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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

24 JOHN E. HUMPHREVILLE,
25
26 Petitioner,
27
28 v.
29
30 CITY OF LOS ANGELES, THE LOS
31 ANGELES DEPARTMENT OF WATER AND
32 POWER, LOS ANGELES DEPARTMENT OF
33 WATER AND POWER BOARD OF
34 COMMISSIONERS, and DOES 1 through 10,
35
36 Respondents.

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Superior Court of California
County of Los Angeles

JUL 25 2018

Sherri R. Carter, Executive Officer/Clerk
By: Glorietta Robinson, Deputy

CASE NO.

BS 174384

VERIFIED PETITION FOR WRIT OF
MANDATE (CCP § 1085) AND TAXPAYER
COMPLAINT FOR INJUNCTIVE (CCP §
526a) AND DECLARATORY RELIEF

1 Petitioner, JOHN E. HUMPHREVILLE, an individual taxpayer, resident and citizen of the City
2 of Los Angeles (“Humphreville”), brings this taxpayer lawsuit to compel the City of Los Angeles to
3 return to the Los Angeles Department of Water and Power (“LADWP”), and the LADWP and LADWP
4 Board of Commissioners to collect, a \$241,848,000 transfer made from LADWP’s Power Revenue Fund
5 to the City of Los Angeles’s Reserve Fund without voter approval, in violation of Propositions 218 and
6 26 and any other illegal transfer from LADWP to the City of Los Angeles. Petitioner, individually and
7 in a representative capacity on behalf of citizens and taxpayers of the City of Los Angeles, alleges as
8 follows:

9 **PARTIES**

10 1. Humphreville is an individual taxpaying resident of the City of Los Angeles and citizen
11 of the State of California acting individually and in a representative capacity on behalf of other taxpaying
12 residents of the City of Los Angeles who brings this action, as specifically alleged below, to enjoin a
13 scheme to convert funds collected for the generation of electricity and support of LADWP’s electricity
14 generation and distribution infrastructure into an illegal tax. Humphreville has opted-out of the class
15 action settlement in *Eck, et al. v. City of Los Angeles, et al.*, Los Angeles Sup. Ct., Case No. BC 577028.

16 2. The City of Los Angeles, with a 2016 U.S. Census-estimated population of 3,976,322, is
17 the second most populous city in the United States and the most populous city in the state of California.

18 3. The LADWP is the nation’s largest municipal utility and supplies electricity to 1.4 million
19 residential and business customers in the City of Los Angeles and in the Owens Valley. It supplies power
20 and water to nearly four million citizens of Los Angeles. LADWP’s Power System is vertically
21 integrated—the LADWP both owns and operates the majority of its generation, transmission, and
22 distribution systems.

23 4. The LADWP is governed by the Los Angeles Board of Water and Power Commissioners,
24 who are appointed by the Mayor of Los Angeles and confirmed by the Los Angeles City Council. The
25 LADWP is obligated to establish rates for electric service and collect charges in an amount which,
26 together with other available funds, will be sufficient to service the LADWP’s Power System
27 indebtedness and pay the necessary expenses of operating and maintaining the Power System.

1 the City of Los Angeles within one year of commencement of this action pursuant to Code of Civil
2 Procedure section 526a.

3 8. Petitioner seeks to compel the City of Los Angeles to return to the LADWP, and the
4 LADWP and LADWP Board of Commissioners to collect, a \$241,848,000 transfer made from LADWP's
5 Power Reserve Fund to the City of Los Angeles's Reserve Fund in violation of Propositions 218 and 26.
6 Petitioner has a beneficial and justiciable interest as a Los Angeles resident and taxpayer to require local
7 government to return monies to LADWP that were wrongfully converted to an illegal tax.

8 JUSTICIABILITY

9 9. "[Code of Civil Procedure] [s]ection 526a gives citizens standing to challenge
10 governmental action and is liberally construed to achieve that purpose." (*Daily Journal Corp. v. County*
11 *of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557.)

12 10. Under Proposition 218 approved by the voters in 1996, the California Constitution
13 prohibits local government from imposing, extending, or increasing any general or special tax unless it
14 is first approved by voters. (Cal. Const. art. XIII C, § 2 subds. (b) and (d).) Similarly, the Government
15 Code prohibits Respondents from imposing any general or special tax unless it is first approved by voters.
16 (Gov't Code §§ 53722, 53723.)

17 11. "Local government" means any county, city, city and county, including a charter city or
18 county, any special district, or any other local or regional governmental entity. (Cal. Const. art. XIII C,
19 § 1 subd. (b).)

20 12. "General tax" means any tax imposed for general governmental purposes. (Cal. Const.
21 art. XIII C, § 1 subd. (a).)

22 13. "Special tax" means any tax imposed for specific purposes, including a tax imposed for
23 specific purposes, which is placed into a general fund. (Cal. Const. art. XIII C, § 1 subd. (d).)

24 14. Under Proposition 26, approved by the voters in 2010, Proposition 218 was amended to
25 define a "tax" as any levy, charge, or exaction of any kind imposed by a local government, except the
26 following:

1 a. A charge imposed for a specific benefit conferred or privilege granted directly to
2 the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the
3 local government of conferring the benefit or granting the privilege.

4 b. A charge imposed for a specific government service or product provided directly
5 to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to
6 the local government of providing the service or product.

7 c. A charge imposed for the reasonable regulatory costs to a local government for
8 issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural
9 marketing orders, and the administrative enforcement and adjudication thereof.

10 d. A charge imposed for entrance to or use of local government property, or the
11 purchase, rental, or lease of local government property.

12 e. A fine, penalty, or other monetary charge imposed by the judicial branch of
13 government or a local government, as a result of a violation of law.

14 f. A charge imposed as a condition of property development.

15 g. Assessments and property-related fees imposed in accordance with the provisions
16 of Article XIII D.

17 (Cal. Const. art. XIII C, § 1 subd. (e).)

18 15. The local government bears the burden of proving by a preponderance of the evidence
19 that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the
20 reasonable costs of the governmental activity, and that the manner in which those costs are allocated to
21 a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the
22 governmental activity. (Cal. Const. art. XIII C, § 1 subd. (e).)

23 16. Article I, § 26 of the California Constitution states in part: "The provisions of this
24 Constitution are mandatory and prohibitory" and, as such, are deemed to be self-executing. Under that
25 Constitutional provision all branches of government are required to comply with constitutional directives,
26 including those within Article XIII C, §§ 1 and 2.

27 17. This taxpayer action seeks to enforce Respondents' duty to comply with Propositions 218
28 and 26 to obtain voter approval before imposing a tax on LADWP ratepayers in the form of fees collected

1 from LADWP ratepayers that are subsequently transferred from the LADWP's Power Revenue fund to
2 the Reserve Fund of the City of Los Angeles and ultimately to the City's General Fund. Petitioner
3 specifically does not seek in this action to prevent or enjoin the collection of any tax paid, or payable, to
4 any government entity.

5 **GENERAL ALLEGATIONS**

6 **A. LADWP'S CONVERSION OF ELECTRIC CUSTOMER PAYMENTS TO AN 7 ILLEGAL TAX**

8 18. Respondents are engaged in an illegal tax scheme by which they have imposed, increased,
9 and extended and continue to impose, increase and extend taxes without voter approval in violation of
10 California Constitutional and statutory provisions. The taxes at issue herein have never been approved
11 by voters of the City of Los Angeles. Respondents' illegal tax scheme is carried out in a two-step process:
12 First, Respondents have collected charges from LADWP ratepayers over the last 10 years ostensibly for
13 production of electric power and to support LADWP's electricity production and distribution
14 infrastructure. The LADWP Power Revenue Fund has built up a surplus exceeding \$5 billion. Despite
15 great need for infrastructure repair and increasing electricity generation costs that could have been offset
16 by the \$241,848,000 transfer, LADWP has not utilized those funds to pay for electric power production
17 or funded needed infrastructure repair. And second, Respondents authorized each fiscal year from 2008
18 to 2018 a specific amount of "surplus money" to be transferred from the LADWP Power Revenue Fund
19 to the City of Los Angeles to be used for general purposes. Because these monies are used for general
20 purposes by the City of Los Angeles and not for the purpose for which the LADWP charges were
21 originally imposed on LADWP ratepayers to provide—specifically, electric service generation and
22 supporting LADWP's electricity production and distribution infrastructure—such amounts are an illegal
23 tax for which voter approval was not obtained in violation of Propositions 218 and 26. The latest such
24 transfer challenged by Petitioner in this action was made pursuant to Ordinance No. 185349 adopted by
25 the City of Los Angeles on December 12, 2017.

26 19. Ordinance No. 185349 directs the transfer of surplus money from the Power Revenue
27 Fund of the City of Los Angeles Department of Water and Power to the Reserve Fund of the City of Los
28 Angeles during Fiscal Year 2017/18. Mayor Eric Garcetti signed the Ordinance on December 13, 2017

1 (“December 13, 2017 transfer”). The Ordinance became effective on January 26, 2018. The Ordinance
2 provides:

3 Subject to audited financial data for Fiscal Year 2016/17 and all covenants made by the City
4 of Los Angeles Department of Water and Power (LADWP) with respect to transfers from
5 the Power Revenue Fund, subject to there having been, and only to the extent that there was,
6 surplus money in the Power Revenue Fund at the close of the 2016/17 fiscal year, and
7 subject to the declaration of consent adopted by the Board of Water and Power
8 Commissioners, it is hereby directed that \$241,848,000 be transferred from the Power
9 Revenue Fund of the LADWP to the Reserve Fund of the City of Los Angeles during the
10 2017/18 fiscal year.

11 20. Notably, nothing (no ordinance or City Charter) requires the LADWP to transfer money
12 to the City. The transfer is purely discretionary. The transfer is made pursuant to City Charter Section
13 344, which provides in relevant part: “The Council may, by ordinance, direct that a transfer be made to
14 the Reserve Fund from surplus money in the [] Power Revenue Fund with the consent of the Board of
15 Water and Power Commissioners ..., as provided in this section.” “Surplus” is defined as “the amount
16 remaining in the [] Power Revenue Fund, less outstanding demands and liabilities payable out of the
17 fund, at the end of the fiscal year prior to the fiscal year in which the transfer is to be made, as shown by
18 audited financial statements.”

19 21. The funds transferred from the Power Revenue Fund to the City’s Reserve Fund have
20 been, at all relevant times, subsequently transferred to the City’s General Fund. The General Fund is the
21 primary operating fund of the City and is utilized to pay for general government functions, including
22 public works, health and sanitation, community development, and police and fire services. Thus, the
23 funds transferred to the City’s General Fund are never expended on costs necessary to provide electric
24 service or rebuild LADWP’s aging electricity production and distribution infrastructure or the aging
25 infrastructure of the LADWP’s Water System, many facilities of which pre-date World War II and are
26 near the end of their useful lives.

27 **B. TRANSFER OF LADWP ELECTRIC REVENUES TO THE CITY GENERAL FUND**
28 **VIOLATES THE STATED PURPOSE OF THESE FUNDS**

29 22. Funds collected by LADWP from ratepayers are ostensibly intended to fund power
30 generation and water distribution and to support, repair, and expand LADWP’s aging infrastructure to
31 increase power reliability and water supply.

1 23. LADWP’s Customer Bill of Rights promises customers that “[r]atepayer money will
2 support substantial investments to operate and maintain, upgrade or replace power infrastructure to ensure
3 continued reliability, cost effectiveness and environmental performance,” and “[r]atepayer money will
4 support substantial investments to operate and maintain, upgrade or replace aging water infrastructure to
5 ensure continued reliability, cost effectiveness, and environmental performance.”

6 24. To carry out these stated purposes, on March 15, 2016, LADWP requested and received
7 final approval for water and power rate adjustments from 2016 through 2020. The water and power rate
8 changes amount to approximately a combined 3% average yearly increase, about \$4.20 per month, for
9 residential customers using a typical amount of energy and water.

10 25. According to the LADWP, the rate hike was necessary to “accelerate the replacement of
11 aging water and power infrastructure, protect our water supply against drought conditions, transform
12 energy supply to meet mandates, [] improve customer service []” and “further incentivize conservation
13 while remaining competitive with nearby utilities.”

14 26. Customers were told that approximately \$720 million of these new power revenues were
15 to be used to “support the transition to a clean energy future and meet state and local mandates and goals
16 for expanding renewable energy and energy efficiency, while eliminating coal-powered generation to
17 reduce greenhouse gas emissions. As part of the power transformation over the next ten years, LADWP
18 is also meeting regulatory mandates for repowering its coastal generating stations to remove them from
19 ocean water cooling, and to modernize them to improve efficiency and ability to support renewable
20 energy. New investments will also protect power reliability by replacing or upgrading aging power poles,
21 circuits, cross-arms, and other critical electric infrastructure.”

22 27. LADWP also told customers the “new water rates will provide approximately \$330
23 million in additional revenues by the end of five years. The majority of new revenues will enable LADWP
24 to increase the pace of replacing aging water infrastructure for reliability as well as meet water quality
25 regulations. Additional revenues will protect the city from prolonged drought conditions in the future by
26 expanding local water resources and reducing dependence on more expensive, imported purchased water.
27 Local water supply programs include expanding the use of recycled water, enhancing the capture of storm
28

1 water for reuse and replenishing groundwater, and remediating the San Fernando aquifer to restore full
2 use of LADWP’s water allocation from the basin.”

3 28. LADWP’s proposed 2017-2018 budget projects power capital expenditures in the amount
4 of \$1.4 billion and water capital expenditures of \$956 million.

5 29. Yet, from the revenue collected from ratepayers, on December 13, 2017, the LADWP
6 transferred \$241,848,000 to the City of Los Angeles to be used for general purposes. Because these
7 monies are used for general purposes by the City of Los Angeles and not for the purpose for which the
8 LADWP charges were originally imposed, and for which the 2016-2020 rate hikes were granted, such
9 amounts are an illegal tax for which voter approval was not obtained, in violation of Propositions 218
10 and 26.

11 30. Cal. Const. art. XIII C, § 1 subd. (e) requires the amounts charged to residents of Los
12 Angeles for the provision of water and power to not be more than necessary to cover the reasonable costs
13 of the specific government activity for which they were originally imposed. Instead of using the surplus
14 in the LADWP Power Revenue Fund to reduce and/or eliminate any future rate hikes, LADWP
15 improperly transferred \$241,848,000 to the City of Los Angeles for general purposes.

16 **FIRST CAUSE OF ACTION**

17 **(INJUNCTIVE RELIEF – Code of Civil Procedure § 526a)**

18 **(Against All Respondents)**

19 31. Petitioner refers to and incorporates by reference paragraphs 1 through 30 as though set
20 forth at length herein.

21 32. Petitioner is entitled to and seeks an injunction pursuant to Code of Civil Procedure section
22 526a to enjoin Respondents from expending public funds to carry out the illegal tax scheme in violation
23 of Propositions 218 and 26 through the transfer of “surplus” funds from the Power Revenue Fund to the
24 Reserve Fund and to restore to the LADWP Power Revenue Fund all previously-transferred funds.

25 33. This action affects a significant public interest in the enforcement of Proposition 218 and
26 26, requiring voter approval prior to imposing any general or specific tax. Prior to the filing of this
27 lawsuit, Petitioner’s attorneys notified the Respondents of the substance of this Petition in an attempt to
28 have Respondents act without the necessity of filing this action. Despite such notice and following a

1 reasonable amount of time since such notification, Respondents have not taken any of the requested
2 action, thereby prompting the filing of this lawsuit. As a result, Petitioner is entitled to an award of
3 attorneys' fees and costs for undertaking this action as provided under all applicable California statutory
4 and common law.

5 34. This action is appropriate under Code of Civil Procedure 526a because it is not economical
6 for an individual petitioner to pursue this action. For example, Humphreville's individual benefit is only
7 approximately \$172.75 ($\$241,848,000/1,400,000$), but the total benefit for all ratepayers is \$241,848,000.

8 **SECOND CAUSE OF ACTION**

9 **(Against the City of Los Angeles for Writ of Mandamus Pursuant to C.C.P. § 1085)**

10 35. Petitioner incorporates by this reference the above-stated allegations contained within
11 Paragraphs 1 through 34, inclusive, as though fully set forth herein.

12 36. Respondents have a clear and ministerial duty to comply with the requirements of Cal.
13 Const. art. XIII C and Gov. Code §§ 53722, 53723 to obtain voter approval prior to imposing taxes upon
14 LADWP ratepayers and City of Los Angeles residents.

15 37. As a LADWP ratepayer and City of Los Angeles taxpayer, Petitioner has a beneficial
16 interest and right in the enforcement of the legal duties required of Respondents under Cal. Const. art.
17 XIII C and Gov. Code §§ 53722, 53723.

18 38. A writ of mandate is required since Respondents have failed to comply with their
19 mandatory duties under the California Constitution and Government Code to obtain voter approval prior
20 to imposing charges on LADWP ratepayers that amounted to a tax when such funds were transferred
21 from the LADWP Power Revenue Fund to the City's Reserve Fund. Accordingly, Petitioner seeks a writ
22 of mandamus requiring Respondents to comply with the provisions of the Constitution and Government
23 Code and to return the funds transferred to the City's Reserve Fund without voter approval to the LADWP
24 Power Revenue Fund.

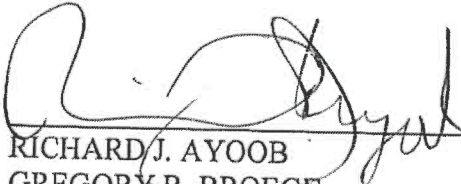
25 **THIRD CAUSE OF ACTION**

26 **(Declaratory Relief against All Respondents)**

27 39. Petitioner incorporates by this reference the above-stated allegations contained within
28 Paragraphs 1 through 38, inclusive, as though fully set forth herein.


1 DATE: July 24, 2018

AJALAT, POLLEY, AYOOB & MATARESE

By: 
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GREGORY R. BROEGE


BLOOD HURST & O'REARDON, LLP

8 DATE: July __, 2018

By: 
TIMOTHY G. BLOOD
LESLIE E. HURST
JENNIFER L. MACPHERSON

12 DATE: July 24, 2018

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