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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

JOHN E. DURGAN, individually and
as class representative for all others
similarly situated; TAWNDI L.
SARGENT, individually and as class
representative for all others similarly
situated; and KRISTOPHER J.
KALLEM, individually and as class
representative for all others similarly
situated,

Plaintiffs,

v.

CITY OF SPOKANE, a municipal
corporation in and for the State of
Washington,

Defendant.

NO. 17-2-02507-5

**SECOND AMENDED COMPLAINT
FOR DAMAGES AND EQUITABLE
RELIEF**

Plaintiffs John E. Durgan, Tawndi L. Sargent, and Kristopher J. Kallem,
individually and as class representatives for all others similarly situated, by and through
their attorneys, Dunn & Black, P.S., allege as follows:

1 **PARTIES, JURISDICTION, AND VENUE**

2 1. Plaintiff John E. Durgan is a married individual residing in Spokane
3 County, Washington who at all times material hereto (1) owned and/or occupied
4 premises located outside the Defendant City of Spokane’s city limits and within the
5 City’s Retail Water Service Area (“Water Service Area”); (2) received municipal water
6 utility services from the Defendant City; and (3) was required by the Defendant City to
7 pay higher water services rates (the “Outside City” rates) than the lower water services
8 rates (the “City” rates) the City required water utility customers located inside the
9 Defendant City’s limits (the “Spokane City Water Customers”) to pay.
10
11

12 2. Plaintiff Tawndi L. Sargent is a married individual residing in Spokane
13 County, Washington who at all times material hereto (1) owned and/or occupied
14 premises located outside the Defendant’s city limits and within the City’s Water Service
15 Area; (2) received municipal water utility services from the Defendant City; and (3) was
16 required by the Defendant City to pay higher Outside City water services rates than the
17 lower “City” rates the Defendant City required Spokane City Water Customers to pay.
18
19

20 3. Plaintiff Kristopher J. Kallem is a married individual residing in Spokane
21 County, Washington who at all times material hereto (1) owned and/or occupied
22 premises located outside the Defendant’s city limits and within the City’s Water Service
23 Area; (2) received municipal water utility services from the Defendant City; and (3) was
24
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1 required by the Defendant City to pay higher Outside City water services rates than the
2 lower “City” rates the Defendant City required Spokane City Water Customers to pay.

3
4 4. Plaintiffs Durgan, Sargent, and Kallem have done all things necessary to
5 maintain this action on behalf of themselves and all other similarly-situated Spokane
6 County residents and businesses receiving municipal water utility services from the
7 Defendant City.

8
9 5. Defendant City of Spokane (the “City”) is a municipal corporation located
10 in Spokane County, Washington providing water services to residents and businesses as
11 a water company owning, controlling, operating, and/or managing a water system for
12 hire within the State of Washington.

13
14 6. The causes of action alleged arise out of conduct that occurred in Spokane
15 County, Washington and written and oral contracts entered into in Spokane County,
16 Washington.

17
18 7. Jurisdiction and venue are proper in this Court.

19 **CLASS ACTION ALLEGATIONS**

20 8. Plaintiffs Durgan, Sargent, and Kallem bring this action on behalf of
21 themselves and the following proposed Class of others similarly situated:

22
23 The Class: All current and former residents and businesses of Spokane
24 County, Washington who (1) are or were at all times material hereto water
25 utility customers of the Defendant City located outside the City’s limits
26 and within the City’s Water Service Area, and (2) were charged by and
required to pay to the City higher water services rates (i.e., “Outside City”

1 water services rates) than water utility customers located within the City's
2 limits were charged by and required to pay to the City.

3 9. Upon information and belief, the Class consists of approximately 6,000
4 similarly-situated individuals and businesses and is therefore so numerous that joinder
5 of all members is impracticable.

6
7 10. Common questions of law and fact exist, including but not limited to
8 whether:

- 9 a. The Defendant City's arbitrary and capriciously higher "Outside
10 City" water services rates for Spokane County residents and
11 businesses located outside the City's limits and within the City's
12 Water Service Area, including Plaintiffs Durgan, Sargent, and
13 Kallem, constitute unlawful water rate discrimination;
- 14 b. The Defendant City's lower "City" water services rates for
15 Spokane City Water Customers constitute an unreasonable and/or
16 discriminatory preference;
- 17 c. The Defendant City's water services rate schedule of prices
18 comprised of lower "City" water services rates constitutes the
19 unlawful and/or discriminatory extension to Spokane City Water
20 Customers of certain privileges, facilities, contracts, agreements,
21 rules, and/or regulations that are not regularly and uniformly
22 extended to all persons and corporations under like circumstances;
- 23 d. The Defendant City's water services rate schedule, including
24 SMC 13.04.2012 and SMC 13.04.2016, violates the laws of the
25 State of Washington and the Spokane Municipal Code and is
26 therefore null and void and of no legal effect; and
- e. The Defendant City charged arbitrary and capriciously higher
"Outside City" water services rates in breach of its contractual
obligations, including but not limited to the duty of good faith and
fair dealing.

1 11. Plaintiff Durgan is and at all times material hereto has been (1) a water
2 utility customer of the Defendant City located outside the City's limits and within the
3 City's Water Service Area, and (2) charged by and required to pay to the City higher
4 water services rates than Spokane City Water Customers were charged by and required
5 to pay to the City.
6

7 12. Plaintiff Durgan's claims are typical of the claims of the Class of others
8 similarly situated.
9

10 13. Plaintiff Sargent is and at all times material hereto has been (1) a water
11 utility customer of the Defendant City located outside the City's limits and within the
12 City's Water Service Area, and (2) charged by and required to pay to the City higher
13 water services rates than Spokane City Water Customers were charged by and required
14 to pay to the City.
15

16 14. Plaintiff Sargent's claims are typical of the claims of the Class of others
17 similarly situated.
18

19 15. Plaintiff Kallem is and at all times material hereto has been (1) a water
20 utility customer of the Defendant City located outside the City's limits and within the
21 City's Water Service Area, and (2) charged by and required to pay to the City higher
22 water services rates than Spokane City Water Customers were charged by and required
23 to pay to the City.
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1 16. Plaintiff Kallem's claims are typical of the claims of the Class of others
2 similarly situated.

3 17. Plaintiffs Durgan, Sargent, and Kallem, and their counsel will fairly and
4 adequately protect the interests of the Class of others similarly situated.

5 18. Because questions of law or fact common to the members of the Class of
6 others similarly situated predominate over any questions affecting only individual
7 members, and because a class action is superior to other available methods for the fair
8 and efficient adjudication of the controversy, this action may be maintained as a class
9 action pursuant to CR 23(b)(3).

10 FACTS

11 19. Although authorized by law to extend its water service outside its
12 boundaries, a municipality such as the Defendant City is under no obligation to sell or
13 furnish water services to anyone outside its corporate limits. Accordingly, in the
14 absence of a contract, the City cannot be compelled to supply water outside its corporate
15 limits.

16 20. Where a municipality such as the Defendant City elects to furnish water
17 services to customers located outside its corporate boundaries, the City acts in a
18 proprietary capacity, and the relationship entered into between the City as a supplier and
19 such "Outside City" water customers is purely contractual.

1 21. In fact, the Defendant City's power to supply water beyond its corporate
2 limits is permissive, with supply being a matter of contract between the municipality
3 and property owners.
4

5 22. From at least the early 1980s, the Defendant City actively encouraged
6 various private landowners to develop residential communities in then-unincorporated
7 areas of Spokane County located outside the then-existing City limits boundaries and
8 within the City's Water Service Area.
9

10 23. In doing so, the Defendant City, acting in a proprietary capacity, entered
11 into certain written and/or oral agreements and contracts with private landowners
12 located outside Defendant's then-existing City limits boundaries (the "Water Services
13 Contracts").
14

15 24. Pursuant to the Water Services Contracts, the Defendant City, in a
16 proprietary capacity, contractually agreed to furnish municipal water services through
17 separately-connected water meters to certain residents and businesses located outside
18 the City limits boundaries and within the City's Water Service Area in exchange for and
19 in consideration of those "Outside City" water customers' agreement to (1) pay the
20 substantial costs of the capital improvements required to connect to the Defendant
21 City's then-existing water infrastructure, and to (2) grant annexation covenants to the
22 City.
23
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1 25. Also pursuant to the Water Services Contracts, the Defendant City
2 contractually agreed to bill individual water services on a monthly and/or bimonthly
3 basis for consumption as determined by reading each customer's individually-numbered
4 water meter.
5

6 26. The parties to the Water Services Contracts further agreed that payment
7 was to be made upon receipt of monthly and/or bimonthly statements. Specifically,
8 Defendant City at all times material hereto has required that water services bills are due
9 and payable ten (10) calendar days after the postmark date reflected on the bill.
10

11 27. Pursuant to the Water Services Contracts, and in reliance upon
12 representations by the Defendant City to supply water services, and subject to the City's
13 express refusal to pay for any capital improvements, private landowners did in fact pay
14 for and construct the water infrastructure required to develop various areas outside the
15 Defendant's then-existing City limits boundaries and within the City's Water Service
16 Area.
17
18

19 28. As a result, in the ensuing years, thousands of homes and apartments, as
20 well as numerous businesses, were constructed outside the Defendant's City limits
21 boundaries and within the City's Water Service Area.
22

23 29. Defendant City thereafter commenced (1) providing City water services to
24 Spokane County residents and businesses located outside the City and within the City's
25 Water Service Area (collectively "Spokane County Water Customers"), and (2) billing
26

1 Spokane County Water Customers on a monthly and/or bimonthly basis for
2 consumption based on each customer's individually-numbered meter, all pursuant to the
3 terms, provisions, and conditions of the Water Services Contracts previously entered
4 into by and between the City and Spokane County Water Customers such as Plaintiffs
5 Durgan, Sargent, and Kallem.
6

7 30. Once the private landowners paid for installation of the water
8 infrastructure necessary for the Defendant City to provide water services to Spokane
9 County Water Customers, the City arbitrarily and capriciously imposed an unlawful and
10 unreasonable water services surcharge.
11

12 31. By 2002, the Defendant City arbitrarily required all Spokane County
13 Water Customers to pay in excess of up to 100 percent of the regular water services
14 rates paid by Spokane City Water Customers.
15

16 32. To date, private residents in neighborhoods and businesses located
17 throughout the County near or adjacent to the Defendant City limits, such as Plaintiffs
18 Durgan, Sargent, and Kallem, have been and continue to be adversely affected by the
19 Defendant City's arbitrary and capricious discriminatory water services surcharge to
20 Spokane County Water Customers.
21

22 33. By 2002, the Defendant City's arbitrary and capricious water services
23 surcharges resulted in complaints to both the Defendant City and to Spokane County
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26

1 officials about the surcharges being levied against Spokane County Water Customers
2 such as Plaintiffs Durgan, Sargent, and Kallem.

3
4 34. During the time period from 2002 to the present, the Defendant City has
5 consistently responded to such complaints by misrepresenting that its higher "Outside
6 City" water services rates are based on (1) the purported higher "cost of service" to
7 provide water services to Spokane County Water Customers; (2) property taxes and
8 other taxes paid only by Spokane City residents; and (3) the City's purported "long-term
9 investment" in the Spokane Water System.
10

11 35. By early 2002, "*a substantial number of customers outside the City limits*"
12 complained to Spokane County officials about the Defendant City's arbitrary and
13 capricious water services surcharges.
14

15 36. Thereafter, on or about March 26, 2002, the Spokane County Board of
16 Commissioners determined "*to analyze the City's increased charges for sewer and*
17 *water services to customers/bulk users outside the City limits.*"
18

19 37. On or about April 2, 2002, the Spokane County Board of Commissioners
20 did in fact request:

- 21
22 a. "*Copies of all rate studies or reports prepared since 1990 relating*
23 *to setting water and sewer rates for customers inside and outside*
24 *the City limits of Spokane;*
25
26 b. "*Copies of all rate models developed since 1990 relating to setting*
water and sewer rates for customers inside and outside the City
limits of Spokane;

- 1 c. *Copies of any rate compilations used to set the water and sewer*
2 *rates for customers inside and outside the City limits of Spokane*
3 *that were adopted by the Spokane City Council for calendar year*
4 *2002;*
- 5 d. *Copies of any and all memoranda, reports or studies prepared and*
6 *used to set water and sewer rates for customers inside and outside*
7 *the City limits of Spokane that were adopted by the Spokane City*
8 *Council for calendar year 2002; and*
- 9 e. *Copies of any and all City ordinances that were passed to set water*
10 *and sewer rates for customers inside and outside the City limits of*
11 *Spokane since 1990.”*

12 38. Upon information and belief, the Defendant City knew at the time that the
13 “Outside City” surcharges levied by the City were arbitrary, capricious, unreasonable,
14 unjust, and/or unlawful. Yet, the Defendant City intentionally and/or negligently failed
15 to disclose these facts, despite public records requests to do so from Spokane County
16 and others.

17 39. Upon information and belief, the City fraudulently and/or deceptively
18 concealed the true facts regarding the discriminatory, excessive “Outside City” water
19 services rates being charged by the Defendant and continued its practice of
20 discriminatorily overcharging Spokane County Water Customers excessive water
21 services contract rates.

22 40. During the time period from 2002 to the present, the Defendant City
23 continued receiving complaints by and/or on behalf of Spokane County Water
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25
26

1 Customers about the City's discriminatory, excessive, arbitrary and capriciously higher
2 "Outside City" water services contract rates.

3
4 41. Yet, in a calculated effort to conceal its unlawful misconduct, the
5 Defendant City continued to intentionally and/or negligently misrepresent the true facts
6 regarding Defendant's arbitrary and capriciously higher "Outside City" water services
7 rates, all for the purpose of fraudulently or inequitably preventing Spokane County
8 Water Customers from commencing timely litigation.

9
10 42. On or about April 9, 2014, the Spokane County Board of Commissioners
11 again submitted a public records request to the Defendant City, requesting in part:

12
13 a. *"Since ratepayers in the City's sewer and water utilities located*
14 *outside the City's corporate boundaries are charged a surcharge*
15 *for service please provide any documents quantifying the*
16 *additional cost burden incurred by the City for providing service to*
17 *these customers;"*

18
19 b. *"In the early 1980's the City of Spokane extended sewer and water*
20 *transmission lines to the West Plains.*

21 *Please provide copies of the cost of that project.*

22 *Please provide copies of documents indicating what percentage of*
23 *the cost was paid for by the ratepayer;"*

24
25 c. *"Please provide copies of the financial analysis that quantifies the*
26 *cost to the Spokane City taxpayer for extending sewer line mains,*
water line mains or streets to accommodate new development;"

d. *"Please provide copies of the financial analysis that quantifies the*
cost to the Spokane County taxpayer for extending sewer main
lines, water main lines and streets to accommodate new
development in the County;"

1 e. *“Please provide copies of the financial analysis that quantifies the*
2 *cost to City and County residents for water and sewer main line*
3 *extensions;”*

4 f. *“Please provide copies of the financial analysis that quantifies the*
5 *cost to City and County residents for the cost of maintaining sewer*
6 *and water line extensions.”*

7 43. Upon information and belief, the Defendant City continued to know and
8 understand in April 2014 that the “Outside City” surcharges levied by the City were
9 arbitrary, capricious, unreasonable, unjust, and/or unlawful. Yet, the Defendant City
10 intentionally and/or negligently failed or refused to provide the requested documents to
11 Spokane County or to otherwise disclose these facts.

12 44. In 2015, the Defendant City’s then-Director of Public Works directed
13 Spokane County Water Customer complaints about the Defendant City’s ongoing
14 arbitrary and capriciously higher water rates surcharges to the Spokane City Council,
15 and specifically to Council President Ben Stuckart.

16 45. City Council President Stuckart was contacted regarding concerns about
17 the Defendant City’s unlawful arbitrary and capricious water services surcharges despite
18 the fact that Spokane County Water Customers such as Plaintiffs Durgan, Sargent, and
19 Kallem are not residents of the Defendant City and therefore cannot vote for and are not
20 represented by the Spokane City Council.

21 46. Council President Stuckart ignored those concerns, and the Defendant
22 City continued to impose its arbitrary and capricious water service surcharges on that
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1 Class of water services users located within the Defendant City's Water Service Area
2 but outside the Defendant City's boundaries.

3
4 47. On or about March 3, 2016, the Defendant City formally adopted
5 Administrative Policy and Procedure No. 5200-16-03 which (1) confirmed as an express
6 policy of the Defendant City that "*City water service is intended to provide for the*
7 *needs of the residents of the City and for residents outside the City who are within the*
8 *City's Retail Service Area,*" provided that "*customers outside the City must complete an*
9 *annexation covenant and service agreement as a condition of water service;*" and (2)
10 emphatically acknowledged the Defendant City's "*duty to serve*" Spokane County
11 residents outside the City, such as Plaintiffs Durgan, Sargent, and Kallem, subject to
12 "*[w]ritten contract with cost allocation, indemnity and all applicable liabilities....*"

13
14
15 48. Despite requests to do so, the Defendant City has failed and/or refused to
16 cease the City's discriminatory water services rate practices that specifically target
17 Spokane County Water Customers, including Plaintiffs Durgan, Sargent, and Kallem.

18
19 49. Instead, the Defendant City refused to rationally and reasonably address
20 and resolve the City's arbitrary and capricious water services surcharges.

21
22 50. As a direct result of Defendant's unlawful over-charging misconduct,
23 Plaintiffs Durgan, Sargent, and Kallem, individually, along with those similarly situated
24 in the Class of Spokane County Water Customers for which they are representatives,
25 have suffered direct and consequential damages and irreparable harm and are entitled to
26

1 restitution from the Defendant City in amounts to be proven at trial, plus interest, costs,
2 and attorney fees.

3
4 51. As a direct result of Defendant's unlawful misconduct, Plaintiffs Durgan,
5 Sargent, and Kallem, individually, along with those similarly situated in the Class of
6 Spokane County Water Customers for which they are representatives, have suffered
7 damages in amounts to be proven at trial, plus interest, costs, and attorney fees.
8

9 **FIRST CAUSE OF ACTION**
10 **(Declaratory Judgment – RCW 7.24, et seq.)**

11 52. Plaintiffs incorporate by reference the allegations set forth above as
12 though fully set forth herein.

13 53. Under Washington law, a “water company” includes “*every city or town*
14 *owning, controlling, operating, or managing any water system for hire within this*
15 *state.*” RCW 80.04.010(30)(a).
16

17 54. The Defendant City owns, controls, operates, and/or manages a water
18 system for hire within the State of Washington. Consequently, the City is a “water
19 company” as defined by RCW 80.04.010(30)(a).
20

21 55. Under Washington law, no water company “*may extend to any person or*
22 *corporation any form of contract or agreement or any rule or regulation or any*
23 *privilege or facility except such as are regularly and uniformly extended to all persons*
24 *and corporations under like circumstances.*” RCW 80.28.080(2).
25
26

1 56. Additionally, no water company “*may make or grant any undue or*
2 *unreasonable preference or advantage to any person, corporation, or locality, or to any*
3 *particular description of service in any respect whatsoever, or subject any particular*
4 *person, corporation or locality or any particular description of service to any undue or*
5 *unreasonable prejudice or disadvantage in any respect whatsoever.”* RCW 80.28.090.

7 57. Further, no water company “*may, directly or indirectly, or by any special*
8 *rate, rebate, drawback or other device or method, charge, demand, collect or receive*
9 *from any person or corporation a greater or less compensation for ... water, or for any*
10 *service rendered or to be rendered, or in connection therewith, except as authorized in*
11 *this chapter, than it charges, demands, collects or receives from any other person or*
12 *corporation for doing a like or contemporaneous service with respect thereto under the*
13 *same or substantially similar circumstances or conditions.”* RCW 80.28.100.

16 58. The Defendant City requires Spokane County residents and businesses
17 located outside the City’s limits, such as Plaintiffs Durgan, Sargent, and Kallem, to pay
18 arbitrary and capriciously higher water services rates than those residents and business
19 located inside the City’s limits.

21 59. Pursuant to SMC 13.04.2012 (“Outside City Residence Rates”), the
22 Defendant City charges, demands, collects, and/or receives from residents located
23 outside the City’s limits, including Plaintiffs Durgan, Sargent, and Kallem, greater
24 compensation for water services than the Defendant City charges, demands, collects,
25
26

1 and/or receives from residents located inside the City's limits under SMC 13.04.2002
2 ("City Residence Rates"), all in violation of the laws of the State of Washington and the
3
4 Spokane Municipal Code.

5 60. Pursuant to SMC 13.04.2016 ("Outside City Commercial and Industrial
6 Rates"), the Defendant City charges, demands, collects, and/or receives from businesses
7 located outside the City's limits, greater compensation for water services than the
8 Defendant City charges, demands, collects, and/or receives from businesses located
9 inside the City's limits under SMC 13.04.2004 ("City Commercial and Industrial
10 Rates"), all in violation of the laws of the State of Washington and the Spokane
11 Municipal Code.
12
13

14 61. Under Washington law, a city may maintain and operate waterworks "*as*
15 *an integral utility service incorporated within general rates... with full power to*
16 *regulate and control the use, distribution, and price thereof: PROVIDED, that the rates*
17 *charged must be uniform for the same class of customers or service."* RCW 35.92.010.
18

19 62. To date, Spokane County residents and businesses located outside the
20 City's boundaries, such as Plaintiffs Durgan, Sargent, and Kallem, have been and
21 continue to be discriminated against and adversely affected by the Defendant City's
22 arbitrary and discriminatory water services rates.
23

24 63. Plaintiffs Durgan, Sargent, and Kallem, individually and as the Class
25 representatives of all those similarly situated, are entitled to a declaratory ruling that:
26

- 1 a. The Defendant City's arbitrary and capriciously higher "Outside
2 City" water services rates for Spokane County Water Customers,
3 including Plaintiffs Durgan, Sargent, and Kallem, and the Class of
4 all those similarly situated constitute unlawful water rate
5 discrimination;
6
7 b. The Defendant City's lower "City" water services rates for
8 Spokane City Water Customers constitute an unreasonable
9 preference;
10
11 c. The Defendant City's water services rate schedule of prices
12 comprised of lower "City" water services rates unlawfully extends
13 to Spokane City Water Customers certain privileges, facilities,
14 contracts, agreements, rules, and/or regulations that are not
15 regularly and uniformly extended to all persons and corporations
16 under like circumstances;
17
18 d. The Defendant City's water services rate schedule, including but
19 not limited to SMC 13.04.2012 and SMC 13.04.2016, violates the
20 laws of the State of Washington and the Spokane Municipal Code
21 and is therefore null and void and of no legal effect; and
22
23 e. The Defendant City charged arbitrary and capriciously higher
24 "Outside City" water services rates in breach of its contractual
25 obligations, including but not limited to the duty of good faith and
26 fair dealing.

SECOND CAUSE OF ACTION
(Injunctive Relief)

64. Plaintiffs incorporate by reference the allegations set forth above as though fully set forth herein.

65. Plaintiffs Durgan, Sargent, and Kallem, and the Class have a clear legal and/or equitable right to be free from unlawful rate discrimination; unreasonable rate

1 preferences; and unjust, unfair, and unreasonable rate charges on the part of the
2 Defendant City of Spokane.

3
4 66. Plaintiffs Durgan, Sargent, and Kallem, and the Class have a well-
5 grounded fear of continued and further immediate invasion of their rights by the
6 Defendant City.

7
8 67. Defendant's actions have and will result in actual, substantial, and
9 irreparable injury, loss, or damage to Plaintiffs Durgan, Sargent, and Kallem, and the
10 Class of others similarly situated.

11
12 68. Plaintiffs Durgan, Sargent, and Kallem, and the Class of others similarly
13 situated have no legal remedy to protect their interests, maintain the status quo, and/or
14 preserve their rights pending a determination of this action.

15
16 69. Plaintiffs Durgan, Sargent, and Kallem, and the Class of others similarly
17 situated are entitled to injunctive relief including an order directing the Defendant City
18 to establish just, fair, reasonable and sufficient water services rates based upon matters
19 which present a reasonable difference as a ground for distinction and/or based upon
20 reasonable differences, including cost of service; location of customers; cost of system
21 maintenance, operation, repair and replacement; character of service furnished; quantity
22 and quality of service; time of use; and capital contributions made to the system by way
23 of assessments or otherwise.
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1 THIRD CAUSE OF ACTION
2 (Restitution)

3 70. Plaintiffs incorporate by reference the allegations set forth above as
4 though fully set forth herein.

5 71. The Defendant City has required and continues to require Plaintiffs
6 Durgan, Sargent, and Kallem, and the Class of all other similarly-situated Spokane
7 County residents and businesses located outside the Defendant City's limits to pay
8 arbitrary and capriciously higher "Outside City" water services rates of up to 100
9 percent of the regular water services rates paid by residents and businesses located
10 within the City's limits.
11

12 72. Plaintiffs Durgan, Sargent, and Kallem, and the Class of others similarly
13 situated, including residents and businesses located outside the Defendant City's limits,
14 conferred a benefit on the City from at least 2007 to date, if not earlier, by paying the
15 City's arbitrary and capriciously higher "Outside City" water services rates.
16

17 73. The Defendant City has for years charged, demanded, collected, or
18 received arbitrary and capriciously higher payments for water services from Plaintiffs
19 Durgan, Sargent, and Kallem, and the Class of other similarly-situated residents and
20 businesses located outside the City's limits under circumstances that make it inequitable
21 for the Defendant to retain the benefit of those excessive payments.
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1 74. In order to prevent the unjust enrichment of the Defendant City, Plaintiffs
2 Durgan, Sargent, and Kallem, and the Class of others similarly situated, are entitled to
3 restitution in amounts to be proven at trial, plus interest, costs, and attorney fees.
4

5 **FOURTH CAUSE OF ACTION**
6 **(Damages – RCW 80.04.440)**

7 75. Plaintiffs incorporate by reference the allegations set forth above as
8 though fully set forth herein.

9 76. Under Washington law, a “water company” includes “*every city or town*
10 *owning, controlling, operating, or managing any water system for hire within this*
11 *state.*” RCW 80.04.010(30)(a).

12 77. The Defendant City owns, controls, operates, and/or manages a water
13 system for hire within the State of Washington. Consequently, the City is a “water
14 company” as defined by RCW 80.04.010(30)(a).

15 78. Under Washington law, a “public service company” includes every “*water*
16 *company.*” RCW 80.04.010(23).

17 79. Consequently, the Defendant City is a “public service company” as
18 defined by RCW 80.04.010(23).

19 80. Washington law provides that “[i]n case any public service company shall
20 do, cause, to be done or permit to be done any act, matter or thing prohibited, forbidden
21 or declared to be unlawful, or shall omit to do any act, matter or thing required to be
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1 *done, either by any law of this state, by this title or by any order or rule of the*
2 *commission, such public service company shall be liable to the persons or corporations*
3 *affected thereby for all loss, damage or injury caused thereby or resulting therefrom.”*

4
5 RCW 80.04.440.

6 81. The Defendant City has required and continues to require Plaintiffs
7 Durgan, Sargent, and Kallem, and the Class of all other similarly-situated Spokane
8 County residents and businesses located outside the Defendant City’s limits to pay
9 arbitrary and capriciously higher water services rates than residents and businesses
10 located within the City’s limits in violation of the laws of the State of Washington and
11 the Spokane Municipal Code, and in breach of the City’s contractual obligations.
12

13
14 82. The Defendant City’s water services rate schedule comprised of higher
15 “Outside City” water services rates, including but not limited to SMC 13.04.2012,
16 unlawfully discriminates against Spokane County Water Customers such as Plaintiffs
17 Durgan, Sargent, and Kallem in violation of the laws of the State of Washington and the
18 Spokane Municipal Code, and in breach of the City’s contractual obligations.
19

20 83. The Defendant City allows residents and businesses located inside the
21 City’s limits to pay lower “City” water services rates in violation of the laws of the State
22 of Washington and the Spokane Municipal Code, and in breach of the City’s contractual
23 obligations.
24

1 90. Implied by law into the terms of the written and oral agreements is a
2 covenant of good faith and fair dealing.

3
4 91. The Defendant City failed to exercise honest judgment in its conduct with
5 Plaintiffs and breached this covenant of good faith and fair dealing by:

- 6 a. Requiring Plaintiffs Durgan, Sargent, and Kallem, and the Class of
7 others similarly situated to pay arbitrary and capriciously higher
8 “Outside City” water services rates;
- 9 b. Making false and misleading statements, and intentionally and/or
10 negligently concealing the true facts regarding the City’s arbitrary
11 and capriciously higher “Outside City” water services rates; and
- 12 c. Denying Plaintiffs access to information.

13 92. As a direct and proximate result of the Defendant City’s breach of
14 contract conduct, including but not limited to the City’s breach of the implied covenant
15 of good faith and fair dealing, Plaintiffs Durgan, Sargent, and Kallem, and the Class of
16 others similarly situated have suffered damages in amounts to be proven at trial, plus
17 interest, costs, and attorney fees.

18
19 **SIXTH CAUSE OF ACTION**
20 **(Conversion/Misappropriation)**

21 93. Plaintiffs incorporate by reference the allegations set forth above as
22 though fully set forth herein.

23 94. The Defendant City willfully interfered with Plaintiffs Durgan, Sargent,
24 and Kallem, and the Class of others similarly situated without lawful justification.
25
26

1 95. The Defendant City’s willful interference with Plaintiffs’ property
2 deprived Plaintiffs of possession of their property.

3
4 96. As a direct and proximate result of the Defendant City’s conversion
5 and/or misappropriation misconduct, Plaintiffs Durgan, Sargent, and Kallem, and the
6 Class of others similarly situated have suffered damages in amounts to be proven at
7 trial, plus interest, costs, and attorney fees.

8
9 **SEVENTH CAUSE OF ACTION**
10 **(Account Receivable)**

11 97. Plaintiffs incorporate by reference the allegations set forth above as
12 though fully set forth herein.

13 98. An account receivable is any obligation for payment incurred in the
14 ordinary course of business whether arising from one or more transactions and whether
15 or not earned by performance.

16
17 99. Plaintiffs Durgan, Sargent, and Kallem, and the Class of others similarly
18 situated incurred on a monthly and/or bimonthly basis an obligation to pay reasonable
19 water services rates for all water services provided to them by the Defendant City, all
20 pursuant to monthly and/or bimonthly water utility invoices.

21
22 100. The Defendant City fraudulently and/or negligently miscalculated and
23 overstated Plaintiffs’ monthly account receivable by imposing an arbitrary and
24

1 capriciously higher “Outside City” water services surcharge which Plaintiffs did in fact
2 pay.

3
4 101. As a direct and proximate result of the Defendant City’s unlawful
5 misconduct, Plaintiffs Durgan, Sargent, and Kallem, and the Class of others similarly
6 situated have suffered damages in amounts to be proven at trial, plus interest, costs, and
7 attorney fees.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs Durgan, Sargent, and Kallem, individually and as
11 Class representatives on behalf of all others similarly situated, pray for judgment against
12 Defendant City of Spokane as follows:
13

14 1. For a declaratory judgment ruling (1) that the Defendant City’s arbitrary
15 and capriciously higher “Outside City” water services rates for Spokane County Water
16 Customers constitute unlawful water rate discrimination; (2) that the Defendant City’s
17 lower “City” water services rates for Spokane City Water Customers constitute an
18 unreasonable preference; (3) that the Defendant City’s water services rates schedule of
19 charges comprised of lower “City” water services rates unlawfully extends to Spokane
20 City Water Customers certain privileges, facilities, contracts, agreements, rules, and/or
21 regulations that are not regularly and uniformly extended to all persons and corporations
22 under like circumstances; (4) that the Defendant City’s water services rate schedule,
23 including but not limited to SMC 13.04.2012 and SMC 13.04.2016, violates the laws of
24
25
26

1 the State of Washington and the Spokane Municipal Code and is therefore null and void
2 and of no legal effect; and/or (5) the Defendant City charged arbitrary and capriciously
3 higher "Outside City" water services rates in breach of its contractual obligations,
4 including but not limited to the duty of good faith and fair dealing.
5

6 2. For a preliminary and permanent injunction directing the Defendant City
7 to establish just, fair, reasonable, and sufficient water services rates based upon matters
8 which present a reasonable difference as a ground for distinction, and/or based upon
9 reasonable differences, including cost of service; location of customers; cost of system
10 maintenance, operation, repair and replacement; character of service furnished; quantity
11 and quality of service; time of use; and capital contributions made to the system by way
12 of assessments or otherwise.
13

14 3. For an Order compelling the Defendant City to return to Plaintiffs Durgan,
15 Sargent, and Kallem, and the Class of others similarly situated, all water rate
16 compensation received in excess of the "City" water services rates paid by Spokane
17 City Water Customers in an amount expected to be not less than Thirty Million Dollars
18 (\$30,000,000).
19

20 4. For judgment against the Defendant City for damages in such amounts as
21 are proven at trial, to include refunds of amounts paid in excess of lawful water services
22 rates since the date the unlawful practice commenced.
23

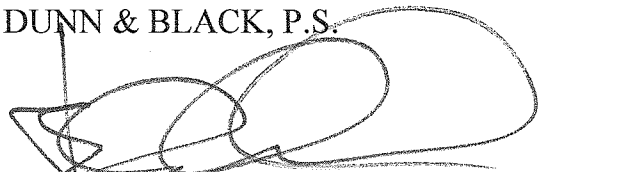
24 5. For pre-judgment and post-judgment interest as allowed by law.
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6. For an award of attorney fees and costs as allowed by contract, law, or equity.

7. For such other relief as the Court deems just and equitable.

DATED this 17 day of August, 2018.

DUNN & BLACK, P.S.


ROBERT A. DUNN, WSBA #12089
BIL G. CHILDRESS, WSBA #45203
Attorneys for Plaintiffs Durgan, Sargent, and
Kallem, individually and as class
representatives for all others similarly situated

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 17th day of August, 2018, I caused to be
3 served a true and correct copy of the foregoing document to the following:

4 HAND DELIVERY Salvatore J. Faggiano
5 U.S. MAIL Elizabeth L. Schoedel
6 OVERNIGHT MAIL Assistant City Attorneys
7 FAX TRANSMISSION 808 W. Spokane Falls Blvd., 5th Floor
8 EMAIL Spokane, WA 99201

8 HAND DELIVERY Michael J. McMahon
9 U.S. MAIL Michael F. Connelly
10 OVERNIGHT MAIL Megan C. Clark
11 FAX TRANSMISSION Etter, McMahon, Lamberson
12 EMAIL Van Wert & Oreskovich, P.C.
13 618 W. Riverside Ave., Suite 210
14 Spokane, WA 99201

14 
15 _____
16 SHELLIE GARRETT