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12 *(Additional Counsel Listed in Signature Block)*

13 *Attorneys for Plaintiffs, PATRICK ECK, et al.*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF LOS ANGELES**

17 PATRICK ECK, TYLER CHAPMAN,
18 BRENDAN EISAN, JUSTIN KRISTOPHER
19 LE-ROY, individually and on behalf of all others
20 similarly situated,

21 Plaintiffs,

22 v.

23 CITY OF LOS ANGELES, THE LOS
24 ANGELES DEPARTMENT OF WATER AND
25 POWER, LOS ANGELES DEPARTMENT OF
26 WATER AND POWER BOARD OF
27 COMMISSIONERS, and DOES 1 through 10,

28 Defendants,

Case No.: BC577028 (Lead)

Consolidated with Case No.: BS153395 &
Case No.: BC583788

*Assigned for all purposes to the
Honorable Ann I. Jones*

**FIRST AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT FOR:**

1. Refund of Taxes
2. Declaratory Relief
3. Injunctive Relief
4. Reduction in Property Tax Revenue

Dept.: 308

1 Plaintiffs Patrick Eck, Tyler Chapman, Brendan Eisan, and Justin Kristopher Le-Roy (hereinafter
2 “Plaintiffs”) bring this action, by and through their undersigned counsel, on behalf of themselves and all
3 electric (power) customers of the Los Angeles Department of Water and Power, based upon information
4 and belief and the investigation of counsel, except for information based upon personal knowledge, and
5 hereby allege as follows:

6
7 **NATURE OF THE ACTION**

8 1. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a
9 class action seeking refunds of illegal taxes imposed, increased, and extended by The City of Los Angeles
10 (“City”), the Los Angeles Department of Water and Power (“LADWP”), and the LADWP Board of
11 Commissioners (“Board”) for violations of the California Constitution and Government Code. Plaintiffs
12 also bring this action for equitable, injunctive, and declaratory relief to compel the City, the LADWP and
13 the Board to comply with these California constitutional provisions and California Government code
14 sections.

15
16 **JURISDICTION AND VENUE**

17 2. This Court has jurisdiction over all causes of action asserted herein pursuant to the
18 California Constitution, article VI, § 10. Each Defendant is a resident of California. Each Defendant has
19 sufficient contacts with the State of California such that rendering the exercise of jurisdiction over them
20 by the California courts is consistent with traditional notions of fair play and substantial justice.

21 3. Venue is appropriate in this Court because substantially all, if not all, of the events at issue
22 in this Complaint occurred in Los Angeles County, and because the Defendants reside in Los Angeles
23 County.

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1 **THE PARTIES**

2 4. Plaintiff Patrick Eck is an adult individual who resided in the City of Los Angeles, State
3 of California, will be reside in the City of Los Angeles in the near future, and has paid the illegal taxes at
4 issue herein during the Class Period (defined below).

5 5. Plaintiff Tyler Chapman is an adult individual who resides and has resided in the City of
6 Los Angeles and has paid the illegal taxes at issue herein during the Class Period.

7 6. Plaintiff Brendan Eisan is an adult individual who resides and has resided in the City of
8 Los Angeles and has paid the illegal taxes at issue herein during the Class Period.

9 7. Plaintiff Justin Kristopher Le-Roy is an adult who resides and has resided in the City of
10 Los Angeles and has paid the illegal taxes at issue herein during the Class Period.

11 8. As further described herein, Plaintiffs have standing to assert all claims set forth herein on
12 behalf of themselves and on behalf of a class of similarly situated persons. Plaintiffs satisfied all
13 prerequisites and exhausted all administrative and/or other remedies before commencing this action. In
14 addition, Plaintiffs have public interest standing to prosecute the claims of all other individuals who have
15 paid or currently pay the illegal taxes to Defendants.

16 9. Defendant the City of Los Angeles is a California charter city.

17 10. Defendant LADWP is a proprietary department of the City. The City acquired LADWP
18 (which originally operated as the “Los Angeles City Water Company”) in 1902 to provide water to
19 residents and businesses and later started delivering electricity in 1917. LADWP is the largest combined
20 municipal utility in the United States, providing water and power service to more than 3.8 million
21 customers in the City of Los Angeles.

22 11. Under section 670 of the City Charter, the LADWP is governed by a five member Board
23 of Commissioners (the “Board”), which currently is comprised of the following individuals: Mel Levine,
24 President; William W. Funderburk, Jr., Vice President; Jill Banks Barad, Commissioner; Michael F.
25 Fleming, Commissioner; and Christina E. Noonan, Commissioner.

26 12. The Board’s individual members are appointed by the Mayor, subject to confirmation by
27 the City Council. *See* City Charter section 502(a).

1 13. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as DOES
2 1 to 10, inclusive, and therefore sue said Defendants by such fictitious names. Plaintiffs will amend this
3 First Amended Consolidated Class Action Complaint to allege the true names and capacities of said
4 Defendants when ascertained.

5 14. Plaintiffs are informed and believe, and based thereon allege that each of said fictitiously
6 named Defendants acted unlawfully, intentionally, negligently, and/or recklessly or is responsible in some
7 manner for the occurrences herein alleged, and that each of the damages and violations of Plaintiffs' rights
8 as herein alleged were proximately and legally caused by said Defendants' actions.

9 15. Plaintiffs are informed and believe, and based thereon allege that all of the Defendants
10 identified herein, whether identified by name or by fictitious name, were and are the agents, servants, and
11 employees of each of the remaining Defendants, and that in doing the things alleged herein were acting
12 within the purpose, course and scope of said agency, service, and/or employment and with the permission,
13 consent, authorization, and subsequent ratification of each of the remaining Defendants.

14 16. Plaintiffs are informed and believe, and based thereon allege that Defendants agreed to,
15 cooperated with, aided, abetted, encouraged, ratified, and/or adopted the acts, actions, wrongdoing, and
16 representations of each of the remaining Defendants herein, and that in doing any act alleged herein, were
17 acting in concert and through a civil conspiracy by and among each Defendant to further the interests of
18 each Defendant individually, and all Defendants as a group. For this reason, as well, all Defendants are
19 jointly liable to Plaintiffs.

20
21 **SATISFACTION OF GOVERNMENT CLAIM REQUIREMENT**

22 17. On January 30, 2015, February 10, 2015, and April 15, 2015, Plaintiffs Chapman, Eck
23 and Eisan respectively, presented to the City a written claim for damages/refunds on behalf of themselves
24 and on behalf of all LADWP customers. The City either denied those claims or failed to respond within
25 45 days. Those claims complied with all requirements of the Government Claims Act. (Gov't. Code §
26 910, *et seq.*)

1 18. On March 15, 2016, the City adopted Ordinance No. 184133 approving electric rates fixed
2 by the LADWP, which became effective April 15, 2016 (the “2016 Rate Ordinance”). On or about June
3 6, 2016 and June 7, 2016, Plaintiffs presented to the City and the LADWP a written claim for
4 damages/refunds on behalf of themselves and on behalf of all others similarly situated (LADWP
5 customers) regarding, in part, the rates adopted by Ordinance No. 184133. The City either denied those
6 claims or failed to respond within 45 days. Those claims complied with all requirements of the
7 Government Claims Act. (Gov’t Code § 910, *et seq.*)

8
9 **GENERAL ALLEGATIONS**

10 **DEFENDANTS’ ILLEGAL TAXATION SCHEME**

11 19. The California Constitution prohibits Defendants from imposing, extending, or increasing
12 any general or special tax unless it is first approved by voters. (Cal. Const. art. XIII C, § 2 subds. (b) and
13 (d).) Similarly, the Government Code prohibits Defendants from imposing any general or special tax
14 unless it is first approved by voters. (Gov’t Code §§ 53722, 53723.) All fees and charges of any kind
15 imposed by local government are taxes unless they fall into an exception. (Cal. Const. art. XIII D, § 1
16 subd. (e).)

17 20. Defendants are engaged in an illegal tax scheme by which they have imposed, increased,
18 and extended and continue to impose, increase and extend taxes without voter approval in violation of
19 these Constitutional and statutory provisions. The taxes at issue herein have never been approved by
20 voters.

21 21. The tax scheme is perpetrated as follows: Each month Defendants charge, collect from,
22 and impose on Plaintiffs and all LADWP electric customers an amount that they know exceeds the cost
23 of providing electric service and in fact exceeds the cost of providing electric service. This excess amount
24 is not specifically fixed by any rate ordinance. Instead, the City’s various electric rate ordinances
25 (effective September 18, 2008, November 11, 2012, and April 15, 2016) provide that the excess, in part,
26 is based on the percentage of audited gross operating electric revenues the City last transferred from the
27 Power Revenue Fund to its Reserve Fund.

1 22. The percentage the City transfers from its Power Revenue Fund to its Reserve Fund in
2 any given year is discretionary. Neither the City Charter nor any ordinance requires the City to make a
3 certain percentage transfer or any transfer at all. City Charter section 344(b) governs these transfers and
4 states, in relevant part:

5 (b) The Council may, by ordinance, direct that a transfer be made
6 to the Reserve Fund from surplus money in the Water Revenue Fund
7 or Power Revenue Fund with the consent of the Board of Water and
8 Power Commissioners (the “Board”), as provided in this section.
9

10 (1) For purposes of this section, surplus in the Water
11 Revenue Fund or Power Revenue Fund shall be defined as the amount
12 remaining in the Water Revenue Fund or Power Revenue Fund, less
13 outstanding demands and liabilities payable out of the fund, at the end
14 of the fiscal year prior to the fiscal year in which the transfer is to be
15 made, as shown by audited financial statements.
16

17 (2) Through the process provided in this section, the Board
18 may withhold its consent to make the transfer in whole or in part if,
19 despite the existence of a surplus as defined herein, it finds that making
20 the transfer would have a material negative impact on the Department's
21 financial condition in the year in which the transfer is to be made.
22

23 23. Thus, the amount of the excess built into electric rates depends on discretionary
24 legislative acts taken by the City.
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24. Exercising its authority under section 344(b) of the Charter, since 2008 the City has adopted the following ordinances transferring the indicated amounts from its Power Revenue Fund to its Reserve Fund:

ORDINANCE NO. AND EFFECTIVE DATE	AMOUNT OF TRANSFER	BASED ON OPERATING REVENUES FROM FISCAL YEAR	PERCENTAGE
179909 - June 27, 2008	\$182,003,900	FY 06-07	7%
180517 - March 13, 2009	\$194,692,700	FY 07-08	7%
180701 - June 27, 2009	\$27,813,200	FY 07-08	1%
181105 - April 11, 2010	\$147,000,000	FY 08-09	Not stated
181169 - June 18, 2010	\$73,475,000	FY 08-09	Total 08-09 transfer increased up to 8%
181607 - April 11, 2011	\$258,815,000	FY 09-10	8%
182054 - March 29, 2012	\$250,077,000	FY 10-11	8%
182364 - February 11, 2013	\$246,534,000	FY 11-12	8%
182827 - January 24, 2014	\$253,000,000	FY 12-13	8%
183418 - March 16, 2015	\$265,586,000	FY 13-14	8%
184143 - April 21, 2016	\$266,957,000	FY 14-15	8%

25. Therefore, as an example, the electric rates paid by customers in FY 14-15 were 8% higher simply because the City Council had exercised its discretion to adopt Ordinance No. 182827 (effective January 24, 2014) transferring 8% of the operating revenues in Fiscal Year 12-13 totaling \$253,000,000.

1 The percentage transferred has been as low as 5%, thus demonstrating that the City has absolute control
2 and discretion over the amount of the transfer each year.

3 26. During the past eight years, the Power Revenue Fund has maintained a surplus exceeding
4 \$4 billion. The current surplus is over \$5 billion. Thus, when the City has exercised its discretion to pass
5 an ordinance transferring funds, it has transferred only a fraction of its surplus.

6 27. Because the City is under no obligation to make any transfer whatsoever, it could, in any
7 given year, decline to adopt an ordinance transferring funds. If it were to decline to make a transfer, there
8 would be no “excess” incorporated into the electric rates in the following year. In other words, it is the
9 City’s legislative act in any given year that provides the foundation on which the LADWP later
10 incorporates into its electric rates, an excess, which constitutes an illegal tax.

11 28. The funds transferred to the Reserve Fund have been at all relevant times, subsequently
12 transferred to the City’s General Fund, which is permitted by Section 341 of the City Charter upon
13 approval by the City Council and Mayor. The General Fund is the primary operating fund of the City and
14 is utilized to pay for general government functions, including public works, health and sanitation,
15 community development, and police and fire services. Thus, the funds transferred are never expended on
16 costs necessary to provide electric service.

17 29. In addition, the electric rates exceed the cost of providing electric service because they
18 fail to consider the billion dollar surpluses the LADWP has maintained and continues to maintain. The
19 2016 Rate Ordinance extends, subsumes and / or increases already inflated rates implemented by the 2008
20 rate ordinance, in violation of the state Constitution, and implements inflated bases for its own incremental
21 “base rate,” which includes amounts that exceed the cost of providing electric service, such as amounts
22 meant to fund previously unfunded pension liabilities and “legacy” cost “adjustments” implemented to
23 compensate for “under collection” a decade ago. As of today, at least \$2 billion of the surplus in the
24 Power Reserve Fund could be used to fund LADWP operations without jeopardizing any bond covenants
25 or violating the City Charter. Thus, the rates include amounts that are beyond those necessary to provide
26 electric service.

1 **CLASS ALLEGATIONS**

2 30. Plaintiffs bring this action pursuant to Section 382 of the California Code of Civil
3 Procedure, on behalf of themselves and on behalf of all others similarly situated. Plaintiffs seek to
4 represent a class (the “Class”) defined as: All Los Angeles Department of Water and Power customers
5 who paid and will continue to pay fees, rates and charges for electric services during the Class Period.

6 31. The “Class Period” dates back three years (or the length of the longest applicable statute
7 of limitations for any claim asserted) from January 30, 2015 and continues through the present and the
8 date of judgment. Specifically excluded from the Class are: (a) any officers and council
9 members/commissioners of the Defendants; (b) any judge assigned to hear this case (or spouse or
10 immediate family member of any assigned judge); (c) any employee of the Court; (d) any juror selected
11 to hear this case; and (e) any attorneys of record and their employees.

12 32. In accordance with California law, Plaintiffs reserve the right to modify, expand, or amend
13 the above Class definition or seek certification of a class that is defined differently than above before any
14 court determines whether certification is appropriate following discovery.

15 33. **Numerosity of the Class.** Members of the Class are so numerous that their individual
16 joinder herein is impracticable. The Class is estimated to include 1.5 million LADWP electric account
17 holders.

18 34. **Ascertainable Class.** The community of interest among the Class Members in the
19 litigation is well-defined and the proposed class is ascertainable from objective criteria. The identities of
20 Class Members can be obtained from Defendants’ business records. Class members can be notified of
21 the pendency of this Action by mail or published / Internet notice. If necessary, to preserve the case as a
22 class action, the Court can redefine the Class and/or create subclasses.

23 35. **Commonality and predominance.** There is a well-defined community of interest in the
24 questions of law and fact involved affecting the parties to be represented. These common questions of
25 law and fact exist as to all members of the Class and predominate over any questions affecting only
26 individual members, including, but not limited to:

- a. Whether the City charges excessive fees, rates and charges in an amount that exceeds the cost of providing power services;
- b. Whether the amount of the overcharge is a “tax” subject to Proposition 26;
- c. Whether the Defendants are charging and collecting an unlawful tax;
- d. Whether the Plaintiffs and Class members are entitled to a refund;
- e. Whether the Plaintiffs and Class members are entitled to declaratory relief; and
- f. Whether the Plaintiffs and Class members are entitled to an order enjoining the City from continuing to collect the overcharge.

36. **Adequacy of Representation.** Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the other putative Class Members, and because Plaintiffs have retained counsel competent and experienced in complex class action and consumer litigation, including substantial experience in the types of claims alleged in this First Amended Consolidation Class Action Complaint. Plaintiffs and their counsel will fairly and adequately protect the interests of all putative Class members.

37. **Superiority of Class Adjudication.** The certification of a class in this action is superior to the litigation of a multitude of cases by members of the putative class. Class adjudication will conserve judicial resources and will avoid the possibility of inconsistent rulings. Moreover, there are Class members who are unlikely to join or bring an action due to, among other reasons, their reluctance to sue Defendants and/or their inability to afford a separate action. Equity dictates that all persons who stand to benefit from the relief sought herein should be subject to the lawsuit and hence subject to an order spreading the costs of the litigation among the Class members in relation to the benefits received. The damages, restitution, and other potential recovery for each individual member of the Class are modest relative to the substantial burden and expense of individual prosecution of these claims. Given the amount of the individual class members’ claims, few, if any, Class members could afford to seek legal redress individually for the wrongs complained of herein. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the complex legal and factual issues of the case. By contrast,

1 the class action device presents far fewer management difficulties, and provides the benefits of single
2 adjudication, economy of scale, and comprehensive supervision by a single court.

3 38. In the alternative, the above-referenced class may be certified because:

- 4 a. The prosecution of separate actions by the individual members of the Class would
5 create a risk of inconsistent or varying adjudication with respect to individual
6 Class members' claims which would establish incompatible standards of conduct
7 for Defendants;
- 8 b. The prosecution of separate actions by individual members of the Class would
9 create a risk of adjudications which would as a practical matter be dispositive of
10 the interests of other members of the class who are not parties to the adjudications,
11 or which would substantially impair or impede the ability of other class members
12 to protect their interests; and
- 13 c. Defendants have acted or refused to act on grounds generally applicable to the
14 class, thereby making appropriate final and injunctive relief with respect to the
15 Class.

16
17 **FIRST CAUSE OF ACTION**

18 **(REFUND OF ILLEGAL TAXES)**

19 **(On Behalf of Plaintiffs and All Others Similarly Situated Against All Defendants)**

20 39. Plaintiffs refer to and incorporate by reference paragraphs 1 through 38 as though set forth
21 at length herein.

22 40. Defendants have continuously imposed, extended and/or increased, and collected illegal
23 taxes as set forth above. The taxes are illegal because there were never submitted to the voters for approval
24 as required by California Constitution article XIII C, section 2, subd. (b) and/or (d) and Gov't Code §
25 53722 and 53723.

26 41. Plaintiffs and the Class have paid and continue to pay the illegal taxes.
27
28

1 injunction directing Defendants to cease its illegal taxation scheme unless and until the taxes are approved
2 by a vote of the electorate.

3
4 **THIRD CAUSE OF ACTION**

5 **(INJUNCTIVE RELIEF – CCP § 526a)**

6 **(On Behalf of Plaintiffs Against All Defendants)**

7 46. Plaintiffs refer to and incorporate by reference paragraphs 1 through 45 as though set forth
8 at length herein.

9 47. Plaintiffs are entitled to and seek an injunction pursuant to C.C.P. § 526a to enjoin
10 Defendants from the illegal transfer of funds from the Power Revenue Fund to the Reserve Fund and to
11 restore to the Power Revenue Fund all previously-transferred funds.

12
13 **FOURTH CAUSE OF ACTION**

14 **(REDUCTION IN PROPERTY TAX ALLOCATION (Cal. Gov’t Code § 53728))**

15 **(On Behalf of Plaintiffs Against City and DOES)**

16 48. Plaintiffs refer to and incorporate by reference paragraphs 1 through 47 as though set forth
17 at length herein.

18 49. As a consequence of the Defendants' violation of Government Code § 53722 and § 53723,
19 the City is subject to and bound by the provisions of Government Code § 53728 requiring a dollar-for-
20 dollar reduction in the amount of property tax revenue allocated to the City pursuant to Chapter 6 of part
21 0.5 of Division 1 of the Revenue & Taxation Code. The exact amount of unlawful special taxes for which
22 the City would be subject to the provisions of Government Code § 53728 is not known at this time, and
23 will be subject to further proof and full disclosure and accounting by Defendant City upon trial of the
24 matter, but it is estimated that it would be equal to the amount of any unlawful Power Revenue Fund
25 transfers incorporated into the rates as set forth above.

26 / / /

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for relief and judgment against Defendants, jointly and severally,
3 as follows:

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

5 B. For an order appointing Plaintiffs Patrick Eck, Tyler Chapman, Brendan Eisan, and Justin
6 Kristopher Le-Roy each as class representatives and appointing their attorneys as class counsel;

7 C. For declaratory judgment declaring that Defendants’ practices have violated and will
8 continue to violate substantive and procedural directives of Article XIIC of the California Constitution
9 as well as the statutory directives of Proposition 62;

10 D. For a permanent injunction enjoining Defendants from further transfers from the Power
11 Revenue Fund to Reserve Fund and from the further imposition, extension, increase, and collection of
12 taxes until such taxes are first submitted to the voters;

13 E. For an order requiring Defendants to restore to the Power Revenue Fund all previous
14 transfers it made to the Reserve Fund;

15 F. For a refund of taxes paid by Plaintiffs and the Class in an amount to be proven at trial;

16 G. For an order reducing the property tax revenue allocated to the City in an amount to be
17 proved at trial, pursuant to Government Code §53728;

18 H. For payment of attorneys’ fees and costs, including those recoverable pursuant to
19 California Code of Civil Procedure § 1021.5, and/or pursuant to the “common fund” doctrine and/or
20 pursuant to equitable principles or contribution and/or other applicable method of awarding attorney’s
21 fees and costs; and

22 I. For any such further relief as may be permitted by law and/or that this Court deems
23 equitable, just and proper.

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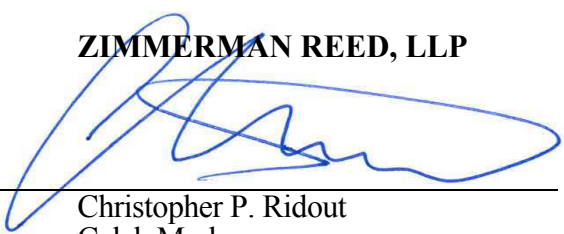
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Respectfully submitted,

ZIMMERMAN REED, LLP

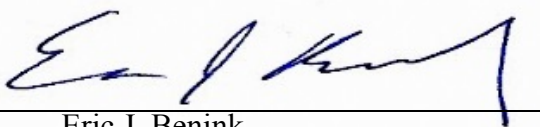


Dated: July 1, 2016

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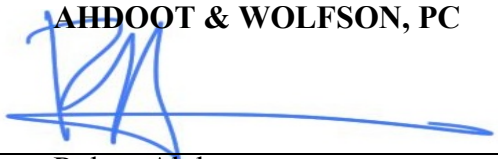


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1 I declare under penalty of perjury under the laws of the State of California that the above is
2 true and correct. Executed on July 1, 2016, at West Hollywood, California.
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6 _____
7 Candy Santos
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