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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

**JUL 06 2012**  
L. SIRACUSA

6 Attorneys for Petitioners / Plaintiffs

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF RIVERSIDE**

10 JAVIER MORENO, an individual; and  
11 VIVIAN MORENO, an individual,  
12  
13                   Petitioners and Plaintiffs,  
14  
15                   v.  
16 CITY OF RIVERSIDE; and DOES 1 through  
17 10,  
18  
19                   Respondents and Defendants.

Case No. **RIC 1210249**  
**VERIFIED PETITION FOR WRIT OF MANDATE**  
and  
**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

20                   Petitioners / Plaintiffs Javier Moreno and Vivian Moreno (together as "Petitioners")  
21 allege as follows:

22 **I.**  
**INTRODUCTION**

23                   1. Petitioners bring this action to compel Respondent / Defendant the City of Riverside  
24 ("Riverside") to comply with Proposition 218's mandates. Specifically, they seek to enjoin  
25 Riverside from illegally transferring funds collected as water utility fees and charges to  
26 Riverside's general fund. They also request that Riverside be ordered to restore to the water  
27 utility, all prior illegal distributions.  
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**II.**

**PARTIES**

2. Petitioners Javier Moreno and Vivian Moreno have been residents of Riverside since 1990. They have paid the water utility fees and charges at issue herein, including fees and charges imposed during the past year.

3. The City of Riverside is a California charter city located in the County of Riverside.

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

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

**III.**

**GENERAL ALLEGATIONS**

6. Riverside operates a water utility which is overseen by the Riverside Board of Public Utilities. Through this utility, it provides water services to its citizens. It imposes fees and charges on the users of the utility on a monthly basis. The water services it provides are property-related services and the fees and charges are imposed by Riverside upon parcels and persons as an incident of property ownership.

7. Riverside has engaged in and intends to continue the practice of transferring funds collected by the water utility in the form of utility fees and charges to Riverside's general fund.

1 The funds transferred are not earmarked or designated for any specific purpose (i.e. for  
2 reimbursement of shared costs), but instead are used for general governmental purposes. In fact,  
3 the amount transferred each year is approximately eleven and one-half percent (11.5%) of the  
4 prior year's gross operating revenues. In the Fiscal Years Ended June 30, 2011 and 2010,  
5 Riverside transferred \$5,847,000 and \$5,656,000 respectively from the water utility to its general  
6 fund.

7 8. As a direct consequence of this transfer of funds from the water utility, Riverside has  
8 been required to impose on its utility customers higher charges and fees than it would otherwise  
9 be required to impose. In other words, the water utility fees and charges Riverside imposes  
10 exceed the reasonable costs to Riverside of providing the water utility service.

11 IV.

12 **FIRST CAUSE OF ACTION**  
13 **Petition for Writ of Mandate**  
14 **C.C.P. § 1085**  
15 **(Against All Respondents)**

16 9. Petitioners hereby incorporate by reference each of the preceding allegations as  
17 though fully set forth therein.

18 10. Respondents refused and continue to refuse to comply with Cal. Const. art. XIII D,  
19 § 6(b)(1), (2) and (5). Specifically, they impose water utility fees and charges that exceed the  
20 cost of providing water services, and use revenues generated from water users to illegally fund  
Riverside's general fund, which is used for general governmental services.

21 11. Accordingly, Petitioners are entitled to a writ of mandate pursuant to C.C.P. §  
22 1085 as specified more fully below.

23 V.

24 **SECOND CAUSE OF ACTION**  
25 **Declaratory Relief**  
26 **(Against All Defendants)**

27 12. Plaintiffs hereby incorporate by reference each of the preceding allegations as  
28 though fully set forth herein.

1 13. An actual, present, and substantial controversy exists between Plaintiffs and  
2 Defendants. Plaintiffs contend that Defendants have violated and will continue to violate Cal.  
3 Const. art. XIIIID, § 6(b)(1), (2), and (5). Defendants contend that they have complied, and will  
4 continue to comply, with these Constitutional provisions.

5 14. A declaration as to the respective rights and duties of the parties is necessary and  
6 appropriate.

7 **VI.**

8 **THIRD CAUSE OF ACTION**  
9 **Injunction Pursuant to C.C.P. § 526a**  
10 **(Against All Defendants)**

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

13 16. Plaintiffs are entitled to and seek an injunction pursuant to C.C.P. § 526a to enjoin  
14 Defendants from illegal expenditures of funds from the water utility to the general fund and to  
15 restore to the water utility all previously-transferred funds.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Petitioners / Plaintiffs pray for judgment as follows:  
18

19 **ON THE FIRST CAUSE OF ACTION AS TO ALL RESPONDENTS**

20 For the issuance of a writ of mandate directing Respondents to (a) cease any and all  
21 transfers of water utility funds to Riverside's general fund and (b) restore to the water utility all  
22 previously-transferred funds.  
23

24 **ON THE SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS**

25 For a declaratory judgment declaring that Defendants' practices have violated and will  
26 continue to violate Cal. Const. art. XIIIID, § 6(b)(1), (2) and (5).  
27  
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1 **ON THE THIRD CAUSE OF ACTION AS TO ALL DEFENDANTS**

2 For a temporary restraining order, and preliminary and permanent injunction (a)  
3 enjoining Defendants from transferring funds from the water utility to Riverside's general fund  
4 and (b) ordering Defendants to restore to the water utility all previously-transferred funds..

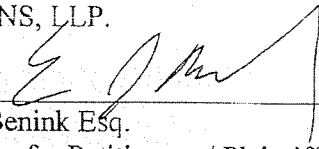
5 **ON ALL CAUSES OF ACTION AS TO ALL RESPONDENTS / DEFENDANTS**

6 1. For attorney's fees and costs, including those recoverable pursuant to California Code  
7 of Civil Procedure § 1021.5; and

8 2. For such other relief as the Court deems necessary and proper.  
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11 DATED: July 5, 2012

KRAUSE, KALFAYAN, BENINK, &  
SLAVENS, LLP.

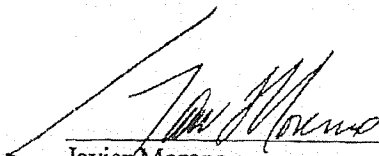
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14 Eric J. Benink Esq.  
15 Attorneys for Petitioners / Plaintiffs  
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VERIFICATION

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

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

Executed on July 5, 2012 in Riverside, CA.

  
\_\_\_\_\_  
Javier Moreno  
Petitioner / Plaintiff

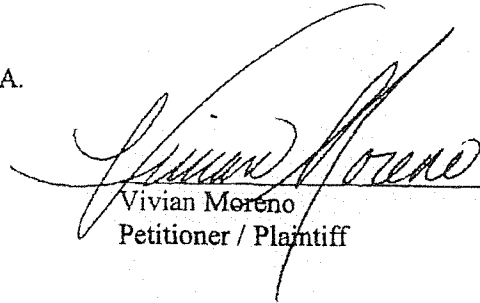
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Executed on July 5, 2012 in Riverside, CA.

  
Vivian Moreno  
Petitioner / Plaintiff

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