

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY
CIVIL DIVISION

JENNIFER MERRIOTT, individually
and on behalf of those similarly situated

PLAINTIFF

vs.

Case No. CV-17-637

CITY OF FORT SMITH, ARKANSAS

DEFENDANT

FOURTH AMENDED AND SUBSTITUTED COMPLAINT

COMES NOW the plaintiff, individually and on behalf of all other similarly situated residents of the City of Fort Smith Arkansas, and pursuant to both Article 16 § 13 of the Constitution of the State of Arkansas, and Rule 23 of the Arkansas Rules of Civil Procedure, files this fourth amended and substituted complaint¹, stating and alleging as follows:

PARTIES AND JURISDICTION

1. This is a civil action for equitable relief in two counts. Plaintiff's claims arise from the City of Fort Smith's misuse of public funds to deceive the public over many months. The City collected monthly sanitation fees from its residential customers and used money from those fees to pay for a sham recycling operation that made residents believe the City was recycling materials that residents had set aside for recycling while the City was actually dumping nearly 100% of those materials in a landfill.
2. Plaintiff seeks relief from an illegal exaction under Article 16, Section 13 of the Arkansas Constitution in which the affected Fort Smith residents form a class as a matter of law. Plaintiff further pleads a cause of action for unjust enrichment, and requests equitable remedies. This court has jurisdiction over the subject matter.

¹ Plaintiff's had previously filed two "Third Amended And Substituted Complaint" one of which was struck by Order of August 31, 2020. As such, the plaintiff proceeds as if the stricken filing was a nullity. The other was filed by mistake.

3. Plaintiff, Jennifer Merriott, is a Fort Smith, Arkansas, resident. She is taxpayer who at all relevant times has paid residential sanitation fees to the Fort Smith City government, and from those fees the City has apportioned payments for the City's residential curbside recycling program. Plaintiff has standing to institute this action on behalf of herself and all others interested.
4. The City of Fort Smith, Arkansas (hereinafter "the City" is an Arkansas city of the First Class with a City Administrator form of government. The City can be served with process through its chief executive officer, the City Administrator, Carl Geffken. This court has jurisdiction over the defendant and venue is proper herein.

FACTUAL ALLEGATIONS

5. At all relevant times, the City has had in effect a set of ordinances providing for a residential curbside collection program.
6. Residential curbside recycling is part of the residential curbside collection program. Fort Smith ordinance 13-93 passed on April 6, 1993, by which the City Administrator was authorized to expand the residential curbside recycling program to "provide the opportunity for all residential customers to participate in the system." The same ordinance determined that "an emergency exists in reference to the implementation of the expansion of the Sanitation Department's curbside recycling program in order to better provide for the health, safety and welfare of the City's inhabitant's . . ."
7. Recycling means the systematic collection, sorting, decontamination, and return of waste materials to commerce as commodities for use or exchange. (Ark. Code 8-6-603)
8. In the city of Fort Smith, and at all relevant times, curbside residential recycling has been managed and operated by the city's Department of Sanitation. The Sanitation department

has been headed by a Director of Sanitation. Supervising the Director of Sanitation is the City Administrator who “shall have full power and responsibility concerning the employment, disciplining, and termination of employment of all officials and non-uniformed employees of the city, including, but not limited to, heads of city departments . . .” (Fort Smith Ordinance, 2-96; A.C.A. § 14-48-117).

9. The City’s residential curbside collection program includes a recycling program by which recyclable materials, “recyclables,” are supposed to be source separated from the solid waste stream so that the City’s Sanitation Department can collect, haul and dispose of the recyclable material.
10. Under Regulation 22 of the Arkansas Pollution Control and Ecology Commission (“Ark. Reg. 22”) the definition of recycling includes separating or diverting an item or items from the solid waste stream for the purpose of processing it or causing it to be processed into a material product, including compost, in order to provide for the final disposition of the material product in a manner other than landfilling or incineration.
11. An essential element of a residential recycling program, including the residential recycling program in the City of Fort Smith, is the transport of recyclables to a recycling facility, which is a facility engaged solely in practices related to the management or diversion of source separated recoverable materials from the waste stream including storage, processing, marketing or reuse of recovered materials. (Ark. Reg. 22.102)
12. Before the time that this cause of action arose, Fort Smith Sanitation Department had been transporting all of its’ curbside residential recyclables to Smurfit Kappa, a private recycling facility. The City used its fleet of recycling vehicles to collect and transport the

recyclables.

13. On or about September 30, 2014 the City's recycling facility agreement with Smurfit Kappa expired, and no new contract with the same or another recycling facility was in place. The City did not enter into a new contract with a recycling facility until June 20, 2017 when the City's Board of Directors approved an agreement with 3rd Rock Recycling, LLC.
14. As the following paragraphs explain, it was during the period that the City did not have a contract with a recycling facility that the City used public funds to mislead the public into believing that residential curbside recycling operations were occurring normally.
15. During the same period, and at all relevant times, the City was only recycling a small percentage of recyclable materials that its residential sanitation customers had placed curbside for recycling, as the following chronology shows.
16. In October 2014, the month immediately following the expiration of the City's contract with the Smurfit Kappa recycling facility, the City began transporting a small portion of its residential curbside recyclables to a recycling facility in Clarkesville, AR known as Green Source.
17. In the months that followed, although a small amount of residential recyclable materials was going to Green Source, the amounts of residential curbside recyclables that the City transported to a landfill was on the increase.
18. By the City's own estimates (see attached Exhibit 1), from October of 2014 to May 1, 2017, the monthly percentages of residential recyclable materials that were dumped in a landfill after residents had placed them in containers for curbside pick-up to be recycled were as follows:

October 2014:	77.79%
November 2014:	84.93%
December 2014:	91.70%
January 2015:	85.45%
February 2015:	83.43%
March 2015:	80.49%
April 2015:	73.12 %
May 2015:	80.26%
June 2015:	83.41%
July 2015:	84.61%
August 2015:	84.62%
September 2015:	84.77%
October 2015:	87.70%
November 2015:	90.18%
December 2015:	89.71%
January 2016:	90.70 %
February 2016:	92.76%
March 2016:	97.10%
April 2016:	98.80%
May 2016:	97.38%
June 2016:	96.74%
July 2016:	100%
August 2016:	100%

September 2016:	100%
October 2016:	100%
November 2016:	100%
December 2016:	100%
January 2017:	100%
February 2017:	100%
March 2017:	100%
April 2017:	100%

19. From October of 2014 to May 1, 2017, while nearly all or all of the City's residential curbside recyclables were being landfilled, Fort Smith residents had continued to separate their residential curbside recyclables from the rest of their solid waste, and placed the recyclables into separate containers for curbside pickup with the expectation that the recyclables would be transported for recycling.
20. Throughout same time-period, the City's Sanitation Department, made it appear that curbside residential recycling was occurring as residents expected, although it was not. Despite the fact that the City was dumping almost all residential recyclables into a landfill, the City continued to encourage residents to recycle as usual through the curbside collection program, and the City continued to send its fleet of rear loader recycling trucks to residences -- business as usual -- to pick up recyclables that residents had placed in their designated recycling containers.
21. The City did nothing to inform its residents that the City was dumping the vast majority of the recyclables in a landfill.
22. Throughout the same time period, the City's Administration did nothing to inform the

City's Board of Directors that the vast majority of the curbside recyclables were not being recycled, despite the clear mandate of A.C.A. 14-48-117(8) whereby the city administrator "shall keep the board advised of the financial condition and future needs of the city . . . "

23. Not only did the City fail to inform its residents that the vast majority of their curbside recyclables were being landfilled despite all appearances to the contrary, the City also adopted a practice of responding to inquiries from the public about recycling by making false or misleading statements calculated to making the public believe that all the curbside residential recyclable materials were going to a recycling facility.

24. Examples of the City's practice of making false and misleading statements include, but are not necessarily limited to, the following:

(a) In an email of July 1, 2015, Dustin Bradshaw, a Sanitation Manager who was in charge of transporting the small percentage of curbside recyclables to Green Source, stated in response to an inquiry: "Right now our recyclable materials are being hauled to Greensource in Clarksville, AR." (See Exhibit 2 hereto). In fact, during that same month, only 15% of the residential recyclables went to Green Source. (See Exhibit 1). The foregoing statement was made with knowledge that the vast majority of recyclables were not going to Green Source but were going to a landfill.

(b) In the first week of October, 2015, an inquiry was emailed the City's Sanitation Director asking where the City was taking its single stream recyclables. The city's response on included: "*All curbside recyclables that are collected in Fort Smith are taken to GreenSource.*" (See Exhibit 3). The City's Sanitation Director was cc'd on this email. This statement was clearly false. (See monthly landfilled amounts of recyclables in

Exhibit 1 hereto).

- (c) On or about November 3, 2015 an email from the Sanitation Department was sent in response to a queries specific to Fort Smith from a representative of the Craighead County Solid Waste Disposal Authority. Sanitation Director Baridi emailed a request to Mitchell Parker and Dustin Bradshaw to provide answers to the Authority's queries. Mitchell Parker was the residential collections manager for the Sanitation Department. Dustin Bradshaw was in charge of hauling residential recyclables to Green Source. These queries and corresponding answers included: "*1. Is there curbside recycling available? Yes, curbside is citywide throughout Fort Smith. . . . 5. Who processes the recycling? The recycling is transported to Green Source Recycling, Clarkesville, Arkansas.*" (See Exhibit 4, attached hereto).
- (d) On 07/26/16 the Sanitation Department composed draft of a Request For Proposals for a sanitation services analysis and rate study. On page four of the draft it was stated: "Residential recycling is facilitated using rear-loader collection trucks and are hauled to Clarksville, Arkansas." (See Exhibit 5, attached hereto). In fact, the percentage of residential recyclables that were landfilled during that same month of 07/2016 was 100%. Nothing had been hauled to Clarkesville.
- (e) On 07/28/16, an email from Residential Collections Manager, Mitchell Parker, contained an attachment referred to as "Residential Master Plan 2016" and it included in the attachment was the statement: "We obtained a new contract in 2009 for the processing of our recyclable materials with Corrugated Services to facilitate sorting/sales of our recyclable materials. That contract expired in 2014 and we now haul our recyclables to Green Source Recycling facility in Clarksville, Arkansas." (See Exhibit 6, attached

hereto). As stated above, at the time of this email 100% of residential recyclables were going to the landfill.

(f) On April 20, 2017, at a meeting of Sanitation Department personnel, the Director of Sanitation, in front of all other employees assembled, instructed an employee to lie and tell people that the residential recyclables were going to a vendor. (See attached and incorporated Exhibit 7, excerpt from deposition of former City of F.S. Human Resources Director page 30:19 through 33:6).

25. It was not until May 1 of 2017, or closely thereabout, that the public learned about the landfilling of recyclables because local newspapers first broke the story, and not because the City notified the public.

26. Even when it came to the public's attention that the curbside residential recycling had been feigned rather than performed, the City continued to mislead: In a media release of May 1, 2017, the City stated: "The City of Fort Smith's most recent contract for taking its recyclables expired in September of 2014, when local vendor Smurfit KAPPA closed its single-stream processing . . . As no local vendors were available to offer single-stream processing services at that time, *the materials* were transported to Green Source Recycling Center in Clarksville for disposal." (emphasis supplied, see Exhibit 8, attached hereto). As shown by Exhibit 1 hereto, "the materials" amounted to less than 8% of what Fort Smith residents had separated from their trash to be recycled.

27. By its conduct as described herein, the Sanitation Department created a false impression that it did not believe was true, and failed to correct a false impression that it knew to be false or that the Sanitation Department knew would influence the residential sanitation customers who the Sanitation Department was obliged to serve with honesty.

28. The City perpetuated this sham and sustained the false impression of recycling through the expenditure of public funds. The source and character of these public funds is described in the paragraphs that follow.
29. At all relevant times, the local treasury of the City of Fort Smith has included four major operating funds into which revenues are deposited, and from which the City pays for government operations and services. Those four operating funds are the General Fund, the Street and Maintenance Fund, the Water and Sewer Fund, and the Sanitation Fund.
30. At all relevant times, the City's Sanitation Operating Fund has paid 100% of the costs associated with recycling (or purported recycling).
31. The Sanitation Operating Fund makes expenditures that fund government services outside the scope of sanitation services. At all relevant times, the same fund has also contributed to the costs of sustaining city offices, departments and services that have included, but are not necessarily limited to, the following: the Mayor; the Board of Directors; the City Administrator; the City Attorney; the District Court; Human Resources; Safety and Risk Management; the City Clerk; Finance; Collections; Utility Billing/Customer Service, and Purchasing Info. & Tech Services. In addition, the Sanitation Operating Fund has, at relevant times, contributed money into the General Operating Fund.
32. Thus, the Sanitation Operating Fund is not a specialty account that is fiscally insulated from the rest of the City's departments. Rather, the Sanitation Operating Fund has, at all relevant times, been an important component of the local treasury of the City of Fort Smith.
33. At all relevant times, and pursuant to city ordinance, the City has levied rates and charges

which the Fort Smith residential customers have paid as monthly fees for the collection, hauling and disposing of garbage and rubbish, and for other health and sanitation services. These services include curbside residential recycling. Fort Smith Ordinance 25-278 provides: “The rates and charges to be paid to the city by every person for the collection, hauling and disposing of garbage and rubbish, and for other health and sanitation services provided shall be as determined by the board of directors from time to time and on file in the office of the city clerk.”

34. At all relevant times, the sanitation fees that residential customers have paid, and which fund the residential curbside recycling program, were obligatory. Under Chapter 25 of the Fort Smith Municipal Code, which has been in effect at all relevant times, sanitation service is a utility, and sanitation customers are therefore subject to penalties for nonpayment of sanitation fees: “In the event any consumer of utility services furnished by the city shall fail to pay the bill therefor when the same is due, a penalty as determined by the board of directors shall be imposed.” (FS Ordinance 25-44).

35. At all relevant times, the above-described residential sanitation fees that Fort Smith residents have paid have been deposited by the City into the Sanitation Department’s Operating Fund. Those fees are city revenues that Sanitation Department has, in turn, spent to defray the costs of sanitation services, which have included the residential curbside recycling program.

36. At all relevant times, the costs incurred by the City to run its residential curbside recycling program have included, but are not necessarily limited to, the fuel, maintenance and other costs associated with operating the fleet of rear loader vehicles (recycling trucks) that collect and transport residential curbside recyclables, the costs associated

with the use of recycling containers, the costs associated with the labor and supervision required to operate the program.

37. At all relevant times, the City's residential sanitation customers have thus been required on a monthly basis to replenish the revenue stream which the City, by and through its Sanitation Department, had drawn upon to operate the City's curbside residential recycling program under the false pretenses that this complaint has described.

EQUITABLE CONSIDERATIONS

38. A confidential or fiduciary relationship exists between the City and its residential sanitation customers in that such a relation inheres between two persons when one has gained the confidence of the other and purports to act or advise with the other's interest in mind. The City enacted ordinances establishing and residential sanitation program for the benefit of its citizens and represented to its residential sanitation customers that their sanitation fees were paying for recycling that the City gave the appearance of effectuating.²

39. The City's lack of transparency and deceptive, misleading conduct in this matter ran afoul of the City's own stated policy.

40. It was not necessary to have kept Fort Smith residents uninformed and mislead about the fact that their sanitation fees were paying for recycling trucks to transport residential recyclables to a landfill instead of a recycling facility.

41. It was not proper for the City to have duped residents into wasting their time and effort in separating and preparing the recyclable materials in their homes from other disposable

² See Ark House Resolution 1043 of 2013, which states: "a public trust exist when Arkansas citizens participate in municipal recycling programs and these citizens rightfully expect that the materials collected will in fact be recycled." (Exhibit 9, attached hereto).

items, thereby eroding public trust.

42. It was not necessary or proper to have perpetuated a fraud upon the public that deprived residents of the opportunity to have made informed decisions about their recycling efforts as the public policy of this state clearly favors: Recycling programs provide a public benefit, as evinced in the public policy and statutes of Arkansas that mandate that recycling shall be integrated as a component of any solid waste management plan required under the Arkansas Solid Waste Management Act (A.C.A. § 8-6-602). Moreover, state law requires governmental entities to submit a solid waste management plan which proposes the establishment of recycling programs and facilities (A.C.A. 8-6-604).
43. At some point in time, the City could have, and should have, informed residents that curbside residential recycling had substantially or entirely discontinued until further notice, which would have given residents the opportunity to have made informed decisions and find other ways for their recyclable solid waste to be recycled or otherwise disposed of in a more environmentally-friendly way.
44. To make matters worse, as the City mislead citizens, a marked increase was occurring in the number of recyclables that the City was dumping in a landfill. For the nine months after the contract with Smurfit Kappa had terminated, from 10/01/14 to 07/01/15, the average monthly percentage of residential recyclables that the City dumped in a landfill was 82.27 %. From 07/01/15 until 05/01/17 that average percentage was 95.23 %.
45. As shown in paragraph 24 above, the first evidence of the City making a misleading statement to a query by a member of the public is from July 1, 2015. By or before July 1, 2015, the City could have, and should have, shown transparency by some means. Instead,

the City elected to spend public funds on a deceptive operation while residents reasonably relied upon the City's representations that curbside residential recycling was occurring as advertised. Residential sanitation customers were encouraged by the City to recycle while those same customers continued to pay for and participate unknowingly in a recycling sham.

46. The costs for the City to have informed the public much earlier about the unavailability of a recycling facility for the residential curbside recycling program would have been negligible.
47. Any costs associated with suspending the use of recycling vehicles for residential curbside recyclables would have been substantially less expensive than the costs associated with the continued use of the recycling vehicles for taking the recyclables to a landfill. Residential recyclables comprised approximately 1.25% of the total waste that the City had collected.
48. Even if the City's sham recycling operations were to have been more cost effective than suspending the use of the recycling trucks until a new contract with a recycling facility was made (and they were not) such fiscal considerations would provide no justification for City's use of public funds to deceive the public.
49. The amount of public money the City had spent to perpetuate the façade of curbside residential recycling can be reasonably approximated by established accounting principles as plaintiff is prepared to show at the trial of this case.
50. Nine months passed between the termination of the City's recycling contract with Smurfit Kappa and the first evidence of an affirmatively misleading statement by a Sanitation Department manager to a member of the public on July 1, 2015. Nine months was ample

time and ample leeway for the City to have addressed the recycling problem in a way that involved informing the public. Furthermore, after those nine months, the average percentage of landfilled residential recyclables did not decrease and eventually increased to 100% or very close to that amount.

51. July 1, 2015 marks a point at which evidence emerged of an expressly deceptive practice of knowingly false and misleading statements by City officials after the City had had an ample nine months to address the problem honestly. Therefore, plaintiff hereby asserts that liability in this matter attaches as of July 1, 2015 and continues until May 1, 2017, a time period during which 95.2% of residential recyclables were deceptively landfilled without public knowledge.

52. The City's actions in this matter were arbitrary, capricious, should be deemed ultra vires, and cannot be justified by any defense of discretion pursuant to police power or reasonableness.

COUNT ONE – ILLEGAL EXACTION

53. The foregoing allegations of paragraphs 1 through 52 are hereby incorporated and re-alleged in this count one as if fully laid out

54. The City's use of monies derived from governmental levies upon Fort Smith residents to pay for recycling while the City had not actually been providing recycling does not bear a reasonable relationship to any benefits conferred upon the plaintiff and all those similarly situated Fort Smith residents. Fort Smith residents had paid monthly sanitation fees, a significant part of which had been intended to pay for the public benefit of recycling. However, those monies instead went to pay for dumping recyclables in a landfill contrary to what the City had led the public to believe.

55. The City's use of public funds as described in this complaint is not reasonable. It is unreasonable for the City to charge the public for services that it is not providing without informing the public. It is not reasonable nor justifiable for the City to have spent public funds to deceive residential sanitation customers who paid those same public funds. Under the circumstances described in this complaint, the expenditure of Sanitation Department revenues for recycling vehicles to transport residential curbside recyclables to a landfill became a deceptive misuse of public funds in breach of the public trust.
56. The City's use of public funds as described in this complaint is not fair. It is not fair for the City to have charged its residents for a recycling service that the City was knowingly not providing while not informing the citizenry of that fact while the residents continued to act on the reasonable belief that the City was actually recycling.
57. The sanitation fees collected from residential customers were revenues used to defray the costs of government expenditures in the provision of government services. As such, City's expenditure of funds in furtherance of the sham recycling described herein had implicated the local treasury.
58. Because the City's use of public funds in the form of revenue from residential sanitation fees as described herein implicated the local treasury, was not fair, was not reasonable, and did not bear a reasonable relationship to any benefits conferred upon the plaintiff and all those similarly situated Fort Smith residents, the City's expenditure of revenues to move recyclables into landfills as described in this complaint was a wrongful use of public funds, which is an illegal exaction.
59. As such, the plaintiff, individually and behalf of all others similarly situated, is entitled to all the protections afforded by virtue Article 16 § 13 of the Arkansas Constitution,

including and equitable disgorgement by the City of all monies illegally exacted with said monies distributed to each class member as equity dictates.

60. The plaintiff and all others similarly situated form a class of persons that can be described thusly: All Fort Smith, Arkansas residential sanitation fee customers who paid a residential sanitation fee to the City of Fort Smith between July 1, 2015 and May 1, 2017.

COUNT TWO – UNJUST ENRICHMENT

61. The foregoing allegations of paragraphs 1 through 52 are hereby incorporated and re-alleged in this count three as if fully laid out.
62. The plaintiff has paid sanitation fees to the City which the City used to pay for the pick-up, transport and deposit of recyclables within the time period from July 1, 2015 until the present.
63. Under the circumstances, the money that the plaintiff has conferred upon the City that was supposed to be used for recycling but was used instead for sham recycling is money paid under such circumstances that, in equity and good conscience, the City should not have retained.
64. The City's use of monies from the plaintiff's sanitation fees in order to transport recyclables to a landfill under the deceptive circumstances described hereinabove involved an operative act, intent or situation that makes for an unjust enrichment which equity demands the City to restore.
65. To prevent an unjust enrichment, the plaintiff is entitled to remedies such as the imposition of a constructive trust, equitable disgorgement, and equitable lien in an amount equal to the value of the monies the City spent on the sham recycling operations as described in this complaint.

CLASS ACTION ALLEGATIONS

66. Pursuant to Rule 23 of the Arkansas Rules of Civil Procedure, the plaintiff brings this Count Two as a class action on behalf of plaintiff and all others similarly situated.
67. The proposed class which the plaintiff seeks to represent is described as follows: All Fort Smith, Arkansas residential sanitation fee customers who paid any residential sanitation fees to the City of Fort Smith between the following dates: 07/01/15 and 05/01/17.
68. Numerosity: The members of this proposed class are so numerous that joinder of all members is impracticable. Plaintiff believes that tens of thousands of Fort Smith residents have paid sanitation fees which the City used to dump recyclables in a landfill. The names and addresses of persons who comprised the proposed class can be readily ascertained from the City's records. Notice to these class members can be provided from information in the City's database.
69. Commonality: There are common questions of law or fact common to the class. Those questions include, but are not necessarily limited to: (1) Whether City is authorized to use public funds derived from governmental levies upon Fort Smith residents to pay for recycling while the City has not actually been providing recycling; (2) Whether the use of the public monies in said manner has resulted in an unjust enrichment to the City; (3) What is the proper measure of restitution in this matter?; (4) At what point within the last three years did the City start taking recyclables to a landfill instead of a recycling facility; (5) How much recyclable material was taken to a landfill during the relevant time period?; (6) How much did the City spend out of the monies derived from sanitation fees to pay for residential curbside recycling operations which operated to take recyclables to a landfill? (7) Whether the City's actions in this matter constitute a breach of fiduciary

duty, and (8) Whether the City mislead or deceived its residential sanitation customers by its conduct as described in this this complaint.

70. Typicality: The claims of the plaintiff are typical of the claims of the class: the plaintiff paid sanitation fees that were to go to paying for recycling that has never occurred, and so did every other person in Fort Smith who paid sanitation fees during the relevant time period.
71. Adequacy: The plaintiff and plaintiff's counsel will fairly and adequately protect the interest of the class. There are no conflicts of interest or other impediments that would render the plaintiff or plaintiff's counsel's representation inappropriate. The plaintiff consistently recycles and displays a sufficient level of interest in this cause of action; is familiar with the City's challenged practices; and has the ability to assist in this litigation. The experience of plaintiff's counsel exceeds 20 years of active law practice and includes class action litigation.
72. Predominance: The questions of law or fact common to the members of the class predominate over any questions affecting only individual members: Plaintiff is alleging a common wrong that affects all class members. Preliminary and common issues presented herein can be resolved before any individualized issues.
73. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy: A cohesive and manageable class exists. There will be no difficulty in the management of this case as a class action. The only method to adjudicate the claims of the class members would be through numerous separate trials with the potential for different and inconsistent results. By contrast, a class action can provide a single forum for all the class members' claims to be addressed fairly and

equitably.

WHEREFORE, PREMISES CONSIDERED, the plaintiff, individually and on behalf of all others interested, prays:

- (a) That in accordance with Article 16 § 13 the court declare the misuse of the public funds complained of herein to be an illegal exaction;
- (b) That the court cast judgment against the defendant for unjust enrichment and order equitable remedies as requested hereinabove;
- (c) That the court order a disgorgement all monies that have been exacted illegally or inequitably retained and used, and for payment of same to the class members be in excess of the amount for federal jurisdiction;
- (d) That the court permanently enjoin the City from the further misuse of public funds as described in this complaint;
- (e) That the court create a common fund to provide for the payment of all restitution, the expenses incurred in the prosecution of this action, and that the court grant attorney's fees for class counsel and authorize the payment of said fees from a common fund;
- (f) That the court certify the proposed class in accordance with Rule 23 of the Arkansas Rules of Civil procedure and appoint the plaintiff and her attorneys as class representative and class counsel respectively;
- (g) That the court grant any further relief that is appropriate to which the plaintiff and all other similarly situated persons may be entitled.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing fourth amended complaint by emailing the same to opposing counsel whose address is jcanfield@dailywoods.com and croe@dailywoods.com on November 10, 2020.

Monzer Mansour