

S224779

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Government Code § 6103

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Citizens for Fair REU Rates, et al.
Plaintiffs and Appellants

vs.

City of Redding, et al.
Defendants and Respondents.

SUPREME COURT
FILED

APR 03 2015

Fee Fighter LLC, et al.
Plaintiffs and Appellants

vs.

City of Redding, et al.
Defendants and Respondents.

Frank A. McGuire Clerk
Deputy

**MOTION FOR JUDICIAL NOTICE
IN SUPPORT OF REPLY
TO ANSWER TO PETITION FOR REVIEW**

Of a Published Decision of the
Third Appellate District, Case No. C071906

Reversing a Judgment of the Superior Court of
the State of California for the County of Shasta,
Case No. 171377 (Consolidated with Case No. 172960)
Honorable William D. Gallagher, Judge Presiding

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Attorneys for Respondent City of Redding

**To the Honorable Chief Justice and Associate Justices of the
Supreme Court of the State of California:**

Pursuant to California Rules of Court, rule 8.252, California Evidence Code section 452, subds. (d) and (h), and section 459; Petitioner City of Redding hereby moves this Court to take judicial notice of the documents attached hereto as Exhibits I through K:

- I. Moody's Investor Services Newsletter, February 19, 2015;
- J. Petition for Writ of Mandate in *Tyler Chapman v. City of Los Angeles et al.*, Los Angeles County Superior Court Case No. BS153395;
- K. Fitch Ratings, *Ruling May Endanger Key Revenue Source for Some CA Cities*, February 11, 2015

These materials are relevant to the Reply to Answer to Petition because they demonstrate the statewide significance of the issues presented in this case. Exhibits I and K show that the municipal bond markets have taken notice of the Opinion in this case, and are unable to state conclusively what the effect of that opinion will be. Exhibit J is another example of a lower court grappling with the very questions raised here, which will look to the Court of Appeal's published Opinion in this case for guidance. These materials demonstrate that this Court should grant review to provide such guidance.

The above-listed materials were not presented to the trial court because they are relevant only to the unique questions presented in the Petition for Review.

This motion is based on the attached Memorandum of Points and Authorities, Declaration of Michael R. Cobden, and Exhibits I through K attached thereto, the complete records and files of this Court, and the accompanying proposed order granting this motion.

DATED: April 2, 2015

**COLANTUONO HIGHSMITH &
WHATLEY, PC**

A handwritten signature in black ink, appearing to read 'M. Colantuono', is written over a horizontal line.

MICHAEL G. COLANTUONO
AMY C. SPARROW
MICHAEL R. COBDEN
Attorneys for Respondent
City of Redding

MEMORANDUM OF POINTS AND AUTHORITIES

I. JUDICIAL NOTICE OF BRIEFS AND PLEADINGS IN CASES PENDING IN LOWER COURTS IS APPROPRIATE TO ESTABLISH THE SIGNIFICANCE OF A LEGAL QUESTION PRESENTED FOR REVIEW

A. General Principles of Judicial Notice

A reviewing court may take judicial notice of any matter specified in Evidence Code section 452. (Evid. Code § 459.) Pursuant to Evidence Code section 452, subdivision (d) this Court may notice “[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.” The Court may also notice “facts ... that are not reasonably subject to dispute.” (Evid. Code § 452, subd. (h).) Judicial notice of such facts are mandatory in the trial court upon request where the opposing party is permitted to raise objections and the court has enough information about the facts to make a determination that they come within a category subject to notice. (Evid. Code § 453, subd. (b).) A reviewing court is permitted to notice facts just as is a trial court. (Evid. Code § 459, subd. (a).)

“Judicial notice is the recognition and acceptance by the court, for use ... by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.” (*Lockley v. Law Office of Cantrell, Green, et al.* (2001) 91 Cal.App.4th 875, 882, citations and quotations omitted.) “The underlying theory of judicial notice is that the matter judicially

noticed is a law or fact that is **not reasonably subject to dispute.**" (*Ibid.*, original emphasis; Evid. Code § 452, subd. (h).)

B. The Court Should Notice A Relevant Published Newsletter

Published news articles are a proper subject of judicial notice. (See *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 408 [granting judicial notice of newspaper articles demonstrating controversy over Halcion] citing Evid.Code, §§ 452, subd. (h), 459, subd. (a); *Californians for Alternatives to Toxics v. California Dept. of Pesticide Regulation* (2006) 136 Cal.App.4th 1049, 1064, fn. 5 [article regarding endangered species].) The existence of a published article is not reasonably subject to dispute. (Evid. Code § 452, subd. (h).)

Exhibit I is a newsletter article published by Moody's Investor Services, an organization which monitors and reports on financial markets including municipal bond markets. Exhibit K is a similar article by Fitch Ratings, reaching a different conclusion. The newsletter articles are not offered to prove the truth of any facts stated within them, but merely to show that the marketplace has begun to react to the Opinion in this case, and with some degree of uncertainty. Thus the articles are relevant to the point made in the Reply that the Opinion is having a generally negative effect on the marketplace, or at least has created uncertainty and controversy. (*Norgart, supra*, 21 Cal.4th at p. 408.)

C. The Court Should Notice a Pleading from a Pending State Cases

The Court should judicially notice Exhibit J as a document duly filed in California Superior Court. This document is a court record falling directly within subdivision (d) of Evidence Code section 452. Furthermore, it is a document not reasonably subject to dispute. (Evid. Code § 452, subd. (h).)

Respondent does not ask this Court to notice this document for the truth of any fact stated within it, but for the proposition that the litigants and courts involved in that case is grappling with the same or similar issues raised in this case. The document is therefore relevant to the issues raised in the Petition for Review, and should be noticed in consideration of that Petition.

CONCLUSION

The City respectfully requests this Court grant Respondent's motion to notice Exhibits I through K and consider them in support of its Petition for Review.

DATED: April 2, 2015

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**



MICHAEL G. COLANTUONO
AMY C. SPARROW
MICHAEL R. COBDEN
Attorneys for Respondent
City of Redding

DECLARATION OF MICHAEL R. COBDEN
[Cal. Rules of Court, rule 8.54, subdivision (a)(2)]

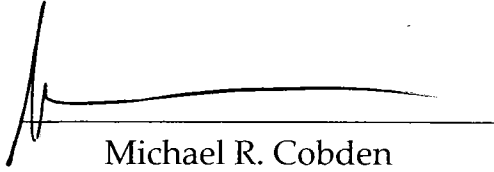
1. I am an attorney in good standing licensed to practice before the courts of this state and counsel of record for Petitioner City of Redding in this matter.

2. Attached hereto as Exhibit I is a true and correct copy of the Moody's Investor Services' newsletter published February 19, 2015. I obtained this document from the City of Redding, which received it directly from the publisher.

3. Attached hereto as Exhibit J is a true and correct copy of the Petition for Writ of Mandate in *Tyler Chapman v. City of Los Angeles*, Los Angeles County Superior Court Case Number BS153395. I obtained this document from our firm's files which we maintain in the ordinary course of business representing the City of Los Angeles.

4. Attached hereto as Exhibit K is a true and correct copy of an article published by Fitch Ratings titled "Ruling May Endanger Key Revenue Source for Some CA Cities" dated February 11, 2015. I received a copy of this article on April 2, 2015 via email from Rick Jarvis, representing amicus curiae in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of April, 2015.



Michael R. Cobden

[Proposed]

**ORDER TAKING JUDICIAL NOTICE OF
DOCUMENTS**

Good cause appearing, IT IS HEREBY ORDERED that Respondent City of Redding's Motion Requesting Judicial Notice is granted. IT IS ORDERED that this Court shall take judicial notice of the following:

- I. Moody's Investor Services Newsletter, February 19, 2015;
- J. Petition for Writ of Mandate in *Tyler Chapman v. City of Los Angeles et al.*, Los Angeles County Superior Court Case No. BS153395;
- K. Fitch Ratings, *Ruling May Endanger Key Revenue Source for Some CA Cities*, February 11, 2015

DATED: _____

By: _____

Chief Justice Tani Cantil-Sakauye

EXHIBIT I

SECTOR COMMENT

19 FEBRUARY 2015

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California Cities

Most California Cities not Directly Affected by State Appeal Court Ruling on Redding's Electric Utility Transfer

On January 20, a California state appeals court ruled that the City of Redding's (GO unrated) transfer of payments in lieu of taxes (PILOTs) from its electric utility (A2) to the city's General Fund is potentially illegal. The ruling held that the utility's transfer to the city General Fund is a tax, and subject to Proposition 26, thus requiring a majority vote of the electorate or sufficient justification that the transfer does not exceed the cost of providing city services to the utility. The matter was remanded to the trial court for further proceedings. While on its face the ruling could have implications for at least 28 California cities that receive such transfers, we believe that a vast majority of these cities would be insulated from similar suits.

Transfers from municipally owned electric utilities can account for up to 29% of a California city's General Fund revenues, according to our survey of Moody's rated issuers. A distinguishing characteristic between most of these municipalities and Redding is that the vast majority of cities are authorized under city charter or city ordinance to make these transfers. In contrast, Redding does so under a long standing budgeting practice. This is an important and distinguishing factor because Proposition 26 allows for grandfathered transfers, for transfers that were authorized or fixed prior to 2010. While most cities have a very strong argument that their transfers are grandfathered and thus not subject to Proposition 26, the court ruled that Redding's PILOT transfer is not grandfathered.

California's Proposition 26 is a 2010 voter initiative that broadened the definition of a tax to include any levy, charge or fees imposed by a local government. Under Proposition 26, there are exclusions to the definition of a tax, including charges for a specific government service that does not exceed the reasonable cost to the local government of providing such a service. The onus is on the local government to prove that such a charge, like the PILOT payment in Redding's case, does not exceed the reasonable cost of providing general fund services to the electric utility. The Redding Electric Utility PILOT payment made up \$5.5 million in fiscal year 2014 or 7.8% of the city General Fund revenues.

Cities rarely, if ever, size PILOTs and typical electric utility transfers to their General Fund with the intent to recoup the reasonable costs of providing services. These transfers are, in some cases, greater than the cost of providing services, and often represent the amount in property taxes a municipal utility would pay if it were a taxable entity. This is the case for Redding. Alternatively, the transfer may be a fixed percentage of utility revenues.

If the transfer from their electric utility were challenged, most cities would likely argue that the transfer is exempt from Proposition 26 because it was established by city charter or ordinance passed before passage of Proposition 26. Otherwise, the city would have to justify the transfer as reasonable cost of providing services, or seek a majority vote of its electorate, in order to continue the transfer.

The city intends to file a petition for review with the California Supreme Court. If review is granted, the case will be vacated. If review is not granted, the case will be remanded to Shasta County Superior Court and the city will have the opportunity to put forth evidence and argue that some of all of the transfer from the utility does not exceed the fair and reasonable cost the city's general fund incurs for services to its electric utility.

This publication does not announce a credit rating action. For any credit ratings referenced in this publication, please see the ratings tab on the issuer/entity page on www.moodys.com for the most updated credit rating action information and rating history.

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EXHIBIT J

JAN 29 2015

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By: Kristina Vargas, Deputy

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12 *Attorneys for Petitioner*

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF LOS ANGELES

By Fax

15 TYLER CHAPMAN, an individual,

16 Petitioner,

17 vs.

18 THE CITY OF LOS ANGELES; THE LOS
19 ANGELES DEPARTMENT OF WATER AND
WATER AND POWER; LOS ANGELES DEPARTMENT OF
20 COMMISSION, and DOES 1 to 50, inclusive,

21 Respondents.

CASE NO:

BS 153395

PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR:

1. Injunctive Relief
2. Declaratory Relief

D-82 Luis A. Lavin

24 Petitioner Tyler Chapman (hereinafter "Petitioner") brings this action, by and through his
25 undersigned counsel, on behalf of himself and all customers of the Los Angeles Department of Water
26 and Power, based upon information and belief and the investigation of counsel, except for
27 information based upon personal knowledge, and hereby alleges as follows:
28

1 7. The City's legal affairs are represented by City Attorney Michael Feuer, located at 200
2 North Main Street, 8th Floor, Los Angeles, California 90012.

3 8. Respondent LADWP is a proprietary department of the City.

4 9. Originally operating as the private Los Angeles City Water Company, the City acquired
5 LADWP in 1902 to provide water to residents and businesses and later started delivering electricity in
6 1917. LADWP is the largest combined municipal utility in the United States, providing water and
7 power service to more than 3.8 million customers in the City of Los Angeles. (2009 Survey, at i.)
8 LADWP's operating revenues in FY2013 were \$3.162 billion.

9 10. Respondent Board pursuant to § 670 of the City Charter, LADWP is governed by a five
10 member Board of Commissioners (the "Board"), which is currently comprised of the following
11 individuals: MEL LEVINE, President; WILLIAM W. FUNDERBURK, JR., Vice President; JILL
12 BANKS BARAD, Commissioner; MICHAEL F. FLEMING, Commissioner; and CHRISTINA E.
13 NOONAN, Commissioner.

14 11. The Board's individual members are appointed by the Mayor, subject to confirmation by
15 the City Council. City Charter §502(a).

16 12. Pursuant to § 675(b) of the City Charter, the Board has "the power and duty to":

17 (1) regulate and control the use, sale and distribution of water, reclaimed water,
18 surplus water, electric energy and surplus electric energy owned or controlled by
19 the City;

20 (2) grant permits for connections with the water or electric works of the City and
21 fix the charges for these connections;

22 (3) fix the rates to be charged for water, reclaimed water, surplus water, electric
23 energy or surplus electric energy for use inside or outside the City in accordance
24 with Section 676; and

25 (4) prescribe the time and the manner of payment for the collection of the rates
26 and charges for water and electric energy.

1 13. The Board is required to set said rates pursuant to § 676(a) of the City Charter, which
2 provides the following:

3 Rate Setting Procedure. Subject to approval by ordinance, rates for water,
4 reclaimed water, surplus water, electric energy and surplus energy shall be fixed
5 by the board from time to time as necessary. Except as otherwise provided in the
6 Charter, rates shall be of uniform operation for customers of similar
7 circumstances throughout the City, as near as may be, and shall be fair and
8 reasonable...

9 14. On a day-to-day basis, LADWP is led by a General Manager who is appointed by the
10 Board, subject to approval by the Mayor and City Council. City Charter §604.

11 15. The General Manager has the power and duty to: "(a) enforce all orders, rules and
12 regulations adopted by the board; (b) supervise and manage the design, construction, maintenance
13 and operation of all work or improvements authorized or ordered by the board; and (c) carry out all
14 powers and duties of the department delegated by the board." City Charter §678.

15 16. Petitioner is ignorant of the true names and capacities of Respondents sued herein as
16 DOES 1 to 50, inclusive, and therefore sue said Respondents by such fictitious names. Petitioner will
17 amend this Petition and Complaint to allege the true names and capacities of said respondents when
18 ascertained.

19 17. Petitioner is informed and believes, and based thereon alleges that each of said
20 fictitiously named Respondents acted intentionally, negligently, and/or recklessly or is responsible in
21 some manner for the occurrences herein alleged, and that each of the violations of Petitioner's rights as
22 herein alleged were proximately and legally caused by said respondent's actions.

23 18. Petitioner is informed and believes, and based thereon alleges that all of the Respondents
24 identified herein, whether identified by name or by fictitious name, were and are the agents, servants,
25 and employees of each of the remaining Respondents, and that in doing the things alleged herein were
26 acting within the purpose, course and scope of said agency, service, and/or employment and with the
27 permission, consent, authorization, and subsequent ratification of each of the remaining Respondents.
28

1 19. Petitioner is informed and believes, and based thereon alleges that Respondents agreed
2 to, cooperated with, aided, abetted, encouraged, ratified, and/or adopted the acts, actions, wrongdoing,
3 and representations of each of the remaining Respondents herein, and that in doing any act alleged
4 herein, were acting in concert and through a civil conspiracy by and among each Respondent to further
5 the interests of each Respondent individually, and all Respondents as a group. For this reason as well,
6 all Respondents are jointly liable to Petitioner.

7 **The LADWP Power Revenue Fund Transfer Payments**

8 20. LADWP's rates are determined by the Board and are subject to review and approval by
9 the City Council. (FY2013 Financial Statement, at 20.)

10 21. Section 344(a) of the City Charter states, "The Council may, by ordinance, direct that
11 surplus money in the Harbor Revenue Fund, the Power Revenue Fund or the Water Revenue Fund be
12 transferred to the Reserve Fund with the consent of the board in charge of the fund, but not otherwise."
13 Charter Amendment J § 2, approved March 8, 2011, effective April 8, 2011.

14 22. Such a transfer is, by definition, unrelated to the cost of generating or transmitting water
15 or power and then used for any purpose the City Council desires.

16 23. Independent auditor Crowe Horwath completed a report dated June 10, 2010 regarding
17 LADWP's ability to transfer "surplus power revenue funds" ("Power Revenue Funds").

18 24. As of June 10, 2010, LADWP unilaterally resolved to maintain a cash balance of \$300
19 million. (Crowe Report, at 4.)

20 25. Historically the calculation of LADWP's surplus funds available in any fiscal year has
21 ranged from five percent (5%) to its current eight percent (8%) of the Power System's gross operating
22 revenues from the prior fiscal year as identified in the annual audit for LADWP. (Crowe Report, at 5.)

23 26. As of February 4, 2009, LADWP's rates included a 7% transfer of the prior year's total
24 operating revenues to the City. (2009 Survey, at 3-59.)

25 27. "For FY 2009, the Power System's gross operating revenues were \$2.756 billion, which
26 would yield a surplus funds amount for payment in FY 2010 of roughly \$220.5 million." (Crowe
27 Report, at 5.)

1 28. "LADWP's revenue requirements are determined according to a bottom-up
2 methodology, so prudent management of the individual components of its budget is paramount.
3 LADWP's revenue requirement, and thus rates requirement, is determined according to a relatively
4 straightforward calculation based on projected revenue, less operating costs, less debt service, less
5 transfer to city. If rates are designed correctly, this calculation should net to zero for all rate classes."
6 (2009 Survey, at 3-59.)

7 29. As a result, LADWP's rates were 7% higher than necessary to cover LADWP's own
8 individual components of its budget and were artificially increased to provide for a 7% transfer to the
9 City's General Fund.

10 30. In FY2013, LADWP transferred \$253 million in Power Revenue Funds to the City's
11 General Fund.

12 31. Since FY2013, the LADWP Power Revenue Funds transfers have been the sixth-largest
13 source of revenue for the City's General Fund, representing approximately 5.1% of the City's General
14 Fund.

15 32. For FY2014, the Mayor's Office notes that the LADWP estimates that it will provide a
16 "Power Revenue Transfer" of \$246.5 million to the City's General Fund. (Mayor's 2014-2015
17 Revenue Outlook, at 59.) Conversely, the Mayor's Office has budgeted \$261 million. (Id., at 3.) In
18 comparison, sales taxes generate \$374.1 million in revenue for the General Fund. (Id., at 10.)

19 33. The City has described the Power Revenue Fund transfer as a tax of sorts, noting that
20 "[t]he assumed increase [of the Power Revenue Fund transfer] is within the historical average and is
21 consistent with electric users' tax growth." (Mayor's 2014-2015 Revenue Outlook, at 12.)

22 ///
23 ///
24 ///
25 ///
26 ///
27 ///

1 FIRST CAUSE OF ACTION

2 (PETITION FOR WRIT OF MANDATE RE:
3 ADOPTION OF RATES AND CHARGES IN VIOLATION OF
4 ARTICLE XIII OF THE CALIFORNIA CONSTITUTION)

5 (On Behalf of Petitioner Against All Respondents)

6 34. Petitioner refers to and incorporates by reference the preceding as though set forth at
7 length herein.

8 35. Petitioner alleges that Power Revenue Fund transfers to the City General Fund are
9 unconstitutional, invalid, and void, on the grounds that it was adopted in violation of Article XIII C of
10 the California Constitution.

11 36. Petitioner alleges Power Revenue Fund transfers are not in any way attributable to any
12 costs incurred by LADWP or the City for electric service, and that they therefore violate Article XIII C
13 Section 1 (e)(2) in that any excessive rate charges exceed the reasonable costs to the LADWP and/or
14 City of providing the service or product and therefore is a "tax."

15 37. Power Revenue Fund transfers constitute a "special tax" insofar as they were and are
16 specially charged in the rates.

17 38. Alternatively, the Power Revenue Fund transfers may be considered a "general tax"
18 insofar as they are deposited in the City's General Fund and are used for general government purposes.

19 39. Regardless of whether the Power Revenue Fund transfers were and are a "special" or
20 "general" tax, they are unconstitutional because they were not submitted to the voters for approval of a
21 "tax" as required by California Constitution Article XIII C §2(b)(d) and Government Code §53722 and
22 §53723.

23 40. Respondents had and have a plain, ministerial, nondiscretionary, mandatory duty to
24 follow and abide by the substantive and procedural directives of California Constitution Article XIII C,
25 and Government Code §53722 and §53723 as hereinabove described. Respondents have repudiated and
26 refused to abide by their constitutional and statutory duties by their approval of any Power Revenue
27 Fund transfers and the imposition of the new increased electric service rates on Petitioner.

1 41. Petitioner has no plain, speedy, or adequate remedy at law. Petitioner will be irreparably
2 harmed unless the Court exercises its equitable jurisdiction to enter a judgment and issue a writ of
3 mandate to prohibit any further Power Revenue Fund transfers to the City General Fund; to order the
4 Respondents to comply with the substantive and procedural directives of California Constitution Article
5 XIII C §1 and §2, as well as Government Code §53722 and §53723; and to provide such other equitable
6 relief as will make Petitioner whole and as the Court deems proper.

7 42. Prosecution of this action will result in the enforcement of important rights affecting the
8 public interest, for which Petitioner will be entitled and shall seek an award of attorney's fees pursuant
9 to CCP §1021.5.

10 **SECOND CAUSE OF ACTION**

11 **(DECLARATORY AND INJUNCTIVE RELIEF)**

12 **(On Behalf of Petitioner Against All Respondents)**

13 43. Petitioner refers to and incorporates by reference paragraphs 1 through 42 as though set
14 forth at length herein.

15 44. A present dispute and controversy now exists between Petitioner and Respondents, in
16 that Petitioner contends any Power Revenue Fund transfers are void and invalid due to the incorporation
17 of the unlawful rate charges, based on each of the grounds described herein above; that increased rates
18 used to fund Power Revenue Fund transfers are void and invalid, at least insofar as they incorporate the
19 unlawful excessive charges to enable any future Power Revenue Fund transfers; that if the City and
20 LADWP desire to tax the customers, the matter must first be submitted to the voters for approval as a
21 tax in accordance with the requirements of Article XIII C of the California Constitution and
22 Government Code §53722 and §53723. Respondents City and LADWP dispute those contentions and
23 claim that Power Revenue Fund transfers are valid, lawful, and fully enforceable in all respects; and
24 that they have no unsatisfied or further duties under Article XIII C of the California Constitution and
25 Government Code §53722 and §53723.

26 45. Petitioner desires a declaration as to the validity and enforceability of any approval of
27 Power Revenue Fund transfers, the Constitutional and legal issues raised in connection therewith, and
28

1 the validity and enforceability of the rate increases imposed on Petitioner (and all other customers in the
2 City of Los Angeles). A judicial declaration is necessary and appropriate at this time so that Petitioner
3 may determine their ongoing rights and obligations with respect to the validity of any Power Revenue
4 Fund transfers and the increased rates that Petitioner are subject to pay indefinitely into the future.

5 46. Petitioner has no adequate remedy at law for the dispute and controversy as alleged
6 herein. Further, Petitioner will suffer irreparable harm if the void and invalid resolution and rate
7 increases are enforced and imposed on Petitioner in the future. To prevent such harm it is necessary for
8 the Court to issue its Order and Final Judgment enjoining and restraining Respondents from approving
9 any further Power Revenue Fund transfers and the rate increases adopted thereby as against Petitioner.

10 **THIRD CAUSE OF ACTION**

11 **(DECLARATORY RELIEF – PROPOSITION 62,**

12 **REDUCTION IN PROPERTY TAX ALLOCATION (GC §53728))**

13 **(On Behalf of Petitioner Against All Respondents)**

14 47. Petitioner refers to and incorporates by reference paragraphs 1 through 46 as though set
15 forth at length herein.

16 48. Petitioner alleges that the approval of any Power Revenue Fund transfer to the City's
17 General Fund by City and LADWP, without first submitting the matter to the voters for approval as a
18 tax, created and imposed an unlawful "tax" in violation of Article XIII C of the California Constitution
19 and "Proposition 62" (added by initiative measure Nov. 4, 1986; at Government Code §53720- §53730).
20 Regardless of whether the "tax" is characterized as a "special tax" or a "general tax," it was not put
21 before the voters for prior approval as required by Government Code §53722 (special tax) and
22 Government Code §53723 (general tax).

23 49. Petitioner further alleges that, as a consequence of the Respondents' violation of
24 Government Code §53722 and §53723, the City is subject to and bound by the provisions of
25 Government Code §53728 requiring a dollar-for-dollar reduction in the amount of property tax revenue
26 allocated to the City pursuant to Chapter 6 of part 0.5 of Division 1 of the Revenue & Taxation Code.
27 The exact amount of unlawful special taxes for which the City would be subject to the provisions of
28

1 Government Code §53728 is not known at this time, and will be subject to further proof and full
2 disclosure and accounting by Respondent City upon trial of the matter, but it is estimated that it would
3 be equal to the amount of any unlawful Power Revenue Fund transfers incorporated into the rates—
4 approximately \$246,534,000 in 2013; \$250,077,000 in 2012; \$258,815,000 in 2011 and increasing—
5 with the further collection of unlawful taxes in the utility rates.

6 50. An actual controversy has arisen and now exists between Petitioner and Respondents
7 concerning their respective rights and duties, in that Petitioner contends that any Power Revenue Fund
8 transfer levies are unlawful "taxes" by imposing rates that are in excess of the reasonable cost of
9 providing services, due to the unlawful transfer of revenues to the City general fund; and that City is
10 subject to the provisions of Proposition 62 (Government Code §53720-§53728), which the City violated
11 by failing to submit the matter to a (two-thirds) vote of the electorate requiring two-thirds of voters to
12 pass as required by §53722 and §53723, making the City subject to the penalty provisions of
13 Government Code §53728. Whereas, Respondent City denies that any Power Revenue Fund transfer
14 levies excess revenues which constitute unlawful taxes; and denies that the City is subject to the
15 provisions of Proposition 62 or the provisions of Government Code §53722, §53723 and §53728.

16 51. Petitioner desires a judicial determination of his rights and duties, and a declaration as to
17 whether Respondent City is subject to and bound by the provisions of Government Code §53728, and in
18 what amount.

19 52. A judicial declaration is necessary and appropriate at this time, under the facts and
20 circumstances herein above alleged, in order that the rights and duties of Petitioner, and all other
21 citizens, rate payers and tax payers of the City of Los Angeles, may be ascertained and finally
22 determined by the Court. Government Code §53728 is the only express provision of law that gives local
23 government an incentive to take care and caution in the imposition of fees so as to collect them only
24 with proper legal authority and to avoid over-collection of excess fees which constitute unlawful taxes.
25 Respondent City will continue to overcharge and collect excessive and arbitrary fees with impunity
26 unless and until it is given an incentive to take requisite care and caution, by judicial determination and
27 application of Government Code §53728.

1 PRAYER FOR RELIEF

2 WHEREFORE, Petitioner prays for relief and judgment against Respondents, jointly and
3 severally, as follows:

4 A. That the Court issue a peremptory writ of mandate directing Respondents to comply
5 with the substantive and procedural directives of Proposition 26 and California Constitution Article
6 XIII as well as the statutory directives of Proposition 62 within 10 days of this Court's order
7 directing that they do so; or

8 B. In the alternative, that the Court issue an order to show cause why the Court should
9 not issue such writ and thereafter issue a peremptory writ compelling Respondents to perform their
10 public duty as set forth above;

11 C. For the issuance of a writ of mandate directing Respondents as provided above;

12 D. For declaratory judgment declaring that Respondents' practices have violated and
13 will continue to violate substantive and procedural directives of Proposition 26 and California
14 Constitution Article XIII as well as the statutory directives of Proposition 62.

15 E. For payment of attorney's fees and costs, including those recoverable pursuant to
16 California Code of Civil Procedure § 1021.5, and/or pursuant to the "common fund" doctrine and/or
17 pursuant to equitable principles or contribution and/or other applicable method of awarding
18 attorney's fees and costs;

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1 F. For any such further relief as may be permitted by law and/or that this Court deems
2 equitable, just and proper.

3
4 Respectfully submitted,

5 RIDOUT LYON + OTTOSON, LLP

6 Dated: January 29, 2015

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EXHIBIT K



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Ruling May Endanger Key Revenue Source for Some CA Cities

Fitch Ratings-New York-11 February 2015: A recent appellate court ruling could lead to increased financial pressure for California cities that transfer revenue from electricity utilities to general operating funds, Fitch Ratings says. We believe this decision could lead to similar lawsuits in other locations.

The court ruled that the city of Redding's electric system payments in lieu of taxes (PILOTs) constitute a tax and, therefore, require two-thirds voter approval to remain in place. If the decision from this court stands or if the case is upheld by the state Supreme Court, it would remove an important income stream from the city of Redding's general fund. In fiscal 2014, the electric fund PILOT accounted for 7.8% of general fund revenues and transfers in. Electric system transfers account for a significant amount of general fund inflows in a number of other California cities including Glendale, Lodi, Los Angeles, Pasadena and Riverside. Fitch believes a trend of similar legal actions could become a rating sensitivity in the coming years for those cities.

The appellate court decision would require two-thirds voter approval under Proposition 26 for the PILOTs to remain in place unless Redding can demonstrate that the transfers recover costs associated with providing electric service.

Momentum to limit utility transfers for general government purposes has been building for decades. Proposition 218 (passed in 1996) required new fees or taxes levied by local governments to receive two-thirds voter approval but excluded electric and gas rates. Proposition 218 and a subsequent ruling by the California Supreme Court in 2006 (Bighorn Desert-View Water Agency v. Verjil) successfully limited utility transfers not related to cost recovery. Proposition 26, passed in 2010, more broadly defines taxes with fewer exclusions.

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The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article, which may include hyperlinks to companies and current ratings, can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

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PROOF OF SERVICE

Citizens for Fair Reu Rates v. City of Redding
Third District Court of Appeal Case No. C071906
California Supreme Court Case No. S224779

I, Ashley A. Lloyd, declare:


I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 11364 Pleasant Valley Road, Penn Valley, California 95946. On April 2, 2015 I served the document(s) described as **MOTION FOR JUDICIAL NOTICE IN SUPPORT OF REPLY TO ANSWER TO PETITION FOR REVIEW** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED LIST

*X*BY MAIL: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Penn Valley, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

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

Executed on April 2, 2015 at Penn Valley, California.


Ashley A. Lloyd

SERVICE LIST

Citizens for Fair Reu Rates v. City of Redding
Third District Court of Appeal Case No. C071906
California Supreme Court Case No. S224779

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