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SUPERIOR COURT  
OF CALIFORNIA  
COUNTY OF SONOMA

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11 Attorneys for Plaintiffs PAUL D. STUTRUD and STEPHEN N. BOSSHARD

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 IN AND FOR THE COUNTY OF SONOMA

14 PAUL D. STUTRUD, and STEPHEN N. )  
15 BOSSHARD, individually and on behalf of all )  
16 others similarly situated, )

17 Plaintiffs, )

18 vs. )

19 THE CITY OF ROHNERT PARK, a )  
20 municipal corporation, and DOES 1 through )  
21 10, inclusive, )

22 Defendants. )

Case No. 237482

FIRST AMENDED CLASS ACTION  
COMPLAINT

[CLASS ACTION]

Dept. 20

Action Filed: September 26, 2005

23 Plaintiffs, Paul D. Stutrud and Stephen N. Bosshard on behalf of themselves, and all others  
24 similarly situated, allege, upon personal knowledge as to themselves and their acts, and as to all other  
25 matters upon information and belief based upon, *inter alia*, the investigations made by their  
26 attorneys, as follows:

27 **I.**  
28 **NATURE OF THE ACTION**

1. This is a class action seeking refunds, disgorgement, and/or restitution for a class of  
City of Rohnert Park ("City") sewer customers, described more fully, *infra*, and an injunction to  
enjoin the City from charging illegal sewer fees in the future.

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**II.**  
**JURISDICTION AND VENUE**

2. Plaintiffs and the putative class member are City residents. The defendant's primary place of business is in the City of Rohnert Park, County of Sonoma.

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**III.**  
**PARTIES**

3. Plaintiffs Paul D. Stutrud and Stephen N. Bosshard are City residents and have been City sewer customers at all relevant times. They have paid the City's monthly sewer bill at all relevant times and intend to pay the sewer bill in the future.

4. Defendant, the City of Rohnert Park, is a general law city of the State of California and is situated in the County of Sonoma.

5. Plaintiffs allege on information and belief that at all relevant times, DOES 1-10, inclusive, were agents, servants, employees, representatives, partners, and related or affiliated entities of defendant, and in doing the things hereinafter mentioned, were acting in the course and scope of their agency, employment, or retention with the permission, consent, authority and ratification of defendant. Plaintiffs are presently unaware of the true names and identities of those defendants fictitiously sued herein as DOES 1-10, inclusive, and therefore sue each of those defendants by fictitious name pursuant to section 474 of the Code of Civil Procedure. Any reference made to the named defendant by specific name or otherwise, is also a reference to the actions or inactions of DOES 1-10, inclusive.

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**IV.**  
**SUBSTANTIVE ALLEGATIONS**

6. On or about August 3, 2005, Stutrud filed a claim with the City, on behalf of himself and all City of Rohnert Park residential property owners (including Bosshard) seeking a refund of sewer fee overcharges. The letter met the requirements of Gov. Code § 910 and § 945.4.

7. On or about August 23, 2005, the City formally rejected Stutrud's claim.

8. The claim was based on the following: On February 16, 2005, the City purportedly approved a new sewer rate structure which raised the monthly service charge for single-family

1 residential customers as follows:

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|                                 | <u>Then</u> | <u>Current</u> | <u>April 1, 2005</u> | <u>April 1, 2006</u> | <u>April 1, 2007</u> |
|---------------------------------|-------------|----------------|----------------------|----------------------|----------------------|
| 4 Monthly Fee                   |             | \$1.03         | \$1.08               | \$1.35               | \$1.55               |
| 6 Usage Charge<br>per 1000 gal. |             | \$5.70         | \$7.30               | \$9.15               | \$10.50              |

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8 Thus, in a two-year period, the City increased the monthly fees **48%** and the usage charges by **84%**.  
9 In terms of total monthly sewer charges, a typical customer's bill will rise from approximately  
10 \$32.38 as of March 31, 2005 to \$59.70 on April 1, 2007 – a staggering **84%**.

11 9. The sewer fees were imposed as an incident of property ownership and are ostensibly  
12 charged for property-related services.

13 10. The City increased the rates on February 16, 2005 (effective April 1, 2005) without  
14 complying with the notice requirements set forth in Cal. Const. art. XIII D 6(a). Specifically, it failed  
15 to mail a Notice of the Public Hearing to all owners of all affected parcels prior to imposing the rate  
16 increases. It further failed to properly identify the basis of the rate increase, and failed to properly  
17 provide affected owners the opportunity to stop the increase by submitting written protests.

18 11. On or about December 2006, the City, for the first time, mailed a Notice of Public  
19 Hearing to owners of the affected parcels describing the past rate increase and the rate increase going  
20 forward. On January 23, 2007, it conducted a public hearing and approved the rate increases  
21 prospectively. It also claims to have retroactively approved the rate increases charged from April  
22 1, 2005 through January 22, 2007.

23 12. The City is prohibited from retroactively approving the increased sewer fees charged  
24 from April 1, 2005 through January 22, 2007. Such fees were illegally extracted and must be  
25 returned to the owners of the affected parcels.

26 13. The primary reason the City adopted the rate increase was to fund construction of an  
27 additional sewer main to serve *new* development on the east side of the City. The additional sewer  
28 main neither provides a benefit to, nor is utilized by, existing sewer customers.



1 and Plaintiffs have no interests which are contrary to or in conflict with those of the Class members  
2 they seek to represent. Plaintiffs have retained competent counsel experienced in class action  
3 litigation to further ensure such protection and they intend to prosecute this action vigorously.

4 21. A class action is superior to other available methods for the fair and efficient  
5 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the  
6 future harm suffered by individual members of the Class may be relatively small, the expense and  
7 burden of individual litigation make it impossible for the members of the Class to individually  
8 redress the wrongs done to them. Plaintiffs know of no difficulty that will be encountered in the  
9 management of this litigation that would preclude its maintenance as a class action.

10 22. Common questions of law and fact exist as to all members of the Class and  
11 predominate over any questions affecting solely individual members of the Class.

12 **VI.**  
13 **FIRST CAUSE OF ACTION**  
14 **Violation of Cal. Const. Article XIII D § 6(b)**  
15 **(Against All Defendants)**

16 23. Plaintiffs reallege and incorporate by reference each and every paragraph above as  
17 though fully set forth herein.

18 24. Cal. Const. art. XIII D § 6(b)(1) states:

19 *Revenues derived from the fee or charge shall not exceed the funds required to provide the*  
20 *property-related service.*

21 25. Cal. Const. art. XIII D § 6(b)(2) states:

22 *Revenues derived from the fee or charge shall not be used for any purpose other than that*  
23 *for which the fee or charge was imposed.*

24 26. Cal. Const. art. XIII D § 6(b)(3) states:

25 *The amount of a fee or charge imposed upon any parcel or person as an incident of property*  
26 *ownership must not exceed the proportional cost of the service attributable to the parcel.*

27 27. Cal. Const. art. XIII D § 6(b)(4) states:

28 *No fee or charge may be imposed for a service unless that service is actually used by, or*  
*immediately available to, the owner of the property in question. Fees or charges based on*  
*potential or future use of a service are not permitted. . .*

29 28. The sewer fees charged by the City are imposed upon Sewer Customers as an incident  
30 of property ownership.



1 Plaintiffs contend that the rates are illegal because they fail to comply with constitutional mandates.

2 The City contends that it has complied with the constitutional mandates.

3 37. Plaintiffs desire a judicial declaration as to whether the City has, in fact, complied  
4 with Cal. Const. art. XIII D.

5 38. Such a declaration is necessary and appropriate at this time so that Plaintiffs may  
6 ascertain their rights and duties before making further illegal sewer fees payments. Plaintiffs also  
7 seek ancillary relief, including, but not limited to, an injunction to enjoin the illegal collection of  
8 fees, and restitution and disgorgement of previously-paid fees.

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10 **IX.**  
**FOURTH CAUSE OF ACTION**  
11 **Assumpsit**  
**(Against All Defendants)**

12 39. Plaintiffs reallege and incorporates by reference, each and every paragraph above as  
13 though fully set forth herein.

14 40. The increased sewer fees were paid upon a consideration that failed completely.

15 41. Plaintiffs seek a return of the increased sewer fees.

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17 **X.**  
**FIFTH CAUSE OF ACTION**  
18 **Constructive Trust**  
**(Against All Defendants)**

19 42. Plaintiffs reallege and incorporate by reference, each and every paragraph above as  
20 though fully set forth herein.

21 43. By virtue of the City's illegal and improper activities as alleged herein, the City holds  
22 funds paid to it by Plaintiffs as a constructive trust for Plaintiffs.

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24 **XII.**  
**PRAYER FOR RELIEF**

25 WHEREFORE, the representative Plaintiffs demand judgment individually and on behalf  
26 of the Sewer Customers as follows:

27 A. For a determination that the instant action is a proper class action maintainable under  
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1 Section 382 of the Code of Civil Procedure; that Paul Stutrud and Stephen N. Bosshard are adequate  
2 class representatives; and that Krause Kalfayan Benink & Slavens, LLP and John F. Hudson are  
3 suitable class counsel;

4 B. For refunds, damages, restitution, and/or disgorgement, in an amount to be  
5 determined at trial, but not less than \$5,280,000;

6 C. For imposition of a constructive trust;

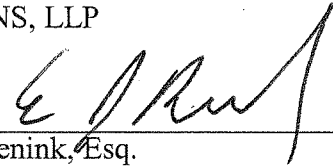
7 D. For an award of attorneys' fees pursuant to CCP § 1021.5, or as permitted by law;

8 E. For prejudgment interest; and

9 F. For other further relief as may be just and proper.

10  
11 Dated: February 15, 2007

KRAUSE KALFAYAN BENINK &  
SLAVENS, LLP



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14 Eric J. Benink, Esq.  
15 Attorneys for Plaintiffs  
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