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12 CITY OF PALO ALTO

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF SANTA CLARA**

15  
16 EILEEN A. STAATS, on behalf of herself and all  
others similarly situated,,

17 Plaintiffs,

18 v.

19 CITY OF PALO ALTO; and DOES 1 through  
20 100, inclusive,

21 Defendants.

CASE NO. 1-15-CV-284956

**DEFENDANT CITY OF PALO  
ALTO'S FIRST AMENDED ANSWER TO  
CLASS ACTION COMPLAINT**

Action Filed: August 17, 2015

Assigned for All Purposes to the Honorable  
Brian C. Walsh, Department 1

**E-FILED**  
**12/28/2017 10:26 AM**  
**Clerk of Court**  
**Superior Court of CA,**  
**County of Santa Clara**  
**2015-1-CV-284956**  
**Reviewed By: R. Walker**  
**Envelope:1091975**

1 Defendant CITY OF PALO ALTO (the “City”) hereby answers the Class Action Complaint for  
2 (1) Declaratory Relief; (2) Money Had and Received; (3) Unjust Enrichment; (4) Writ of Mandamus;  
3 (5) Violation of Government Code § 53723; and (6) Violation of the California Constitution article XIII,  
4 § C (Proposition 218) (“Complaint”) filed by Plaintiff EILEEN A. STAATS (“Plaintiff”) as follows:

5 **GENERAL DENIAL**

6 Pursuant to section 431.30(d) of the Code of Civil Procedure, the City denies each and every  
7 allegation in the Complaint.

8 **AFFIRMATIVE DEFENSES**

9 **First Affirmative Defense**

10 **(Failure to State a Cause of Action)**

11 As a first separate and distinct affirmative defense, the City alleges that the Complaint, and each  
12 cause of action therein, fails to allege facts sufficient to state a cause of action.

13 **Second Affirmative Defense**

14 **(Statute of Limitations)**

15 As a second separate and distinct affirmative defense, the City alleges that those causes of action  
16 alleged in the Complaint that seek a refund of taxes or any other money judgment are limited by section  
17 911.2 of the Government Code to claims that arose within one year of the submission of a Government  
18 Claim by the Plaintiff to the City under the Government Claims Act (Gov’t Code §§ 810 *et seq.*). The  
19 City further alleges that the Complaint, or some portion thereof, is barred by other applicable statutes of  
20 limitations, including the three-year limitations period in section 338 of the Code of Civil Procedure.

21 **Third Affirmative Defense**

22 **(Immunity from Common Law Causes of Action)**

23 As a third separate and distinct affirmative defense, the City alleges that it is immune from the  
24 Plaintiff’s non-statutory, common law causes of action under section 815 of the Government Code.

25 **Fourth Affirmative Defense**

26 **(Voluntary Payment Doctrine)**

27 As a fourth separate and distinct affirmative defense, the City alleges that the Plaintiff’s non-  
28 statutory, common law causes of action are barred by the voluntary payment doctrine.

1 **Fifth Affirmative Defense**

2 **(Failure to Satisfy Class Action Requirements)**

3 As a fifth separate and distinct affirmative defense, the City alleges that the proposed class of  
4 claimants alleged in the Complaint is not ascertainable; that common questions of law or fact do not  
5 predominate over the individual questions that must be addressed to resolve the alleged class claims; that  
6 Plaintiff is not an adequate representative for the proposed class; and that a class action is, under the  
7 circumstances, neither manageable nor superior to the prosecution of individual refund claims.

8 **Sixth Affirmative Defense**

9 **(Immunity from Misrepresentation)**

10 As a sixth separate and distinct affirmative defense, the City alleges that under sections 818.8 and  
11 820.8 of the Government Code, it is immune from liability arising from any cause of action based upon  
12 allegations that the City committed fraud or made misrepresentations to Plaintiff or the proposed class.

13 **Seventh Affirmative Defense**

14 **(Failure to Verify Complaint)**

15 As a seventh separate and distinct affirmative defense, the City alleges that the fourth cause of  
16 action of the Complaint, which seeks a writ of mandate, is barred because the Complaint is not verified.

17 **Eighth Affirmative Defense**

18 **(Equitable Setoff)**

19 As an eighth separate and distinct affirmative defense, the City alleges that it is entitled to offset  
20 any recovery secured by Plaintiff and the proposed class in this case by an amount equal to any telephone  
21 users taxes that were wrongfully not paid by Plaintiff and the proposed class or that were wrongfully not  
22 collected by the telephone carriers who collect the City’s telephone users tax. Under applicable law,  
23 such unpaid and under-paid taxes are debts owed to the City for which an equitable setoff is appropriate.

24 (See, e.g., *Title Insurance Co. v. State Board of Equalization* (1992) 4 Cal.4th 715, 732.)

25 **PRAYER FOR RELIEF**

26 The City prays:

- 27 1. That the Plaintiff take nothing in this action;  
28 2. That certification of Plaintiff’s proposed class be denied;

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- 3. That judgment be entered in favor of the City;
- 4. That the City be awarded the costs of suit incurred herein; and
- 5. That the City be granted such other relief as the Court may deem just and proper.

JARVIS, FAY, DOPORTO & GIBSON, LLP



Dated: December 22, 2017

By: \_\_\_\_\_  
Benjamin P. Fay  
Gabriel McWhirter  
Attorneys for Defendant CITY OF PALO ALTO

**DECLARATION OF SERVICE**

I, the undersigned, declare as follows:

I am a citizen of the United States and employed in the County of Alameda; I am over the age of eighteen years and not a party to the within entitled action; my business address is Jarvis, Fay, Doport & Gibson, LLP, 492 Ninth Street, Suite 310, Oakland, California 94607.

On December 22, 2017, I served the within:

**DEFENDANT CITY OF PALO ALTO'S FIRST AMENDED ANSWER TO CLASS ACTION COMPLAINT**

on the parties in this action, by placing a true copy thereof in a sealed envelope(s), each envelope addressed as follows:

Thomas V. Girardi  
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*Attorneys for Plaintiff*  
*EILEEN A. STAATS*

- (X) (By First Class Mail) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail to be mailed by First Class mail at Oakland, California.
- ( ) (By Federal Express) I caused each such envelope to be sent by Federal Express to the offices of each addressee above.
- ( ) (By Electronic Service) I caused each document to be served on the parties at the email addresses shown above via Odyssey File & Serve, as required by Rule 6 of the General Court and Administration Rules.

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

3 Executed on December 22, 2017, at Oakland, California.

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