the Overcharges were uniform and consistently applied throughout the Class Period. Accordingly, the fact that Plaintiff was not a customer for the entire Class Period does not render her inadequate to represent members of the Class who incurred and paid the disputed Water and Sewer Rates between September 2016 and the date when Plaintiff became a City water and sewer customer in 2019.

B. THE CITY IMPOSED AND COLLECTED THE OVERCHARGES FROM BOTH METERED AND UNMETERED CUSTOMERS, SO PLAINTIFF IS AN ADEQUATE REPRESENTATIVE OF BOTH TYPES OF CUSTOMERS.

Next, the City seeks to manufacture a material difference between (1) members of the Class whose properties are serviced by meters that measure actual water usage and (2) members of the Class whose properties do not have meters and therefore are billed based upon estimated water usage. The City contends that Plaintiff cannot adequately represent those who paid unmetered water and sewer charges because she is charged based on her metered usage. However, the City cites no authority for this proposition, and the City has identified no fundamental difference between metered

---

[2] Section 2--801 is patterned after Rule 23 of the Federal Rules of Civil Procedure and, because of this close relationship between the state and federal provisions, "federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois." *Avery v. State Farm Mutual Automobile Insurance Co.,* 216 Ill. 2d

and unmetered customers that would disqualify Plaintiff from representing both types of customers. For the reasons discussed below, there are no such differences.

The Overcharges Plaintiff challenges are necessarily included in the Rates paid by **both** metered and unmetered customers. The Charges to unmetered customers are intended to approximate the charges the City imposes on similarly situated metered customers. The unmetered charges may be less precise (because they are based on a formula instead of actual metering), but they indisputably include the same Overcharges that are imposed on the metered customers. Thus, there is no basis for the City's blanket statement that "non-metered customers are not subject to the allegedly 'excessive' rates." City Response at p. 4.

In a recent federal court filing, the City conceded that its Water Rates and Charges are intended to cover the City's cost of providing water service to both metered and unmetered customers. In a Memorandum in Support of Its Motion to Dismiss in *Danahy v. City of Chicago*, Case No. 24-CV-00449 (N.D. Ill. 2024) (Exhibit 3 hereto), the City stated:

> "**The basis for the billing of <u>both</u> metered and nonmetered properties is '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.' MCC Sec. 11-12-260. To cover those costs, DWM assesses water use at each property it services. For metered properties, the meter does that work. But for nonmetered properties, DWM uses the MCC formula because nonmetered properties' water use cannot be precisely measured**. The formula is based on objective, common-sense variables: a property's size, number of stories, and number of water fixtures. See MCC § 11-12-270. Those variables are rational because they are relevant to the amount of water likely consumed at a given property. [*Id*. at pp. 7-8 (emphasis added).]

These statements are consistent with the admissions the City made in its Answer to the FAC in this case. In particular:

- The City admits rates need to produce revenues necessary to cover the costs of the water and sewer system." City's Answer to ¶ 53 of the FAC (Exhibit 1 hereto);

100, 125, 835 N.E.2d 801, 296 Ill. Dec. 448 (2005).

- "The City admits that Water and Sewer Fund expenses are reflected in the City's annual appropriation fund ordinance." *Id.,* ¶ 56;
- The City admits that the "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." *Id.* ¶ 57;

As the City admits, there is no fundamental difference between metered and unmetered customers. The City clearly intends to charge both types of customers the same amount for the same usage. For the City to now contend otherwise would be to admit that it engages in unlawful rate discrimination. And the fact that the City might be able to more precisely measure the usage of metered customers does not create a material difference between the two types of customers for class certification purposes, **because both types of customers necessarily pay the Overcharges, which are baked into the Rates both types of customers pay to the City**. Therefore, the Court should reject the City's purported material distinction between metered and unmetered customers.[3]

C. THE CUSTOMERS WHO PARTICIPATE IN THE UTILITY BILLING RELIEF PROGRAM STILL PAY THEIR SHARE OF THE OVERCHARGES AND AS SUCH ARE PROPERLY IN THE CLASS SO THERE IS NO ADEQUACY ISSUE.

The City further contends that Plaintiff cannot represent those who paid reduced rates as participants in the City's Utility Billing Relief ("UBR") program. The City's argument is baseless. The uniform conduct is the City's imposition of Overcharges contained in its Water and Sewer Rates. Here, because UBR program participants have paid a portion of the Overcharges—even if at a reduced rate—they are properly included as Class members and are entitled to a refund that is proportionate to payments that they made. Plaintiff is an adequate representative of these customers.

D. PLAINTIFF'S INTERESTS ARE NOT ANTAGONISTIC TO CERTAIN MEMBERS OF THE CLASS.

Finally, the City argues that a problem "arises with a putative class period spanning a period

[3] The City also argues that unmetered customers are not similarly situated to meter customers because unmetered customers are not eligible for the same exemptions from Water Charges as metered customers. *See* City Resp. at p. 4. But this cannot defeat Plaintiff's adequacy because all Exempt Customers — whether metered or unmetered — are excluded from the Class definition.

of 10 years when one considers that certain members of the class who may not have been entitled to exemptions at the start of the period became eligible for the exemptions later in the class period." City Response at pp. 5-6. The City uses an example of a person who was 62 in 2019 and thus not eligible for the Senior Sewer Exemption and turned 65 in 2022 and thus became eligible for that Exemption. But this scenario creates no actual conflict, much less a fundamental conflict, that could defeat Plaintiff's adequacy as a class representative.

First, the City makes no attempt to demonstrate how many class members could be affected by this hypothetical. Second, it does not matter because, if a customer was non-exempt from 2016 through 2023, then turned 65 in 2024 and became eligible for the Senior Sewer Exemption in 2024, that customer is a Class member **only** for the period of time from 2016 through 2023, when the customer was under 65 years old. The fact that the customer became eligible for the Senior Sewer Exemption in 2024 does not change that fact that that customer overpaid from 2016 through 2023 as a non-exempt customer.

Federal authority establishes that a conflict must be "fundamental" to preclude class certification. In *Valley Drug Co. v. Geneva Pharms., Inc*., 350 F.3d 1181, 1189 (11th Cir. 2003), the Eleventh Circuit held: "Significantly, the existence of minor conflicts alone will not defeat a party's claim to class certification: the conflict must be a 'fundamental' one going to the specific issues in controversy." Further, "[a] fundamental conflict exists where some [class] members claim to have been harmed by the same conduct that benefitted other members of the class." *Id.* at 1189 (emphasis added). Adequacy is not defeated by "merely speculative or hypothetical" conflicts. *Ward v. Dixie Nat'l Life Ins. Co.*, 595 F.3d 164, 180 (4th Cir. 2010).

The City does not even attempt to argue that some members of the Class could claim to be harmed by the same conduct that benefitted other members of the Class. This is not surprising, since all members of the Class as defined by Plaintiff necessarily were harmed by their payment of the

City's Overcharges.

In any event, the Court need not consider this kind of "hypothetical contention that some class members will be hurt by class treatment." *Johnson v. Meriter Health Servs. Emp. Ret. Plan*, 702 F.3d 364, 372 (7th Cir. 2012). *See also Abbott v. Lockheed Martin Corp.*, 725 F.3d 803, 813 (7th Cir. 2013) (a defendant cannot defeat class certification by invoking "the mere possibility" of "a trivial level of intra-class conflict").

The Court should reject the City's argument that Plaintiff has interests that are antagonistic to certain members of the Class. Given the City's systemic and uniform conduct that necessarily injured each and every member of the Class as defined by Plaintiff, Plaintiff's interests are fully aligned with each and every member of that Class. Accordingly, the Court should reject the City's attack on Plaintiff's adequacy.

CONCLUSION

Based upon the foregoing, Plaintiff requests that the Court grant the following relief:

A. Certify this action to be a class action with Plaintiff certified as Class Representative and with Kickham Hanley PLLC and Moskovic & Associates, Ltd. designated as Class Counsel;

B. Define the Class to include "all persons or entities who/which 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/which are not 'Exempt Customers.'"

KICKHAM HANLEY PLLC

February 24, 2026 By: /s/*Gregory D. Hanley*

Counsel for Plaintiff	Co-Counsel for Plaintiff
Gregory D. Hanley	Alex Moskovic
Kickham Hanley PLLC	Moskovic & Associates, Ltd.
40950 Woodward Avenue, Suite 306	3233 N. Arlington Heights Road, Suite 303
Bloomfield Hills, MI 48304	Arlington Heights, IL 60004
E-mail: ghanley@kickhamhanley.com	E-mail: amoskovic@moskoviclaw.com
Phone: (248) 544-1500	Phone: (847) 797-1300; Fax: (847) 797-1350
Attorney No. 65814	Attorney No. 45923

CERTIFICATE OF SERVICE

I, Jamie Warrow, an attorney, certify under penalty of perjury pursuant to 735 ILCS 5/1-109 that on February 24, 2026, I served a copy of *Plaintiff's Reply Brief In Support Of Her Motion for Class Certification* by the Odyssey electronic filing system and by e-mailing a copy of same to the parties listed below from e-mail jwarrow@kickhamhanley.com.

/s/ *Jamie Warrow*

Service List:

Susan Jordan Susan.Jordan@cityofchicago.org
Steven Tomiello Steven.Tomiello@cityofchicago.org
Scott Crouch Scott.Crouch@cityofchicago.org
Sunny Baxter sunny.baxter@cityofchicago.org

4902-5384-3345, v. 1

EXHIBIT – 1

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

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.

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

EXHIBIT – 2

Meier v. Rohrman

Appellate Court of Illinois, First District, Second Division

June 16, 2020, Decided

No. 1-19-2401

Reporter
2020 IL App (1st) 192401-U *; 2020 Ill. App. Unpub. LEXIS 1039 **

GLENN MEIER and GERALD OSLANCE, individually and on behalf of all others similarly situated, Plaintiffs-Appellees, v. ROBERT V. ROHRMAN, individually, ROBERT V. ROHRMAN, INC. d/b/a SCHAUMBURG HONDA AUTOMOBILES, ROHR-MONT MOTORS, INC. d/b/a OAKBROOK TOYOTA, ROHR-BURG MOTORS, INC. d/b/a BOB ROHRMAN SCHAUMBURG FORD, ROHRMAN MIDWEST MOTORS, INC. d/b/a ARLINGTON KIA, ROHR-GROVE MOTORS, INC. d/b/a ARLINGTON NISSAN, ROHRMAN MIDWEST MOTORS, INC. d/b/a ARLINGTON ACURA, RHOR-LEX MOTORS, INC. d/b/a ARLINGTON LEXUS, ROHR-GURNEE MOTORS, INC. d/b/a GURNEE HYUNDAI, ROHR-GURNEE MOTORS, INC. d/b/a GURNEE VOLKSWAGEN, ROHR-MITS MOTORS, INC. d/b/a SCHAUMBURG KIA, and ROBERT V. ROHRMAN, INC. d/b/a BOB ROHRMAN USED CAR SUPERSTORE, Defendants-Appellants.

Notice: THIS ORDER WAS FILED UNDER SUPREME COURT RULE 23 AND MAY NOT BE CITED AS PRECEDENT BY ANY PARTY EXCEPT IN THE LIMITED CIRCUMSTANCES ALLOWED UNDER RULE 23(e)(1).

Prior History: **[**1]** Appeal from the Circuit Court of Cook County. No. 14 CH 11513. Honorable Anna Demacopoulos, Judge Presiding.

Disposition: Affirmed.

Judges: JUSTICE COGHLAN delivered the judgment of the court. Justices Lavin and Pucinski concurred in the judgment.

Opinion by: COGHLAN

Opinion

ORDER

Held: The trial court did not abuse its discretion in finding that the named plaintiffs were adequate class representatives and certifying the class to the present.

[*P2] In this Illinois Supreme Court Rule 306(a)(8) (eff. Jan. 1, 2016) interlocutory appeal, defendants Robert V. Rohrman, individually, Robert V. Rohrman, Inc. d/b/a Schaumburg Honda Automobiles, Rohr-Mont Motors, Inc. d/b/a Oakbrook Toyota, Rohr-Burg Motors, Inc. d/b/a Bob Rohrman Schaumburg Ford, Rohrman Midwest Motors, Inc. d/b/a Arlington Kia, Rohr-Grove Motors, Inc. d/b/a Arlington Nissan, Rohrman Midwest Motors, Inc. d/b/a Arlington Acura, Rhor-Lex Motors, Inc. d/b/a Arlington Lexus, Rohr-Gurnee Motors, Inc. d/b/a Gurnee Hyundai, Rohr-Gurnee Motors, Inc. d/b/a Gurnee Volkswagen, Rohr-Mits Motors, Inc. d/b/a Schaumburg Kia, and Robert V. Rohrman, Inc. d/b/a Bob Rohrman Used Car Superstore (collectively referred to as "defendants") appeal the trial court's order granting plaintiffs Glenn Meier and Gerald Oslance's motion for **[**2]** class certification. Meier and Oslance filed this suit, individually and on behalf of all others similarly situated, alleging that defendants violated the Illinois Wage Payment and Collection Act (Act) (820 ILCS 115/9 (West 2014)) by deducting a percentage of business losses from employee wages without first obtaining the required "express written consent of the employee, given freely at the time the deduction is made." On appeal, defendants argue that (1) Meier and Oslance were inadequate class representatives because they worked exclusively at one dealership, (2) a conflict of interest exists between Meier and Oslance and another class member, and (3) the class certification period should not extend to the present. For the reasons that follow, we affirm.

[*P3] BACKGROUND

[*P4] Meier and Oslance worked as finance and insurance managers at Schaumburg Honda Automobiles ("Schaumburg Honda") located at 750 East Golf Road in Schaumburg. Meier worked at Schaumburg Honda from May 1993 until June 2014, and Oslance worked from May 1985 until August 2012. Schaumburg Honda is one car dealership of within "The Bob

Rohrman Auto Group" (BRAG). Robert V. Rohrman is BRAG's founder, president, vice-president, and secretary **[**3]** and owns or owns a controlling share of all BRAG dealerships, which are individually named as defendants. BRAG is not incorporated to do business as an entity and none of the individual dealerships do business under the BRAG name.

[*P5] During the course of their employment, Meier and Oslance claim that they were subject to wage deductions under a "Money Due" policy for business losses sustained by the dealership. Meier and Oslance assert that the wage deduction practice was uniformly applied to all managers working at a BRAG dealership. They argue that any consent for the wage deduction was not freely given because it was understood that the refusal to sign the deduction authorization form could result in termination.

[*P6] Meier and Oslance filed this action against defendants, asserting that defendants' practice of deducting managers' wages without "the express written consent of the employee, given freely at the time the deduction is made" violated the Act. 820 ILCS 115/9 (West 2014). Meier and Oslance moved to certify their action as a class action. The exhibits attached to the motion in support of the class action included: (1) the "Money Due" policy issued to general managers and written on "Bob Rohrman **[**4]** Auto Group" letterhead, which "requires the Sales and Finance Management to participate in any loss incurred as a result of your failure to follow company policy;" (2) the "Money Due Reports" policy issued to general and office managers and written on "Bob Rohrman Auto Group" letterhead, which requires a biweekly report to be faxed to Rohrman; (3) the "Bob Rohrman Automobile Dealerships Payroll Deduction Authorization" form; (4) the "Bob Rohrman Auto Group - Chicagoland Division" "pay plan" (compensation) form; and (5) the "Bob Rohrman Automobile Dealership Employee Handbook," which included a "Welcome to the Rohrman Dealerships" message signed by Rohrman and "General Company Policies."

[*P7] Defendants moved for summary judgment, asserting, in part, that Meier and Oslance were inadequate class representatives because they worked exclusively at one dealership and the other dealerships named as defendants could not be considered their "employer" under the Act.

[*P8] Summarized below are relevant portions of discovery depositions relied on by the parties.

[*P9] Oslance and Meier testified that their wages were deducted for "write-offs," which could include uncollected bad checks, fraudulent purchase of **[**5]** vehicles, and government-imposed penalties. Oslance explained that "we would be charged for just about anything that could be imagined that the dealership could end up losing money." Both former employees testified consistently that consent for the deductions was not freely given, but given under duress. Meier complained about the write-off policy to his office manager, but was told that "this was a policy that was impacting [ ] this category of managers equally." Although Meier worked exclusively at Schaumburg Honda, Oslance testified that he provided services for other dealerships.

[*P10] Rohrman testified that he has 14 dealerships in Illinois and 1600 employees. BRAG is a term of art that refers to a group of car dealerships that he owns or owns a controlling share of. Each dealership is a separate corporation operating independently, with separate bank accounts, registered dealer number, police book, federal employer identification number, and payroll. At one time, Rohrman had other individuals as secretary of the BRAG dealerships, but "changed it all with me as the president, secretary, and vice-president and all so I could sign one thing."

[*P11] Rohrman explained that one comptroller, director **[**6]** of operations, and in-house attorney have responsibility over all Illinois dealerships and each dealership contributes towards their salary. Those individuals each receive a paycheck from Lexus of Arlington. The attorney "works for the Bob Rohrman Auto Group." Rohrman also hired Mark Battista, who "keeps us out of trouble." Rohrman could not remember Battista's job title, "because it's been so long ago I gave him the job title [and] the job title don't mean anything today because he does a lot of the things that are not in that job title now too." Battista's duties and responsibilities apply to all BRAG dealerships.

[*P12] Every dealership has a general manager and all general managers report directly to him. Rohrman and the comptroller did monthly "rounds" at the various dealerships. Rohrman was "mean at [the dealerships] that we lost money at on the last month." His grandson, Ryan Rohrman, is his "backup" and "is taking over right in back of me." Ryan also participated in the monthly "rounds."

[*P13] Rohrman stated that every employee receives a copy of the employee handbook. Most of the information in the handbook is consistent for every dealership, but there are some differences because each **[**7]** dealership operates on its own. For example, employee benefits and employee job descriptions may differ among the dealerships.

[*P14] According to Rohrman, the "Money Due" policy, which he approved, was distributed to every dealership and applies to general managers, new car managers, desk managers, general sales managers, used car sales managers, and finance and insurance managers. A percentage of the business loss or "write-

off" was allocated to the respective manager and deducted from his or her wages. Managers received an "employee statement" when they were hired that outlines their salary and authorization for deductions from their wages, which included money collected under the "write-off" policy. "If they want to go to work for us, they sign it; and if they don't want to go to work for us, they don't sign it."

[*P15] Ryan Rohrman testified that he has been director of operations since January 1, 2016 and receives a check from Lexus of Arlington. Before that position, he was the general manager of Schaumburg Honda from February 1, 2011 to January 1, 2016, and both Meier and Oslance worked for him. As the director of operations, he consults with every Illinois dealership on a weekly basis, **[**8]** sometimes multiple times a week. He works directly for Rohrman and helps the general managers run their stores.

[*P16] According to Ryan, there is no formal BRAG entity and that term just refers to a group of car dealerships that Rohrman owns. BRAG has an employee handbook that applies to all employees, and general managers have the authority to run their stores in accordance with that employee handbook, but have no authority to make their own rules or create their own employee handbook.

[*P17] Ryan explained that the "write-off" policy exists to recoup losses from the respective managers for negligence occurring at a dealership that could have been prevented by the mangers. General managers impose "write-offs" at their discretion. When Ryan was the general manager of Schaumburg Honda, there was never an instance where there was a payroll deduction to a manger's salary without a signed authorization form. Ryan recalled an incident where Meier and the finance department did not follow proper procedures, which resulted in the theft of a vehicle. Ryan decided to charge a portion of that loss to the managers. Ryan and 10 other managers signed the payroll deduction authorization form, but Meier refused **[**9]** to do so. Ryan suspended Meier twice over his refusal to sign the form, and Meier ultimately never returned to work.

[*P18] Mark Battista testified that he is personally employed by Rohrman and is a "Director for Bob Rohrman." Battista is the registered agent for the dealerships within BRAG. Battista explained that each dealership has its own (1) dealership license, (2) Illinois business tax number, (3) employee tax number, (4) bank accounts, and (5) accounting department. BRAG is "a term of art that has been used for many, many years, and it is a non-entity. It's not a corporation or a d/b/a, but it's been used kind of as a brand for advertising. *** It has no assets. It has no liabilities."

[*P19] According to Christina Antonetti, Rohrman promoted her from office manager to comptroller for BRAG, *i.e.*, the Chicagoland dealerships. She reports directly to Rohrman and the office managers at the dealerships report to her. The BRAG human resources director or manager is responsible for managing and administering the 401(k) for every dealership, along with verifying that new employees complete the proper paperwork.

[*P20] Antonetti stated that Battista determines whether a write-off deduction from an employee's **[**10]** wages is necessary and she processes the payroll deduction. Employees must consent to the deduction and a form is used every time there is a deduction from an employee's paycheck. Regarding the employee handbook, every employee of every dealership receives a copy of the employee handbook, and general managers have no authority to create their own employee handbook. The employment policies in the handbook apply to all BRAG dealerships.

[*P21] Before his retirement in January 2015, John Hoffman was the "Director of Fixed Operations, Chicagoland area." Hoffman stated that he was employed by Rohrman and reported exclusively to him. Hoffman consulted the parts and service departments for the Chicagoland dealerships, and those dealerships contributed towards his salary.

[*P22] Hoffman held a meeting six or seven times a year for all parts and service managers at one dealership location, and the location of the meeting would change. Ryan and Battista occasionally attended those meetings. Hoffman only consulted and made recommendations to the general managers, because the general manager ran the dealership. "Rohrman himself remind[ed] me that the general manager runs the store, I don't."

[*P23] Hoffman interviewed **[**11]** individuals for all positions of fixed operations. On occasion, a parts and service employee would be promoted to a manager position at a different dealership, but Rohrman would have to first approve the promotion. Rohrman authorized any pay plan changes for compensation paid to the "manager, service manager, or parts manager." He participated in interviews for general managers, but Rohrman made the final decision and hired all general managers. Rohrman, as needed, would discipline the general managers. The only person general managers "would answer to" was Rohrman.

[*P24] Following a two-day hearing on the motion for summary judgment and the motion for class certification, the trial court denied defendants' motion for summary judgment finding genuine issues of material fact as to "what relationship existed between BRAG, Bob Rohrman individually, Bob Rohrman, Inc., and all of the other entities." The trial court also granted the motion for class certification and appointed Oslance

and Meier as class representatives. The trial court "slightly modified" the class definition, certifying it as:

> "Employees who work or worked at a group of New and Used Car Dealerships which Bob Rohrman owns or owns **[**12]** the controlling share of in Illinois, consisting of General Managers, Finance and Insurance Managers, General Sales Managers, New Car Sales Managers, Used Car Sales Managers, Desk Managers, or other similarly-titled managerial positions, at any time, from July 14, 2004 to the present, and whom had wages deducted by Defendants for ordinary business losses without providing written, contemporaneous authorization for such deductions. Dealerships specifically consisting of:
>
> (1) Robert V. Rohrman, Inc. d/b/a Schaumburg Honda Automobiles;
>
> (2) Rohr-Mont Motors, Inc. d/b/a Oakbrook Toyota;
>
> (3) Rohr-Burg Motors, Inc. d/b/a Bob Rohrman Schaumburg Ford;
>
> (4) Rohrman Midwest Motors, Inc. d/b/a Arlington Kia;
>
> (5) Rohr-Grove Motors, Inc. d/b/a Arlington Nissan;
>
> (6) Rohrman Midwest Motors, Inc. d/b/a Arlington Acura;
>
> (7) Rohr-Lex Motors, Inc. d/b/a Arlington Lexus;
>
> (8) Rohr-Lex Motors, Inc. d/b/a Gurnee Hyundai;
>
> (9) Rohr-Gurnee Motors, Inc. d/b/a Gurnee Volkswagen;
>
> (10) Rohr-Mits Motors, Inc. d/b/a Libertyville Mitsubishi; and
>
> (11) Rohr-Schaumburg Motors, Inc. d/b/a Schaumburg Kia."

[*P25] ANALYSIS

[*P26] Defendants argue that Meier and Oslance were inadequate class representatives because they cannot represent the interests **[**13]** of managers who were employed by a different dealership.

[*P27] Under section 9 of the Act, "deductions by employers from wages *** are prohibited unless such deductions are *** made with the express written consent of the employee, given freely at the time the deduction is made." 820 ILCS 115/9 (West 2014). Section 2 of the Act defines "employer" as "any individual, partnership, association, corporation, limited liability company *** or any person or group of persons acting directly or indirectly in the interest of an employer in relations to an employee, for which one or more person is gainfully employed." 820 ILCS 115/2 (West 2014). The Act also provides that "any officers of a corporation or agents of an employer who knowingly permit such employer to violate the provisions of this Act shall be deemed to be the employers of the employees of the corporation." 820 ILCS 115/13 (West 2014). To bring a claim under the Act, a plaintiff "must plead that (1) he had an employment agreement with the employer that required the payment of wages or final compensation and (2) that the defendants were employers under the Wage Act." *Watts v. ADDO Management, L.L.C.*, 2018 IL App (1st) 170201, P14, 420 Ill. Dec. 501, 97 N.E.3d 75.

[*P28] Section 2-801 of the Code of Civil Procedure sets forth the following four "prerequisites for the maintenance of a class action: **[**14]** *** (1) The class is so numerous that joinder of all members is impracticable. (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members. (3) The representative parties will fairly and adequately protect the interests of the class. (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801 (West 2014). The party seeking certification bears the burden of establishing all four statutory prerequisites. *Gridley v. State Farm Mutual Automobile Insurance Co.*, 217 Ill. 2d 158, 167, 840 N.E.2d 269, 298 Ill. Dec. 499 (2005); *Arnold v. Kapraun, P.C.*, 2018 IL App (1st) 172854, ¶ 14, 435 Ill. Dec. 166, 138 N.E.3d 780. In deciding whether to certify a class, "the trial court accepts the allegations of the complaint as true and should err in favor of maintaining class certification." *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶ 9, 392 Ill. Dec. 150, 32 N.E.3d 150. We will not disturb a trial court's ruling regarding class certification unless the court abused its discretion or applied impermissible legal criteria. *Smith v. Illinois Central R.R. Co.*, 223 Ill. 2d 441, 447, 860 N.E.2d 332, 307 Ill. Dec. 678 (2006). A trial court abuses its discretion "only where no reasonable person would take the position adopted by the" court. *Peach v. McGovern*, 2019 IL 123156, ¶ 25, 432 Ill. Dec. 706, 129 N.E.3d 1249.

[*P29] The only class action prerequisite at issue here is whether Meier and Oslance "will fairly and adequately protect the interests of the class." Adequate representation requires a consideration of "whether the **[**15]** interests of the named parties are the same as the interests of those who are not named" and that class members receive "appropriate protection of their interests in the presentation of the claim." *Cruz v. Unilock Chicago*, 383 Ill. App. 3d 752, 778, 892 N.E.2d 78, 322 Ill. Dec. 831 (2008). A class representative "cannot adequately represent a class when the representative does not state a valid cause of action." *De Bouse v. Bayer*, 235 Ill. 2d 544, 560, 922 N.E.2d 309, 337 Ill. Dec. 186 (2009). Thus, we must first determine whether Meier and Oslance pled an actionable claim against defendants. *Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill. 2d 45, 72, 879 N.E.2d 910, 316 Ill. Dec. 522 (2007); *Acevedo v. Cook*

County Sheriff's Merit Board, 2019 IL App (1st) 181128, ¶ 38, 432 Ill. Dec. 440, 129 N.E.3d 658; *Stefanski v. City of Chicago*, 2015 IL App (1st) 132844, ¶ 15, 390 Ill. Dec. 314, 28 N.E.3d 967; *Uesco Industries, Inc. v. Poolman of Wisconsin, Inc.*, 2013 IL App (1st) 112566, ¶ 48, 993 N.E.2d 97, 373 Ill. Dec. 97.

[*P30] Defendants argue that Meier and Oslance failed to plead an actionable claim because, except for Schaumburg Honda, the other dealerships were neither an employer nor joint employer under the Act, having exerted no control over the terms and conditions of their employment.

[*P31] The Act recognizes joint employers. *Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101, 117, 838 N.E.2d 894, 298 Ill. Dec. 1 (2005). The test for a joint employer "is whether '"two or more employers exert significant control over the same employees—where from the evidence it can be shown that they share or codetermine those matters governing essential terms and conditions of employment."'" *Village of Winfield v. Illinois State Labor Relations Board*, 176 Ill. 2d 54, 60, 678 N.E.2d 1041, 223 Ill. Dec. 33 (1997) (quoting *Orenic v. Illinois State Labor Relations Board*, 127 Ill. 2d 453, 474, 537 N.E.2d 784, 130 Ill. Dec. 455 (1989) (quoting *National Labor Relations Board v. Browning-Ferris Industries of Pennsylvania, Inc.*, 691 F.2d 1117, 1124 (3d Cir.1982))). The relevant factors to consider in determining "joint employer" status "include the 'putative joint employer's role in "hiring and firing; promotions and demotions; setting **[**16]** wages, work hours, and other terms and conditions of employment; discipline; and actual day-to-day supervision and direction of employees on the job."'" *Id.* (quoting *Orenic*, 127 Ill. 2d at 475 (quoting J. Jansonius, *Use and Misuse of Employee Leasing*, 36 Lab. L.J. 35, 36 (1985))).

[*P32] As defendants note, each dealership is separately incorporated and maintains a separate: (1) location, (2) distinct assumed name, (3) state issued dealership license, (4) state business tax number, (5) federal employer identification number, (6) books and records, and (7) inventory of new and used cars. But defendants urge us to ignore the fact that Rohrman, as president, dictated the essential terms and conditions of employment either directly or through key employees that uniformly applied to all managers employed at all dealerships. Rohrman had ultimate oversight over and directly monitored all dealership business operations, evidenced by the monthly meetings at each dealership, requiring each general manager to report directly to him, and requiring a biweekly "Money Due Report" faxed to him. Rohrman hired and disciplined, when necessary, the general managers and approved changes to managers' compensation agreements.

[*P33] Rohrman also approved and implemented **[**17]** at *every* dealership the "Money Due" policy, which deducted from managers' wages a percentage of certain write-offs. All managers were subject to the "Money Due" policy. Battista decided whether the "Money Due" policy should be enforced at each dealership and the related payroll deductions were completed by one individual, the comptroller. Meier and Oslance asserted that authorization for the deductions to employee wages was only given under a fear of being terminated. The "Money Due" policy, "Money Due Report" policy, and "Pay Plan" form were all documented on "Bob Rohrman Auto Group" letterhead. Defendants do not dispute the existence or enforcement of any of the policies.

[*P34] Likewise, "The Bob Rohrman Employee Handbook," was the only employee handbook and every employee hired at one of "The Bob Rohrman Automobile Dealerships" received a copy of it. All employees were subject to the policies in the handbook, which addressed matters such as discipline, pay advances, personal appearances, and other terms and conditions of employment. General managers had no authority to create a replacement employee handbook.

[*P35] Further indications of control and oversight include Rohrman directly hiring **[**18]** Battista, the comptroller, director of operations, and in-house counsel, who all performed services for every dealership within BRAG and reported directly to him. Not only did Rohrman directly hire those employees, but he also had the discretion to fire those employees (he had fired a previous comptroller). Moreover, parts and service managers attended a meeting multiple times a year held at a different Rohrman dealership, which Battista and Ryan occasionally attended.

[*P36] Although Meier and Oslance still bear the burden of proving the ultimate facts and allegations pled at trial and we express no opinion regarding the merits of their claims, we find that they have pled an actionable claim for class certification purposes. *Zabinsky v. Gelber Group, Inc.*, 347 Ill. App. 3d 243, 250, 807 N.E.2d 666, 283 Ill. Dec. 61 (2004); see contra *Andrews*, 217 Ill. 2d at 112 (evidence at trial established that the former owner no longer controlled the business because the bank seized and took over the corporation). Thus, the trial court did not abuse its discretion in certifying the class and naming Meier and Oslance as class representatives.

[*P37] Defendants also claim that Meier and Oslance were inadequate to represent the class because a conflict of interest arises between the named plaintiffs and their supervisor (Ryan), a class **[**19]** member who enforced the wage deduction.

[*P38] Named class representatives must be free from a conflict of interest with the represented class members. *Slimack v. Country Life Insurance Co.*, 227 Ill. App. 3d 287, 299, 591

N.E.2d 70, 169 Ill. Dec. 190 (1992). Importantly, Meier and Oslance were not supervisors enforcing the contested "Money Pay" policy, but managers with first-hand knowledge of and subject to the policy. See *Cruz*, 383 Ill. App. 3d at 779 (a supervisor who did not participate in the contested practice of requiring employees to report to their workstations before the start of their shift was an adequate class representative). Similarly, there is no indication that Meier and Oslance would be competing for limited relief with any of the class members. *Id.* Meier and Oslance's interests are the same as the class members, who allegedly did not freely consent to wage deductions. Thus, the trial court did not abuse its discretion in finding no conflict of interest that would preclude Meier and Oslance from adequately and fairly representing the interests of the class. *Id.* at 778.

[*P39] Finally, defendants claim that the trial court abused its discretion in certifying the class "from July 14, 2004 to the present" when Meier and Oslance's employment terminated in 2014 and 2012, respectively.[1] See *Lee v. Buth-Na-Bodhaige, Inc.*, 2019 IL App (5th) 180033, ¶ 74, 143 N.E.3d 645 (quoting 735 ILCS 5/2-801(4) (West 2016)) ("class period **[**20]** is an important factor in determining whether certification of a class is 'an appropriate method for the fair and efficient adjudication of the controversy.'") Defendants argue thatMeier and Oslance were inadequate class representatives because they were not subject to the "Money Due" policy for the entire class period. However, defendants do not claim that the "Money Due" policy has been eliminated. Indeed, the deposition and affidavit evidence establish that the disputed policy was still in effect when the class was certified. Moreover, Meier and Oslance are adequate class representatives because the class consists of "employees who work or worked" at a respective dealership. Thus, the trial court did not abuse its discretion in certifying the class period "to the present."

[*P40] CONCLUSION

[*P41] The trial court did not abuse its discretion in certifying the action as a class action and naming Meier and Oslance as class representatives.

[*P42] Affirmed.

[1] Meier and Oslance argue that defendants forfeited this argument by failing to raise it in the trial court, but this is an interlocutory appeal pursuant to Rule 306(a)(8). Defendants included their objection to the class period in their petition for interlocutory appeal and determining the class period was inherent in certifying the class.

End of Document

EXHIBIT – 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THOMAS J. DANAHY AND KIMBERLY M. DANAHY; JASON BLACK; BARBARA SCOTT; DENISE SMITH and TOUHY II REAL ESTATE LLC, an Illinois limited liability company, Plaintiffs, v. CITY OF CHICAGO; CITY OF CHICAGO DEPARTMENT OF WATER BILLINGS AND COLLECTIONS; CHICAGO DEPARTMENT OF WATER MANAGEMENT, Defendants.	No. 2024-CV-00449 Hon. Manish S. Shah Hon. Young B. Kim

DEFENDANT CITY OF CHICAGO'S MEMORANDUM IN SUPPORT OF ITS RULE 12(B)(1) AND (6) MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

Defendant City of Chicago[1] (the "City") submits this Memorandum in support of its Motion to Dismiss Plaintiffs' Amended Complaint under Fed. R. Civ. P. 12(b)(1) and (6).

INTRODUCTION

Plaintiffs allege that the City violated their due process and equal protection rights under the federal and Illinois constitutions by "willfully, intentionally and unlawfully overcharging and collecting excessive fees and taxes for water and sewer usage from property owners who do not have a water meter." Am. Compl. ¶¶ 2, 69-87. Plaintiffs' Amended Complaint should be

[1] The City does not have a "Department of Water Billings and Collections"; those functions are performed by the Department of Finance. Regardless, the Departments of Water Management ("DWM") and Finance are part of the City, so claims against both are treated as claims against the City. *See, e.g.*, *Bonilla v. City Council of City of Chicago*, 809 F. Supp. 590, 601 (N.D. Ill. 1992).

dismissed for two independent reasons. First, Plaintiffs lack standing because they have alleged no injury in fact. They do not allege that their own water bills would be lower if they had meters. Second, Plaintiffs fail to state claims upon which relief can be granted. Their substantive due process claims (counts I and III) fail because the City's approach to billing nonmetered accounts is rationally related to its legitimate purpose of recouping the costs associated with providing municipal water service and servicing the bonds that fund that service. And Plaintiffs' equal protection claim (count II) fails because the City's differential treatment of metered and nonmetered accounts is rational. Unlike at metered properties, water consumption at nonmetered properties must necessarily be billed at a flat rate. The Amended Complaint should therefore be dismissed in its entirety, with prejudice.

BACKGROUND

The Municipal Code of Chicago ("MCC") sets the billing rates for metered and nonmetered water accounts. MCC §§ 11-12-210 *et seq*., 11-12-260 *et seq*. For properties with a water meter, the City charges a flat rate per 1,000 cubic feet of water used, as recorded by the property's meter. *Id.* § 11-12-310. For properties without a water meter, the City charges property owners for their water using a formula for assessing water use. *Id*. § 11-12-270. That formula determines each nonmetered property's water bill based on the premise's size, number of stories, and number of water fixtures. *Id.*; *see also id.* § 11-12-260 (directing DWM to propose rates that "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.").

Plaintiffs allege they are owners of properties located in the City, Am. Compl. ¶¶ 11-15, and challenge the formula used for nonmetered water billing as "arbitrary and capricious," saying it causes nonmetered bills to be up to 600% higher than bills for metered properties with comparable water use, *id.* ¶ 20. Plaintiffs argue that because the formula inflates nonmetered property owners' water (and corresponding sewer) bills, it also saddles those owners with a disproportionate share of water and sewer taxes in a way that is "arbitrary, capricious, and not rationally related to a legitimate government purpose." *Id.* ¶ 27. Plaintiffs do not allege that their own properties currently lack meters, that their bills would have been lower if their properties had meters, or that they have actually paid their water bills. They also do not challenge as irrational any of the specific variables underpinning the MCC formula for nonmetered billing.[2]

Based on these allegations, Plaintiffs claim that the City has violated their due process and equal protection rights by using the MCC formula to assess water use at nonmetered single family homes and two-flats, rather than installing water meters in every such property in the City on an expedited basis and then billing them at the same rate as existing metered properties.

LEGAL STANDARD

A motion to dismiss under Rule 12(b)(1) challenges the Court's subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). The party asserting jurisdiction has the burden to establish that requirements for jurisdiction are met. *Ctr. for Derm. & Skin Cancer, Ltd. v. Burwell*, 770 F.3d 586, 589 (7th Cir. 2014).

A Rule 12(b)(6) motion to dismiss tests whether the complaint states a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). To survive dismissal, a complaint "must contain

[2] Plaintiffs also allege that buildings in census tracts that are majority Black, Hispanic, and Asian are "less likely to be metered," *id.* ¶ 43, but they do not assert any disparate impact claim.

sufficient factual matter," accepted as true, to state a claim to relief that is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Conclusory allegations and legal conclusions, however, are not afforded the presumption of truth. *Id.*

ARGUMENT

I. Plaintiffs Have Not Alleged Facts Establishing Their Standing.

Plaintiffs do not have standing because they fail to allege a cognizable, redressable, injury. Standing requires "(1) an injury in fact that is (2) fairly traceable to the challenged action of the defendant," and that it "(3) is likely, not merely speculative, that the injury will be redressed by a favorable decision." *In re Recalled Abbott Infant Formula Prods. Liability Lit.*, 97 F.4th 525, 528 (7th Cir. 2024) (quoting *Silha v. ACT, Inc.*, 807 F.3d 169, 172-73 (7th Cir. 2015)). Plaintiffs bear the burden of establishing standing, *Silha*, 807 F.3d at 173, and therefore must "allege sufficient factual matter to support the inference that standing exists" to survive a motion to dismiss, *Abbott Infant Formula*, 97 F.4th at 528.

Here, Plaintiffs fail to allege facts showing an injury that is sufficient to confer standing. Standing requires that plaintiffs allege an injury to a legally recognized interest that is "concrete and particularized," not "conjectural or hypothetical." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (internal citation omitted). In the Amended Complaint, Plaintiffs allege that they own properties in the City, Am. Compl. ¶¶ 11-15, and that they have been "billed for water usage as unmetered accounts by the Defendants," *id.* ¶ 4. But nowhere do they allege that they have been individually harmed by nonmetered account water billing—or even that they personally paid any such water bills. While Plaintiffs allege generally that "unmetered rates charged by the City . . . result in water and sewer bills that are 100% to 600% (or more) higher than water/sewer charges

for similar properties that have been provided with meters," *id.* ¶ 7, they do not allege that *their* specific water bills would have been lower if their properties had water meters and had been billed under the City's metered rate. And that is not necessarily the case. In fact, Plaintiffs' bills well may have gone up if, for example, a water meter detected excessive water use associated with a leak at their properties, or if the cost of citywide meter installations caused overall water system expenditures, and the metered rates designed to recoup those costs, to skyrocket. Plaintiffs hypothesize that their bills would have been lower if they had metered accounts, but their alleged injury is neither concrete nor particularized; it is instead entirely speculative and conjectural. That is insufficient for standing. *See, e.g.*, *Area Transp., Inc. v. Ettinger*, 219 F.3d 671, 672-73 (7th Cir. 2000) (holding that allegations that FTA's lenient sanctions against a regulated entity injured its competitor were insufficient to plead a concrete injury, and the competitor's economic injury was merely conjectural).

For the same reason, because Plaintiffs have not alleged that they have been personally injured in a concrete way by the City, it is impossible to conclude that their injury "is likely to be redressed by a favorable judicial decision." *See Spokeo*, 578 U.S. at 338.

Because the Plaintiffs have not alleged a concrete, redressable injury, the Amended Complaint should be dismissed in its entirety.

II. Plaintiffs' Substantive Due Process Counts Fail Because The City's Nonmetered Water Service Rates Are Supported By A Rational Basis (Counts I & III).

Counts I and III both appear to raise substantive due process claims. In count I, Plaintiffs allege, under 42 U.S.C. § 1983, that the City's different rates for metered and nonmetered properties violate the U.S. Constitution's Fifth and Fourteenth Amendments. Am. Compl. ¶¶ 70-75. Plaintiffs do not articulate any theory why the challenged MCC provisions violate the Fifth and Fourteenth Amendments, but the City understands count I to allege a violation of Plaintiffs'

substantive due process rights because Plaintiffs claim that the City's practices are "excessive and not justified by any legitimate purpose." *Id.* ¶ 75. While Plaintiffs also label count I as asserting a violation of "Article One, Sections Two and Twelve of the Illinois Constitution," *see id.* ¶¶ 69-75—the Due Process and Equal Protection, and the Right to Remedy and Justice clauses, respectively, they make no express allegations under either of these provisions.[3] Count III, meanwhile, alleges the City's rate schedule for nonmetered properties is "irrational and arbitrary," *id.* ¶ 85, in violation of the Fourteenth Amendment's Due Process Clause, *id.* ¶¶ 82-87, which the City understands to allege a violation of Plaintiffs' substantive due process rights. As next explained, Plaintiffs fail to allege a plausible substantive due process claim.

A. Plaintiffs' federal substantive due process claims fail because there is a rational basis for the City's actions (counts I & III).

"Substantive due process protects against government power arbitrarily and oppressively exercised." *Dyson v. City of Calumet*, 306 F. Supp. 3d 1028, 1042 (7th Cir. 2018). Substantive due process is "limited [in] scope." *Lee v. City of Chicago*, 330 F.3d 456, 467 (7th Cir. 2003) (citation omitted). Because substantive due process is "a doctrine limited to impingement on fundamental rights," *Hanson v. Dane Cty.*, 608 F.3d 335, 338 (7th Cir. 2010), the plaintiff must allege the challenged government action infringes on a right "deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Khan v. Bland*, 630 F.3d 519, 535 (7th Cir. 2010)

---

[3] The Illinois Constitution's Right to Remedy and Justice states that: "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly." Ill. Const., Art. I, § 12. This clause "does not create a constitutional right to a certain remedy, or mandate that a certain remedy be provided in any specific form." *Schultz v. Lakewood Elec. Corp.*, 362 Ill. App. 3d 716, 724 (1st Dist. 2005). Accordingly, Plaintiffs cannot state a claim under the Right to Remedy and Justice clause. *E.g.*, *Bart v. Bd. of Ed. of City of Chicago*, 256 Ill. App. 3d 880, 886 (1st Dist. 1993) (holding that clause does not provide a cause of action).

(citation omitted). "Unless a governmental practice encroaches on a fundamental right, substantive due process requires only that the practice be rationally related to a legitimate governmental interest, or alternatively phrased, that the practice be neither arbitrary nor irrational." *Lee*, 330 F.3d at 467.

Here, Plaintiffs do not allege that any fundamental right or liberty interest is at issue. And the City has found no case suggesting that a plaintiff has a fundamental right to a utility billing rate. Therefore, the ordinance "will stand if it passes rational basis scrutiny." *Goodpaster v. City of Indianapolis*, 736 F.3d 1060, 1071 (7th Cir. 2013). Under rational basis review, a state law is constitutional if it "is rationally related to a legitimate state interest." *Lee*, 330 F.3d at 467. And "[t]hose attacking a statute on rational basis grounds have the burden to negate 'every conceivable basis which might support it." *Platt v. Brown*, 872 F.3d 848, 852 (7th Cir. 2017) (citation omitted).

A number of conceivable rational bases justify the MCC's approach to billing nonmetered properties, and Plaintiffs have not even attempted to rebut them. The basis for the billing of both metered and nonmetered properties is "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." MCC § 11-12-260. To cover those costs, DWM assesses water use at each property it services. For metered properties, the meter does that work. But for nonmetered properties, DWM uses the MCC formula because nonmetered properties' water use cannot be precisely measured. The formula is based on objective, common-sense variables: a property's size, number of stories, and number of water fixtures. *See* MCC § 11-12-270. Those variables are rational because they are relevant to the amount of water likely consumed at a given

property. Indeed, Plaintiffs do not argue otherwise. Based on this estimate, the property is billed at a rate intended to recoup the cost of providing service, which takes into account not only the cost of water in the municipal system, but also the likely existence of undiscovered leaks at some nonmetered properties, the cost of servicing bond obligations, and the need to maintain proper reserves.

Plaintiffs supplement their challenge to the MCC formula with quibbles about the pace of water meter installations. Am. Compl. ¶ 86. While acknowledging the City has "a plan to install meters for some existing unmetered properties," they complain that the program was capped at 25,000 meter installations per year. *Id.* ¶ 38. They do not explain why that pace is unreasonable—let alone irrational—and only note statistics about nonmetered properties in Chicago. *Id.* ¶¶ 40-42. But providing an explanation that negates all conceivable bases for the City's actions is their burden. They must explain why the City's approach, given its budgetary and legal constraints, is so beyond the pale that it violates their constitutional rights.

The mere fact that it may "take many years to install meters in all of the unmetered properties in the City of Chicago," Am. Compl. ¶ 40, does not render the City's approach irrational. Infrastructure projects often take years to complete, and interested parties often are unsatisfied with the pace of progress. That alone does not trigger a due process violation, and it would be inappropriate for this Court to direct the City to prioritize meter replacements over the many other important services competing for the City's attention and budget. DWM must decide important policy questions related to intersecting infrastructure priorities, including service line replacement, which implicate public health and budgetary concerns—concerns with which the Amended Complaint, with its myopic focus on billing rates, does not begin to grapple.

For these reasons, Counts I and III should be dismissed.

B. Plaintiffs' state-law due process claim fails (count I).

To the extent Plaintiffs assert a substantive due process claim under the Illinois Constitution in count I, *see* Am. Compl. at 9, that claim also fails, both because DWM's billing system and approach to meter installations are based on rational considerations, and because Plaintiffs advance no theory for why the Illinois Constitution would extend greater due process protections to water utility customers than the federal Constitution. The Illinois Constitution's due process clause sometimes "provide[s] greater protections than its federal counterpart," but only where there is "an appropriate basis" to find such heightened protection, such as state precedent holding the state constitution's protections extend broadly "in this context." *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 227 (1999). "Nonetheless, federal precedent interpreting the federal due process clause is useful as a guide in interpreting the Illinois provision." *Id.* The burden is on the Plaintiffs to provide a "basis for a broader construction of the Illinois due process clause" in a particular context, *id.*, and that reason must be "compelling," *In re M.A.*, 2015 IL 118049 ¶ 38 (2015); *People v. Molnar*, 222 Ill. 2d 495, 510 (2006). A mere assertion that the state protections should be extended beyond their federal counterparts is insufficient. *Lewis E.*, 186 Ill. 2d at 227.

Here, Plaintiffs have not provided any reason, let alone a compelling one, for why Illinois's substantive due process protections are greater in this context than federal protections. Nor can they, because there are no cases interpreting the state constitution to provide additional protections to utility customers. So, the Plaintiffs' state due process claim fails for the same reason its federal claim does, and the Court should dismiss both with prejudice.

III. Plaintiffs Fail To Allege An Equal Protection Claim Because The City's Water Billing Rates Are Supported By A Rational Basis (Count II).

Plaintiffs' Equal Protection claim in Count II fails because the City's differential treatment of metered and nonmetered accounts is rational, both because there is no way to charge

for nonmetered properties' actual water use, and because charges for assessed water use by nonmetered properties are based on relevant property characteristics.

The Equal Protection Clause is "'essentially a direction that all persons similarly situated should be treated alike.'" *St. Joan Antida High Sch. Inc. v. Milwaukee Public Sch. Dist.*, 919 F.3d 1003, 1008 (7th Cir. 2019) (citation omitted). "To state a *prima facie* claim under the Equal Protection Clause of the Fourteenth Amendment, a plaintiff must demonstrate that (1) he is otherwise similarly situated to members of the unprotected class; (2) he was treated differently from members of the unprotected class; and (3) the defendant acted with discriminatory intent." *Greer v. Amesqua*, 212 F.3d 358, 370 (7th Cir. 2000).

A classification system is subject to rational basis review unless its distinctions are "based on a person's membership in a suspect class." *Srail v. Vill. of Lisle*, 588 F.3d 940, 943 (7th Cir. 2009) (holding that classifications related to rates charged to specific subsets of water customers did not implicate a suspect class or fundamental right). Here, Plaintiffs do not allege they are members of a suspect class. Rational basis review under the Equal Protection Clause is "essentially the same" as under the Due Process Clause. *Halgren v. City of Naperville*, 577 F. Supp. 3d 700, n.59 (N.D. Ill. 2021). Thus, the Court must first identify "some" legitimate government purpose for different classifications, and "a classification is generally valid as long as a rational basis is plausible." *St. Joan Antida*, 919 F.3d at 1010. "Rational-basis review tolerates overinclusive classifications, underinclusive ones, and other imperfect means-ends fits." *Id.* "The standard also imputes 'a strong presumption of validity' on the contested classification." *Id.* (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 314 (1993)). "To overcome that presumption, a challenger must negate every conceivable basis which might support the classification." *Id.* (quotations omitted).

Plaintiffs allege that the City's billing approach requires properties without meters to "pay double or triple what metered customers pay for the same water and sewer services." Am. Compl. ¶ 79.[4] Plaintiffs argue that the City's billing system violates the Equal Protection Clause because it is "arbitrary, irrational and unrelated to the purposes of a municipal water and sewer utility." *Id.* ¶¶ 80-81.

This claim fails because the City's distinction between metered and nonmetered properties is clearly rational. It is not possible to assess charges to metered properties and nonmetered properties the same way because nonmetered properties, by definition, lack a meter to record actual water usage. Out of necessity, the City must calculate water use at nonmetered properties using other characteristics of the premises and assess charges accordingly. The City does this by using the MCC's formula, which utilizes a property's size, stories, and number of water fixtures to assess the property's water usage. Additionally, the City seeks to recoup the costs associated with providing municipal water services, and because properties without meters may have undetected leaks or water waste, the City must allocate the cost across all nonmetered properties, rather than assigning those charges to the specific properties responsible for the consumption, as can be done for metered properties. Indeed, addressing an equal protection challenge, the Seventh Circuit has recognized the need to recoup the cost of service as a justification for utility billing, holding that a municipal water supplier had a rational basis for its

[4] To the extent the Amended Complaint suggests that the City's billing process disparately impacts certain racial groups, those allegations are not relevant to Plaintiffs' Equal Protection claim. Plaintiffs' theory is that the City irrationally distinguishes between nonmetered and metered accounts, not that it imposes a disparate impact on particular protected classes. *See* Am. Compl. ¶ 78. And regardless, such claims are not cognizable in the Equal Protection context. *Personnel Adm'r of Mass. v. Feeny*, 442 U.S. 256, 272 (1979) ("[E]ven if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose.").

differential treatment of specific properties where the municipality "harbored real concerns that it would be unable to recoup" the cost of service from one property class. *Srail*, 588 F.3d at 948.

Plaintiffs have not explained away these rational bases for the City's water billing. Instead, they imply that DWM should eliminate the need for the distinction by installing meters at every nonmetered property in Chicago faster than it is already doing. Am. Compl. ¶¶ 40-42. But, again, DWM's approach to infrastructure upgrades involves complex policy questions. The courts' role is not to intervene in those decisions in favor of Plaintiffs' preferred infrastructure program. Nor is it the Court's role to serve as utility rate maker for nonmetered accounts—a function that courts are ill-equipped to serve. *See, e.g.*, *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 617-18 ("Congress has entrusted the administration of" the federal power transmission system "to the [Federal Power] Commission not to the courts," and "it is not for us to advise the Commission how to discharge its functions.").

Rather, the Court need only look to whether the City's current approach has a rational basis. And it does, because the MCC assesses charges to nonmetered accounts by looking to property size, stories, and water fixtures to assess the costs necessary to recoup the cost of providing water services. Illinois courts have already recognized that goal as a rational one for utility charges, *see Vill. of Niles, et al. v. City of Chicago*, 201 Ill. App. 3d 651, 675 (1st Dist. 1990) ("a reasonable rate would be one which would fully compensate the city for the cost of serving" its customers), and this Court should too. Count II should be dismissed.

CONCLUSION

For the reasons stated above, the City respectfully requests that this Court dismiss the Amended Complaint with prejudice for failure to state a claim upon which relief can be granted.

Date: July 16, 2024

Respectfully submitted,

Corporation Counsel for the City of Chicago

By: /s/ Jackson P. Garrity
Assistant Corporation Counsel

ELLEN W. McLAUGHLIN
ellen.mclaughlin@cityofchicago.org
WHITNEY G. WOODWARD
whitney.woodward@cityofchicago.org
JACKSON P. GARRITY
jackson.garrity@cityofchicago.org
City of Chicago, Department of Law
Constitutional and Commercial
Litigation Division
2 N. LaSalle Street, Suite 520
Chicago, Illinois 60602
(312) 742-5147 / 742-0260 / 742-6238
Attorneys for Defendants