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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF RIVERSIDE**

15 SUMMER PARADA, an individual,) Case No.: **RIC1719894**
16)
Petitioner and Plaintiff,) **VERIFIED PETITION FOR WRIT OF**
17) **MANDATE**
18 v.) **and**
19) **COMPLAINT FOR DECLARATORY**
CITY OF RIVERSIDE, a California charter) **AND INJUNCTIVE RELIEF**
20 city; and DOES 1 through 10,
21 Respondents and Defendants.)

22
23 Petitioner and Plaintiff Summer Parada (“Petitioner”) brings this action by and through
24 her undersigned counsel and alleges as follows:

25 **NATURE OF THE ACTION**

26 1. Petitioner challenges Respondent/Defendant the City of Riverside’s (“City”)
27 imposition of an electricity users tax (“EUT”) on a portion of electricity customer’s charges.
28 Pursuant to the City’s Municipal Code, the City is authorized to impose an EUT at a rate of 6.5% of

1 the charges made for electrical energy. But the EUT is applied against both charges made for
2 electrical energy and charges for purposes unrelated to the provision of electricity. Specifically,
3 embedded in the electric fees and charges (against which the EUT is applied) are surcharges used to
4 fund general governmental services such as police, fire, parks, and libraries. Thus, the City's
5 Municipal Code does not authorize it to tax this surcharge. And the EUT was never submitted to the
6 electorate and approved by a majority vote.

7 2. Petitioner seeks a judgment declaring the City's actions illegal and enjoining it
8 from imposing the EUT on charges unrelated to the provision of electricity in the future (i.e. the
9 surcharge).

10 **PARTIES**

11 3. Petitioner resides, and has resided at all relevant times, in the City of Riverside,
12 California and each month has paid and continues to pay the retail electric fees and charges and
13 the EUT at issue herein.

14 4. Defendant City of Riverside is a California charter city located in the County of
15 Riverside.

16 5. Petitioner is unaware of the true names and capacities of defendants sued herein
17 as DOES 1 through 10, inclusive, and therefore sues those defendants by such fictitious names.
18 She is informed and believes, and thereon alleges, that each of said fictitiously-named defendants
19 is in some manner responsible for the acts, violations, and injuries alleged herein. She will
20 amend this petition and complaint to allege the true names and capacities of said fictitiously-
21 named defendants when the same has been ascertained.

22 6. Petitioner is informed and believes, and thereon alleges, that at all times herein
23 mentioned, each of the defendants was the agent, employee, representative, partner, joint
24 venturer, and/or alter ego of each of the other defendants and, in doing the things alleged herein,
25 was acting within the course and scope of such agency, employment, representation, on behalf of
26 such partnership or joint venture, and/or as such alter ego, with the authority, permission,
27 consent, and/or ratification of each of the other defendants.

1 **GENERAL ALLEGATIONS**

2 7. The City operates Riverside Public Utilities (“RPU”) which is governed by a
3 nine-member volunteer board appointed by the City Council. The RPU has no separate legal
4 identity from the City. RPU generates, transmits and distributes electricity to a 90-square-mile
5 territory with a population of approximately 325,000. The RPU generates approximately \$350
6 million in annual operating revenues and serves approximately 109,000 electricity customers.

7 8. The City’s Charter section 1204 (“section 1204”) provides that the revenue of
8 each public utility (e.g., RPU) shall be used for six purposes (and in order of the six purposes).
9 The first five purposes are related to the provision of utility service (e.g. payment of operating
10 costs, payment of utility bonds, capital expenditures of the utility). The final purpose is the
11 transfer of 11.5% of the utility’s gross operating revenues to the City’s General Fund in twelve
12 equal monthly installments.

13 9. In accordance with section 1204, the City makes transfers of 11.5% of electric
14 revenues from its electric utility to the General Fund. The funds transferred are not earmarked or
15 designated for any specific purpose (i.e. reimbursement of shared costs), but instead are used for
16 general governmental purposes and not for the benefit of the electric utility or electric customers.
17 The City transferred \$38.1 million and \$38.3 million in Fiscal Years 2015 and 2016 respectively.

18 10. The City’s electric fees and charges imposed on customers are set forth in Council
19 Resolution No. 22513, effective March 26, 2013. Embedded in the fees and charges is a
20 surcharge of 11.5% that is designed to generate revenues sufficient to transfer to the City’s
21 General Fund pursuant to section 1204. The surcharge is totally unrelated to the provision of
22 electric service and is simply passed through RPU to the City’s General Fund. The surcharge, by
23 itself, may be an illegal tax because it meets the definition of tax under Proposition 26 and has
24 not submitted to the electorate and approved by a majority of voters. (See Cal. Const., art. XIII
25 C, § 1 subd. (e) & § 2, subd. (b).) This action, however, does not challenge the legality of the
26 11.5% surcharge.¹

27 ¹ The validity of the 11.5% surcharge was challenged in a separate action filed in this court, *Olguin v. City*
28 *of Riverside*, Case No. RIC 1605106, that was dismissed after the City’s demurrer was sustained on
statute of limitations grounds. That action is on appeal.

1 11. Beginning no later than 1970, the City has passed a number of ordinances
2 enacting municipal code sections to impose an EUT in the City. The most recent ordinance,
3 Ordinance 6250, was passed on November 7, 1995 and amended Section 3.14.040 of the
4 Riverside Municipal Code. Municipal Code ("MC") section 3.14.040 reads, in pertinent part:

5 A. There is imposed a tax upon every person using electrical energy in the City.
6 The tax imposed by this section shall be at the rate of six and one-half percent of
7 the charges made for such energy and shall be paid by the person paying for such
8 energy. "Charges" as used in this section includes charges made for (1) metered
9 energy; and (2) minimum charges for service, including customer charges, service
charges, demand charges, standby charges, and annual and monthly charges, **but
excluding any and all surcharges.** [emphasis added.]

10 12. When the City applies the 6.5% EUT, it applies it against charges for electric
11 service as authorized by MC section 3.13.040 (i.e. charges made for electrical energy), but it also
12 applies it against the 11.5% surcharge which has nothing to do with the provision of electric
13 service. MC section 3.13.040 prohibits the imposition of the EUT on surcharges. As described
14 above, the 11.5% surcharge is designed to fund general governmental services. Thus, the City is
15 imposing the EUT in a manner that violates its own municipal code. It is also imposing the EUT
16 without voter approval in violation of the article XIII C, section 2, subdivision (b) of the
17 California Constitution.

18 13. The amount of the EUT on the 11.5% surcharge that the City imposes and collects
19 from RPU electrical customers is approximately \$2.5 million annually.

20 CAUSES OF ACTION

21 FIRST CAUSE OF ACTION 22 PETITION FOR WRIT OF MANDATE 23 (Against All Respondents)

24 14. Petitioner refers to and incorporates by reference all preceding paragraphs as
25 though fully set forth at length herein.

26 15. There is a clear, present and ministerial duty upon the part of the Respondents to
27 comply with Riverside Municipal Code section 13.14.040 with respect to the 11.5% surcharge.
28 Alternatively, there is a clear, present, and ministerial duty upon the part of the Respondents to

1 not impose, extend, or increase the EUT on the 11.5% surcharge without first submitting it to the
2 electorate and obtaining approval of a majority of voters as required by California Constitution,
3 article XIII C, section 2, subdivision (d).

4 16. Petitioner has a clear, present and beneficial right to the performance of those
5 duties.

6 17. Petitioner does not have an adequate remedy at law.

7 18. Accordingly, Petitioner is entitled to a writ of mandate pursuant to Code of Civil
8 Procedure section 1085 as specified more fully below.

9
10 **SECOND CAUSE OF ACTION**
11 **DECLARATORY RELIEF**
12 **C.C.P § 1085**
13 **(Against All Defendants)**

14 19. Plaintiff refers to and incorporates by reference all preceding paragraphs as
15 though fully set forth at length herein.

16 20. An actual, present, and substantial controversy exists between Plaintiff and
17 Defendants. Plaintiff contends that Defendants have exceeded their authority under and violated
18 Riverside Municipal Code section 13.14.040 with respect to the imposition of the EUT on the
19 11.5% surcharge. Plaintiff contends that Defendants will continue its illegal actions in the
20 future. Plaintiff alternatively contends that Defendants have violated and will continue to violate
21 California Constitution, article XIII C, section 2, subdivision (b). Defendants contend that they
22 have complied, and will continue to comply with said municipal code and constitutional
23 limitations and requirements.

24 21. Plaintiff is entitled to a judicial declaration declaring the parties' respective rights
25 and obligations pursuant to Code of Civil Procedure section 1085.

26 **THIRD CAUSE OF ACTION**
27 **INJUNCTION PURSUANT TO C.C.P. § 526a**
28 **(Against All Defendants)**

29 22. Plaintiff refers to and incorporates by reference all preceding paragraphs as
30 though fully set forth at length herein.

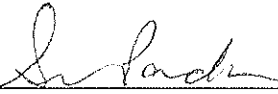
VERIFICATION

I, Summer Parada, declare:

I am a party to this action, and I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. Where indicated, the matters stated therein are true based on my knowledge, and are otherwise stated on information and belief, and as to those matters I believe them to be true.

I certify, upon penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this verification was executed on the date shown below in the City of Riverside, California.

Dated: October 18, 2017



Summer Parada