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18 2349 Beverly Glen Homeowners Association; Greenfield West
19 Homeowners Association; Wilkins Ave. Homeowners Association

20 **SUPERIOR COURT OF CALIFORNIA**
21 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

22 MICHAEL CASSELL, Individually and
23 on behalf of All Others Similarly Situated;
24 2349 Beverly Glen Homeowners
25 Association, Inc.; Greenfield West
26 Homeowners Association; Wilkins Ave.
27 Homeowners Association;

28 Plaintiffs,

v.

CITY OF LOS ANGELES,

Defendant.

FILED
Superior Court of California
County of Los Angeles
03/18/2024
David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

Case No.: 23STCV19995

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Breach of Implied Contract;**
- (2) Money Had and Received;**
- (3) Violation of Cal. Const., Art. XIII
Section D, §6;**
- (4) Declaratory Relief;**
- (5) Accounting**

Action Filed: August 21, 2023

Assigned for All Purposes to Hon. Kenneth
Friedman

1 Plaintiffs Michael Cassell, 2349 Beverly Glen Homeowners Association, Inc.,
2 Greenfield West Homeowners Association, and Wilkins Ave. Homeowners
3 Association (collectively, "Plaintiffs"), individually and on behalf of other putative
4 Class members, allege:

5 **FACTUAL ALLEGATIONS**

6 1. This class action against the City of Los Angeles ("City") arises from the City's
7 overcharging certain multi-family residential properties for electricity by charging
8 these properties the improper and higher R-1 and R-1[i] – Rate A Standard Service
9 rate, rather than the correct and more economical A-1 and A-1[i] Small General
10 Electric Rate A rate.

11 2. Through its Department of Water and Power ("DWP"), the City charges
12 different amounts for its electricity, measured per kilowatt hour ("kWh"), depending
13 on the customer's service classification; such as, for example, whether the customer is
14 a single-family or multi-family residence.

15 3. Effective July 1, 2009, the City adopted by Ordinance the following service
16 classifications and electricity rates¹:

17 a. "Schedule R-1 [/] Residential Service:" For single-family homes and
18 separately metered common areas of condominiums:

		High Season	Low Season
Rate A - Standard Service, per kWh	Tier 1	\$0.0702	\$0.0702
	Tier 2	\$0.0852	\$0.0702
	Tier 3	\$0.12	\$0.0702

19 _____
20 ¹ https://www.ladwp.com/ladwp/faces/ladwp/aboutus/a-financesandreports/a-fr-electricrates;jsessionid=k5Mykp0VJ12GJY3Q3RGk2FCQq1ZTwhXHnnRHT1nvn8DQVndMXhPI!1052951499?_adf.ctrl-state=b1y33mfsf_134&_afLoop=496947343332978&_afWindowMode=0&_afWindowId=null#%40%3F_afWindowId%3Dnull%26_afLoop%3D496947343332978%26_afWindowMode%3D0%26_adf.ctrl-state%3Dkucrn0kfa_4

1 Further definitions, such as the “High Season” and “Low Season” appear
2 within the Ordinance. “Tier 1” applies to the first 350 kWh, “Tier 2” to the next 700
3 kWh, and Tier 3 for anything greater than 1,050 kWh. *Id.* p. 3.

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5 b. Schedule R-3, for “residential multifamily service” (capitals removed),
6 applicable to “master-metered residential facilities and mobile home parks, where the
7 individual single-family accommodations are privately Sub-metered [sic]”:

		High Season	Low Season
Rate A - Standard Service, per kWh	Tier 1	\$0.03645	\$0.02995

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13 That rate schedule does not provide for multi-tier charges for users living in
14 multi-family residences. Thus, the rate charged to users of multi-family residences
15 for the high season (\$0.03645) is less than 52% of that charged to users of single-family
16 residences (\$0.0702), and even less than that when the multi-family users’ rate for the
17 Low Season. Similarly, the single-family user’s higher tier rate in the High Season
18 (\$0.852 and \$0.12) is more than double what the multi-family users’ rate (\$0.03645)
19 for the same time period.

20 c. Beginning July 1, 2016, DWP’s rates per kWh for single-family residences
21 became the following:

		High Season	Low Season
Rate A - Standard Service, per kWh	Tier 1	\$0.00457	\$0.00457
	Tier 2	\$0.02486	\$0.03986
	Tier 3	\$0.04583	\$0.03986

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28 Rates per kWh for multi-family buildings became the following (*id.* p. 9):

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		High Season	Low Season
Rate A - Standard Service, per kWh	Single Tier	\$0.01065	\$0.01065

d. Beginning July 1, 2017, the rates charged to single-family residences changed as follows (*id.*, p. 4):

		High Season	Low Season
Rate A - Standard Service, per kWh	Tier 1	\$0.00295	\$0.00295
	Tier 2	\$0.02823	\$0.04323
	Tier 3	\$0.06128	\$0.04323

Rates per kWh for multi-family buildings became the following (*id.* p. 10):

		High Season	Low Season
Rate A - Standard Service, per kWh	Single Tier	\$0.01187	\$0.01187

Beginning July 1, 2018, the rates charged to single-family residences changed as follows changed as follows (*id.*, p. 5):

		High Season	Low Season
Rate A - Standard Service, per kWh	Tier 1	\$0.00233	\$0.00233
	Tier 2	\$0.03566	\$0.05066
	Tier 3	\$0.07696	\$0.05066

1 Rates per kWh for multi-family buildings became the following (*id.* p. 10):

		High Season	Low Season
2 Rate A - Standard	Single Tier	\$0.01370	\$0.01370
3 Service, per kWh			

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6 e. Beginning July 1, 2019, the rates charged to single-family residences
7 changed as follows (*id.* p. 6):

		High Season	Low Season
8 Rate A - Standard	Tier 1	\$0.00122	\$0.00122
9 Service, per kWh			
10	Tier 2	\$0.04481	\$0.05981
11	Tier 3	\$0.09702	\$0.05981

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14 Rates per kWh for multi-family buildings became the following (*id.* p. 10):

		High Season	Low Season
15 Rate A - Standard	Single Tier	\$0.01643	\$0.01643
16 Service, per kWh			

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19 4. Under all versions of the relevant Ordinances, it is clear that a single-family
20 residences must be charged the R-1, single-family rate; while multi-family properties
21 where the individual single-family accommodations are privately sub-metered must
22 be charged the R-3, multi-family rate.

23 5. Plaintiff 2349 Beverly Glen Homeowners Association, Inc. is a California
24 corporation and is an electricity customer of the City for a sixteen (16) unit residential
25 building located at 2349 Beverly Glen, Los Angeles, California 90025 (account number
26 with the digits 65 (“the ‘65 account”). Electricity is provided to this building on a
27 master meter, with the individual residences being privately sub-metered. Plaintiff
28 2349 Beverly Glen Homeowners Association, Inc. should have been charged the

1 multi-unit A-1 and A-1[i] rate, but was charged the R-1 residential rate through the
2 bill for October 11, 2022. The bill for the period October 11, 2022 through November
3 18, 2022 shows the refunding of the overcharges for the period June 10, 2022 through
4 October 11, 2022 (due to the City's using the R-1 rate rather than the A-1 and A-1[i]
5 rate) – and for that refunded period Plaintiff does not seek reimbursement for this
6 account – but shows no refund for the periods before June 10, 2022. It would have
7 been more economical for Plaintiff 2349 Beverly Glen Homeowners Association, Inc.
8 to be on the correct multi-unit A-1 and A-1[i] rate. As a result, the '65 account was
9 overcharged.

10 6. Plaintiff Greenfield West Homeowners Association is a California corporation
11 is an electricity customer of the City for a fifteen (15)-unit residential building at 1550
12 Greenfield Avenue (account number with the digits 50 (“the '50 account”). Electricity
13 is provided to this building on a master meter, with the individual residences being
14 privately sub-metered. Plaintiff Greenfield West Homeowners Association should
15 have been charged the multi-unit A-1 and A-1[i] rate, but was charged the R-1
16 residential rate through April 14, 2022; the bill for April 15 through June 14, 2022
17 reflects the correct A-1 and A-1[i] rate. It would have been more economical for
18 Plaintiff Greenfield West Homeowners Association to be on the correct multi-unit A-
19 1 and A-1[i] rate. As a result, the '50 account was overcharged.

20 7. Plaintiff Michael Cassell is a California citizen and resident and is an electricity
21 customer of the City for a six (6)-unit residential building at 1936 Pelham Avenue, Los
22 Angeles, California, 90025 (account number with the digits 71 (“the '71 account”).
23 Electricity is provided to this building on a master meter, with the individual
24 residences being privately sub-metered. Plaintiff Michael Cassell should have been
25 charged the multi-unit A-1 and A-1[i] rate, but was charged the R-1 residential rate
26 through June 10, 2022. It would have been more economical for Plaintiff Michael
27 Cassell to be on the correct multi-unit A-1 and A-1[i] rate. As a result, the '71 account
28 was overcharged.

1 8. Plaintiff Wilkins Ave. Homeowners Association is a California corporation and
2 is an electricity customer of the City for a six (6)-unit residential building located at
3 10687 Wilkins Ave., Los Angeles, CA 90024 (account number with the digits 30 (“the
4 ‘30 account”). Electricity is provided to this building on a master meter, with the
5 individual residences being privately sub-metered. Plaintiff Wilkins Ave.
6 Homeowners Association should have been charged the multi-unit A-1 and A-1[i]
7 rate, but was charged the residential rate through the bill for December 16, 2022. It
8 would have been more economical for Plaintiff Wilkins Ave. Homeowners
9 Association to be on the correct multi-unit A-1 and A-1[i] rate. As a result, the '30
10 account was overcharged.

11 9. The City and each Plaintiff had an express and/or implied agreement when
12 each Plaintiff opened and maintained an electricity account that the City would
13 charge and each Plaintiff would pay the proper rate for electricity. Each Plaintiff has
14 paid the rate that it agreed to pay, but the City has overcharged each Plaintiff.

15 10. Defendant City of Los Angeles is a government entity operating under the laws
16 of the State of California; the City in turn controls DWP.

17 11. Plaintiffs are informed and believe, and thereon allege, that the City is
18 responsible for the acts, omissions, occurrences, and transactions alleged herein.

19 **JURISDICTION AND VENUE**

20 12. Plaintiffs bring this class action pursuant to Code of Civil Procedure Section
21 382.

22 13. This Court has jurisdiction over this action pursuant to the California
23 Constitution, Article VI, Section 10. The monetary damages sought by Plaintiffs
24 exceeds the minimal jurisdictional limits of the Superior Court and Plaintiffs expect
25 will be established according to proof at trial.

26 14. This Court has personal jurisdiction over the City as a government entity
27 located in this county.

28 15. Venue lies within this judicial district because the City is located in this county,

1 and the acts and omissions alleged herein took place in this county.

2 16. Plaintiffs have satisfied any prerequisites necessary for the institution of this
3 action.

4 **CLASS ALLEGATIONS**

5 17. Plaintiffs bring this action on its own behalf and on behalf of a class of similarly
6 situated individuals for damages, disgorgement, restitution, and declaratory and
7 injunctive relief.

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9 18. The Class is preliminarily defined as follows:

10 All City of Los Angeles electricity customers who, at any time
11 within the applicable statute of limitations preceding the filing of
12 this action through and including the date of judgment, (a) were
13 properly classified as R-3 multi-family electricity customers, but
14 (b) were improperly charged a R-1 single-family electricity rate.

15 19. Subject to additional information obtained through further
16 investigation and discovery, the foregoing definitions of the Class may be expanded
17 or narrowed.

18 20. Excluded from the Class are the City; any parent, subsidiary, or affiliate
19 of the City; any entity in which the City has or had a controlling interest, or which the
20 City otherwise controls or controlled; and any officer, director, legal representative,
21 predecessor, successor, or assignee of the City.

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23 21. This action is properly maintainable as a class action. The proposed
24 Class is so numerous that joinder of all members, whether otherwise required or
25 permitted, is impracticable. There are questions of law or fact common to all Class
26 Members that predominate over any questions affecting only individual members.

27 Specifically, the common questions of fact and law include:
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- 1 a. Whether the City has improperly charged Plaintiffs and the Class
2 a R-1 electricity rate instead of a proper R-3 electricity rate;
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4 b. Whether the City has overcharged Plaintiffs and the Class for
5 electricity service;
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7 c. Whether the Class has sustained damages and, if so, the proper
8 measure thereof;
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10 d. Whether, and to what extent, equitable relief should be imposed
11 on the City to prevent it from continuing its unlawful practices;
12 and
13 e. The extent of class-wide injury and the measure of damages for
14 those injuries.

15 22. The proposed lead Plaintiffs' claims are typical of those of the proposed
16 Class because the proposed lead Plaintiffs' claims are based upon the same facts and
17 circumstances that give rise to the claims of the other Class Members and are based
18 upon the same predominate legal theories.

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20 23. The representative Plaintiffs can adequately and fairly represent the
21 Class. No conflict of interest exists between the representative Plaintiffs and the Class
22 Members because the City's alleged conduct affected them similarly.

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24 24. The Plaintiffs and their chosen attorneys are familiar with the subject
25 matter of the lawsuit and have full knowledge of the allegations contained in this
26 complaint so as to be able to assist in its prosecution. In addition, the Plaintiffs'
27 attorneys are competent in the areas of law relevant to the Complaint and have
28

1 sufficient experience and resources to vigorously represent the Class members and
2 prosecute this action.

3 25. A class action is superior to any other available method for adjudicating
4 this controversy. The proposed class is (i) the surest way to fairly and expeditiously
5 compensate so large a number of injured persons that constitute the Class, (ii) to keep
6 the courts from being inundated by hundreds or thousands of repetitive cases, and
7 (iii) to reduce transactions costs so that the injured Class Members can obtain the most
8 compensation possible. Accordingly, class treatment presents a superior mechanism
9 for fairly resolving similar issues and claims without repetitious wasteful litigation
10 relevant to this action.

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14 **FIRST CAUSE OF ACTION**

15 (Breach of Contract)

16 26. Plaintiffs incorporate by reference all above paragraphs.

17 27. Valid and enforceable contracts exists between Plaintiffs and the Class, and the
18 City, for the provision of electricity service.

19 28. An express and/or implied term of these contracts is that the City would bill
20 Plaintiffs and the Class the proper amounts for electricity service.

21 29. The City has breached its contracts with Plaintiffs and the Class by improperly
22 charging Plaintiffs and the Class a R-1 single-family residential rate.

23 30. Plaintiffs and the Class have been damaged by the City's breach of contract.

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25 **SECOND CAUSE OF ACTION**

26 (Alternatively, Breach of Implied-in-Fact Contract)

27 31. Plaintiffs incorporate by reference all above paragraphs.

28 32. By opening and maintaining electricity accounts with the City, Plaintiffs and

1 the Class entered into an implied-in-fact contract that the City would charge the rates
2 that the City had legislated and listed on the City's website. The City's overcharging
3 the Plaintiffs for electricity constitutes breach of that contract, entitling Plaintiffs to
4 damages in the amount of the overpayments for electricity.

6 **THIRD CAUSE OF ACTION**

7 (Money Had and Received)

8 33. Plaintiffs incorporate by reference all above paragraphs.

9 34. The City received money intended for the Class's benefit, to pay their correct
10 charges for electricity. However, unbeknownst to the Class, the City charged an
11 incorrect and higher rate to the Class, demanding and collecting payments for
12 electricity charged at the rates of single-family residences when the City should have
13 charged and collected payments for rates of multi-family residences. The
14 overpayment of the money caused by the City's overcharging therefore did not pay
15 the Class's proportionate share of correct electric chargers. The City has retained this
16 money, and has not given it to the Class.

17 35. Plaintiffs, on their own behalf and the Class's behalf, seek the return of the
18 overpayment.

19 **FOURTH CAUSE OF ACTION**

20 (Violation of Cal. Const., Art. XIII Section D, §6)

21 36. Plaintiffs incorporate by reference all above paragraphs.

22 37. By overcharging the Class without following the proper procedure for raising
23 rates, and by failing to demonstrate that the revenue raised from the de facto rate
24 increases would be used solely for the production and transmission of electricity, the
25 City violated the Constitution of the State of California, Art. XIII, Section D,
26 Subsection 6.

27 38. Plaintiffs, on their own behalf and on behalf of the Class, seek a refund of all
28 overcharges paid during the applicable statute of limitations period. Plaintiff also

1 seeks a judicial declaration that the City's charging single-family home rates to
2 residents of multi-family homes violates the California Constitution. The City's
3 continued overcharging has made such declaration necessary and in the absence of
4 such declaration the City will continue to overcharge ratepayers.

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6 **FIFTH CAUSE OF ACTION**

7 (Declaratory Relief)

8 39. Plaintiffs incorporate by reference all above paragraphs.

9 40. A declaration of rights concerning the proper calculation of electricity rates that
10 apply to residents of multi-family homes is a proper subject of declaratory relief
11 because there is an actual controversy involving justiciable questions relating to
12 Plaintiffs' and the Class's rights and the City's obligations.

13 41. Circumstances appropriate to an accounting are present here because the City
14 overcharges for electricity without indicating how much it overcharges. The City has
15 not disclosed to Plaintiffs and the Class the methodology it employs to determine
16 whether to assess a ratepayer at a single-family rate or a multi-family rate.

17 42. Accordingly, an accounting is necessary to determine the excess balance due
18 to Plaintiffs and the Class.

19 **THEREFORE**, Plaintiff respectfully requests that this Court issue an Order for
20 the following:

21 a. That this action may proceed as a class action under California Code of
22 Civil Procedure, Section 382;

23 b. Designating Plaintiffs as Class Representative and designating
24 Plaintiffs' counsel as counsel for the putative class;

25 c. Directing proper notice to be mailed to the putative class at the City's
26 expense;

27 d. Finding that the City overcharged the Class, and requiring repayment
28 of all overcharges to Plaintiff and the Class, plus pre-judgment and post-judgment

1 interest;

2 e. Enjoining the City from continuing to engage in the unlawful conduct
3 described herein;

4 f. Awarding reasonable attorney's fees and costs;

5 g. Granting further relief as this Court may deem appropriate and just.
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7 **DEMAND FOR JURY TRIAL**

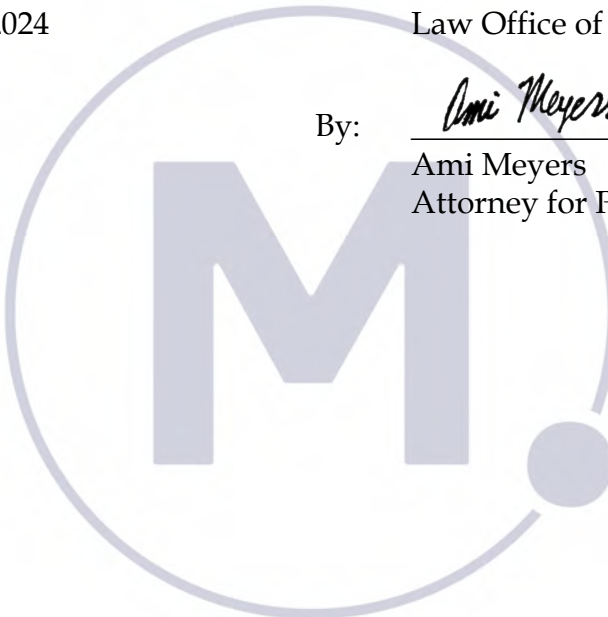
8 Plaintiff hereby demands a jury trial of all issues in this action so triable of right.
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10 Date: March 18, 2024

Law Office of Ami Meyers

11 By: *Ami Meyers*

12 Ami Meyers
13 Attorney for Plaintiffs
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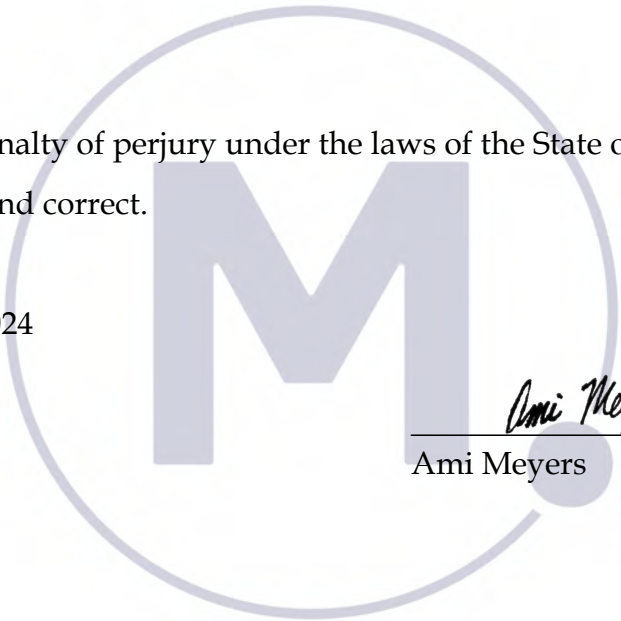


1 PROOF OF SERVICE

2 At the time of service I was over 18 years of age **and not a party to this action.** My
3 residence or business address is **292 South La Cienega Boulevard, Suite 331,**
4 **Beverly Hills, CA 90211.** On **March 18, 2024,** I served the **FIRST AMENDED**
5 **CLASS ACTION COMPLAINT** on the City of Los Angeles by emailing the
6 document to Holley Whatley, of Colantuono, Highsmith & Whatley, PC, counsel for
7 the City of Los Angeles (their address, as appearing on a filing in this case, is 790 E.
8 Colorado Blvd., Suite 850, Pasadena, CA 91101). By submitting this document to the
9 Court, I represent that before doing so I have also uploaded it to CaseAnywhere for
10 this case.

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12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

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15 Date: March 18, 2024



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17 *Ami Meyers*

18 Ami Meyers

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