

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

CITY AND COUNTY OF SAN FRANCISCO and DOES 1 through 20

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

T-MOBILE WEST, LLC

BY FAX

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a flanco, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): **San Francisco Superior Court**
400 McAllister Street
San Francisco, CA 94102-4514

CASE NUMBER:
(Número del Caso)

000 15-547840

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Hugh Goodwin, DLA Piper LLP (US), 2000 University Avenue, East Palo Alto, CA 94303 650-833-2262

DATE:
(Fecha) **SEP 09 2015**

CLERK OF THE COURT Clerk, by
(Secretario)

Arlene Ramos
ARLENE RAMOS

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
HUGH GOODWIN, DLA PIPER LLP (US)
 SBN: 124662
 2000 UNIVERSITY AVENUE, EAST PALO ALTO, CA 94303

TELEPHONE NO.: 650-833-2262

FAX NO.: 650-687-1174

ATTORNEY FOR (Name): T-MOBILE WEST, LLC

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

STREET ADDRESS: 400 McAllister Street

MAILING ADDRESS:

CITY AND ZIP CODE: San Francisco, CA 94102-4514

BRANCH NAME:

CASE NAME:

T-MOBILE WEST v. CITY AND COUNTY OF SAN FRANCISCO

CIVIL CASE COVER SHEET

- ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

- ☐ Counter ☐ Joinder
 Filed with first appearance by defendant
 (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **CGC 15-547840**

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

- ☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- ☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- ☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

- ☐ Wrongful termination (36)
☐ Other employment (15)

Contract

- ☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

- ☐ Eminent domain/inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

- ☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

- ☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

- ☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

- ☐ RICO (27)
☒ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- ☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
 b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☒ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 1

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 3, 2015

HUGH GOODWIN

(TYPE OR PRINT NAME)

NOTICE

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other P/DP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/DP/DWD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/DP/DWD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/DP/DWD

Non-PI/DP/DWD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/DP/DWD Tort (35)

Employment

Wrongful Termination (36) Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

BY FAX

1 DAVID COLKER (Bar No. 083226)
2 HUGH GOODWIN (Bar No. 124662)
3 HENRY CHENG (Bar No. 267578)
4 DLA PIPER LLP (US)
5 2000 University Avenue
6 East Palo Alto, CA 94303-2214
7 Tel: 650-833-2000
8 Fax: 650-833-2001

9 Attorneys for Plaintiff
10 T-MOBILE WEST, LLC

FILED
Superior Court of California
County of San Francisco

SEP 09 2015

CLERK OF THE COURT

By: Arlene Ramon
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

11 T-MOBILE WEST, LLC,

12 Plaintiff,

13 v.

14 CITY AND COUNTY OF SAN
15 FRANCISCO, and DOES 1 through 20,

16 Defendants.

CASE NO. **CGC 15-547840**

**VERIFIED COMPLAINT FOR REFUND OF
UTILITY USERS TAX**

17
18 For its complaint against Defendant City and County of San Francisco (hereinafter
19 “Defendant” or “City”), Plaintiff T-Mobile West, LLC predecessor to T-Mobile West
20 Corporation (hereinafter “Plaintiff”), alleges as follows:

21 **NATURE OF THE COMPLAINT**

22 1. This is a verified complaint for a refund of Utility Users Tax (“UUT”) illegally
23 assessed and collected by the City.

24 2. The City illegally declined to refund the UUT that was applied by Plaintiff to
25 certain Roaming Charges (as defined in Paragraph 23 below) imposed on Foreign Carriers (as
26 defined in Paragraph 23 below) for Plaintiff’s telecommunications services used by Foreign
27 Customers (as defined in Paragraph 28 below) within the City.

28
DLA PIPER LLP (US)
EAST PALO ALTO

VERIFIED COMPLAINT FOR REFUND OF COMMUNICATIONS USERS TAX

1 PARTIES

2 3. Plaintiff is and was at all times relevant herein a Limited Liability Company, duly
3 organized and in good standing under the laws the State of Delaware and authorized to do
4 business in the State of California. Plaintiff is the successor-in-interest to T-Mobile West
5 Corporation. Plaintiff is a wholly-owned subsidiary of T-Mobile USA, Inc., duly organized and
6 in good standing under the laws of the State of Delaware.

7 4. The City is and was at all times relevant herein a charter city of the State of
8 California, having adopted a charter as authorized by the Constitution of the State of California,
9 Article XI.

10 5. The true names and capacities of Defendants sued herein as DOES 1 through 20,
11 inclusive, or the individuals, corporations, associates, entities or otherwise, are unknown to
12 Plaintiff who therefore sues said Defendants by such fictitious names. Each of said Defendants
13 DOES is responsible in some manner for the events herein referred to and caused injury and
14 damages proximately thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave to
15 amend this Complaint to state the true names and capacities when the same have been
16 ascertained.

17 JURISDICTION AND VENUE

18 6. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
19 § 410.10.

20 7. All of the causes of action relate to activities wholly within the State of California.

21 8. This Court has personal jurisdiction over the City because it is domiciled within
22 California.

23 9. Venue is proper in this Court pursuant to Code of Civil Procedure § 394.

24 RELEVANT FEDERAL STATE AND LOCAL TAX AND REFUND PROVISIONS

25 10. Section 703(a) of Article 10 of the San Francisco Business and Tax Regulations
26 Code ("BTRC") applicable to Telephone, Electricity, Gas, Water and Steam Users Tax, imposes a
27 UUT "upon every person, other than a telephone communications service supplier, who uses
28 telephone communications service in the City. . ."

- 1 11. Section 703(c) of the BTRC provides that the UUT "shall be collected from the
2 service user by the telephone communications service supplier."
- 3 12. The service user is the person required to pay the UUT. BTRC Section 708(a).
- 4 13. The service supplier is required to collect the UUT from the service user at the
5 time of collecting the service charges from the service user. BTRC Section 708(b).
- 6 14. In 2000, Congress adopted the Mobile Telecommunications Sourcing Act
7 ("MTSA"), which precludes state and local governments from imposing a tax on mobile
8 telecommunications services deemed to be provided by the customer's home service provider
9 unless the customer's place of primary use of such services is within the "territorial limits" of the
10 taxing jurisdiction.
- 11 15. Under the MTSA a Foreign customer's place of primary use is the "residential
12 street address or the primary business street address of the customer. . .within the licensed service
13 area of the home service provider."
- 14 16. Section 6.15-1(a) of Article 6 of the BTRC applicable to the UUT, provides that
15 the City "Controller shall refund or cause to be refunded the amount of any tax, interest or penalty
16 that has been overpaid or paid more than once, or has been erroneously or illegally collected or
17 received by the City, provided the person that paid such amount files with the Controller, within
18 the later of 1 year of payment of such amount or when the return accompanying such payment
19 was due, a verified claim in writing therefor."
- 20 17. Section 6.15-1(b) of the BTRC provides that the "claim shall be on a form
21 furnished by the Controller."
- 22 18. Section 910 of the California Government Code provides requirements for claims
23 for refund submitted to municipalities (the "Claim for Refund Requirements").
- 24 19. California Government Code Section 945.6(a)(1) provides a six month limitation
25 to file suit if a municipality issues a written notice of action described in Section 913, to a
26 taxpayer who has filed a claim under Section 910.
- 27 20. If no written notice of action is issued under Section 945.6(a)(1), a party must file
28 suit "within two years from the accrual of the cause of action."

BACKGROUND FACTS

21. Plaintiff is a facilities-based wireless carrier that provides wireless telecommunications services to its customers predominantly on an unlimited, flat rate basis with no annual contract.

22. Plaintiff offers wireless service plans to its customers throughout California and the nation, including in the City.

23. Plaintiff applied the UUT to telecommunications charges (the "Roaming Charges") on telecommunications carriers located outside the United States (the "Foreign Carriers").

24. Plaintiff is a person providing "telephone communications service" for purposes of Section 703(c) of the BTRC.

25. Plaintiff is required to collect and remit UUT under the provisions of the BTRC.

26. The Foreign Carriers are service users within the meaning of Section 708(b) of the BTRC.

27. Plaintiff assessed and collected UUT from Foreign Carriers on Roaming Charges. Foreign Carriers paid the UUT because they assumed Plaintiff's invoices to be properly prepared and believed payment of Plaintiff's invoices in the normal course of business to be prudent in order to protect Foreign Carriers' business interest.

28. The Roaming Charges are deemed to be provided to foreign customers of the Foreign Carriers (the "Foreign Customers").

29. The Foreign Carriers bill the Foreign Customers for the Roaming Charges billed to Foreign Carriers by Plaintiff.

30. Foreign Carriers do not bill Foreign Customers for UUT on Roaming Charges.

31. Foreign Customers do not have places of primary use within the City.

32. Under its agreement with the Foreign Carriers, Plaintiff is authorized to file refund claims for UUT on the Foreign Carriers' behalf for UUT imposed on Roaming Charges.

33. Foreign Carriers are entitled to any refunds obtained by Plaintiff from claims for refund filed to recover UUT imposed on Roaming Charges, however, under its agreements with

1 Foreign Carriers, Plaintiff is not obligated to advance any monies to Foreign Carriers or to make
2 any payments to Foreign Carriers in excess of refunds and credits received from taxing
3 jurisdictions including the City

4 34. The City will be unjustly enriched if it is permitted to retain the UUT imposed by
5 Plaintiff on non-taxable Roaming Charges.

6 **CLAIM FOR REFUND AND PROCEDURE**

7 35. On June 13, 2014, Plaintiff filed a timely claim for refund (the "Original Claim")
8 with the City for Roaming Charges collected and remitted to the City for the period May 1, 2013
9 through April 30, 2014 (the "Relevant Period"). The Original Claim was timely filed with the
10 Controller on forms furnished by the Controller and in the manner prescribed by Section 6.15-
11 1(a) of the BTRC. Pursuant to Section 6.15-1(d) of the BTRC and California Government Code
12 Section 912.4, the Original Claim was deemed rejected on the 45th day after the claim was
13 presented to the City.

14 36. On July 17, 2015, an amended claim was filed with the City (the "Amended
15 Claim") supplementing the Original Claim. The Amended Claim identifies each Foreign Carrier
16 from whom UUT was collected and the amount of UUT erroneously collected and remitted by
17 Plaintiff on behalf of each Foreign Carrier for the Relevant Period. The Amended Claim was
18 timely filed with the Controller on forms furnished by the Controller and in the manner prescribed
19 by Section 6.15-1(a) of the BTRC. As a result of filing the Original Claim and the Amended
20 Claim, Plaintiff was in substantial compliance with the Claim for Refund Requirements.

21 37. Plaintiffs erroneously collected UUT from the Foreign Carriers on Roaming
22 Charges because Plaintiff believed it was in its business interest to collect and remit UUT on
23 Roaming Charges since Plaintiff was uncertain about the City's position on applying the UUT to
24 Roaming Charges and the City's ordinance subjects international telephone communications
25 services to the UUT.

26 38. The City has not issued a written notice of action described in Section 913.

27 39. Suit for a refund of City business taxes, including a refund of UUT assessed
28 pursuant to Section 703 of the BTRC, may be brought pursuant to Sections 6.13-5 and 6.15-4 of

1 the BTRC and California Government Code Sections 905, 935, 945.6 and 946. This action is
2 timely brought by Plaintiff within the time period permitted under the applicable statute.

3 **FIRST CAUSE OF ACTION**

4 **(Refund)**

5 40. The allegations of Paragraphs 1 through 39 are hereby incorporated by reference.

6 41. The City has illegally refused to grant Plaintiff's refund requests for UUT
7 collected and remitted on Roaming Charges.

8 42. Plaintiff is entitled to a refund of all amounts claimed for UUT applied to Roaming
9 Charges. Accordingly, \$243,758.80 must be refunded to Plaintiff.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff asks this Court to:

12 1. Declare that the UUT is not applicable to Roaming Charges.

13 2. Award Plaintiff a refund of at least \$243,758.80 plus interest thereon as allowed by
14 law.

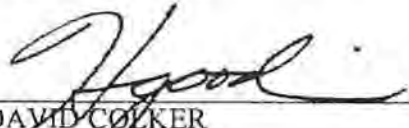
15 3. Award Plaintiff its costs of suit, including reasonable attorney's fees pursuant to
16 § 1021.5 of the Code of Civil Procedure and any other applicable authority.

17 4. Provide such other and further relief to Plaintiff as the Court may deem
18 appropriate.

19 Dated: August 18, 2015

DLA PIPER LLP (US)

20
21 By

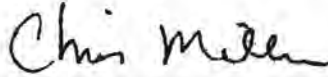

22 DAVID COLKER
23 HUGH GOODWIN
24 HENRY CHENG
25 Attorneys for Plaintiff
26 T-MOBILE WEST, LLC
27
28

1 VERIFICATION

2 I, Christopher Miller, certify and declare as follows:

3 I am the Vice President of Tax for **T-Mobile West, LLC**, and I have read the foregoing
4 VERIFIED COMPLAINT FOR DECLARATORY RELIEF AND REFUND OF
5 COMMUNICATIONS USERS TAX, to which this Verification is attached, and know its
6 contents. Based on a review of information available to me and my personal knowledge of the
7 matters set forth therein, I hereby attest to the truth of the matters stated therein.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct and that this declaration was executed on August 18, 2015.

10
11 

12 Christopher Miller
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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
Document Scanning Lead Sheet**

Oct-19-2015 3:37 pm

Case Number: CPF-15-514532

Filing Date: Oct-19-2015 3:27

Filed by: RONNIE OTERO

Juke Box: 001 Image: 05121047

PETITION

IN RE: JUSTICE INVESTORS, LP A CALIFORNIA LIMITED ET AL

001C05121047

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

JUSTICE INVESTORS, LP, a California limited partnership dba HILTON HOTEL
FINANCIAL DISTRICT; KEARNY STREET EMPLOYERS, LLC

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Francisco Superior Court
Civic Center Courthouse, 400 McAllister St., San Francisco, CA 94102

CASE NUMBER:
(Número del Caso): 15-514532

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y al número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Laura J. O'Kane; O'Kane & McKee, LLP, 140 N. Luring Dr., Ste. E, Palm Springs CA 92262; 760-904-4152;

DATE:
(Fecha)

OCT 19 2015

Clerk, by
(Secretario)

CLERK OF THE COURT

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

unnie Otero

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):



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FAXED

FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

15 OCT 19 PM 3:41

CLERK OF THE COURT
DEPUTY

BY: _____

1 O'KANE & McKEE, LLP
2 Laura J. O'Kane (State Bar No. 192143)
3 Michele L. McKee (State Bar No. 224818)
4 140 N. Luring Drive, Suite E
5 Palm Springs CA 92262
6 Telephone: (760) 904-4152
7 Facsimile: (760) 652-4800

8 Attorneys for Plaintiff JUSTICE INVESTORS, LP

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

CPF - 15 - 514532

Case No. _____

JUSTICE INVESTORS, LP, a California
Limited Partnership dba HILTON HOTEL
FINANCIAL DISTRICT; KEARNY
STREET EMPLOYERS, LLC,

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation;
and DOES 1 through 100, inclusive;

Defendants.

**COMPLAINT FOR TRANSIENT
OCCUPANCY TAX REFUND; AND
TOURISM IMPROVEMENT DISTRICT
TAX REFUND**

DEMAND FOR JURY TRIAL

PLAINTIFFS JUSTICE INVESTORS, LP ("JUSTICE") dba HILTON HOTEL
FINANCIAL DISTRICT and KEARNEY STREET EMPLOYERS, LLC ("KEARNEY
STREET") (collectively "Plaintiffs"), complain against Defendant CITY AND COUNTY OF
SAN FRANCISCO, as follows:

INTRODUCTION

1. This is an action for refund of Transient Occupancy Tax ("TOT") paid by Plaintiffs
for the period 2011Q1 through 2013Q3 and Tourism Improvement District Assessment ("TID")
paid by Plaintiffs for the period 2012Q1 through 2013Q3, which was imposed by Defendant CITY
AND COUNTY OF SAN FRANCISCO (the "CITY" or "Defendant").

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1. JUSTICE INVESTORS, LP'S COMPLAINT FOR TAX REFUND FOR TOT & TID.

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1 thereon alleges, that each of the defendants herein gave consent, aid and assistance to each of the
2 remaining defendants, and ratified and/or authorized the acts or omissions of each defendant as
3 alleged herein, except as may be hereinafter otherwise alleged

4 8. Plaintiff brings this action pursuant to section 945.6 of the California Government
5 Code.

6 **JURISDICTION AND VENUE**

7 9. Jurisdiction is vested in this Court under California Government Code Sections
8 940 *et seq.*

9 10. Venue for this action is proper in this Court under California Code of Civil
10 Procedure Section 394.

11 **PROCEDURAL POSTURE**

12 11. On or about March 13, 2014, Plaintiffs filed a timely claim for refund in the amount
13 of \$126,771.68 for overpaid TID.

14 12. On or about March 14, 2014, Plaintiffs filed a timely claim for refund in the amount
15 of \$739,511.42 for overpaid TOT.

16 13. On April 20, 2015 Defendant City and County of San Francisco sent a letter to
17 Plaintiffs denying the TOT refund claim.

18 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19 14. Plaintiffs have exhausted all administrative remedies.

20 **I.**

21 **FIRST CLAIM FOR RELIEF**

22 (Refund of Overpayment of TID)

23 15. Plaintiffs repeat and reallege all of the allegations stated above as though fully set
24 forth herein.

25 16. For the tax periods 2009Q1 through 2013Q3, one of the most financially difficult
26 periods for San Francisco's hotel and tourist industry in its history, Plaintiffs paid the Tax
27 Collector \$2,480,044.80 of TID, penalties and interest.

28 //

1 17. Plaintiff initially paid to Tax Collector penalties and interest for late TID payments
2 in the amount of **\$483,556.12** for 2012Q1 through 2013Q3.

3 18. Tax Collector's assessment against Plaintiffs in additional penalties and interest in
4 the amount of **\$130,831.72** was issued to Plaintiff in the form of Tax Collector's *Notice of*
5 *Deficiency* dated December 9, 2013.

6 19. JUSTICE is the 100% owner of Plaintiff Kearny Street Employers, LLC, who also
7 received a *Statement of Account* claiming that Plaintiff Kearny Street Employers, LLC, too, was
8 responsible for payment of the purported aforementioned TID deficiency.

9 20. A Petition for Redetermination was timely filed by Plaintiffs pursuant to Business
10 and Tax Regulation Code, Article 6, Section 6.13-1.

11 21. On February 3, 2014 Tax Collector issued its *Notice of Tax Collector Decision on*
12 *Petition for Redetermination of Assessment Liability* upholding the amount of the deficiency of
13 the TID set forth in the *Notice of Deficiency* in the amount of **\$130,831.72**.

14 22. On February 18, 2014, Plaintiffs timely paid, under protest, the entire additional
15 TID assessed by the Tax Collector in the amount of **\$130,831.72**.

16 23. On or about March 13, 2014, Plaintiffs timely filed a Claim for Tax Refund
17 (hereinafter "TID Claim") to the Controller's Office of the City and County of San Francisco
18 ("Controller") in the amount of **\$126,771.68** on the basis that the Tax Collector of the City and
19 County of San Francisco's ("Tax Collector") assessment of penalties and interest in the amount
20 of \$610,827.79 for Plaintiffs' late payments of the CITY's Tourism Improvement District
21 Assessment ("TID") for the period 2011Q1 through 2013Q3 was excessive and unsupported by
22 the facts and applicable law.

23 24. On or about April 20, 2015, Defendant City and County of San Francisco sent a
24 letter to Plaintiffs denying the TID refund claim.

25 25. During the tax periods 2012Q1 through 2013Q4 Plaintiffs contacted Tax Collector
26 multiple times regarding the amount of TID that was owed to Tax Collector. These discussions
27 and communications focused on how much Plaintiff owed to bring its TID payment current.
28 Plaintiffs contacted Tax Collector regarding the amount due for the TID due to Plaintiffs' previous

1 experience with Tax Collector's improper calculation and untimely posting of Plaintiffs'
2 payments in the tax years 2008 through 2013.

3 26. Tax Collector should have posted Plaintiffs' payments as received pursuant to
4 Business and Tax Regulation Code, Article 6 Section 6.9-6. "Filing And Paying By Mail," which
5 requires Tax Collector's office to post a taxpayer's payment as received by Tax Collector's office
6 as follows:

7 "(a) Filing by Mail. Except as otherwise provided in this Section, taxpayers may
8 file any return or other document with or make any payment to Tax Collector by
9 United States mail.

10 "(b) Date of Postmark. The date of postmark shall be deemed the date of filing
11 for any return or other document, or any payment, delivered to the Tax Collector
12 by United States mail if:

13 (1) The postmark is made by the United States Postal Service;

14 (2) The postmark date falls within the prescribed period, or on or before the
15 prescribed date, including any extension, for filing the return or other document,
16 or for making the payment;

17 (3) The return or other document, or the payment, was, within that time,
18 deposited in the mail in the United States in an envelope or other appropriate
19 wrapper, postage prepaid and properly addressed to the Tax Collector; and

20 (4) The Tax Collector receives the return or other document, or the payment, as
21 a result of the timely mailing.

22 "The Tax Collector may provide by regulation for application of this rule to
23 postmarks not made by the United States Postal Service."

24 27. In the alternative to mailing, under the City and County of San Francisco's
25 Business and Tax Regulation Code, Article 6 Section 6.9-6(e) the taxpayer may deliver its
26 payment by private delivery service, as follows:

27 "(e) Private Delivery Services. References in this Section to the United States
28 mail and a postmark of the United States Postal Service shall include any
designated delivery service and any date recorded or marked as described herein
by any designated delivery service.

1 (1) A "designated delivery service" means any delivery service provided by a
2 trade or business if such service is designated by the Tax Collector for purposes
3 of this Section. The Tax Collector may designate a delivery service only if he or
4 she determines that such service:

5 (A) Is available to the general public;

6 (B) Is at least as timely and reliable on a regular basis as the United States mail;

7 (C) Records electronically to its database, kept in the regular course of its
8 business, or marks on the cover in which any item referred to in this Section is
9 to be delivered or filed, the date on which such item was given to such trade or
10 business for delivery; and

11 (D) Meets such other criteria as the Tax Collector may prescribe."

12 28. After having significant issues with the Tax Collector's office from 2008 forward
13 regarding the proper posting by the Tax Collector's office of the date of Plaintiffs' payment of the
14 TID for those items sent by U.S. mail, regardless of the date of the post mark on the envelope,
15 Plaintiffs hired, at an extra cost to Plaintiffs, a private delivery service to deliver Plaintiffs'
16 payments for the TID to the Tax Collector. As such, the date the delivery service delivered the
17 check to the Tax Collector is the correct date to determine, if any, the amount of penalties and
18 interest due by Plaintiffs.

19 29. Under the CITY AND COUNTY OF SAN FRANCISCO's Business and Tax
20 Regulation Code, Article 6, Section 6.9-7(b), "Partial Payments," the taxpayer can specify how
21 the tax paid to the Tax Collector for the TID (or any other tax due the Tax Collector) is to be
22 allocated against the taxpayer's liability to the Tax Collector. At the time of Plaintiffs' payment
23 of its TID, Plaintiffs' Tax Collector's payment invoice accompanied by Plaintiffs' check show
24 that Plaintiffs' payments were to be allocated to the amount of TID due and that no amounts were
25 to be allocated to penalties and/or interest and all sums paid should have been applied to the TID
26 due, which would have lessened the number of late TID payments and the amount of penalties
27 due. However, Tax Collector did not allocate Plaintiffs' payments in this manner.

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1 34. Section 6.17-1(a) specifically authorizes the imposition of a 5 percent penalty if a
2 payment is even one day late for the first month and an additional 5 percent penalty "each
3 following month or fraction of a month during which such failure continues. . . until the date of
4 payment. . . ." Thus, under 6.17-1(a) if a payment is even 1 day late, the penalty is 5 percent of
5 the tax; if a payment is 1 month and 1 day late, the penalty is 10 percent of the tax, etc. up to the
6 imposition of a 20 percent penalty.

7 35. Conversely, Section 6.17-1(c) states that interest accrues "at the rate of 1 percent
8 per month, or fraction of a month" and not 1 percent for "each month or fraction of a month."
9 Thus, the rate of accrual of interest is fractional under Section 6.17-1(c), while the penalty is
10 imposed for each month or fraction of a month that a payment is late under Section 6.17-1(a).
11 Thus, if a payment is one day late that fraction of 1 percent of interest accrues, while the entire 5
12 percent monthly penalty is imposed.

13 36. The fallacy of Tax Collector's interpretation of Section 6.17-1(c) in calculating
14 interest due thereunder is supported by Tax Collector's own interpretation of the nearly identical
15 language in San Francisco Business & Tax Regulations Code Section 6.15-2, governing refunds
16 and interest, which states in pertinent part:

17 "(a) Any amounts refunded shall bear interest at the rate of 2/3 of 1
18 percent per month or fraction thereof . . . and shall be computed from the date
 of payment to the date of refund."

19 37. Plaintiffs are informed and believe, and thereon allege, that when calculating
20 interest due on refunds under Section 6.15-2, Tax Collector interprets the nearly identical
21 language "fraction thereof" language as allowing Tax Collector to calculate the interest due on a
22 refund fractionally. For example, when Tax Collector issues a refund on the first day of a month,
23 Tax Collector only pays 1 day of interest on that refund, not a full month of interest.

24 38. Importantly, nowhere does Tax Collector give any notice to taxpayers that the
25 nearly identical language in the penalty statute, Section 6.17-1(c), and the refund statute, Section
26 6.15-2, are being interpreted in exactly the opposite manner to Tax Collector's clear benefit and
27 to the detriment of taxpayers.

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1 39. Tax Collector (a) improperly allocated Plaintiffs' payment for TID tax due to the
2 payment of penalties first, then interest, and finally tax due; (b) Tax Collector improperly posted
3 Plaintiffs' dates of payment; (c) Tax Collector improperly calculated the amount of interest due
4 by charging an entire month's interest when a TOT payment was one or more days late, instead
5 of calculating interest so as to comport with the fractional monthly proportion that said payment
6 of late; (d) Tax Collector's improperly posted payment dates; and (e) Tax Collector failed to
7 accurately communicate the TID sums due to Plaintiffs, despite Plaintiffs' repeated requests
8 therefore.

9 40. Further, Tax Collector made a mistake of law under the San Francisco Business
10 and Tax Regulation Code in Tax Collector's application of the TID and penalties and interest the
11 Tax Collector is claiming is owed by Plaintiffs. The inclusion of the "fraction of a month"
12 language in 6.17-1(c) indicates that the amount of interest due on late payments under Section
13 6.17-1(c) should be calculated on a fractional basis, not a per month basis. As a result, Tax Collector
14 has over charged Plaintiffs by at least \$22,875.26 in TID interest payments previously paid by
15 Plaintiffs.

16 41. Plaintiffs are entitled to a refund of interest paid by Plaintiffs on the late TID
17 payments in the amount of \$22,875.26 (as well as a refund of penalties as previously set forth) on
18 the grounds that Tax Collector incorrectly calculated the amount of interest due under Section
19 6.17-1(c) by charging Plaintiffs an entire month's interest, instead of the fractional proportion of
20 interest, for each late TID payment.

21 42. Further, because Plaintiffs exercised ordinary and reasonable care in making
22 payments under the relevant economic circumstances, and there was no willful neglect on
23 Plaintiffs' part in making Plaintiffs' payments, all penalties and interest should have been waived
24 under Business and Tax Regulation Code, Article 6, Section 6.17-4. "Waiver of Penalties."
25 Despite a very difficult environment for the hotel and tourism industry in the city and county of
26 San Francisco Plaintiffs paid all TID due to Tax Collector from 2009Q1 to 2013Q4, in the total
27 amount of \$ 2,480,048.73. As such, there is no willful neglect on Plaintiffs' part to pay its share
28 of TID. Although Plaintiffs' timeliness of payment record is not perfect, Plaintiffs have exercised

1 ordinary and reasonable care under the relevant economic circumstances to pay Tax Collector the
2 TID due. Plaintiffs has a history of contacting the Tax Collector to determine its liabilities owed
3 for the TID and other city taxes Plaintiffs is required to pay. Plaintiffs has, at its own additional
4 expense to try to reduce friction with the Tax Collector's office, had Plaintiffs' payments delivered
5 to Tax Collector by personal delivery service so that there is no controversy surrounding the date
6 of Plaintiffs' payment and as the Tax Collector's own records will demonstrate try to maintain
7 regular communications with the Tax Collector to try to bring its outstanding TID due current.
8 Moreover, all of Plaintiffs' payments of the TID for 2013Q3 and 2013Q4 have been timely made.

9 43. As Plaintiffs has paid all the principal amounts of TID due to Tax Collector in the
10 amount **\$2,480,044.80** from 2012Q1 to 2013Q4, and based on the relevant law and supporting
11 facts as stated above, Plaintiffs seek a refund of penalties and interest for late TID payments from
12 Defendant in the amount of **\$126,771.68**.

13 WHEREFORE, Plaintiffs seek judgment as set forth below.

14 **II.**

15 **SECOND CLAIM FOR RELIEF**

16 **(Refund of Overpayment of TOT)**

17 44. Plaintiffs repeat and reallege all of the allegations stated above as though fully set
18 forth herein.

19 45. Plaintiffs have paid Tax Collector **\$14,425,575.00** for sums due the Tax Collector
20 related to the payment of TOT for the period 2011Q1 through 2013Q3.

21 46. Tax Collector initially assessed a TOT deficiency in the amount of **\$2,023,001.07**
22 against Plaintiffs, including Tax Collector's *Notice of Deficiency* to Petitioner, dated December
23 9, 2013.

24 47. Tax Collector subsequently issued a *Notice of Jeopardy Determination* to Plaintiffs
25 dated December 17, 2013 for the same deficiency.

26 48. JUSTICE is the 100% owner of Plaintiff Kearny Street Employers, LLC which is
27 located at 750 Kearny Street, San Francisco, CA 94108-1809, who also received a statement of
28 account claiming that it too was responsible for payment of the purported aforementioned TOT

1 deficiency.

2 49. Plaintiffs timely filed a Petition for Redetermination of Transient Occupancy Tax
3 pursuant to Business and Tax Regulation Code, Article 6, Section 6.13-1 on January 2, 2014.

4 50. On February 3, 2014 Tax Collector issued its *Notice of Tax Collector Decision on*
5 *Petition for Redetermination of Transient Occupancy Tax*, reducing the amount of the deficiency
6 of the Transient Occupancy Tax set forth in the Jeopardy Determination by **\$170,051.72** for a
7 revised total tax liability for the Transient Occupancy Tax in the amount of **\$1,865,769.37** for the
8 relevant Tax Period.

9 51. On February 18, 2014, Plaintiffs timely paid, under protest, the entire TOT
10 assessed by the Tax Collector in the amount of **\$1,865,769.37**.

11 52. On or about March 13, 2014, Plaintiffs timely filed a Claim for Tax Refund for
12 **\$739,511.42** in TOT penalties and interest for the Tax Period that Tax Collector incorrectly
13 calculated and improperly assessed, pursuant to the CITY AND COUNTY OF SAN
14 FRANCISCO's Business and Tax Regulation Code, Article 6, Section 6.15-1(a), where in
15 Plaintiffs has 1 year to request such a refund from the date of payment.

16 53. On or about April 20, 2015, Defendant CITY AND COUNTY OF SAN
17 FRANCISCO sent a letter to Plaintiffs denying the TID refund claim.

18 54. During the applicable Tax Periods although some of Plaintiffs' TOT payments
19 were late; those payments, on average, were only 44.4 days late. Additionally, many of the late
20 TOT payments were paid at the beginning or middle of a month and, thus, were only a fraction of
21 a month or months late.

22 55. During the applicable Tax Period Plaintiffs contacted Tax Collector multiple times
23 regarding the amount of TOT that was owed to Tax Collector. These discussions and
24 communications mainly focused on Tax Collector's date of posting of Plaintiffs' payments of the
25 TOT to the Tax Collector's office so that Plaintiffs could determine the amount of penalties and
26 interest actually owed for its late payment of a portion of Plaintiffs' TOT during the Tax Period.
27 Plaintiffs contacted Tax Collector regarding the date the Tax Collector posted Plaintiffs' payments
28 because of Petitioner's prior issues regarding the posting of Plaintiffs' payments in the TOT tax

1 years preceding 2011.

2 56. During the applicable Tax Period, due to the Tax Collector's historically inaccurate
3 posting of the date of Plaintiffs' payments of the TOT, Plaintiffs hired a courier service to
4 personally deliver Plaintiffs' tax payments to insure an accurate record of the date of Plaintiffs'
5 payments to Tax Collector.

6 57. During the applicable Tax Period, Plaintiffs also specifically instructed Tax
7 Collector to allocate all of Plaintiffs' payment to the payment of the TOT. This allocation was
8 made on each payment stub delivered to Tax Collector along with a check for payment of said
9 amount. As such, no portion of Plaintiffs' TOT payments was to be made to either penalties and/or
10 interest and all sums paid should have been applied to the TOT. "). However, Tax Collector did
11 not allocate Plaintiffs' TOT payments in this manner.

12 58. As is more fully set forth above, Tax Collector improperly calculated the amount
13 of interest due on late TOT payments on a monthly basis, instead of on the basis of the fraction of
14 the month that a payment was late. For example, if Plaintiffs' TOT payment was even one day
15 late, Tax Collector incorrectly assessed one entire month's interest, rather than interest on just the
16 fraction of the month that a payment was late. Tax Collector made a mistake of law under the San
17 Francisco Business and Tax Regulation Code in Tax Collector's application of the TOT and
18 penalties and interest the Tax Collector is claiming is owed by Plaintiffs.

19 59. Tax Collector assessed a Tax Installment Penalty against Plaintiffs in the amount
20 of \$411,128.00 for the period Tax Period under the auspices of San Francisco Business & Tax
21 Regulations Code Section 6.17-1 (a) and 6.17-1 (c) for Plaintiffs' failure to timely remit TOT
22 payments. In assessing the amount of penalty due Tax Collector incorrectly charged Plaintiffs a
23 full month's penalty and interest, instead of a "fraction thereof" as required by Section 6.17-1 (c),
24 for each month or fraction thereof that a TOT payment was late.

25 60. As such, Tax Collector's assessment of the amount owed by Plaintiffs to Tax
26 Collector for the TOT for Tax Period is in error. As a result, Tax Collector has over charged
27 Petitioner by at least \$504,138.73 in penalties and \$235,372.69 in interest.

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- 3. For reasonable attorneys' fees;
- 4. For costs of suit; and
- 5. For such other and further relief as the Court deems appropriate

DATED: October 19, 2015

O'KANE & MCKEE, LLP

By: Laura J. O'Kane
Laura J. O'Kane, Esq., Attorney for Plaintiffs

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Laura J. O'Kane (SBN 192143); Michele L. McKee (SBN 224818) O'Kane & McKee, LLP 140 N. Luring Dr., Ste. E, Palm Springs CA 92262 TELEPHONE NO.: 760-904-4152 FAX NO.: 760-652-4800 ATTORNEY FOR (Name): Plaintiff, Justice Investors, LP	FOR COURT USE ONLY SAN FRANCISCO COUNTY SUPERIOR COURT 15 OCT 19 PM 3:41 BY: _____ CLERK OF THE COURT DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: _____ SAME _____ CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civic Center Courthouse	
CASE NAME: Justice Investors LP, et al. vs. City and County of San Francisco	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER: _____ DEPT: 15-514532	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPD/WD (23) Non-P/DPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input checked="" type="checkbox"/> Other petition (not specified above) (43)
--	--	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☐ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 1
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 19, 2015

Laura J. O'Kane
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

ORIGINAL

FAXED



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
Document Scanning Lead Sheet**

Jan-20-2016 2:51 pm

Case Number: CGC-16-549988

Filing Date: Jan-20-2016 2:43

Filed by: MADONNA CARANTO

Juke Box: 001 Image: 05240665

COMPLAINT

LONG & LEVITT, LLP VS. CITY AND COUNTY OF SAN FRANCISCO ET AL

001C05240665

Instructions:

Please place this sheet on top of the document to be scanned.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Glen R. Olson (SBN 111914) Andrew M. Massara (SBN 282913) Long & Levit LLP 465 California Street, Ste. 500 San Francisco, CA 94104 TELEPHONE NO.: (415) 397-2222 FAX NO.: Fax No.: (415) 397 ATTORNEY FOR (Name): Plaintiff Long & Levit LLP		FOR COURT USE ONLY FILED Superior Court of California County of San Francisco JAN 20 2016 CLERK OF THE COURT BY: <u>[Signature]</u> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		CASE NUMBER: CGC-16-549988 JUDGE: DEPT:
CASE NAME: Long & Levit LLP v. City and County of San Francisco CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other P/PI/D/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/WD (23) Non-P/PI/D/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PI/D/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify):

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 20, 2016

Glen R. Olson (SBN 111914)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

BY FAX

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
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- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other P/DPD/W (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other P/DPD/W (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/W (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other P/DPD/W

Non-P/DPD/W (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-P/DPD/W Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller
Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT: City and County of San Francisco,
(AVISO AL DEMANDADO): Jose Cisneros, Treasurer and Tax
Collector of the City and County of San Francisco,
and DOES 1 through 50, inclusive**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF: Long & Levit LLP
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Francisco Superior Court
400 McAllister Street

CASE NUMBER
(Número del Caso) 16-549988

San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Glen R. Olson (SBN 111914)

(415) 397-2222 Fax No.: (415)

Andrew M. Massara (SBN 282913)

Long & Levit LLP

San Francisco, CA 94104

DATE: JAN 20 2016

CLERK OF THE COURT

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

MADONNA CARANTO



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

BY FAX

1 GLEN R. OLSON, State Bar #111914
2 ANDREW M. MASSARA, State Bar #282913
3 LONG & LEVIT LLP
4 465 California Street, Suite 500
5 San Francisco, California 94104
6 Telephone: (415) 397-2222
7 Facsimile: (415) 397-6392
8 Email: golson@longlevit.com
9 amassara@longlevit.com

10 Attorneys for Plaintiff
11 LONG & LEVIT, LLP

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

14 LONG & LEVIT, LLP,

15 Plaintiff,

16 vs.

17 CITY AND COUNTY OF SAN
18 FRANCISCO, JOSE CISNEROS,
19 TREASURER AND TAX COLLECTOR
20 OF THE CITY AND COUNTY OF SAN
21 FRANCISCO, and DOES 1 through 50,
22 inclusive,

23 Defendants.

Case No. **CGC-16-549988**

**COMPLAINT FOR REFUND OF CITY
AND COUNTY OF SAN FRANCISCO
PAYROLL EXPENSE TAX PENALTIES
AND INTEREST**

Action Filed: January 20, 2016

BY FAX

24 Plaintiff LONG & LEVIT, LLP (hereinafter "Plaintiff" or "L&L"), in accordance with
25 California Government Code § 945.6, hereby files this Complaint for Refund of Payroll Expense
26 Tax Penalties and Interest ("Complaint"). This Complaint constitutes an appeal of the denial of a
27 claim for refund of Payroll Expense Tax penalties assessed against L&L for the tax years 2010
28 through 2012, inclusive, and interest on the penalties paid by L&L to the City and County of San
Francisco. Plaintiff complains of Defendants CITY AND COUNTY OF SAN FRANCISCO,
JOSE CISNEROS, TREASURER AND TAX COLLECTOR OF THE CITY AND COUNTY OF
SAN FRANCISCO, and DOES 1 through 50, inclusive ("Defendants") as follows:

GENERAL ALLEGATIONS

1. Plaintiff at all times mentioned herein was a Limited Liability Partnership ("LLP") organized and existing under the laws of the State of California. Plaintiff's principal place of business is located at 465 California Street, Suite 500, San Francisco, California 94104. Plaintiff is a law firm that has been in business in the City of San Francisco for nearly 90 years.

2. Defendant City and County of San Francisco (hereinafter "Defendant" or the "City") is a political subdivision of the State of California. The City is a "local government" as defined in the California Constitution, Art. XIII C, Section 1(b).

3. Defendant Jose Cisneros ("Treasurer"), at all times relevant herein, was the Treasurer and Tax Collector of the City. He is sued in his official capacity only.

4. The true names and capacities, whether individual, corporate, or otherwise, of Does 1-50, inclusive, are unknown to Plaintiff, who therefore sues such Defendants by such fictitious names. Plaintiff will amend this complaint to allege the Doe Defendants' true names and capacities once they are ascertained.

JURISDICTION AND VENUE

5. Jurisdiction is vested in this Court under §§ 940 *et seq.* of the California Government Code.

6. Venue is proper in this Court pursuant to Code of Civil Procedure § 394.

7. L&L brings this action in accordance with § 945.6 of the California Government Code. Plaintiff seeks a refund of penalties paid to Defendants pursuant to San Francisco's Payroll Expense Tax Ordinance, S.F. Business & Tax Regulations Code, Art. 12-A and interest on those penalties (collectively, "Payroll Expense Tax"). Specifically, L&L seeks a refund of the Payroll Expense Tax based on the Underpayment and Substantial Under-Reporting penalties the City imposed pursuant to S.F. Bus. & Tax Regulations Code § 6.17-2(a) because there was no determination of negligence on L&L's part sufficient to support said penalties. Further, § 6.17-4 provides that penalties can be waived if the failure to comply occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect. L&L did exercise ordinary care

1 and acted without willful neglect with respect to its Payroll Expense Tax obligations.

2 THE PAYROLL EXPENSE TAX

3 8. Payroll Expense Taxes first became relevant in San Francisco in 1970. Since that
4 time, San Francisco has imposed the Payroll Expense Tax on every entity engaging in business in
5 the City.

6 9. On several occasions after the 1970s, the City tried to expand the Payroll Expense
7 Tax to tax partnership profits. In 2002, the Board of Supervisors drafted and then tabled an
8 ordinance to make clear that all cash distributions to partners must be included as taxable payroll
9 expense.

10 10. In 2004, Proposition K was presented for voter approval, seeking to expand the
11 Payroll Expense Tax to partner profit distributions. Proposition K failed to secure a majority
12 vote.

13 11. In 2005, purely by administrative action, the City claimed that a new interpretation
14 of the existing Payroll Expense Tax ordinance allowed it to tax partnership profits. After a writ
15 petition was filed challenging that approach, the City abandoned it and returned to the pre-2005
16 methodology which did not include partnership profits as taxable payroll expense.

17 12. On July 29, 2008, the San Francisco Board of Supervisors passed an ordinance
18 approving the submission of Proposition Q, purportedly a clarification as to the tax liability of
19 partnerships. The City's voters passed Proposition Q on November 4, 2008. It provided a
20 formula for calculating tax based upon certain "pass-through income" for a partnership.

21 13. The legality of Proposition Q was challenged after its adoption, including in the
22 case of *Coblentz, Patch, Duffy & Bass LLP v. City and County of San Francisco, et al.*, San
23 Francisco Superior Court Case No. CGC-11-514292. The plaintiff in the *Coblentz* action argued
24 that Proposition Q violated Proposition 218's voter-enacted constitutional limitations on the
25 power of local governments to enact tax increases, violated Revenue & Taxation Code §
26 17041.5's bar against local government income taxation and, due to its impermissibly vague
27 nature, violated the Due Process Clause.

28 14. The *Coblentz* action was filed in 2010 and resulted in a judgment in favor of the

1 City on May 2012. The Court of Appeal, First District, affirmed the judgment on December 24,
2 2014 and a petition to review by the *Coblentz* firm to the California Supreme Court was thereafter
3 denied.

4 THE L&L TAX ASSESSMENT FOR THE YEARS 2010 - 2012

5 15. On September 24, 2013, the Office of Treasurer and Tax Collector (Treasurer")
6 issued to L&L a Notice of Tax Audit Deficiency. The total amount assessed was \$222,140.97,
7 inclusive of tax owing, interest and penalties. A true and correct copy of the Notice of Tax Audit
8 Deficiency is attached hereto and incorporated herein as Exhibit "A."

9 16. Of the total amount set forth on Exhibit "A" hereto, the Treasurer assessed
10 Underpayment Penalties in the following amounts: (1) \$9,437.63 (2010); (2) \$6,868.42 (2011);
11 and (3) \$6,740.70 (2012). The assessed Underpayment Penalties without interest totaled
12 \$23,046.75. In addition, L&L believes it ultimately paid at least \$39,239.59 in interest accruing
13 on the tax owing and penalties assessed and is therefore entitled to a refund of that portion of the
14 paid interest that is attributable to the Underpayment Penalties.

15 17. Of the total amount set forth on Exhibit "A" hereto, the Treasurer assessed
16 Substantial Under-Reporting Penalties in the following amounts: (1) \$19,002.24 (2010); (2)
17 \$12,705.73 (2011); and (3) \$12,747.90 (2012). The assessed Substantial Under-Reporting
18 Penalties totaled \$44,455.87. The combined penalties assessed against L&L in the Notice of Tax
19 Audit Deficiency totaled \$67,502.62. In addition, L&L believes it ultimately paid at least
20 \$39,239.59 in interest accruing on the tax owing and penalties assessed and is therefore entitled to
21 a refund of that portion of the paid interest that is attributable to the Substantial Under-Reporting
22 Penalties.

23 18. Although the Notice of Tax Audit Deficiency imposed penalties of \$67,502.62, on
24 information and belief, the Treasurer did not make a formal determination that underreporting by
25 L&L was attributable to negligence prior to imposing those penalties. The penalties were
26 therefore invalid under S.F. Business & Tax Reg. Code Section 6-17-2(a).

27 19. If the Treasurer did determine there was underreporting attributable to negligence
28 prior to imposing penalties, its only written notice to L&L of that determination as required by

1 S.F. Business & Tax Reg. Code Section 6.11-2(a) was that, as a law firm, L&L should have been
2 aware of the tax. Because L&L was never provided proper notice of the Tax Collector's
3 determination of negligence, any penalties imposed upon L&L based upon that determination
4 violate Article 1, Section 7 of the California Constitution.

5 20. L&L timely filed a Petition for Redetermination of Tax Liability arising from the
6 Treasurer's Notice of Tax Audit Deficiency. A true and correct copy of the Petition is attached
7 hereto and incorporated herein as Exhibit "B."

8 21. On March 5, 2014, the Treasurer issued its decision on L&L's petition, denying it
9 and imposing the same penalties as set forth above. A true and correct copy of the March 5, 2014
10 decision is attached hereto and incorporated herein as Exhibit "C."

11 22. On March 31, 2014 L&L paid the Payroll Expense Tax amounts allegedly owing
12 to the City, including penalties and interest. A true and correct copy of L&L's letter in that
13 regard is attached hereto and incorporated herein as Exhibit "D."

14 23. On March 30, 2015, L&L timely filed a Claim for Tax Refund with the Treasurer.
15 A true and correct copy of Plaintiff's Claim is attached hereto and incorporated herein as Exhibit
16 "E." The Claim argued, *inter alia*, that there was no basis for the imposition of penalties.
17 Specifically, L&L did not act negligently after the adoption of Proposition Q as it concluded that
18 amounts paid to its partners did not equate to the "compensation for services" that would be
19 ordinarily subject to a payroll expense tax. L&L also confirmed the correctness of this position
20 with its CPA.

21 24. On July 20, 2015, the City denied Plaintiff's Claim for Tax Refund. A true and
22 correct copy of the denial is attached hereto and incorporated herein as Exhibit "F."

23 25. This action is timely pursued, for purposes of California Government Code §
24 945.6 and S.F. Bus. & Tax Regulations Code § 6.5-4, to challenge the Treasurer's denial of
25 L&L's Claim for Tax Refund, as to the Underpayment and Substantial Under-Reporting
26 Penalties, with interest paid on said amounts, that were assessed against L&L. Plaintiff has
27 exhausted all available administrative remedies.

FIRST CAUSE OF ACTION
(Refund of Payroll Expense Tax Underpayment Penalties)

26. Plaintiff incorporates Paragraphs 1 through 25 above as though fully set forth herein.

27. L&L acted reasonably and with due care in assessing its liability pursuant to the City's Payroll Expense Tax. Plaintiff had good reason to believe that its partnership distributions, which are not salaries or guaranteed payments, were not subject to the Payroll Expense Tax. The correctness of this position was also confirmed with L&L's CPA in conjunction with L&L's determining of its tax liabilities. The Treasurer failed to provide L&L with notice of the basis for any formal determination that there was negligence or willful neglect on L&L's part.

28. In the period 2010 – 2012 the applicability of the Payroll Expense Tax to partnership profits was a subject of dispute and controversy, as evidenced by the claims made in the *Coblentz* action, which arguments were ultimately presented to the California Supreme Court and not resolved until late 2014 or early 2015. L&L had a good faith reason to believe that those arguments were valid and would ultimately prevail, invalidating any application of the Payroll Expense Tax to partnership profits.

29. The Treasurer's Underpayment Penalties were therefore improperly applied to L&L for the years 2010 through 2012 and L&L is entitled to a refund from the City of the \$23,046.75 amount it has paid in Underpayment Penalties, with interest paid on said amounts.

WHEREFORE, Plaintiff prays for relief as set forth below.

SECOND CAUSE OF ACTION
(Declaratory Relief - Payroll Expense Tax Underpayment Penalties)

30. Plaintiff incorporates Paragraphs 1 through 25 above as though fully set forth herein.

31. An actual and justiciable controversy exists between the City, on the one hand, and L&L, on the other hand, as to L&L's liability for Underpayment Penalties associated with the Payroll Expense Tax. L&L contends that it acted with due care and without negligence or willful

1 neglect in assessing its liability for the City's Payroll Expense Tax. L&L also contends the
2 Treasurer failed to provide L&L with notice of the basis for any formal determination there was
3 negligence, a failure to exercise due care or willful neglect on L&L's part. L&L is informed and
4 believes that Defendants dispute these contentions.

5 32. As L&L acted reasonably and with due care in assessing its liability pursuant to
6 the City's Payroll Expense Tax, L&L is entitled to a declaration that the \$23,046.75 paid by
7 Plaintiff for Underpayment Penalties, with interest paid on said amounts, should be refunded to
8 L&L.

9
10 **THIRD CAUSE OF ACTION**
(Refund of Payroll Expense Tax Substantial Under-Reporting Penalties)

11 33. Plaintiff incorporates Paragraphs 1 through 25 above as though fully set forth
12 herein.

13 34. L&L acted reasonably and with due care in assessing its liability pursuant to the
14 City's Payroll Expense Tax. Plaintiff had good reason to believe that its partnership distributions,
15 which are not salaries or guaranteed payments, were not subject to the Payroll Expense Tax. The
16 correctness of this position was also confirmed with L&L's CPA in conjunction with L&L's
17 determining its tax liabilities. The Treasurer failed to provide L&L with notice of the basis for
18 any formal determination that there was negligence or willful neglect on L&L's part.

19 35. In the period 2010 – 2012 the applicability of the Payroll Expense Tax to
20 partnership profits was the subject of dispute and controversy, as evidenced by the claims made
21 by the plaintiff in the *Coblentz* action, which arguments were ultimately presented to the
22 California Supreme Court and not resolved until late 2014 or early 2015. L&L had a good faith
23 reason to believe that those arguments were valid and would ultimately prevail, invalidating any
24 application of the Payroll Expense Tax to partnership profits.

25 36. The Treasurer's Substantial Under-Reporting Penalties were therefore improperly
26 applied to L&L for the years 2010 through 2012 and L&L is entitled to a refund from the City of

27 //

28 //

1 the \$44,455.87 it has paid in Substantial Under-Reporting Penalties, with interest paid on said
2 amounts.

3 WHEREFORE, Plaintiff prays for relief as set forth below.
4

5 **FOURTH CAUSE OF ACTION**
6 **(Declaratory Relief - Payroll Expense Tax Substantial Under-Reporting Penalties)**

7 37. Plaintiff incorporates Paragraphs 1 through 25 above as though fully set forth
8 herein.

9 38. An actual and justiciable controversy exists between the City, on the one hand, and
10 L&L, on the other hand, as to L&L's liability for Substantial Under-Reporting penalties. L&L
11 contends that it acted with due care and without negligence or willful negligence in assessing its
12 liability for the City's Payroll Expense Tax. L&L also contends the Treasurer failed to provide
13 L&L with notice of the basis for any determination there was negligence, a failure to exercise due
14 care or willful neglect on L&L's part. L&L is informed and believes that Defendants dispute
15 these contentions.
16

17 39. As L&L acted reasonably and with due care in assessing its liability pursuant to
18 the City's Payroll Expense Tax, L&L is entitled to a declaration that the \$44,455.87 paid by
19 Plaintiff for Substantial Under-Reporting Penalties should be refunded to L&L, with interest with
20 interest paid on said amounts.
21
22
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1 **PRAYER FOR DAMAGES**


2 Therefore, Plaintiff prays for damages against Defendants, and each of them, as follows:

- 3 1. Refund to L&L of the \$23,046.75 paid for Underpayment Penalties, with interest paid
4 on said amounts;
5
6 2. refund to L&L of the \$44,455.87 paid for Substantial Under-Reporting Penalties, with
7 interest paid on said amounts;
8
9 3. attorney's fees and costs incurred herein; and
10
11 4. for such other and further relief as the Court may deem appropriate.

12 Dated: January 20, 2016

LONG & LEVIT LLP

13
14 By


15 GLEN R. OLSON
16 ANDREW M. MASSARA
17 Attorneys for Plaintiff
18 LONG & LEVIT, LLP

19 DOCS\Z9940-634\783117.1

Exhibit A

Office of the Treasurer & Tax Collector
City and County of San Francisco

Business Tax Section, Audit Unit



José Cisneros, Treasurer

NOTICE OF TAX AUDIT DEFICIENCY

September 24, 2013

LONG & LEVIT
ATTN: JENNIFER WONG SUZUKI, PARTNER
465 CALIFORNIA ST #500
SAN FRANCISCO, CA 94104

Certificate No: 017304 Period Covered: 2010 - 2012

Dear Ms. JENNIFER WONG SUZUKI:

Enclosed is a copy of our audit report, relative to the Payroll Tax audit of your business, covering the period *January 1, 2010 through December 31, 2012*. Please review this report and let us know whether you agree with our findings. Adjustments have been made in the amount of your tax for each year as indicated in the audit report and the total amount of adjustments is \$222,140.97 which includes a 20% penalty and interest calculated through October 31, 2013, and administrative fees. Tax obligations accrue interest at 1% per month, or fraction thereof, from the date of delinquency, until the date of payment.

If you accept our findings, please pay the total amount shown in the report and issue a check or money order payable to the San Francisco Tax Collector, and mail to the attention of the Business Taxes Section, P. O. Box 7425, San Francisco, CA 94120-7425, along with one copy of this notice, within 30 days from the date of this letter. An additional 20% penalty will be imposed 90 days after this deficiency becomes final and unpaid in full.

If you do not accept our findings, you have 30 days from the date of this letter to petition in writing to the San Francisco Tax Collector for redetermination, under Section 6.13-1, Article 6 of the San Francisco Municipal Code, Common Administrative Provisions. Your petition for redetermination must be in writing, stating under penalty of perjury, the specific grounds upon which it is founded, with sufficient specificity to enable the Tax Collector to understand and evaluate the information and authenticate the records upon which you rely in support of your petition.

You may call the undersigned at (415) 554-7363 to answer any questions you may have.

If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the adjustments shown in the audit report.

Thank you for your cooperation.

Sincerely yours,

Lenida C. Reyes

LENIDA C. REYES
Chief Auditor

Encl.

COPY

Business Tax Section, Audit Unit



PAYROLL TAX AUDIT REPORT

BUSINESS TAX ID / CERTIFICATE NO.: 94121986601 / 017304
OWNERSHIP NAME: LONG & LEVIT
OWNERSHIP CONTACT NAME: Jennifer Wong Suzuki, Partner
TAX PERIODS AUDITED: 2010 - 2012
OWNERSHIP TYPE: PARTNERSHIP
CLASS: 07

PER AUDIT				AS REPORTED			
TAX PERIOD	TAX TYPE	TAXABLE PAYROLL	TAX DUE	TAX TYPE	TAXABLE PAYROLL	TAX DUE	TAX ADJUSTMENT
2010YR	FY	5,594,743.28	83,921.15	PY	2,448,889.00	36,733.00	47,188.15
2011YR	FY	4,669,548.80	70,043.23	PY	2,380,361.28	35,701.13	34,342.10
2012YR	FY	4,435,488.43	66,532.33	PY	2,188,614.58	32,828.82	33,703.51
TOTALS		14,699,780.51	220,496.71		7,017,864.86	105,262.95	115,233.76

SUMMARY OF DEFICIENCY								
TAX PERIOD	TAX ADJUSTMENT	Non File /Late Pmt	Underpayment PENALTY	Sub-Under-Rpt Penalty	INTEREST		Admin Fee	TOTAL Over / Under
2010YR	47,188.15	0.00	9,437.63	19,002.24	32	24,200.97	55.00	99,883.99
2011YR	34,342.10	0.00	6,868.42	12,705.73	20	10,783.25	55.00	64,754.50
2012YR	33,703.51	0.00	6,740.70	12,747.90	8	4,255.37	55.00	57,502.48
TOTALS	115,233.76	0.00	23,046.75	44,455.87		39,239.59	165.00	222,140.97

Date: September 6, 2013

1998YR = Special Credit / GR = Gross Receipts / PY = Payroll Expense / PPY = Prepayment

City Hall - Room 140 • 1 Dr. Carlton B. Goodlett Place • San Francisco, CA 94102-4638
Dial 3 1 1 (within SF only) or 415 - 554-4400 telephone • 415-554-7316 fax

Exhibit B

October 22, 2013

Writer's Direct Contact
Telephone: (415) 593-3502
asilverstein@sptaxlaw.com

By Certified Mail
(Return Receipt No. 7009 1410 0000 4221 6889)

Office of the Treasurer & Tax Collector, City and County of San Francisco
City Hall – Room 140
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4638

Re: Long & Levit LLP (Business Tax ID: 94121986601/Certificate No: 017304)
Petition for Redetermination of Notice of Payroll Tax Audit Deficiency

To whom this may concern:

On behalf of Long & Levit LLP ("Long & Levit" or the "Taxpayer") and pursuant to S.F. Bus. & Tax Regs. Code § 6.13-1, we hereby submit this Petition for Redetermination in response to the Notice of Tax Audit Deficiency issued by the Office of the Treasurer & Tax Collector dated September 24, 2013 (copy attached). The Deficiency Notice indicates that a Payroll Tax Audit by the Tax Collector for the tax years 2010-2012 resulted in the adjustment of the Taxpayer's Payroll Tax liability by \$115,233.76, and the imposition of penalties and interest, for a total deficiency of \$222,140.97.

Taxpayer's Partnership Profit Distributions Are Not Subject to the Payroll Tax

The primary ground for Taxpayer's Petition is that the Deficiency Notice imposes Payroll Tax on Taxpayer's profit distributions to its partners, and such distributions were not subject to the Payroll Tax as purportedly amended by Proposition Q for many reasons.

The plain language of the Payroll Tax Ordinance as allegedly amended by Proposition Q cannot be interpreted to include profit distributions in the measure of a

Tax Collector, City and County of San Francisco

Page 2

October 22, 2013

partnership's Payroll Tax. The Ordinance expressly limits taxation of a partnership's payments to partners to "compensation for services." Long & Levit is a small law firm based in San Francisco. Its partners are not compensated for their services – they do not receive salaries or guaranteed payments; they receive profit distributions. Profit distributions are not "compensation for services." Rather, they represent the distribution of the net income of Taxpayer among its partners and solely reflect the ability of the partnership as a whole to generate revenues and manage expenses. Simply put, if there are no profits, Long & Levit's partners receive no distributions. In addition, Section 903.1 of the Payroll Tax Ordinance makes plain that distributions of ownership profit and loss are not taxed, and this provision was untouched by Proposition Q.

Further, Proposition Q's alleged changes to the Payroll Expense Tax to expand its reach to partnership profits are unconstitutional and violate California statute. First, the City's interpretation of Proposition Q to reach some amount of partnership profit distributions violates the Due Process Clause of the State and federal Constitutions because it lacks adequate standards for taxpayer compliance. Second, local governments are barred from taxing income by Rev. & Tax. Code § 17041.5, and profit distributions are the distributions of a partnership's net income. Third, Proposition Q violated the single subject rule of Cal. Const. art. II, § 8(d). Fourth, the enactment of Proposition Q violated art. XIII C, § 2(b) of the California Constitution (Proposition 218) requiring voter approval for all tax increases because the expansion of the Payroll Tax was not submitted to the voters for approval due to a serious error in the submission of the measure in voter materials.

For all of these reasons, Long & Levit's distributions of partnership profits to its partners for the years in issue are not subject to Payroll Tax, and the Deficiency Notice was in error.

No Basis for Imposition of Penalties

There is no basis for imposition of penalties under the circumstances. Long & Levit acted in a reasonable and thoughtful manner in attempting to comply with its Payroll Tax obligations. Section 6.17-2(a) requires a determination of negligence before the underreporting penalty is imposed. Similarly, Section 6.17-4 provides that penalties may be waived if the failure to comply occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect. After Proposition Q was passed, Long & Levit analyzed the application of Proposition Q to the firm's Payroll Tax obligations, including seeking the advice of its CPA. For the reasons discussed above, Taxpayer had a reasonable basis to conclude that its partner distributions were not properly subject to tax

Tax Collector, City and County of San Francisco

Page 3

October 22, 2013

under Proposition Q. The pending litigation by many law firms as to the scope of Proposition Q's changes to the Payroll Tax and whether it reaches any profit distributions as "compensation for services" confirms the reasonableness of Taxpayer's position. The briefs in the Court of Appeal in the case filed by Coblenz, Patch, Duffy & Bass lay out strong arguments supporting Long & Levit's conclusion, and, whether or not those arguments are finally adopted by the Court, they validate the reasonableness of its judgment. While the City disagrees with the position Long & Levit took, the facts and particular circumstances here show that Taxpayer certainly exercised ordinary care and did not demonstrate willful neglect in attempting to comply with the requirements of the Payroll Tax post-Proposition Q.

In addition, Long & Levit has a long history of compliance with its City tax obligations, providing further confirmation that Taxpayer takes those obligations seriously (and did so here). Taxpayer has an extensive history in the City, as the firm was founded here 85 years ago and has been located in San Francisco ever since. Long & Levit has complied with local tax requirements over these many years. Further, Taxpayer made every effort to fully comply and cooperate with all requests made in connection with this audit.

The City recently responded to Long & Levit's September 19, 2013 written request to the auditor that penalties not be imposed. The City responded that "[f]ailure to file and pay taxes due to lack of understanding of San Francisco's ordinance requirements is not valid basis that falls under 'reasonable cause.'" (Letter from Lenida C. Reyes, Chief Auditor, October 17, 2013.) However, the City apparently misunderstood the basis for Long & Levit's request. Long & Levit's position is not that it did not understand San Francisco's ordinance requirements. To the contrary, Long & Levit is arguing that it carefully considered the terms of the ordinance and filed based on a reasonable interpretation of those terms. Because there has not yet been a final court decision on these issues, the City has no basis for concluding that Long & Levit's filing position was wrong or even that it was unreasonable. The vigor with which both parties are litigating their positions in the *Coblenz* appeal, as well as the arguments in Coblenz's briefs (as noted above), underscore that it is far from certain that the City will prevail in that litigation.

Silverstein &
Pomerantz LLP
ATTORNEYS AT LAW

Tax Collector, City and County of San Francisco

Page 4

October 22, 2013

Long & Levit reserves the right to supplement this petition with additional grounds and/or additional explanation of the grounds set forth herein, as well as evidence to support these grounds. To the extent this matter cannot be resolved informally, Long & Levit also requests an oral hearing on this matter pursuant to S.F. Bus. & Tax Regs. Code § 6.13-2.

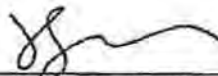
Very truly yours,



Amy L. Silverstein

I declare under penalty of perjury under the laws of the State of California that all information submitted in this Petition for Redetermination of Long & Levit LLP is true, correct and complete to the best of my knowledge and belief.

Dated: October 21, 2013



Jennifer Suzuki
Long & Levit LLP

Office of the Treasurer & Tax Collector
City and County of San Francisco

Business Tax Section, Audit Unit



José Cisneros, Treasurer

NOTICE OF TAX AUDIT DEFICIENCY

September 24, 2013

LONG & LEVIT
ATTN: JENNIFER WONG SUZUKI, PARTNER
465 CALIFORNIA ST #500
SAN FRANCISCO, CA 94104

Certificate No: 017304 Period Covered: 2010 - 2012

Dear Ms. JENNIFER WONG SUZUKI:

Enclosed is a copy of our audit report, relative to the Payroll Tax audit of your business, covering the period *January 1, 2010 through December 31, 2012*. Please review this report and let us know whether you agree with our findings. Adjustments have been made in the amount of your tax for each year as indicated in the audit report and the total amount of adjustments is \$222,140.97 which includes a 20% penalty and interest calculated through **October 31, 2013**, and administrative fees. Tax obligations accrue interest at 1% per month, or fraction thereof, from the date of delinquency, until the date of payment.

If you accept our findings, please pay the total amount shown in the report and issue a check or money order payable to the San Francisco Tax Collector, and mail to the attention of the Business Taxes Section, P. O. Box 7425, San Francisco, CA 94120-7425, along with one copy of this notice, within 30 days from the date of this letter. An additional 20% penalty will be imposed 90 days after this deficiency becomes final and unpaid in full.

If you do not accept our findings, you have 30 days from the date of this letter to petition in writing to the San Francisco Tax Collector for redetermination, under Section 6.13-1, Article 6 of the San Francisco Municipal Code, Common Administrative Provisions. Your petition for redetermination must be in writing, stating under penalty of perjury, the specific grounds upon which it is founded, with sufficient specificity to enable the Tax Collector to understand and evaluate the information and authenticate the records upon which you rely in support of your petition.

You may call the undersigned at (415) 554-7363 to answer any questions you may have.

If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the adjustments shown in the audit report.

Thank you for your cooperation.

Sincerely yours,

A handwritten signature in cursive script that reads "Lenida C. Reyes".

LENIDA C. REYES
Chief Auditor

Encl.

Office of the Treasurer & Tax Collector
City and County of San Francisco

Business Tax Section, Audit Unit



José Cisneros, Treasurer

PAYROLL TAX AUDIT REPORT

BUSINESS TAX ID / CERTIFICATE NO.: 94121986601 / 017304
OWNERSHIP NAME: LONG & LEVIT
OWNERSHIP CONTACT NAME: Jennifer Wong Suzuki, Partner
TAX PERIODS AUDITED: 2010 - 2012
OWNERSHIP TYPE: PARTNERSHIP
CLASS: 07

PER AUDIT				AS REPORTED			
TAX PERIOD	TAX TYPE	TAXABLE PAYROLL	TAX DUE	TAX TYPE	TAXABLE PAYROLL	TAX DUE	TAX ADJUSTMENT
2010YR	PY	5,594,743.28	83,921.15	PY	2,448,889.00	36,733.00	47,188.15
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2012YR	PY	4,435,488.43	66,532.33	PY	2,188,614.58	32,828.82	33,703.51
TOTALS		14,699,780.51	220,496.71		7,017,864.86	105,262.95	115,233.76

SUMMARY OF DEFICIENCY							
TAX PERIOD	TAX ADJUSTMENT	Non File /Late Pmt	Underpayment PENALTY	Sub-Under-Rpt Penalty	INTEREST		Admin Fee
2010YR	47,188.15	0.00	9,437.63	19,002.24	32	24,200.97	55.00
2011YR	34,342.10	0.00	6,868.42	12,705.73	20	10,783.25	55.00
2012YR	33,703.51	0.00	6,740.70	12,747.90	8	4,255.37	55.00
TOTALS	115,233.76	0.00	23,046.75	44,455.87		39,239.59	165.00

Auditor: Benita Chiang *BC*

Approved by: Lenida C. Reyes

Date: September 6, 2013

1998YR = Special Credit / GR = Gross Receipts / PY = Payroll Expense / PPY = Prepayment

City Hall - Room 140 • 1 Dr. Carlton B. Goodlett Place • San Francisco, CA 94102-4638
Dial 3 1 1 (within SF only) or 415 - 554-4400 telephone • 415-554-7316 fax

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	San Francisco, CA 94102-4638

PS Form 3800, August 2012



Exhibit C

Office of the Treasurer & Tax Collector
City and County of San Francisco

Business Tax Section, Audit Unit



José Cisneros, Treasurer

March 5, 2014

LONG & LEVIT
465 California St., #500
San Francisco, CA 94104
Attn: Douglas Melton, Partner

LONG & LEVIT
465 California St., #500
San Francisco, CA 94104
Attn: Jennifer Wong Suzuki, Partner

SILVERSTEIN & POMERANTZ LLP
ATTORNEYS AT LAW
55 Hawthorne St., Suite 440
San Francisco, CA 94105
Attn: Amy L. Silverstein, Esq.

Re: LONG & LEVIT, Payroll Tax Audit, Period Covered: 2010 - 2012, San Francisco Business Tax
Certificate No. 017304

**NOTICE OF TAX COLLECTOR DECISION ON PETITION FOR REDETERMINATION
OF TAX LIABILITY**

Dear Ms. Wong Suzuki, Mr. Melton, and Ms. Silverstein:

This is to advise you of the Tax Collector decision on the Petition for Redetermination of the liabilities set forth in the Payroll and Business Tax Audit Notice, Certificate No. 017304, dated September 24, 2013 (San Francisco Business and Tax Regulations Code Section 6.13-3), with attached Payroll and Business Tax Audit Report (the "Deficiency Determination"). A copy of the Deficiency Determination is attached hereto. (San Francisco Business and Tax Regulations Code Sections 6.13-1 to 6.13-6.)

The decision is as follows:

1. A Notice of Tax Audit Deficiency was issued on September 24, 2013, against LONG & LEVIT.
2. On October 22, 2013, LONG & LEVIT (the "Taxpayer"), filed a written Petition for Redetermination (the "Petition") of the tax liabilities set forth in the Deficiency Determination.

3. A hearing was held on the Petition on February 4, 2014, at 1:00 p.m., at the Office of the Treasurer and Tax Collector, City Hall, Room 140, #1 Dr. Carlton B. Goodlett Place, San Francisco, California. David Augustine, Tax Collector for the City and County of San Francisco conducted the hearing. The Taxpayer appeared through Amy L. Silverstein, Esq. of Silverstein & Pomerantz LLP, Douglas Melton, Partner, of LONG & LEVIT, and Jennifer Wong Suzuki, Partner, of LONG & LEVIT. Lenida Reyes, Chief Auditor, Business Tax Section, Office of the Treasurer and Tax Collector, presented the Tax Collector's position regarding the basis of the Deficiency Determination. Scott Reiber, Deputy City Attorney, and Jeanne Stathakos, Management Assistant, Business Tax Section were also present.
4. Based on the entire file in this matter, the evidence presented at the oral hearing, and the testimony of the witnesses at the hearing, the Tax collector has determined that the amount of the deficiency of the Payroll Expense Tax as set forth in the Deficiency Determination is upheld. (San Francisco Business and Tax Regulations Code Section 6.13-2).
5. The Taxpayer's total liability for the Payroll Expense Tax set forth in the Deficiency Determination is \$231,277.79, if paid on or before March 31, 2014. See Attachment A for calculations.
6. Pursuant to Section 6.13-4 of the San Francisco Business and Tax Regulations Code, this decision shall become final 15 days after service of this notice on the Taxpayer. The total amount set forth at Paragraph 5 hereof is due and payable at the time that this decision becomes final. Interest on the principal tax and penalties will continue to accrue at the statutory rate of twelve percent (12%) per year until the date on which the total liability, including tax, penalties, interest and fees, is paid.
7. Payment of the tax liabilities set forth herein shall be made to the *San Francisco Tax Collector, P.O. Box 7425, San Francisco, CA 94120-7425, Attn: Lenida Reyes, Chief Auditor*, with Business Tax account and/or certificate number noted on check or cover letter.
8. Prior to seeking judicial relief, persons against whom a deficiency determination is made must exhaust the administrative remedies in the manner set forth in Section 6.13-5 of the San Francisco Business and Tax Regulations Code.


David Augustine, Tax Collector

Attachments

cc: Florence Mar, Director, Business Tax Section
Lenida Reyes, Chief Auditor, Business Tax Section
Scott Reiber, Deputy City Attorney
James Emery, Deputy City Attorney

LONG & LEVIT LLP
DBA: Long & Levit
Certificate # 017304
Payroll Expense Tax Statement of Liabilities
Audit Period 2010 - 2012

		2010	2011	2012	TOTAL
Per Audit					
Principal Obligation		\$ 47,188.15	\$ 34,342.10	\$ 33,703.51	\$ 115,233.76
Underreporting Penalty		9,437.63	6,868.42	6,740.70	23,046.75
Sub-under Rpt Penalty		19,002.24	12,705.73	12,747.90	44,455.87
Interest to October 31, 2013	# of mos =	24,200.97	10,783.25	4,255.37	39,239.59
Admin Fee		55.00	55.00	55.00	165.00
Total		<u>\$ 99,883.99</u>	<u>\$ 64,754.50</u>	<u>\$ 57,502.48</u>	<u>\$ 222,140.97</u>
Interest adjustment: November 1, 2013 to March 1, 2014 = 5 mos		\$ 3,781.40	2,695.81	2,659.61	9,136.82
Balance due as of March 1, 2014		<u>\$ 103,665.39</u>	<u>\$ 67,450.31</u>	<u>\$ 60,162.09</u>	<u>\$ 231,277.79</u>

Office of the Treasurer & Tax Collector
City and County of San Francisco

Business Tax Section, Audit Unit



José Cisneros, Treasurer

NOTICE OF TAX AUDIT DEFICIENCY

September 24, 2013

LONG & LEVIT
ATTN: JENNIFER WONG SUZUKI, PARTNER
465 CALIFORNIA ST #500
SAN FRANCISCO, CA 94104

Certificate No: 017304 Period Covered: 2010 - 2012

Dear Ms. JENNIFER WONG SUZUKI:

Enclosed is a copy of our audit report, relative to the Payroll Tax audit of your business, covering the period *January 1, 2010 through December 31, 2012*. Please review this report and let us know whether you agree with our findings. Adjustments have been made in the amount of your tax for each year as indicated in the audit report and the total amount of adjustments is \$ 222,140.97 which includes a 20% penalty and interest calculated through October 31, 2013, and administrative fees. Tax obligations accrue interest at 1% per month, or fraction thereof, from the date of delinquency, until the date of payment.

If you accept our findings, please pay the total amount shown in the report and issue a check or money order payable to the San Francisco Tax Collector, and mail to the attention of the Business Taxes Section, P. O. Box 7425, San Francisco, CA 94120-7425, along with one copy of this notice, within 30 days from the date of this letter. An additional 20% penalty will be imposed 90 days after this deficiency becomes final and unpaid in full.

If you do not accept our findings, you have 30 days from the date of this letter to petition in writing to the San Francisco Tax Collector for redetermination, under Section 6.13-1, Article 6 of the San Francisco Municipal Code, Common Administrative Provisions. Your petition for redetermination must be in writing, stating under penalty of perjury, the specific grounds upon which it is founded, with sufficient specificity to enable the Tax Collector to understand and evaluate the information and authenticate the records upon which you rely in support of your petition.

You may call the undersigned at (415) 554-7363 to answer any questions you may have.

If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the adjustments shown in the audit report.

Thank you for your cooperation.

Sincerely yours,

Lenida C. Reyes

LENIDA C. REYES
Chief Auditor

Encl.

COPY

Office of the Treasurer & Tax Collector
City and County of San Francisco

Business Tax Section, Audit Unit



José Cisneros, Treasurer

PAYROLL TAX AUDIT REPORT

BUSINESS TAX ID / CERTIFICATE NO.: 94121986601 / 017304
OWNERSHIP NAME: LONG & LEVIT
OWNERSHIP CONTACT NAME: Jennifer Wong Suzuki, Partner
TAX PERIODS AUDITED: 2010 - 2012
OWNERSHIP TYPE: PARTNERSHIP
CLASS: 07

PER AUDIT				AS REPORTED			
TAX PERIOD	TAX TYPE	TAXABLE PAYROLL	TAX DUE	TAX TYPE	TAXABLE PAYROLL	TAX DUE	TAX ADJUSTMENT
2010YR	PY	5,594,743.28	83,921.15	PY	2,448,889.00	36,733.00	47,188.15
2011YR	PY	4,669,548.80	70,043.23	PY	2,380,361.28	35,701.13	34,342.10
2012YR	PY	4,435,488.43	66,532.33	PY	2,188,614.58	32,828.82	33,703.51
TOTALS		14,699,780.51	220,496.71		7,017,864.86	105,262.95	115,233.76

SUMMARY OF DEFICIENCY							
TAX PERIOD	TAX ADJUSTMENT	Non File /Late Pmt	Underpayment PENALTY	Sub-Under-Rpt Penalty	INTEREST	Admin Fee	TOTAL Over / Under
2010YR	47,188.15	0.00	9,437.63	19,002.24	32 24,200.97	55.00	99,883.99
2011YR	34,342.10	0.00	6,868.42	12,705.73	20 10,783.25	55.00	64,754.50
2012YR	33,703.51	0.00	6,740.70	12,747.90	8 4,255.37	55.00	57,502.48
TOTALS	115,233.76	0.00	23,046.75	44,455.87	39,239.59	165.00	222,140.97

Auditor: Benita Chiang

Approved by: Lenida C. Reyes

Date: September 6, 2013

1998YR = Special Credit / GR = Gross Receipts / PY = Payroll Expense / PPY = Prepayment

City Hall - Room 140 • 1 Dr. Carlton B. Goodlett Place • San Francisco, CA 94102-4638
Dial 3 1 1 (within SF only) or 415 - 554-4400 telephone • 415-554-7316 fax

Exhibit D

LONG & LEVIT LLP

ATTORNEYS AND COUNSELORS AT LAW

Douglas J. Melton
Partner

dmelton@longlevit.com
Direct Dial: 415-438-4493

March 31, 2014

VIA U.S. MAIL


San Francisco Tax Collector
Attn: Lenida Reyes, Chief Auditor
P.O. Box 7425
San Francisco, CA 94120-7425

**Re: Long & Levit, Payroll Tax Audit, Period Covered: 2010-2012
San Francisco Business Tax Certificate No. 017304**

Dear Ms. Reyes:

Enclosed please find Check No. 37911 in the amount of \$231,277.91 payable to the Tax Collector, City and County San Francisco. This check is full payment in response to the Notice of Tax Collector Decision on Petition for Redetermination of Tax Liability, dated March 5, 2014 (a copy of which is enclosed for your reference) issued in the matter of the Long & Levit Payroll Tax Audit for the Period 2010 – 2012, San Francisco Business Tax Certificate No. 017304.

Very truly yours,


Douglas J. Melton

Enclosure

Cc: Amy L. Silverstein, Esq.
Silverstein & Polerantz LLP (via email)

DOCSVZ3000-800704109.1

465 California Street, 5th Floor, San Francisco, CA 94104, Tel: 415-397-2222, Fax: 415-397-6392, www.longlevit.com

Exhibit E

CITY AND COUNTY OF SAN FRANCISCO

Claim For Tax Refund

Before completing this form please read the instructions on the back. You have **one year** from the date of payment or the date the return accompanying the payment was due, whichever is later, to submit this form and supporting documentation to **CONTROLLER'S OFFICE, CLAIMS DIVISION, 1380 MARKET STREET, 7TH FLOOR, SAN FRANCISCO, CA 94102-5402.** You must file a separate claim for tax refund for each type of tax.

1. CLAIMANT'S NAME: <u>LONG & LEVIT LLP</u> (DBA) Owner's Name: _____ Address: <u>465 CALIFORNIA ST. SUITE 500</u> <u>SAN FRANCISCO, CA 94104</u> Telephone: <u>(415) 397-2222</u>	2. IF CLAIMANT IS A BUSINESS: Type of Ownership <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other: _____
---	---

3. FEDERAL TAXPAYER ID # <u>94-1219866</u>

4. TAX PAID INFORMATION					
Certificate Number/ BTS ID No. or Assessor's Parcel Number	Paid By	Date Paid	Receipt Number	Amount Paid	Period Covered
a. 017304	LONG&LEVIT LLP	03/31/2014	CK 37911	\$231,277.79	1/1/10-12/31/12
b.					
c.					

5. BASIS OF CLAIM: State all facts that support your claim for tax refund. If your refund applies to only a portion of the tax paid, please explain what portion it applies to. <u>See attachment A</u> _____ _____ _____ _____ _____	Applicable Tax (check one) <input checked="" type="checkbox"/> Payroll Tax <input type="checkbox"/> Hotel Tax <input type="checkbox"/> Parking Tax <input type="checkbox"/> Utility Tax <input type="checkbox"/> Stadium Tax <input type="checkbox"/> Transfer Tax <input type="checkbox"/> Other _____
--	---

6. REFUND AMOUNT: <u>\$231,277.79</u>
--

7. SIGNATURE OF CLAIMANT OR REPRESENTATIVE: I declare under penalty of perjury that the foregoing is true and correct. "I certify I filed this claim within one year of my paying the tax or, within one year of the due date of my tax return." The undersigned is the taxpayer or other person determined to be liable for the tax or said person's guardian or conservator. I am not an agent or the taxpayer's attorney.	
X _____ Signature of Claimant or Representative <u>DOUGLAS J. MELTON</u> Print Name	<u>3/29/15</u> Date <u>PARTNER</u> Title

RECEIVED
 15 MAR 2015 PM 12:06
 OFFICE OF THE
 COMPTROLLER
 OF THE CITY AND
 COUNTY OF
 SAN FRANCISCO

LONG & LEVIT LLP'S CLAIM FOR TAX REFUND
CITY & COUNTY OF SAN FRANCISCO

ATTACHMENT A

LONG & LEVIT LLP seeks a refund of Payroll Expense Tax, and related penalties, that it paid based on partnership profits under the amendments attributed to Proposition Q (eff. January 1, 2009), plus interest as provided by law. LONG & LEVIT LLP's Partners are not compensated for their services; they receive profit distributions. Partners do not receive a salary or guaranteed payments. If there are losses, the Partners do not receive any distributions. In general, this refund claim is based on the grounds that partnership profits are not subject to tax under the terms of Proposition Q, and Proposition Q's alleged changes to the Payroll Expense Tax are unconstitutional and violate California statute. The reasons for this include but are not limited to: (a) the plain language of the Payroll Tax as allegedly amended by Proposition Q cannot be interpreted to include profit distributions in the measure of a partnership's payroll tax; (b) the City's interpretation of Proposition Q violates the Due Process Clause of the State and federal Constitutions because it lacks adequate standards for taxpayer compliance; (c) local governments are barred from taxing income by Rev. & Tax. Code § 17041.5; (d) Proposition Q violated the single subject rule of Cal. Const. art. II, § 8(d); and (e) the enactment of Proposition Q violated art. XIII C, § 2(b) of the California Constitution (Proposition 218) requiring voter approval for all tax increases because it was not submitted to the voters for approval due to a serious error in the presentation of the measure in voter materials.

LONG & LEVIT LLP seeks a refund of \$231,277.79 due to the invalidity and inapplicability of Proposition Q. This amount was calculated based on the safe harbor formula of 200% of the average salary paid to the firm's top quartile of most highly paid employees multiplied by the total number of partners and includes penalties and interest. LONG & LEVIT LLP paid the San Francisco Payroll Expense Tax (at 1.5%) for the period 1/1/10-12/31/12 (the "Period"). LONG & LEVIT LLP also seeks interest as available by law.

In the alternative, LONG & LEVIT LLP asserts that it overpaid the Payroll Expense Tax because the tax it paid was computed by multiplying the tax rate by an amount that exceeded the actual amount that it paid its partners as compensation for services performed in San Francisco and that included return on capital investment, as those terms are interpreted by the City.

Finally, LONG & LEVIT LLP asserts that there was no basis for imposition of penalties under the circumstances. LONG & LEVIT LLP acted in a reasonable and thoughtful manner in attempting to comply with its Payroll Tax obligations. Section 6.17-2(a) requires a determination of negligence before the underreporting penalty is imposed. Similarly, Section 6.17-4 provides that penalties may be waived if the failure to comply occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect. After Proposition Q was passed, LONG & LEVIT LLP analyzed the application of Proposition Q to the firm's Payroll Tax obligations, including seeking the advice of its CPA. LONG & LEVIT LLP's conclusion that amounts paid to its partners did not constitute compensation for services was not unreasonable given the plain meaning of a "payroll" tax. For the reasons discussed above, LONG & LEVIT LLP had a reasonable basis to conclude that its partner distributions were not properly

subject to tax under Proposition Q. The pending litigation by many law firms as to the scope of Proposition Q's changes to the Payroll Tax and whether it reaches any profit distributions as "compensation for services" confirms the reasonableness of LONG & LEVIT LLP's position. The briefs in the Court of Appeal in the case filed by Coblenz, Patch, Duffy & Bass lay out strong arguments supporting LONG & LEVIT LLP's conclusion and they validate the reasonableness of its judgment. Regardless of whether the City, and ultimately the courts, disagree with the position LONG & LEVIT LLP took, the facts and particular circumstances here show that the firm certainly exercised ordinary care and did not demonstrate willful neglect in attempting to comply with the requirements of the Payroll Tax post-Proposition Q.

LONG & LEVIT LLP has a long history of compliance with its City tax obligations, providing further confirmation that this taxpayer takes those obligations seriously (and did so here). LONG & LEVIT LLP has an extensive history in the City, as the firm was founded here 85 years ago and has been located in San Francisco ever since. LONG & LEVIT LLP has complied with local tax requirements over these many years. Further, LONG & LEVIT LLP made every effort to fully comply and cooperate with all requests made in connection with this audit.

LONG & LEVIT LLP reserves the right to supplement this claim, including adding additional grounds and providing more information regarding any of the foregoing grounds for its claim.

ORIGINAL CHECK IS VOIDED BY COPY. CHECK PRINTED ON CHEMICAL RESISTIVE PAPER - GET EACH FOR DEPOSIT

LONG & LEVIT LLP
A Limited Liability Partnership
488 CALIFORNIA ST. SUITE 800
SAN FRANCISCO, CALIFORNIA 94104
017504

DATE: 03-31-14

CHECK NO. 37911


BANK OF THE WEST
SAN FRANCISCO, CA

30.11
1911

\$231,277.79

PAY: TWO HUNDRED THIRTY-ONE THOUSAND TWO HUNDRED SEVENTY-SEVEN AND 79/100 DOLLARS

PAY TO THE ORDER OF: TAX COLLECTOR, CITY & COUNTY SAN FRANCISCO
P.O. BOX 7425
SAN FRANCISCO, CA 94120 7425



⑆37911⑆ ⑆121100782⑆011280062⑆

CK# 37911 PAID 04/09/2014 AMT \$231,277.79

Exhibit F

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

Virginia Ho
Claims Adjuster

DIRECT DIAL: (415) 554-3909
E-MAIL: VIRGINIA.K.HO@SFGOV.ORG

July 20, 2015

Douglas J. Melton
Long & Levit LLP
465 California St., Ste. 500
San Francisco, CA 94104

RE: Claim of Long & Levit LLP / Claim Number 15-02505

Department: TAXCOLLH Tax Refund Claims
Incident Date: March 31, 2014
Claim Filed: March 30, 2015

NOTICE OF ACTION UPON CLAIM

PLEASE TAKE NOTICE THAT

An investigation of your claim filed with the City and County of San Francisco has revealed no indication of liability on the part of the City and County. Accordingly, your claim is **DENIED**.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code section 945.6. This time limitation applies only to causes of action arising under California law for which a claim is mandated by the California Government Claims Act, Government Code sections 900 et. seq. Other causes of action, including those arising under federal law, may have shorter time limitations for filing.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Please also be advised that, pursuant to Code of Civil Procedure sections 128.7 and 1038, the City and County of San Francisco will seek to recover all costs of defense in the event an action is filed in this matter and it is determined that the action was not brought in good faith and with reasonable cause.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Virginia Ho
Claims Adjuster

Claim of: Long & Levit LLP

Claim Filed: March 30, 2015

I, Virginia H, say: I am a citizen of the United States, over eighteen years of age, and not a party to the within action; that I am employed by the City Attorney's Office of San Francisco, Fox Plaza, 1390 Market Street, 7th Floor, San Francisco, CA 94102.

That on July 20, 2015 I served:

NOTICE OF ACTION UPON CLAIM

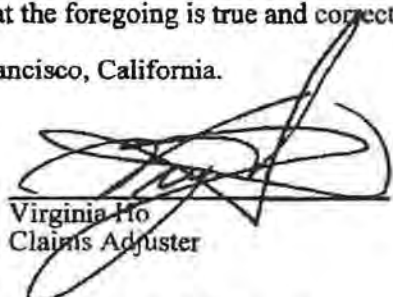
by placing a true copy thereof in an envelope addressed to:

Douglas J. Melton
Long & Levit LLP
465 California St., Ste. 500
San Francisco, CA 94104

Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 20, 2015 at San Francisco, California.


Virginia Ho
Claims Adjuster

DECLARATION OF SERVICE BY MAIL



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
Document Scanning Lead Sheet**

Feb-21-2017 12:21 pm

Case Number: CSM-17-854574

Filing Date: Feb-21-2017 12:19

Filed by: VERLINDA JONES

Image: 05752387

CLAIM OF PLAINTIFF

MARTIN TERPLAN VS. CITY AND COUNTY OF SAN FRANCISCO

001C05752387

Instructions:

Please place this sheet on top of the document to be scanned.

426

SC-100**Plaintiff's Claim and ORDER
to Go to Small Claims Court****Notice to the person being sued:**

- You are the defendant if your name is listed in (2) on page 2 of this form. The person suing you is the plaintiff, listed in (1) on page 2.
- You and the plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en (2) de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en (1) de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Order to Go to Court**The people in (1) and (2) must go to court:** (Clerk fills out section below.)

Trial Date	Date	Time	Department	Name and address of court, if different from above
1.	APR 25 2017	10:00 AM	506	5TH FLOOR
2.				
3.				

Date: FEB 21 2017 Clerk, by VERLINDA JONES, Deputy

Clerk stamps date here when form is filed.

SMALL CLAIMS
FILED
Superior Court of California
County of San Francisco

FEB 21 2017

CLERK OF THE COURT

BY: Verlinda Jones
Deputy Clerk

Fill in court name and street address:

Superior Court of California, County of
San Francisco
400 McAllister Street
San Francisco, CA 94102

Court fills in case number when form is filed.

Case Number:

CSM 17-854574

Case Name:

City and County
Tenderloin of San Francisco

Instructions for the person suing:

- You are the plaintiff. The person you are suing is the defendant.
- Before you fill out this form, read form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to www.courts.ca.gov/smallclaims/forms.
- Fill out pages 2 and 3 of this form. Then make copies of **all** pages of this form. (Make one copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each defendant a court-stamped copy of all five pages of this form and any pages this form tells you to attach. There are special rules for “serving,” or delivering, this form to public entities, associations, and some businesses. See forms SC-104, SC-104B, and SC-104C.
- Go to court on your trial date listed above. Bring witnesses, receipts, and any evidence you need to prove your case.

Plaintiff (list names): Martin Templam

Case Number:

CSM 17-854574

① The plaintiff (the person, business, or public entity that is suing) is:

Name: Martin Templam Phone: 415-332-4228

Street address: 244 Curry Ln Sausalito CA 94965
Street City State Zip

Mailing address (if different):
Street City State Zip

If more than one plaintiff, list next plaintiff here:

Name: Phone:

Street address:

Street City State Zip

Mailing address (if different):
Street City State Zip

- ☐ Check here if more than two plaintiffs and attach form SC-100A.
☐ Check here if either plaintiff listed above is doing business under a fictitious name. If so, attach form SC-103.
☐ Check here if any plaintiff is a "licensee" or "deferred deposit originator" (payday lender) under Financial Code sections 23000 et seq.

② The defendant (the person, business, or public entity being sued) is:

Name: City and County of San Francisco Phone:

Street address: 1 Dr. Carlton B. Goodlett Pl San Francisco CA 94102
Street City State Zip

Mailing address (if different):
Street City State Zip

If the defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process here:

Name: Job title, if known:

Address:
Street City State Zip

- ☐ Check here if your case is against more than one defendant, and attach form SC-100A.
☐ Check here if any defendant is on active military duty, and write his or her name here:

③ The plaintiff claims the defendant owes \$ 767.50. (Explain below):

a. Why does the defendant owe the plaintiff money?

- ① inappropriate to have penalty fee as mistake made by city
② some had already been paid

When did this happen? (Date): July 2010

b. If no specific date, give the time period: Date started: Through:

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.)

total paid by me minus estimated 70.00 per year licensor
fee for 2014, 2015, 2016. 2013 had already been paid as had 2017

- ☐ Check here if you need more space. Attach one sheet of paper or form MC-031 and write "SC-100, Item 3" at the top.



Plaintiff (list names):

Case Number:

CSM 17-854574

- ④ You must ask the defendant (in person, in writing, or by phone) to pay you before you sue. If your claim is for possession of property, you must ask the defendant to give you the property. Have you done this?

☒ Yes ☐ No If no, explain why not:

- ⑤ Why are you filing your claim at this courthouse?

This courthouse covers the area (check the one that applies):

- a. ☒ (1) Where the defendant lives or does business. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the defendant or where the defendant lived or did business when the defendant made the contract.
☐ (2) Where the plaintiff's property was damaged.
☐ (3) Where the plaintiff was injured.
- b. ☐ Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim, is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc., § 395(b).)
- c. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civ Code, § 1812.10.)
- d. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civ Code, § 2984.4.)
- e. ☐ Other (specify):

- ⑥ List the zip code of the place checked in ⑤ above (if you know): 94102

- ⑦ Is your claim about an attorney-client fee dispute? ☐ Yes ☒ No

If yes, and if you have had arbitration, fill out form SC-101, attach it to this form, and check here: ☐

- ⑧ Are you suing a public entity? ☒ Yes ☐ No

If yes, you must file a written claim with the entity first. ☐ A claim was filed on (date): Nov. 28, 2016

If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

- ⑨ Have you filed more than 12 other small claims within the last 12 months in California?

☐ Yes ☒ No If yes, the filing fee for this case will be higher.

- ⑩ Is your claim for more than \$2,500? ☐ Yes ☒ No

If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

- ⑪ I understand that by filing a claim in small claims court, I have no right to appeal this claim.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: 02-21-2017 Martin Terplan

Plaintiff types or prints name here

Martin Terplan

Plaintiff signs here

Date:

Second plaintiff types or prints name here

Second plaintiff signs here



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the trial. Contact the clerk's office for form MC-410, Request for Accommodations by Persons With Disabilities and Response. (Civ. Code, § 54.8.)

"Small claims court" is a special court where claims for \$10,000 or less are decided. Individuals, including "natural persons" and sole proprietors, may claim up to \$10,000. Corporations, partnerships, public entities, and other businesses are limited to claims of \$5,000. (See below for exceptions.)* The process is quick and cheap. The rules are simple and informal. You are the *defendant*—the person being sued. The person who is suing you is the *plaintiff*.

Do I need a lawyer? You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court? You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read "Be Prepared for Your Trial" at www.courts.ca.gov/smallclaims/prepare.

What if I need an accommodation? If you have a disability or are hearing impaired, fill out form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/ Access Coordinator.

What if I don't speak English well? Ask the court clerk as soon as possible if your court has a court-provided interpreter available and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness or an attorney to interpret for you or ask the court for a list of interpreters for hire.

Where can I get the court forms I need? Go to any courthouse or your county law library, or print forms at www.courts.ca.gov/smallclaims/forms.

What happens at the trial? The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case? If you lose, you may appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file form SC-140, *Notice of Appeal*. You must file within 30 days after the clerk hands or mails you the judge's decision (judgment) on form SC-200 or form SC-130, *Notice of Entry of Judgment*.
- If you were *not* at the trial, fill out and file form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File form SC-140.

For more information on appeals, see www.courts.ca.gov/smallclaims/appeals.

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the plaintiff agree on how to settle the case, the plaintiff must file form CIV-110, *Request for Dismissal*, with the clerk. Ask the Small Claims Advisor for help.

- **Prove this is the wrong court.** Send a letter to the court *before* your trial explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done so.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To have the court order a witness to go to the trial, fill out form SC-107 (*Small Claims Subpoena*) and have it served on the witness.
- **Sue the person who is suing you.** If you have a claim against the plaintiff, and the claim is appropriate for small claims court as described on this form, you may file *Defendant's Claim* (form SC-120) and bring the claim in this action. If your claim is for *more* than allowed in small claims court, you may still file it in small claims court if you give up the amount over the small claims value amount, or you may file a claim for the full value of the claim in the appropriate court. If your claim is for more than allowed in small claims court *and* relates to the same contract, transaction, matter, or event that is the subject of the plaintiff's claim, you may file your claim in the appropriate court and file a motion to transfer the plaintiff's claim to that court to resolve both matters together. You can see a description of the amounts allowed in the paragraph above titled "Small Claims Court."
- **Agree with the plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.
- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the plaintiff what he or she is asking for plus court costs. If this happens, the plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial), *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county), *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out form SC-150 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.



Need help?

Your county's Small Claims Advisor can help for free.

Or go to www.courts.ca.gov/smallclaims/advisor.

* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 118.220(c).)

SC-100**Información para el demandado (la persona demandada)**

La "Corte de reclamos menores" es una corte especial donde se deciden casos por \$10,000 o menos. Los individuos, o sea las "personas físicas" y los propietarios por cuenta propia, pueden reclamar hasta \$10,000. Las corporaciones, asociaciones, entidades públicas y otras empresas solo pueden reclamar hasta \$5,000. (Vea abajo para las excepciones.*) El proceso es rápido y barato. Las reglas son sencillas e informales. Usted es el Demandado—la persona que se está demandando. La persona que lo está demandando es el Demandante.

¿Necesito un abogado? Puede hablar con un abogado antes o después del caso. Pero no puede tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación de un caso de reclamos menores).

¿Cómo me preparo para ir a la corte? No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos y pruebas que apoyan su caso. Y lea "Esté preparado para su juicio" en www.courts.ca.gov/reclamosmenores/preparesse.

¿Qué hago si necesito una adaptación? Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, Request for Accommodations. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

¿Qué pasa si no hablo bien inglés? Pregúntele al secretario de la corte lo más pronto posible si en el juzgado habrá un intérprete disponible y cómo solicitarlo. No siempre están disponibles los intérpretes de la corte. Otra opción es llevar a un adulto que pueda interpretar para usted siempre que esa persona no sea un testigo ni un abogado. O puede pedir a la corte una lista de intérpretes particulares disponibles para contratar.

¿Dónde puedo obtener los formularios de la corte que necesito? Vaya a cualquier edificio de la corte, la biblioteca legal de su condado, o imprima los formularios en www.courts.ca.gov/smallclaims/forms (página está en inglés).

¿Qué pasa en el juicio? El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

¿Qué pasa si pierdo el caso? Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, *Aviso de apelación* (Notice of Appeal). Tiene que presentarlo dentro de 30 días después de que el secretario le entregue o envíe la decisión (fallo) del juez en el formulario SC-200 o SC-130, *Aviso de publicación del fallo* (Notice of Entry of Judgment).
- Si no estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración para pedirle al juez que anule el fallo* (decisión). Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140.

Para obtener más información sobre las apelaciones, vea www.courts.ca.gov/reclamosmenores/apelaciones.

¿Tengo otras opciones? Si. Si lo están demandando, puede:

- **Resolver su caso antes del juicio.** Si usted y el Demandante se ponen de acuerdo en cómo resolver el caso, el Demandante tiene que presentar el formulario CIV-110, *Solicitud de desestimación* (Request for Dismissal) ante el secretario de la corte. Pídale al Asesor de Reclamos Menores que lo ayude.

- **Probar que es la corte equivocada.** Envíe una carta a la corte antes del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despida el reclamo. Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- **Ir al juicio y tratar de ganar el caso.** Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Si desea que la corte emita una orden de comparecencia para que los testigos vayan al juicio, llene el formulario SC-107, *Citatorio de reclamos menores* (Small Claims Subpoena) y entrégueselo legalmente al testigo.
- **Demandar a la persona que lo demandó.** Si tiene un reclamo contra el Demandante, y el reclamo se puede presentar en la corte de reclamos menores, tal como se describe en este formulario, puede presentar el formulario SC-120, *Reclamo del demandado* (Defendant's Claim) y presentarlo en este mismo caso. Si su reclamo excede el límite permitido en la corte de reclamos menores, puede igualmente presentarlo en la corte de reclamos menores si está dispuesto a limitar su reclamo al máximo permitido, o puede presentar un reclamo por el monto total en la corte apropiada. Si su reclamo excede el límite permitido en la corte de reclamos menores y está relacionado con el mismo contrato, transacción, asunto o acontecimiento que el reclamo del Demandante, puede presentar su reclamo en la corte apropiada y presentar una moción para transferir el reclamo del Demandante a dicha corte, para poder resolver los dos reclamos juntos. Puede ver una descripción de los montos permitidos en el párrafo anterior titulado "Corte de reclamos menores".
- **Aceptar el reclamo del Demandante y pagar el dinero.** O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- **No ir al juicio y aceptar el fallo por falta de comparecencia.** Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

¿Qué hago si necesito más tiempo? Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio), o
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (ó 20 días si vive fuera del condado), o
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-150 (o escriba una carta) y envíelo antes del plazo a la corte y a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.



¿Necesita ayuda? El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.

O visite www.courts.ca.gov/reclamosmenores/asesores.

* Excepciones: Existen diferentes límites en un reclamo contra un garante. (Vea el Código de Procedimiento Civil, sección 116.220 (c).)

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

CSM 17-854574
OFFICE OF THE CITY ATTORNEY

Virginia Ho
Claims Adjuster

DIRECT DIAL: (415) 554-3909
E-MAIL: VIRGINIA.K.HO@SFGOV.ORG

February 7, 2017

Martin Terplan
244 Currey Ln.
Sausalito, CA 94965

RE: Claim of Martin Terplan / Claim Number 17-01159

Department: TAXCOLLJ Gross Receipts Tax Implementation Business Tax Refund
Claims
Claim Filed: November 28, 2016

NOTICE OF ACTION UPON CLAIM

PLEASE TAKE NOTICE THAT:

An investigation of your claim filed with the City and County of San Francisco has revealed no liability on the part of the City and County. Accordingly, your claim is **DENIED**.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a state court action on this claim. See Revenue and Taxation Code section 5141. This time limitation applies only to causes of action arising under California law for which a claim is mandated by the California Revenue and Taxation Code section 5096 et seq. Other causes of action, including those arising under federal law, may have shorter time limitations for filing.

If you desire to consult an attorney, you should do so immediately.

Please also be advised that, pursuant to Code of Civil Procedure sections 128.7 and 1038, the City and County of San Francisco will seek to recover all costs of defense in the event an action is filed in this matter and it is determined that the action was not brought in good faith and with reasonable cause.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Virginia Ho
Claims Adjuster



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Feb-23-2017 1:49 pm

Case Number: CGC-17-557250

Filing Date: Feb-23-2017 1:45

Filed by: KALENE APOLONIO

Image: 05756546

COMPLAINT

YELP INC. VS. CITY AND COUNTY OF SAN FRANCISCO ET AL

001C05756546

Instructions:

Please place this sheet on top of the document to be scanned.

3985

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CITY AND COUNTY OF SAN FRANCISCO and OFFICE OF THE
TREASURER AND TAX COLLECTOR OF SAN FRANCISCO

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

YELP INC., a corporation

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): SAN FRANCISCO SUPERIOR COURT

400 McAllister Street
San Francisco, CA 94102

Case No. **CGC-17-557250**
(Número de caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Richard E. Nielsen, Pillsbury Winthrop Shaw Pittman LLP, 4 Embarcadero Ctr., 22nd Fl., SF, CA 94111

DATE:
(Fecha)

FEB 23 2017

CLERK OF THE COURT

Clerk, by
(Secretario)

Kalene Apolonio
KALENE APOLONIO

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010))

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- 1 ☐ as an individual defendant.
- 2 ☐ as the person sued under the fictitious name of (specify)
- 3 ☐ on behalf of (specify)

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify)	
- 4 ☐ by personal delivery on (date)

1 PILLSBURY WINTHROP SHAW PITTMAN LLP
JEFFREY M. VESELY 67895
2 KERNE H.O. MATSUBARA 178895
RICHARD E. NIELSEN 72104
3 Four Embarcadero Center, 22nd Floor
Post Office Box 2824
4 San Francisco, CA 94120-7880
Telephone: (415) 983-1000
5 Facsimile No.: (415) 983-1200
6 Attorneys for Plaintiff
YELP INC.
7

FILED
San Francisco County Superior Court

FEB 23 2017

CLERK OF THE COURT
BY: Calene Johnson
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
10 UNLIMITED JURISDICTION

11	_____)	
12	YELP INC., a corporation,)	No. CGC-17-557250
13)	
14	Plaintiff,)	
15	vs.)	VERIFIED COMPLAINT FOR
16)	REFUND OF SAN FRANCISCO
17	CITY AND COUNTY OF SAN)	PAYROLL EXPENSE and GROSS
18	FRANCISCO and OFFICE OF THE)	RECEIPTS TAXES
19	TREASURER AND TAX COLLECTOR OF)	
20	THE CITY AND COUNTY OF SAN)	
	FRANCISCO,)	
)	
	Defendants.)	
)	
)	
)	

21 Plaintiff Yelp Inc. ("Plaintiff" or "Yelp"), in accordance with California
22 Government Code ("Gov't Code") section 945.6, hereby files this Verified Complaint for
23 Refund of San Francisco Payroll Expense and Gross Receipts Taxes ("Complaint").
24 Plaintiff complains of Defendants as follows:

25 **PARTIES**

26 1. Plaintiff Yelp Inc. is, and at all times relevant was, a corporation duly
27 organized under the laws of the State of Delaware and authorized to do business under the
28

1 laws of the State of California. Plaintiff's principal place of business is located at 140 New
2 Montgomery Street, 9F, San Francisco, California 94105.

3 2. Defendant City and County of San Francisco (hereinafter "Defendant" or the
4 "City") is a political subdivision of the State of California. The city is, and all times herein
5 relevant was, a charter city of the State of California, having adopted a charter as authorized
6 by the Constitution of the State of California, Article XI.

7 3. Defendant Office of the Treasurer and Tax Collector of the City and County
8 of San Francisco, at all times relevant herein, includes the Treasurer and the Tax Collector
9 of the City. The Tax Collector in accordance with San Francisco ("S.F.") Business & Tax
10 Regulations Code section 6.16-1 promulgates regulations, issues rules and issues
11 determinations.

12 JURISDICTION AND VENUE

13 4. Jurisdiction is vested in this Court under sections 940 *et seq.* of the
14 California Government Code.

15 5. Venue is proper in this Court pursuant to Code of Civil Procedure
16 Section 394.

17 BASIS OF THE ACTION

18 6. Plaintiff brings this action in accordance with Gov't Code section 945.6 and
19 S.F. Business & Tax Regulations Code section 6.15-3. This is an action for refund of
20 payroll expense and gross receipts taxes, penalties and interest paid by Plaintiff to
21 Defendants pursuant to S.F. Payroll Expense and Gross Receipts Tax Ordinances, S.F.
22 Business and Tax Regulations Code, Article 12-A ("Payroll Expense Tax") and Article 12-
23 A-1 ("Gross Receipts Tax") with respect to the 2014 and 2015 tax years. Yelp erroneously
24 reported and paid payroll expense and gross receipts taxes on the grounds set forth in the
25 claims for refund referenced below, including the following: First, Yelp reported payroll
26 expense on services in fact performed outside San Francisco ("apportionment") with
27 respect to the 2014 and 2015 tax years. This error resulted in an overpayment of payroll
28 expense tax and gross receipts tax. Second, Yelp is entitled to the stock-based

1 compensation exclusion as determined under S.F. Payroll Expense Tax Ord. Section
2 906.4(c)(2) with respect to the 2014 and 2015 tax years. Third, Yelp made an inadvertent
3 mathematical error in calculating the stock compensation exclusion under S.F. Payroll
4 Expense Tax Ord. section 906.4(c)(2) and S.F. Gross Receipts Tax Ord. section 956.2 with
5 respect to the 2014 tax year. This mathematical error resulted in additional payroll expense
6 that should have been included in the stock-based compensation exclusion for purposes of
7 the payroll expense tax and gross receipts tax calculations, amounting to an overpayment of
8 both taxes for the 2014 tax year. Fourth, the Tax Collector's rules, regulations, forms,
9 instructions and interpretation of the payroll expense tax and the gross receipts tax are
10 invalid, to the extent that they are inconsistent with the relevant provisions of the Payroll
11 Expense Tax Ordinance and the Gross Receipts Tax Ordinance. To the extent the Tax
12 Collector's construction of the relevant provisions of the Payroll Expense Tax Ordinance
13 and the Gross Receipts Tax Ordinance is deemed correct, such construction is based upon
14 vague provisions of the respective Ordinance and definitions contained therein which
15 violate the Plaintiff's due process rights.

16 **Plaintiff's 2014 Payroll and Gross Receipts Taxes and**

17 **Claims for Business Tax Refund**

18 7. Plaintiff engaged in business within and without the City during the year
19 2014.

20 8. On or about February 5, 2015, in accordance with S.F. Payroll Expense Tax
21 Ord. section 906.4(d)(1), Plaintiff timely filed its Affidavit Claiming Payroll Expense Tax
22 Exclusion for Stock-Based Compensation for Tax Year 2014.

23 9. On or about February 26, 2015, Plaintiff timely paid its combined 2014
24 Payroll Expense Tax and Gross Receipts Tax. On or about May 1, 2015, Plaintiff timely
25 filed its Business Tax Annual return reporting its combined 2014 Payroll Expense Tax and
26 Gross Receipts Tax.

27 10. On or about February 8, 2016, in accordance with Gov't Code § 910 *et seq.*
28 and S.F. Bus. & Tax Regulations Code § 6.15-1, Plaintiff filed timely claims for refund for

1 the 2014 tax year in the amount of \$28,936.00 of gross receipts taxes and \$1,252,745.00 of
2 payroll expense tax (copies of the respective claims for refund, excluding attachments, are
3 attached hereto as Exhibits A and B, respectively, and incorporated by reference as if fully
4 set forth herein).

5 **Plaintiff's 2014 Payroll and Gross Receipts Taxes and**
6 **Requests for Business Tax Refunds**

7 11. On or about February 8, 2016, in accordance with S.F. Bus. & Tax
8 Regulations Code § 6.15-1(g), Plaintiff also filed timely requests for business tax refund
9 dated February 5, 2016 for the 2014 tax year in the amount of \$28,936.00 of gross receipts
10 tax and \$1,252,745.00 of payroll expense tax (copies of the respective requests for business
11 tax refund, excluding attachments, are attached hereto as Exhibits C and D, respectively,
12 and incorporated by reference as if fully set forth herein).

13 12. On July 14, 2016, Plaintiff was notified by mail by the Office of the
14 Treasurer and Tax Collector that its requests for business tax refund dated February 5, 2016
15 for the 2014 tax year were denied. A true and correct copy of the denial Notice is attached
16 hereto and incorporated herein as Exhibit E.

17 **Notice of Deficiency, Petition for Redetermination and**
18 **Additional Claims for Business Tax Refunds Regarding 2014**

19 13. On or about April 12, 2016, the Office of the Treasurer and Tax Collector
20 caused to be issued to Plaintiff a Notice of Tax Deficiency for the 2014 tax year in the
21 amount of \$15,130.00, including interest, penalties and fees. The stated deficiency
22 indicated an additional amount of payroll expense tax, penalty and interest was due
23 purportedly based on the disallowance of the stock-based compensation exclusion claimed
24 on Plaintiff's 2014 Payroll Expense Tax return.

25 14. On or about May 9, 2016, in accordance with S.F. Bus. & Tax Regulations
26 Code § 6.13-1, Plaintiff timely filed with the Tax Collector a Petition for Redetermination.

27 15. On or about July 15, 2016, Plaintiff's Petition for Redetermination was
28 denied by the Tax Collector.

1 16. On or about August 19, 2016, Plaintiff remitted to the Tax Collector
2 payment in the amount of \$15,580.00 for the alleged deficiency amounts including interest.

3 17. On or about September 12, 2016, in accordance with Gov't Code § 910 *et*
4 *seq.* and S.F. Bus. & Tax Regulations Code § 6.15-1, Plaintiff filed timely claims for refund
5 for the 2014 tax year in the amount of \$28,936.00 of gross receipts tax and \$1,268,325.00
6 (\$1,252,745.00+\$15,580.00) of payroll expense tax, penalties and interest (copies of the
7 respective claims for refund, excluding attachments, are attached hereto as Exhibits F and
8 G, respectively, and incorporated by reference as if fully set forth herein).

9 **Plaintiff's 2015 Payroll and Gross Receipts Taxes and**
10 **Claims for Business Tax Refund**

11 18. Plaintiff engaged in business within and without the City during the
12 year 2015.

13 19. On January 29, 2016, in accordance with S.F. Payroll Expense Tax Ord.
14 section 906.4(d)(1), Plaintiff timely filed its Affidavit Claiming Payroll Expense Tax
15 Exclusion for Stock-Based Compensation for 2015 tax year.

16 20. On April 29, 2016, Plaintiff timely filed its Business Tax Annual filing
17 reporting and paying its combined 2015 Payroll Expense Tax and Gross Receipts Tax.

18 21. On or about December 21, 2016, in accordance with Gov't Code § 910 *et*
19 *seq.* and S.F. Bus. & Tax Regulations Code § 6.15-1, Plaintiff filed timely claims for refund
20 for the 2015 tax year in the amount of \$24,019.00 of gross receipts tax and \$260,609.00 of
21 payroll expense tax (copies of the respective claims for refund, excluding attachments, are
22 attached hereto as Exhibits H and I, respectively, and incorporated by reference as if fully
23 set forth herein).

24 **Refund Action**

25 22. The City has failed to mail to Plaintiff any notice of action on Plaintiff's
26 above-described claims for refund filed on or about February 5, 2016, September 12, 2016
27 and December 21, 2016 within forty-five (45) days after the respective claims were
28

1 presented. Under Gov't. Code § 912.4(c), the claims shall be deemed to have been rejected
2 on the last day of the period within which the City is required to act upon the claims.

3 23. Plaintiff has timely filed this Verified Complaint for Refund. Gov't Code §
4 945.6(a)(2); S.F. Bus. & Tax Regulations Code § 6.15-3.

5 24. Plaintiff has exhausted all available administrative remedies.

6 25. Neither the whole nor any portion of the amounts claimed herein have been
7 refunded to or applied for the benefit of Plaintiff.

8 **PRAYER FOR RELIEF**

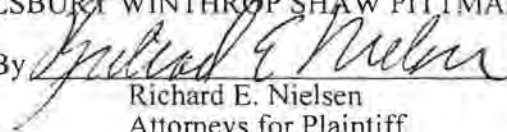
9 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 10 1. For a refund of Payroll Expense Tax, penalties and interest paid by Plaintiff
11 for the 2014 tax year in the amount of \$1,268,325.00, plus interest from the
12 date of payment as provided by law;
- 13 2. For a refund of Gross Receipts Tax paid by Plaintiff for the 2014 tax year in
14 the amount of \$28,936.00, plus interest from the date of payment as
15 provided by law;
- 16 3. For a refund of Payroll Expense Tax, penalties and interest paid by Plaintiff
17 for the 2015 tax year in the amount of \$260,609.00, plus interest from the
18 date of payment as provided by law;
- 19 4. For a refund of Gross Receipts Tax paid by Plaintiff for the 2015 tax year in
20 the amount of \$24,019.00, plus interest from the date of payment as
21 provided by law;
- 22 5. For Plaintiff's attorneys' fees and costs of suit as permitted by law; and
- 23 6. For such other and further legal and equitable relief as the Court deems just
24 and reasonable.

25 Dated: February 23, 2017.

PILLSBURY WINTHROP SHAW PITTMAN LLP

26 By


Richard E. Nielsen
Attorneys for Plaintiff

28

1 VERIFICATION

2 I, CHARLES BAKER, am the Chief Financial Officer of plaintiff Yelp Inc. I have
3 read the foregoing Verified Complaint and the exhibits incorporated therein, and know the
4 contents thereof. I am authorized to make this verification. I am informed and believe that
5 the information contained in said document is true, and on that ground I allege that the
6 information stated therein is true.

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

9 Executed this 23rd day of February, 2017, at San Francisco, CA.

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13 Charles Baker
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C

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EXHIBIT A

CITY AND COUNTY OF SAN FRANCISCO

Claim For Business Tax Refund

Before completing this form, please read the instructions on the back. You have **one year** from the date of payment, the date the return accompanying the payment was due, or the date on which the amount requested on an amended return or request for refund form timely filed with the Tax Collector was denied or deemed denied under section 6.15-1(g) of Article 6 of the Business and Tax Regulations Code, whichever is later, to submit this form and supporting documentation to:
CONTROLLER'S OFFICE, CLAIMS DIVISION, 1390 MARKET STREET, 7TH FLOOR, SAN FRANCISCO, CA 94102-5402.
 You must file a separate claim for business tax refund for each type of tax.

1. CLAIMANT'S NAME: YELP INC

DBA (if applicable): _____

Address: 140 NEW MONTGOMERY ST. 9F
SAN FRANCISCO, CA 94105

Telephone: 415-908-3801

2. IF CLAIMANT IS A BUSINESS:

Type of Ownership

☐ Individual

☐ Partnership

☒ Corporation

☐ Other: _____

3. FEDERAL TAXPAYER ID # 20-1854266

4. TAX PAID INFORMATION					
Business Account Number	Paid By	Date Paid	Receipt No.	Amount Paid	Period Covered
a. 0396032	YELP INC.	02/26/2015		\$1,390,402.65	2014
b.				(includes 1 quarterly installment payment	
c.				and final payment 2/26/2015)	

5. BASIS OF CLAIM: State all facts that support your refund claim. If your claim applies to only a portion of the tax paid, please explain the portion to which it applies.

See attachment.

Applicable Tax (check one)

☐ Payroll Expense Tax

☒ Gross Receipts Tax

☐ Registration Fee

☐ Tourism Improvement District Fee

☐ Moscone Expansion District Fee

☐ Transient Occupancy Tax

☐ Parking Tax

☐ Access Line Tax

☐ Utility Users Tax (other than TUT)

☐ Cigarette Litter Abatement Fee

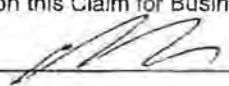
☐ Telephone Users Tax (TUT)

☐ Stadium Operator Admission Tax

6. REFUND AMOUNT REQUESTED: \$ 28,936

7. DATE AMOUNT REQUESTED FROM THE TAX COLLECTOR WAS DENIED OR DEEMED DENIED (IF APPLICABLE): _____

8. SIGNATURE OF CLAIMANT OR REPRESENTATIVE: I certify under penalty of perjury that I am the taxpayer (including an officer, general partner, member manager, executor, trustee, fiduciary, or other individual with authority to bind the taxpayer), or agent of the taxpayer authorized to sign this form on behalf of the taxpayer (attach authorization), and that the information on this Claim for Business Tax Refund form is, to the best of my knowledge and belief, true and correct.

X  2/5/16

Signature Date

ROB KROLIK CFO

Print Name Title

C

C

EXHIBIT B

CITY AND COUNTY OF SAN FRANCISCO

Claim For Business Tax Refund

Before completing this form, please read the Instructions on the back. You have **one year** from the date of payment, the date the return accompanying the payment was due, or the date on which the amount requested on an amended return or request for refund form timely filed with the Tax Collector was denied or deemed denied under section 6.15-1(g) of Article 6 of the Business and Tax Regulations Code, whichever is later, to submit this form and supporting documentation to:
CONTROLLER'S OFFICE, CLAIMS DIVISION, 1390 MARKET STREET, 7TH FLOOR, SAN FRANCISCO, CA 94102-5402.
 You must file a separate claim for business tax refund for each type of tax.

1. CLAIMANT'S NAME: <u>YELP INC</u> DBA (if applicable): _____ Address: <u>140 NEW MONTGOMERY ST. 9F</u> <u>SAN FRANCISCO, CA 94105</u> Telephone: <u>415-908-3801</u>	2. IF CLAIMANT IS A BUSINESS: Type of Ownership <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Other: _____
---	--

3. FEDERAL TAXPAYER ID # <u>20-1854266</u>

4. TAX PAID INFORMATION					
Business Account Number	Paid By	Date Paid	Receipt No.	Amount Paid	Period Covered
a. 0396032	YELP INC.	02/26/2015		\$1,390,402.65	2014
b.				(includes 1 quarterly installment payment	
c.				and final payment 2/26/2015)	

5. BASIS OF CLAIM: State all facts that support your refund claim. If your claim applies to only a portion of the tax paid, please explain the portion to which it applies. <u>See attachment.</u> _____ _____ _____ _____ _____ _____	Applicable Tax (check one) <input checked="" type="checkbox"/> Payroll Expense Tax <input type="checkbox"/> Gross Receipts Tax <input type="checkbox"/> Registration Fee <input type="checkbox"/> Tourism Improvement District Fee <input type="checkbox"/> Moscone Expansion District Fee <input type="checkbox"/> Transient Occupancy Tax <input type="checkbox"/> Parking Tax <input type="checkbox"/> Access Line Tax <input type="checkbox"/> Utility Users Tax (other than TUT) <input type="checkbox"/> Cigarette Litter Abatement Fee <input type="checkbox"/> Telephone Users Tax (TUT) <input type="checkbox"/> Stadium Operator Admission Tax
--	---

6. REFUND AMOUNT REQUESTED: \$ <u>1,252,745</u>
--

7. DATE AMOUNT REQUESTED FROM THE TAX COLLECTOR WAS DENIED OR DEEMED DENIED (IF APPLICABLE): _____

8. SIGNATURE OF CLAIMANT OR REPRESENTATIVE: I certify under penalty of perjury that I am the taxpayer (including an officer, general partner, member manager, executor, trustee, fiduciary, or other individual with authority to bind the taxpayer), or agent of the taxpayer authorized to sign this form on behalf of the taxpayer (attach authorization), and that the information on this Claim for Business Tax Refund form is, to the best of my knowledge and belief, true and correct.	
X _____ Signature	<u>2/5/16</u> Date
<u>ROB KROLIK</u> Print Name	<u>CFO</u> Title

C

C

EXHIBIT C



CITY AND COUNTY OF SAN FRANCISCO
Office of the Treasurer & Tax Collector

REQUEST FOR BUSINESS TAX OR FEE REFUND

Use this Request for Business Tax or Fee Refund form to request a refund of an amount you paid that exceeds the amount of any tax, fee, penalty, and interest. Before completing this form, please read and follow the instructions on the back.

Submit this form and supporting documentation to:

OFFICE OF THE TREASURER & TAX COLLECTOR

Business Tax Section, Account Services, Mailing Address: P.O. Box 7425, San Francisco, CA 94120-7425

or send via email to: BusinessTax.TTX@sfgov.org

IMPORTANT: THIS IS NOT A CLAIM FOR REFUND. DO NOT FILE THIS FORM WITH THE OFFICE OF THE CONTROLLER. TO FILE A CLAIM FOR REFUND GO TO: www.sfcontroller.org

1. BUSINESS NAME: YELP INC.
DBA (if applicable): _____
Business Account Number: 0396032
Mailing Address: 140 NEW MONTGOMERY ST. 9F, SAN FRANCISCO, CA 94105
Federal Tax I.D. or Social Security #: 20-1854266

2. PAYMENT INFORMATION

Date Paid	Amount Paid	Period Covered
2/26/2015 (includes 1 quarterly installment payment and final payment 2/26/15)	\$1,390,402.65	01/01/2014 - 12/31/2014

3. BASIS OF REQUEST: State all facts and circumstances that support your request for a refund. Attach additional documentation if necessary.

See attached.

Applicable Tax/Fee
(check one)

- ☐ Access Line Tax
- ☐ Cigarette Litter Abatement Fee
- ☒ Gross Receipts Tax
- ☐ Moscone Expansion District Fee
- ☐ Payroll Expense Tax
- ☐ Parking Tax
- ☐ Registration Fee
- ☐ Stadium Operator Admission Tax
- ☐ Telephone Users Tax (TUT)
- ☐ Tourism Improvement District Fee
- ☐ Transient Occupancy Tax
- ☐ Utility Users Tax (other than TUT)

4. REFUND AMOUNT REQUESTED: \$ \$28,936

5. SIGNATURE:

I certify under penalty of perjury that I am the taxpayer or operator (including an officer, general partner, member manager, executor, trustee, fiduciary, or other individual with the authority to bind the taxpayer or operator), and I have examined the foregoing Request for Business Tax or Fee Refund, including any attachments, and the information thereon is, to the best of my knowledge and belief, true, correct, and fully compliant with all the requirements of the San Francisco Business and Tax Regulations Code. The undersigned is not an agent or the taxpayer's or operator's attorney. Issuance of any refund does not waive the City's right to audit at a later time.

Signature: X
Print Name: ROB KROLIK

Date: 2/5/15
Title: CFO

Instructions for Filing a Request for Business Tax or Fee Refund

Failure to complete all sections of this form may delay the processing of your request and may result in the return or denial of your request.

Use this Request for Business Tax or Fee Refund form to request a refund of an amount you paid that exceeds the amount of tax, fee, penalty, and interest due. This form may only be filed within the later of one year of the payment of such amount or the date the return accompanying such payment was due.

If you are filing this form as an operator for a third-party tax or fee, you must not have collected the amount requested from your customers.

This Request for Business Tax or Fee Refund is not a Claim for Refund. If the Tax Collector denies your Request for Business Tax or Fee Refund, or if the Tax Collector does not grant your request within one year of the date that you filed your Request for Business Tax or Fee Refund (in which case your Request for Business Tax or Fee Refund is deemed denied), you must satisfy the requirements of Sections 6.13-5 and 6.15-3 of the Business and Tax Regulations Code, including timely filing a Claim for Refund with the Controller and allowing action to be taken on such a Claim for Refund, before you can file suit in Court. You can obtain more information about filing a Claim for Refund and a copy of the Claim for Refund form by calling the Office of the City Attorney at (415) 554-3900, or by going online to www.sfcontroller.org.

1. **Name, DBA, Business Account Number, Mailing Address, and Federal Tax Identification Number** – State the full name, DBA (if applicable), Business Account Number (if applicable), mailing address, and the Federal Tax I.D. or Social Security number of the business and/or person requesting the refund. ALL CORRESPONDENCE WILL BE SENT TO THE MAILING ADDRESS LISTED.
2. **Payment Information** – In the space provided, state all of the following for each payment for which you request a refund: (i) the date of each payment; (ii) the amount of each payment; and (iii) the period for which the payment was made.
3. **Basis of Request** – State in detail all facts supporting your request for refund. For each payment for which you seek a refund, check the appropriate box for the specific tax or fee paid. Submit copies of all cancelled checks, receipts and any other document or record that supports your request for a refund.
4. **Refund Amount Requested** – State the total amount you are requesting as a refund. Provide a breakdown of the different payments and periods for which you are requesting a refund.
5. **Signature** – Please sign and date. Print the name of the signatory and the position, title, or other relationship to the requester. The request must be signed by the taxpayer, operator, or other person determined to be liable for the tax or fee or said person's guardian or conservator. No other agent, including the taxpayer's or operator's attorney, may sign a refund request.

Please be advised that the San Francisco Tax Collector may offset against a refund request any unpaid taxes, fees, or other amounts owed by the requester, including unsecured personal property taxes, business registration fees, or unpaid business taxes and fees.

EXHIBIT D



CITY AND COUNTY OF SAN FRANCISCO
Office of the Treasurer & Tax Collector

REQUEST FOR BUSINESS TAX OR FEE REFUND

Use this Request for Business Tax or Fee Refund form to request a refund of an amount you paid that exceeds the amount of any tax, fee, penalty, and interest. Before completing this form, please read and follow the instructions on the back.

Submit this form and supporting documentation to:

OFFICE OF THE TREASURER & TAX COLLECTOR

Business Tax Section, Account Services, Mailing Address: P.O. Box 7425, San Francisco, CA 94120-7425

or send via email to: BusinessTax.TTX@sfgov.org

IMPORTANT: THIS IS NOT A CLAIM FOR REFUND. DO NOT FILE THIS FORM WITH THE OFFICE OF THE CONTROLLER. TO FILE A CLAIM FOR REFUND GO TO: www.sfcontroller.org

1. BUSINESS NAME:	YELP INC.
DBA (if applicable):	
Business Account Number:	0396032
Mailing Address:	140 NEW MONTGOMERY ST. 9F, SAN FRANCISCO, CA 94105
Federal Tax I.D. or Social Security #:	20-1854266

2. PAYMENT INFORMATION

Date Paid	Amount Paid	Period Covered
2/26/2015 (includes 1 quarterly installment payment and final payment 2/26/15)	\$1,390,402.65	01/01/2014 - 12/31/2014

3. BASIS OF REQUEST: State all facts and circumstances that support your request for a refund. Attach additional documentation if necessary.

See attached.

Applicable Tax/Fee (check one)

- ☐ Access Line Tax
- ☐ Cigarette Litter Abatement Fee
- ☐ Gross Receipts Tax
- ☐ Moscone Expansion District Fee
- ☒ Payroll Expense Tax
- ☐ Parking Tax
- ☐ Registration Fee
- ☐ Stadium Operator Admission Tax
- ☐ Telephone Users Tax (TUT)
- ☐ Tourism Improvement District Fee
- ☐ Transient Occupancy Tax
- ☐ Utility Users Tax (other than TUT)

4. REFUND AMOUNT REQUESTED: \$ \$1,252,745

5. SIGNATURE:

I certify under penalty of perjury that I am the taxpayer or operator (including an officer, general partner, member manager, executor, trustee, fiduciary, or other individual with the authority to bind the taxpayer or operator), and I have examined the foregoing Request for Business Tax or Fee Refund, including any attachments, and the information thereon is, to the best of my knowledge and belief, true, correct, and fully compliant with all the requirements of the San Francisco Business and Tax Regulations Code. The undersigned is not an agent or the taxpayer's or operator's attorney. Issuance of any refund does not waive the City's right to audit at a later time.

Signature: X
Print Name: ROB KROLIK

Date: 2/5/16
Title: CEO

Instructions for Filing a Request for Business Tax or Fee Refund

Failure to complete all sections of this form may delay the processing of your request and may result in the return or denial of your request.

Use this Request for Business Tax or Fee Refund form to request a refund of an amount you paid that exceeds the amount of tax, fee, penalty, and interest due. This form may only be filed within the later of one year of the payment of such amount or the date the return accompanying such payment was due.

If you are filing this form as an operator for a third-party tax or fee, you must not have collected the amount requested from your customers.

This Request for Business Tax or Fee Refund is not a Claim for Refund. If the Tax Collector denies your Request for Business Tax or Fee Refund, or if the Tax Collector does not grant your request within one year of the date that you filed your Request for Business Tax or Fee Refund (in which case your Request for Business Tax or Fee Refund is deemed denied), you must satisfy the requirements of Sections 6.13-5 and 6.15-3 of the Business and Tax Regulations Code, including timely filing a Claim for Refund with the Controller and allowing action to be taken on such a Claim for Refund, before you can file suit in Court. You can obtain more information about filing a Claim for Refund and a copy of the Claim for Refund form by calling the Office of the City Attorney at (415) 554-3900, or by going online to www.sfccontroller.org.

1. **Name, DBA, Business Account Number, Mailing Address, and Federal Tax Identification Number** – State the full name, DBA (if applicable), Business Account Number (if applicable), mailing address, and the Federal Tax I.D. or Social Security number of the business and/or person requesting the refund. ALL CORRESPONDENCE WILL BE SENT TO THE MAILING ADDRESS LISTED.
2. **Payment Information** – In the space provided, state all of the following for each payment for which you request a refund: (i) the date of each payment; (ii) the amount of each payment; and (iii) the period for which the payment was made.
3. **Basis of Request** – State in detail all facts supporting your request for refund. For each payment for which you seek a refund, check the appropriate box for the specific tax or fee paid. Submit copies of all cancelled checks, receipts and any other document or record that supports your request for a refund.
4. **Refund Amount Requested** – State the total amount you are requesting as a refund. Provide a breakdown of the different payments and periods for which you are requesting a refund.
5. **Signature** – Please sign and date. Print the name of the signatory and the position, title, or other relationship to the requester. The request must be signed by the taxpayer, operator, or other person determined to be liable for the tax or fee or said person's guardian or conservator. No other agent, including the taxpayer's or operator's attorney, may sign a refund request.

Please be advised that the San Francisco Tax Collector may offset against a refund request any unpaid taxes, fees, or other amounts owed by the requester, including unsecured personal property taxes, business registration fees, or unpaid business taxes and fees.

EXHIBIT E

Office of the Treasurer & Tax Collector
City and County of San Francisco



José Cisneros, Treasurer

July 14, 2016

Lanny Baker, CFO
Yelp Inc.
140 New Montgomery Street
San Francisco, CA 94105

Re: Request for refund for Payroll Expense and Gross Receipts Tax for the period
January 1, 2014 – December 31, 2014 BAN: 0396032

Dear Mr. Baker:

This is to advise you that your request for business tax refund dated February 5, 2016 was denied. Prior to seeking judicial relief, persons against whom a refund denial is made must exhaust the administrative remedies in the manner set forth in Section 6.15-5 of the San Francisco Business and Tax Regulations Code.

Sincerely,

Business Tax Account Services
Office of the Treasurer & Tax collector
City and County of San Francisco

EXHIBIT F

CITY AND COUNTY OF SAN FRANCISCO

Claim For Business Tax Refund

Before completing this form, please read the instructions on the back. You have **one year** from the date of payment, the date the return accompanying the payment was due, or the date on which the amount requested on an amended return or request for refund form timely filed with the Tax Collector was denied or deemed denied under section 6.15-1(g) of Article 6 of the Business and Tax Regulations Code, whichever is later, to submit this form and supporting documentation to:
CONTROLLER'S OFFICE, CLAIMS DIVISION, 1390 MARKET STREET, 7TH FLOOR, SAN FRANCISCO, CA 94102-5402.
 You must file a separate claim for business tax refund for each type of tax.

1. CLAIMANT'S NAME: <u>YELP INC.</u> DBA (if applicable): _____ Address: <u>140 NEW MONTGOMERY ST. 9F</u> <u>San Francisco, CA 94105</u> Telephone: <u>415-908-3801</u>	2. IF CLAIMANT IS A BUSINESS: Type of Ownership <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Other: _____
--	--

3. FEDERAL TAXPAYER ID # <u>20-1854266</u>

4. TAX PAID INFORMATION					
Business Account Number	Paid By	Date Paid	Receipt No.	Amount Paid	Period Covered
a. 0396032	YELP INC.	02/26/2015		\$1,390,402.65**	2014
b.					
c.		**Includes 1 quarterly installment payment & final payment 2/26/2015			

5. BASIS OF CLAIM: State all facts that support your refund claim. If your claim applies to only a portion of the tax paid, please explain the portion to which it applies. <u>SEE ATTACHMENT</u> _____ _____ _____ _____ _____ _____	Applicable Tax (check one) <input type="checkbox"/> Payroll Expense Tax <input checked="" type="checkbox"/> Gross Receipts Tax <input type="checkbox"/> Registration Fee <input type="checkbox"/> Tourism Improvement District Fee <input type="checkbox"/> Moscone Expansion District Fee <input type="checkbox"/> Transient Occupancy Tax <input type="checkbox"/> Parking Tax <input type="checkbox"/> Access Line Tax <input type="checkbox"/> Utility Users Tax (other than TUT) <input type="checkbox"/> Cigarette Litter Abatement Fee <input type="checkbox"/> Telephone Users Tax (TUT) <input type="checkbox"/> Stadium Operator Admission Tax
---	---

6. REFUND AMOUNT REQUESTED: <u>\$28,936</u>
--

7. DATE AMOUNT REQUESTED FROM THE TAX COLLECTOR WAS DENIED OR DEEMED DENIED (IF APPLICABLE): <u>7/14/2016</u>
--

8. SIGNATURE OF CLAIMANT OR REPRESENTATIVE: I certify under penalty of perjury that I am the taxpayer (including an officer, general partner, member manager, executor, trustee, fiduciary, or other individual with authority to bind the taxpayer), or agent of the taxpayer authorized to sign this form on behalf of the taxpayer (attach authorization), and that the information on this Claim for Business Tax Refund form is, to the best of my knowledge and belief, true and correct.	
X <u><i>Lynn Baker</i></u> Signature	<u>12 SEPT 2016</u> Date
<u>LYNN BAKER</u> Print Name	<u>CFO</u> Title

EXHIBIT G

CITY AND COUNTY OF SAN FRANCISCO

Claim For Business Tax Refund

Before completing this form, please read the instructions on the back. You have **one year** from the date of payment, the date the return accompanying the payment was due, or the date on which the amount requested on an amended return or request for refund form timely filed with the Tax Collector was denied or deemed denied under section 6.15-1(g) of Article 6 of the

Business and Tax Regulations Code, whichever is later, to submit this form and supporting documentation to:
CONTROLLER'S OFFICE, CLAIMS DIVISION, 1390 MARKET STREET, 7TH FLOOR, SAN FRANCISCO, CA 94102-5402.

You must file a separate claim for business tax refund for each type of tax.

1. CLAIMANT'S NAME: <u>YELP INC.</u> DBA (if applicable): _____ Address: <u>140 NEW MONTGOMERY ST. 9F</u> <u>San Francisco, CA 94105</u> Telephone: <u>415-908-3801</u>	2. IF CLAIMANT IS A BUSINESS: Type of Ownership <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Other: _____
--	--

3. FEDERAL TAXPAYER ID # <u>20-1854266</u>

4. TAX PAID INFORMATION					
Business Account Number	Paid By	Date Paid	Receipt No.	Amount Paid	Period Covered
a. 0396032	YELP INC.	02/26/2015		\$1,390,402.65**	2014
b. 0396032	YELP INC.	08/19/2016		\$15,580.00	2014
c.		**Includes 1 quarterly installment payment & final payment 2/26/2015			

5. BASIS OF CLAIM: State all facts that support your refund claim. If your claim applies to only a portion of the tax paid, please explain the portion to which it applies. <u>SEE ATTACHMENT</u> _____ _____ _____ _____ _____ _____	Applicable Tax (check one) <input checked="" type="checkbox"/> Payroll Expense Tax <input type="checkbox"/> Gross Receipts Tax <input type="checkbox"/> Registration Fee <input type="checkbox"/> Tourism Improvement District Fee <input type="checkbox"/> Moscone Expansion District Fee <input type="checkbox"/> Transient Occupancy Tax <input type="checkbox"/> Parking Tax <input type="checkbox"/> Access Line Tax <input type="checkbox"/> Utility Users Tax (other than TUT) <input type="checkbox"/> Cigarette Litter Abatement Fee <input type="checkbox"/> Telephone Users Tax (TUT) <input type="checkbox"/> Stadium Operator Admission Tax
---	---

6. REFUND AMOUNT REQUESTED: \$ <u>1,268,325 (\$1,252,745, plus \$15,580)</u>

7. DATE AMOUNT REQUESTED FROM THE TAX COLLECTOR WAS DENIED OR DEEMED DENIED (IF APPLICABLE): <u>7/14/2016 & 7/15/2016</u>
--

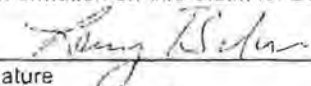
8. SIGNATURE OF CLAIMANT OR REPRESENTATIVE: I certify under penalty of perjury that I am the taxpayer (including an officer, general partner, member manager, executor, trustee, fiduciary, or other individual with authority to bind the taxpayer), or agent of the taxpayer authorized to sign this form on behalf of the taxpayer (attach authorization), and that the information on this Claim for Business Tax Refund form is, to the best of my knowledge and belief, true and correct.	
X <u></u> Signature	<u>12/30/11 7:01</u> Date
<u>LARRY BAKER</u> Print Name	<u>CEO</u> Title

EXHIBIT H

CITY AND COUNTY OF SAN FRANCISCO

Claim For Business Tax Refund

Before completing this form, please read the instructions on the back. You have **one year** from the date of payment, the date the return accompanying the payment was due, or the date on which the amount requested on an amended return or request for refund form timely filed with the Tax Collector was denied or deemed denied under section 6.15-1(g) of Article 6 of the Business and Tax Regulations Code, whichever is later, to submit this form and supporting documentation to:
CONTROLLER'S OFFICE, CLAIMS DIVISION, 1390 MARKET STREET, 7TH FLOOR, SAN FRANCISCO, CA 94102-5402.
 You must file a separate claim for business tax refund for each type of tax.

1. CLAIMANT'S NAME: <u>YELP INC</u> DBA (if applicable): _____ Address: <u>140 NEW MONTGOMERY ST. 9F</u> <u>SAN FRANCISCO, CA 94105</u> Telephone: <u>415-908-3801</u>	2. IF CLAIMANT IS A BUSINESS: Type of Ownership <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Other: _____
---	--

3. FEDERAL TAXPAYER ID # <u>20-1854266</u>

4. TAX PAID INFORMATION					
Business Account Number	Paid By	Date Paid	Receipt No.	Amount Paid	Period Covered
a. 0396032	YELP INC.	4/29/2016		\$1,722,615.00	2015
b.				(includes 1 quarterly installment payment, extension payment and final payment 4/29/2016)	
c.					

5. BASIS OF CLAIM: State all facts that support your refund claim. If your claim applies to only a portion of the tax paid, please explain the portion to which it applies. <u>See attached.</u> _____ _____ _____ _____ _____ _____	Applicable Tax (check one) <input type="checkbox"/> Payroll Expense Tax <input checked="" type="checkbox"/> Gross Receipts Tax <input type="checkbox"/> Registration Fee <input type="checkbox"/> Tourism Improvement District Fee <input type="checkbox"/> Moscone Expansion District Fee <input type="checkbox"/> Transient Occupancy Tax <input type="checkbox"/> Parking Tax <input type="checkbox"/> Access Line Tax <input type="checkbox"/> Utility Users Tax (other than TUT) <input type="checkbox"/> Cigarette Litter Abatement Fee <input type="checkbox"/> Telephone Users Tax (TUT) <input type="checkbox"/> Stadium Operator Admission Tax
--	---

6. REFUND AMOUNT REQUESTED: \$ <u>24,019.00</u>
--

7. DATE AMOUNT REQUESTED FROM THE TAX COLLECTOR WAS DENIED OR DEEMED DENIED (IF APPLICABLE): _____

8. SIGNATURE OF CLAIMANT OR REPRESENTATIVE: I certify under penalty of perjury that I am the taxpayer (including an officer, general partner, member manager, executor, trustee, fiduciary, or other individual with authority to bind the taxpayer), or agent of the taxpayer authorized to sign this form on behalf of the taxpayer (attach authorization), and that the information on this Claim for Business Tax Refund form is, to the best of my knowledge and belief, true and correct.	
<u>X</u> Signature <u>CHARLES BAKER</u> Print Name	<u>2/18/16</u> Date <u>CFO</u> Title

EXHIBIT I

CITY AND COUNTY OF SAN FRANCISCO

Claim For Business Tax Refund

Before completing this form, please read the instructions on the back. You have **one year** from the date of payment, the date the return accompanying the payment was due, or the date on which the amount requested on an amended return or request for refund form timely filed with the Tax Collector was denied or deemed denied under section 6.15-1(g) of Article 6 of the

Business and Tax Regulations Code, whichever is later, to submit this form and supporting documentation to:
CONTROLLER'S OFFICE, CLAIMS DIVISION, 1390 MARKET STREET, 7TH FLOOR, SAN FRANCISCO, CA 94102-5402.

You must file a separate claim for business tax refund for each type of tax.

1. CLAIMANT'S NAME: <u>YELP INC</u> DBA (if applicable): _____ Address: <u>140 NEW MONTGOMERY ST. 9F</u> <u>SAN FRANCISCO, CA 94105</u> Telephone: <u>415-908-3801</u>	2. IF CLAIMANT IS A BUSINESS: Type of Ownership <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Other: _____
---	--

3. FEDERAL TAXPAYER ID # <u>20-1854266</u>

4. TAX PAID INFORMATION					
Business Account Number	Paid By	Date Paid	Receipt No.	Amount Paid	Period Covered
a. 0396032	YELP INC.	4/29/2016		\$1,722,615.00	2015
b.				(includes 1 quarterly installment payment, extension payment and final payment 4/29/2016)	
c.					

5. BASIS OF CLAIM: State all facts that support your refund claim. If your claim applies to only a portion of the tax paid, please explain the portion to which it applies. <u>See attached.</u> _____ _____ _____ _____ _____ _____	Applicable Tax (check one) <input checked="" type="checkbox"/> Payroll Expense Tax <input type="checkbox"/> Gross Receipts Tax <input type="checkbox"/> Registration Fee <input type="checkbox"/> Tourism Improvement District Fee <input type="checkbox"/> Moscone Expansion District Fee <input type="checkbox"/> Transient Occupancy Tax <input type="checkbox"/> Parking Tax <input type="checkbox"/> Access Line Tax <input type="checkbox"/> Utility Users Tax (other than TUT) <input type="checkbox"/> Cigarette Litter Abatement Fee <input type="checkbox"/> Telephone Users Tax (TUT) <input type="checkbox"/> Stadium Operator Admission Tax
--	---

6. REFUND AMOUNT REQUESTED: \$ <u>260,609.00</u>

7. DATE AMOUNT REQUESTED FROM THE TAX COLLECTOR WAS DENIED OR DEEMED DENIED (IF APPLICABLE): _____

8. SIGNATURE OF CLAIMANT OR REPRESENTATIVE: I certify under penalty of perjury that I am the taxpayer (including an officer, general partner, member manager, executor, trustee, fiduciary, or other individual with authority to bind the taxpayer), or agent of the taxpayer authorized to sign this form on behalf of the taxpayer (attach authorization), and that the information on this Claim for Business Tax Refund form is, to the best of my knowledge and belief, true and correct.	
X <u>Charles Baker</u> Signature	<u>21 DEC 2015</u> Date
<u>CHARLES BAKER</u> Print Name	<u>CFO</u> Title

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Richard E. Nielsen (SBN 72104) Pillsbury Winthrop Shaw Pittman LLP Four Embarcadero Center, 22nd Floor San Francisco, CA 94111 TELEPHONE NO. (415) 983-1000 FAX NO. (415) 983-1200 ATTORNEY FOR (Name) Plaintiff YELP INC.		FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">FILED</div> San Francisco County Superior Court <div style="font-size: 1.2em; margin: 10px 0;">FEB 23 2017</div> CLERK OF THE COURT BY:  Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">CGC-17-557250</div> JUDGE: DEPT:	
CASE NAME: YELP v. CITY AND COUNTY OF SAN FRANCISCO, et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
--	--

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary, declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify) One

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 23, 2017

Richard E. Nielsen

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 3

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller
Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item, otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Jan-12-2018 12:58 pm

Case Number: CGC-18-563657

Filing Date: Jan-12-2018 12:56

Filed by: BOWMAN LIU

Image: 06176758

COMPLAINT

AVALONBAY COMMUNITIES, INC. ET AL VS. CITY AND COUNTY OF SAN
FRANCISCO ET AL

001C06176758

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

CITY AND COUNTY OF SAN FRANCISCO, JOSE CISNEROS, TREASURER
AND TAX COLLECTOR OF THE CITY AND COUNTY OF SAN
FRANCISCO, AND DOES 1 THROUGH 50

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

AVALONBAY COMMUNITIES, INC. AND MVP I, LLC

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Francisco Superior Court

400 McAllister Court

San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Edwin Antolin, Antolin Agarwal LLP, 2175 N. California Blvd., Suite 775, Walnut Creek, CA 94596

CASE NUMBER
(Número del caso) 040-18-563657

DATE:
(Fecha)

JAN 12 2018

DEPUTY CLERK

clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010))

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010))

BOWMAN LIU

(SEAL)



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

☒ on behalf of (specify): City & County of San Francisco; Jose Cisneros, Treasurer

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☒ other (specify): CCP 416.50 (Public Entity)

4. ☒ by personal delivery on (date):

1 ANTOLIN AGARWAL LLP
2 EDWIN ANTOLIN (SBN 172599)
3 MONTY AGARWAL (SBN 191568)
4 RACHEL CHANIN (SBN 229253)
5 2175 N. California Blvd., Suite 775
6 Walnut Creek, California 94596
7 Telephone: (925) 262-4187
8 Facsimile: (925) 262-4269
9 Email: eantolin@aaclegal.com

10 Attorneys for Plaintiffs
11 AVALONBAY COMMUNITIES, INC. AND
12 MVP I, LLC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 UNLIMITED CIVIL JURISDICTION

16 AVALONBAY COMMUNITIES, INC. and
17 MVP I, LLC,

18 Plaintiffs,

19 v.

20 CITY AND COUNTY OF SAN FRANCISCO,
21 JOSÉ CISNEROS, TREASURER AND TAX
22 COLLECTOR OF THE CITY AND COUNTY
23 OF SAN FRANCISCO,
24 and DOES 1 through 50,

25 Defendants.

No. **CGC-18-563657**

**COMPLAINT FOR REFUND OF
TAXES**

(Gov. Code § 945.6 and S.F. Bus. and
Reg. Tax Code § 6.15-3)

26 Plaintiffs AvalonBay Communities, Inc. and MVP I, LLC (collectively, "Plaintiffs"), in
27 accordance with California Government Code § 945.6, hereby file this Complaint for Refund of
28 gross receipts taxes and payroll expense taxes for tax years 2014 and 2015. This Complaint
constitutes an appeal of the denial of a claim for refund of gross receipts and payroll expense taxes
paid by Plaintiffs to the City and County of San Francisco. Plaintiffs complain of Defendants as
follows:

1
COMPLAINT FOR REFUND OF TAXES

FILED
Superior Court of California
County of San Francisco

JAN 12 2018

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

BOWMAN LIU

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PARTIES

1. Plaintiff AvalonBay Communities, Inc. ("Avalon") at all times mentioned herein was a corporation organized and existing under the laws of the State of Maryland. Avalon's principal place of business is located at Ballston Tower, 671 N. Glebe Road, Suite 800, Arlington, VA 22203.

2. Plaintiff MVP I, LLC ("MVP") at all times mentioned herein was a limited liability company organized and existing under the laws of the State of Delaware. MVP's principal place of business is located at Ballston Tower, 671 N. Glebe Road, Suite 800, Arlington, VA 22203.

3. Defendant City and County of San Francisco (hereinafter "Defendant" or the "City") is a political subdivision of the State of California.

4. Defendant Jose Cisneros ("Treasurer"), at all times relevant herein, was the Treasurer and Tax Collector of the City. He is sued in his official capacity only.

5. The true names and capacities, whether individual, corporate, or otherwise, of Does 1 through 50, inclusive, are unknown to Plaintiffs, who therefore sue such defendants by fictitious names. Plaintiffs will amend this Complaint to allege the Doe defendants' true names and capacities once they are ascertained.

JURISDICTION AND VENUE

5. Jurisdiction is vested in this Court under sections 940 *et seq.* of the California Government Code.

6. Venue is proper in this Court pursuant to Code of Civil Procedure Section 394.

BASIS OF THE ACTION

7. Plaintiffs bring this action in accordance with Section 945.6 of the California Government Code. This is an action for refund of gross receipts taxes and payroll expense taxes (collectively the "Taxes") paid by Plaintiffs to Defendants pursuant to San Francisco's Business License Tax Ordinance, S.F. Business and Tax Regulations Code, Article 12-A-1 and the Payroll Expense Tax Ordinance, S.F. Business and Tax Regulations Code, Article 12-A for tax years 2014 and 2015.

8. Plaintiffs seek a refund on the ground the Plaintiffs were not liable for the Taxes paid for 2014 and 2015.

1 **FACTUAL BACKGROUND**

2 9. During 2014 and 2015, Avalon owned and managed nine residential apartment
3 buildings or complexes (the "Avalon Apartment Buildings") at separate locations within the City
4 and County of San Francisco.

5 10. During 2014 and 2015, MVP owned and managed two residential apartment
6 buildings or complexes (the "MVP Apartment Buildings") at separate locations within the City and
7 County of San Francisco.

8 11. Prior to 2014, Avalon calculated payroll expense taxes imposed by the City for the
9 Avalon Apartment Buildings under a single Business Account Number ("BAN"), BAN 0942138.

10 12. Prior to 2014, MVP calculated payroll expense taxes imposed by the City for the
11 MVP Apartment Buildings under a single Business Account Number ("BAN"), BAN 0414577.

12 13. For 2014 and 2015, Avalon calculated and paid Taxes attributable to the Avalon
13 Apartment Buildings under BAN 0942138.

14 14. For 2014 and 2015, MVP calculated and paid Taxes attributable to the MVP
15 Apartment Buildings under BAN 0414577.

16 15. On or about February 5, 2016, Mr. Sutanto Darsono of the Treasurer & Tax
17 Collector's Office informed Plaintiffs that due to a change of law effective January 1, 2014, each of
18 Plaintiffs' Apartment Buildings was required to obtain a separate BAN and was required to
19 separately report and pay the Taxes for 2014 and 2015.

20 16. On or about February 5, 2016, Plaintiffs advised Mr. Darsono that they had paid the
21 Taxes attributable to the Avalon Apartment Buildings under BAN 0942138 and paid Taxes
22 attributable to the MVP Apartment Buildings under BAN 0414577.

23 17. Beginning February 15, 2017, Plaintiffs worked with Mr. Darsono to obtain separate
24 BANs for the Avalon and MVP Apartment Buildings.

25 18. Thereafter, Plaintiffs worked with Mr. Darsono to file tax returns under the new
26 BANs for the Avalon and MVP Apartment Buildings.

27 19. On or about March 20, 2017, Avalon filed a 2014 amended return with the City
28 reporting an overpayment of Taxes of \$56,362.66, and on this amended return Avalon checked the

1 box requesting a refund of the overpayment pursuant to S.F. Business and Regulation Tax Code
2 § 6.15-1(g).

3 20. On or about March 17, 2017, Avalon filed a 2015 amended return with the City
4 reporting an overpayment of Taxes of \$90,847.84, and on this amended return Avalon checked the
5 box requesting a refund of the overpayment pursuant to S.F. Business and Regulation Tax Code
6 § 6.15-1(g).

7 21. On or about March 20, 2017, MVP filed a 2014 amended return with the City
8 reporting an overpayment of Taxes of \$7,181.12, and on this amended return MVP checked the box
9 requesting a refund of the overpayment pursuant to S.F. Business and Regulation Tax Code § 6.15-
10 1(g).

11 22. On or about March 17, 2017, MVP filed a 2015 amended return with the City
12 reporting an overpayment of Taxes of \$9,625.31, and on this amended return MVP checked the box
13 requesting a refund of the overpayment pursuant to S.F. Business and Regulation Tax Code § 6.15-
14 1(g).

15 23. On or about March 21, 2017, Plaintiffs requested that the Taxes attributable to the
16 Avalon Apartment Buildings and paid under BAN 0942138 be applied to the new BANs for each
17 Avalon Apartment Building and that interest and penalties be waived, and that Taxes attributable to
18 the MVP Apartment Buildings and paid under BAN 0414577 be applied to the new BANs for each
19 MVP Apartment Building and that interest and penalties be waived.

20 24. On or about March 21, 2017, Mr. Darsono informed Plaintiffs that the City could not
21 apply the overpayments to the new BANs as Plaintiffs had requested. Mr. Darsono further advised
22 Plaintiffs that they were required to file a tax return for each new BAN and that Plaintiffs were
23 required to pay the Taxes, interest and penalties due under the new BANs.

24 25. On or about March 21, 2017, Plaintiffs discovered that they the City was unwilling to
25 apply payments of Taxes attributable to the Avalon Apartment Buildings under BAN 0942138 for
26 2014 and 2015, to the new BANs for each Avalon Apartment Building.
27
28

1 26. On or about March 21, 2017, Plaintiffs discovered that they the City was unwilling to
2 apply payments of Taxes attributable to the MVP Apartment Buildings under BAN 0414577 for
3 2014 and 2015, to the new BANs for each MVP Apartment Building.

4 27. By an email dated March 21, 2017, Mr. Darsono advised Plaintiffs that after they paid
5 the Taxes due under the new BANs, they "may submit a refund request to SF business tax section."

6 28. On or about March 31, 2017, Plaintiffs paid Taxes, interest and penalties for 2014 and
7 2015 for the Avalon and MVP Apartment Buildings under the new BANs.

8 29. By letter dated May 12, 2017, the Office of the Treasurer and Tax Collector notified
9 Avalon that its request for a refund for 2015 under S.F. Business and Tax Regulations Code § 6.15-
10 1(g) was denied and advised that if Avalon disagreed with the result, "you may be entitled to file a
11 Claim for Business Tax Refund with the Controller's Office.

12 30. On or about May 30, 2017, Avalon filed a refund claim of Taxes of \$90,847.84 paid
13 under BAN 0942138 for 2015, on the ground such Taxes were erroneously paid under BAN
14 0942138 and the Taxes were reported and paid under the new BANs for the Apartment Buildings.

15 31. By letter dated July 14, 2017, Ms. Virginia Ho, a Claims Adjuster in the Office of the
16 City Attorney, notified Avalon that its refund claim for 2015 was denied. Ms. Ho's letter did not
17 state any grounds or other bases for the denial of the claim.

18 32. The Defendants have not acted on the refund claims submitted by Avalon for 2014
19 and by MVP for 2014 and 2015.

20 33. The Defendants have not notified Plaintiffs that their refund claims for 2014 or 2015
21 were untimely or otherwise defective.

22 34. Plaintiffs timely filed this Complaint for Refund for overpaid taxes. Cal. Gov't Code
23 § 945.6; S.F. Bus. & Tax Regulations Code § 6.15-3.

24 35. Plaintiffs have exhausted all available administrative remedies.
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FIRST CAUSE OF ACTION

Refund of Gross Receipts Taxes and Payroll Expense Taxes

36. Plaintiffs allege and incorporate by reference the allegations set forth in paragraphs 1 through 34 above.

37. Avalon is due a refund of Taxes paid for 2014 and 2015 under BAN 0942138 on the ground Avalon should not have reported and paid Taxes under BAN 0942138 for activities attributable to the Avalon Apartment Buildings.

38. Avalon is entitled to a refund of overpaid Taxes paid under BAN 0942138 for 2014 and 2015 to avoid double taxation.

39. MVP is due a refund of Taxes paid for 2014 and 2015 under BAN 0414577 on the ground MVP should not have reported and paid Taxes under BAN 0414577 for activities attributable to the MVP Apartment Buildings.

40. MVP is entitled to a refund of overpaid Taxes paid under BAN 0414577 for 2014 and 2015 to avoid double taxation.

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

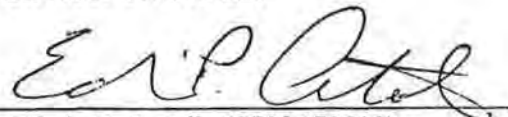
WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For a refund of gross receipts taxes and payroll expense taxes of Payroll Expense Tax paid by Avalon under BAN 0942138 of \$56,362.66 for 2014 and \$90,847.84 for 2015, plus interest from the date of payment as provided by law;
2. For a refund of gross receipts taxes and payroll expense taxes of Payroll Expense Tax paid by MVP under BAN 0414577 of \$7,181.12 for 2014 and \$9,625.31 for 2015, plus interest from the date of payment as provided by law;
3. For Plaintiffs' attorneys' fees and costs of suit as permitted by law; and
4. For such other and further legal and equitable relief as the Court deems just and reasonable.

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Dated: January 12, 2018

ANTOLIN AGARWAL LLP

By: 
Edwin P. Antolin (SBN 172599)

Attorneys for Plaintiff
AVALONBAY COMMUNITIES, INC. AND
MVP I, LLC

CM-010

FILED
FOR COURT USE ONLY
Superior Court of California
County of San Francisco

JAN 12 2018
CLERK OF THE COURT
BY: Bowman Liu Deputy Clerk
BOWMAN LIU

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Edwin Antolin (SBN 172599), Monty Agarwal (SBN 191568)
Rachel Chanin (SBN 229253)
Antolin Agarwal LLP
2175 N. California Blvd., #775, Walnut Creek, CA 94596
TELEPHONE NO.: 925-262-4187 FAX NO.: 925-262-4269

ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco

STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS: 400 McAllister Street
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: Civil

CASE NAME:
AvalonBay Communities, Inc., MVP I LLC v. City/County San Francisco

CIVIL CASE COVER SHEET

☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
CGC-18-563657

JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): one

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 12, 2018
Edwin P. Antolin

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- NOTICE**
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
 - File this cover sheet in addition to any cover sheet required by local court rule.
 - If this case is complex under rule 3.400 at seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
 - Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

EXHIBIT 2

CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU
City Attorney

OFFICE OF THE CITY ATTORNEY

SCOTT M. REIBER
Chief Tax Attorney

Direct Dial: (415) 554-4660
Email: scott.reiber@sfcityattty.org

April 26, 2023

Via Certified Mail (7020 1290 002 3258 1606)

AvalonBay Communities, Inc. and MVP I, LLC
Attn: Edward M. Schulman, Executive Vice President, General Counsel, and Secretary
4040 Wilson Blvd., Suite 1000
Arlington, VA 22203

Via Email (cantolin@vaakllp.com)

Via Certified Mail (7020 1290 002 3258 1675)

Ed Antolin
Vallejo, Antolin, Agarwal, Kanter LLP
3021 Citrus Circle, Suite 220
Walnut Creek, CA 94598

Re: Request for Disclosure of Tax Claims

Dear Mr. Schulman and Mr. Antolin:

In January 2018, AvalonBay Communities, Inc. and MVP I, LLC filed a Complaint for Refund of Taxes against the City and County of San Francisco seeking a refund of gross receipts and payroll expense taxes for tax years 2014 and 2015. The complaint, attached hereto, did not attach copies of the claims for refund underlying the complaint (the "Claims").

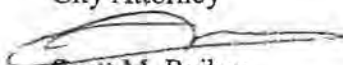
Amy L. Silverstein has requested that we provide her copies of your Claims on the grounds that they constitute "pre-litigation claim[s] against the City" that must be disclosed under S.F. Admin. Code Section 67.24(b)(i). But because we understand that you may take the position that the information in the Claims should remain confidential taxpayer information under S.F. Bus. & Tax Regs. Code Section 6.22-1, Cal. Gov. Code Sections 7925.000 and/or 7927.705 (formerly Sections 6254(i) and (k)), Cal. Evid. Code Section 1040, general principles of taxpayer confidentiality, and/or otherwise, we are reaching out to give you and other similarly-situated taxpayers the opportunity to file suit objecting to the disclosure of the Claims.

If you file suit (and notify us) within 30 days of the date of this letter, we will not disclose the Claims to Ms. Silverstein unless ordered to do so by the court. If we do not hear from you within 30 days of the date of this letter, we will assume you do not claim a confidentiality interest in the Claims or any of their contents and we will disclose them to Ms. Silverstein.

Please reach out to me at the contact information above if you have any questions.

Very truly yours,

DAVID CHIU
City Attorney


Scott M. Reiber
Chief Tax Attorney

Attachment: Complaint



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Jan-12-2018 12:58 pm

Case Number: CGC-18-563657

Filing Date: Jan-12-2018 12:56

Filed by: BOWMAN LIU

Image: 06176758

COMPLAINT

**AVALONBAY COMMUNITIES, INC. ET AL VS. CITY AND COUNTY OF SAN
FRANCISCO ET AL**

001C06176758

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

CITY AND COUNTY OF SAN FRANCISCO, JOSE CISNEROS, TREASURER
AND TAX COLLECTOR OF THE CITY AND COUNTY OF SAN
FRANCISCO, AND DOES 1 THROUGH 50

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

AVALONBAY COMMUNITIES, INC. AND MVP I, LLC

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Francisco Superior Court

400 McAllister Court

San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Edwin Antolin, Antolin Agarwal LLP, 2175 N. California Blvd., Suite 775, Walnut Creek, CA 94596

CASE NUMBER
(Número de caso)

000-18-563657

DATE:
(Fecha)

JAN 12 2018

DEPUTY CLERK, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010)).

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

BOWMAN LIU

[SEAL]

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

☒ on behalf of (specify): City & County of San Francisco; Jose Cisneros, Treasurer

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.80 (minor)
- ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
- ☒ other (specify): CCP 416.50 (Public Entity)

4. ☒ by personal delivery on (date):

1 ANTOLIN AGARWAL LLP
2 EDWIN ANTOLIN (SBN 172599)
3 MONTY AGARWAL (SBN 191568)
4 RACHEL CHANIN (SBN 229253)
5 2175 N. California Blvd., Suite 775
6 Walnut Creek, California 94596
Telephone: (925) 262-4187
Facsimile: (925) 262-4269
Email: eantolin@aaclegal.com

7 Attorneys for Plaintiffs
8 AVALONBAY COMMUNITIES, INC. AND
MVP I, LLC

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 UNLIMITED CIVIL JURISDICTION

13 AVALONBAY COMMUNITIES, INC. and
14 MVP I, LLC,

15 Plaintiffs,

16 v.

17 CITY AND COUNTY OF SAN FRANCISCO,
18 JOSÉ CISNEROS, TREASURER AND TAX
19 COLLECTOR OF THE CITY AND COUNTY
OF SAN FRANCISCO,
and DOES 1 through 50,

20 Defendants.
21

FILED
Superior Court of California
County of San Francisco

JAN 12 2018

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

BOWMAN LIU

No. **CGC-18-563657**

**COMPLAINT FOR REFUND OF
TAXES**

(Gov. Code § 945.6 and S.F. Bus. and
Reg. Tax Code § 6.15-3)

22 Plaintiffs AvalonBay Communities, Inc. and MVP I, LLC (collectively, "Plaintiffs"), in
23 accordance with California Government Code § 945.6, hereby file this Complaint for Refund of
24 gross receipts taxes and payroll expense taxes for tax years 2014 and 2015. This Complaint
25 constitutes an appeal of the denial of a claim for refund of gross receipts and payroll expense taxes
26 paid by Plaintiffs to the City and County of San Francisco. Plaintiffs complain of Defendants as
27 follows:
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PARTIES

1. Plaintiff AvalonBay Communities, Inc. ("Avalon") at all times mentioned herein was a corporation organized and existing under the laws of the State of Maryland. Avalon's principal place of business is located at Ballston Tower, 671 N. Glebe Road, Suite 800, Arlington, VA 22203.

2. Plaintiff MVP I, LLC ("MVP") at all times mentioned herein was a limited liability company organized and existing under the laws of the State of Delaware. MVP's principal place of business is located at Ballston Tower, 671 N. Glebe Road, Suite 800, Arlington, VA 22203.

3. Defendant City and County of San Francisco (hereinafter "Defendant" or the "City") is a political subdivision of the State of California.

4. Defendant Jose Cisneros ("Treasurer"), at all times relevant herein, was the Treasurer and Tax Collector of the City. He is sued in his official capacity only.

5. The true names and capacities, whether individual, corporate, or otherwise, of Does 1 through 50, inclusive, are unknown to Plaintiffs, who therefore sue such defendants by fictitious names. Plaintiffs will amend this Complaint to allege the Doe defendants' true names and capacities once they are ascertained.

JURISDICTION AND VENUE

5. Jurisdiction is vested in this Court under sections 940 *et seq.* of the California Government Code.

6. Venue is proper in this Court pursuant to Code of Civil Procedure Section 394.

BASIS OF THE ACTION

7. Plaintiffs bring this action in accordance with Section 945.6 of the California Government Code. This is an action for refund of gross receipts taxes and payroll expense taxes (collectively the "Taxes") paid by Plaintiffs to Defendants pursuant to San Francisco's Business License Tax Ordinance, S.F. Business and Tax Regulations Code, Article 12-A-1 and the Payroll Expense Tax Ordinance, S.F. Business and Tax Regulations Code, Article 12-A for tax years 2014 and 2015.

8. Plaintiffs seek a refund on the ground the Plaintiffs were not liable for the Taxes paid for 2014 and 2015.

1 **FACTUAL BACKGROUND**

2 9. During 2014 and 2015, Avalon owned and managed nine residential apartment
3 buildings or complexes (the "Avalon Apartment Buildings") at separate locations within the City
4 and County of San Francisco.

5 10. During 2014 and 2015, MVP owned and managed two residential apartment
6 buildings or complexes (the "MVP Apartment Buildings") at separate locations within the City and
7 County of San Francisco.

8 11. Prior to 2014, Avalon calculated payroll expense taxes imposed by the City for the
9 Avalon Apartment Buildings under a single Business Account Number ("BAN"), BAN 0942138.

10 12. Prior to 2014, MVP calculated payroll expense taxes imposed by the City for the
11 MVP Apartment Buildings under a single Business Account Number ("BAN"), BAN 0414577.

12 13. For 2014 and 2015, Avalon calculated and paid Taxes attributable to the Avalon
13 Apartment Buildings under BAN 0942138.

14 14. For 2014 and 2015, MVP calculated and paid Taxes attributable to the MVP
15 Apartment Buildings under BAN 0414577.

16 15. On or about February 5, 2016, Mr. Sutanto Darsono of the Treasurer & Tax
17 Collector's Office informed Plaintiffs that due to a change of law effective January 1, 2014, each of
18 Plaintiffs' Apartment Buildings was required to obtain a separate BAN and was required to
19 separately report and pay the Taxes for 2014 and 2015.

20 16. On or about February 5, 2016, Plaintiffs advised Mr. Darsono that they had paid the
21 Taxes attributable to the Avalon Apartment Buildings under BAN 0942138 and paid Taxes
22 attributable to the MVP Apartment Buildings under BAN 0414577.

23 17. Beginning February 15, 2017, Plaintiffs worked with Mr. Darsono to obtain separate
24 BANs for the Avalon and MVP Apartment Buildings.

25 18. Thereafter, Plaintiffs worked with Mr. Darsono to file tax returns under the new
26 BANs for the Avalon and MVP Apartment Buildings.

27 19. On or about March 20, 2017, Avalon filed a 2014 amended return with the City
28 reporting an overpayment of Taxes of \$56,362.66, and on this amended return Avalon checked the

1 box requesting a refund of the overpayment pursuant to S.F. Business and Regulation Tax Code
2 § 6.15-1(g).

3 20. On or about March 17, 2017, Avalon filed a 2015 amended return with the City
4 reporting an overpayment of Taxes of \$90,847.84, and on this amended return Avalon checked the
5 box requesting a refund of the overpayment pursuant to S.F. Business and Regulation Tax Code
6 § 6.15-1(g).

7 21. On or about March 20, 2017, MVP filed a 2014 amended return with the City
8 reporting an overpayment of Taxes of \$7,181.12, and on this amended return MVP checked the box
9 requesting a refund of the overpayment pursuant to S.F. Business and Regulation Tax Code § 6.15-
10 1(g).

11 22. On or about March 17, 2017, MVP filed a 2015 amended return with the City
12 reporting an overpayment of Taxes of \$9,625.31, and on this amended return MVP checked the box
13 requesting a refund of the overpayment pursuant to S.F. Business and Regulation Tax Code § 6.15-
14 1(g).

15 23. On or about March 21, 2017, Plaintiffs requested that the Taxes attributable to the
16 Avalon Apartment Buildings and paid under BAN 0942138 be applied to the new BANs for each
17 Avalon Apartment Building and that interest and penalties be waived, and that Taxes attributable to
18 the MVP Apartment Buildings and paid under BAN 0414577 be applied to the new BANs for each
19 MVP Apartment Building and that interest and penalties be waived.

20 24. On or about March 21, 2017, Mr. Darsono informed Plaintiffs that the City could not
21 apply the overpayments to the new BANs as Plaintiffs had requested. Mr. Darsono further advised
22 Plaintiffs that they were required to file a tax return for each new BAN and that Plaintiffs were
23 required to pay the Taxes, interest and penalties due under the new BANs.

24 25. On or about March 21, 2017, Plaintiffs discovered that they the City was unwilling to
25 apply payments of Taxes attributable to the Avalon Apartment Buildings under BAN 0942138 for
26 2014 and 2015, to the new BANs for each Avalon Apartment Building.
27
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1 26. On or about March 21, 2017, Plaintiffs discovered that they the City was unwilling to
2 apply payments of Taxes attributable to the MVP Apartment Buildings under BAN 0414577 for
3 2014 and 2015, to the new BANs for each MVP Apartment Building.

4 27. By an email dated March 21, 2017, Mr. Darsono advised Plaintiffs that after they paid
5 the Taxes due under the new BANs, they "may submit a refund request to SF business tax section."

6 28. On or about March 31, 2017, Plaintiffs paid Taxes, interest and penalties for 2014 and
7 2015 for the Avalon and MVP Apartment Buildings under the new BANs.

8 29. By letter dated May 12, 2017, the Office of the Treasurer and Tax Collector notified
9 Avalon that its request for a refund for 2015 under S.F. Business and Tax Regulations Code § 6.15-
10 1(g) was denied and advised that if Avalon disagreed with the result, "you may be entitled to file a
11 Claim for Business Tax Refund with the Controller's Office.

12 30. On or about May 30, 2017, Avalon filed a refund claim of Taxes of \$90,847.84 paid
13 under BAN 0942138 for 2015, on the ground such Taxes were erroneously paid under BAN
14 0942138 and the Taxes were reported and paid under the new BANs for the Apartment Buildings.

15 31. By letter dated July 14, 2017, Ms. Virginia Ho, a Claims Adjuster in the Office of the
16 City Attorney, notified Avalon that its refund claim for 2015 was denied. Ms. Ho's letter did not
17 state any grounds or other bases for the denial of the claim.

18 32. The Defendants have not acted on the refund claims submitted by Avalon for 2014
19 and by MVP for 2014 and 2015.

20 33. The Defendants have not notified Plaintiffs that their refund claims for 2014 or 2015
21 were untimely or otherwise defective.

22 34. Plaintiffs timely filed this Complaint for Refund for overpaid taxes. Cal. Gov't Code
23 § 945.6; S.F. Bus. & Tax Regulations Code § 6.15-3.

24 35. Plaintiffs have exhausted all available administrative remedies.
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FIRST CAUSE OF ACTION

Refund of Gross Receipts Taxes and Payroll Expense Taxes

36. Plaintiffs allege and incorporate by reference the allegations set forth in paragraphs 1 through 34 above.

37. Avalon is due a refund of Taxes paid for 2014 and 2015 under BAN 0942138 on the ground Avalon should not have reported and paid Taxes under BAN 0942138 for activities attributable to the Avalon Apartment Buildings.

38. Avalon is entitled to a refund of overpaid Taxes paid under BAN 0942138 for 2014 and 2015 to avoid double taxation.

39. MVP is due a refund of Taxes paid for 2014 and 2015 under BAN 0414577 on the ground MVP should not have reported and paid Taxes under BAN 0414577 for activities attributable to the MVP Apartment Buildings.

40. MVP is entitled to a refund of overpaid Taxes paid under BAN 0414577 for 2014 and 2015 to avoid double taxation.

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

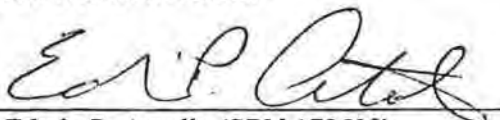
WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For a refund of gross receipts taxes and payroll expense taxes of Payroll Expense Tax paid by Avalon under BAN 0942138 of \$56,362.66 for 2014 and \$90,847.84 for 2015, plus interest from the date of payment as provided by law;
2. For a refund of gross receipts taxes and payroll expense taxes of Payroll Expense Tax paid by MVP under BAN 0414577 of \$7,181.12 for 2014 and \$9,625.31 for 2015, plus interest from the date of payment as provided by law;
3. For Plaintiffs' attorneys' fees and costs of suit as permitted by law; and
4. For such other and further legal and equitable relief as the Court deems just and reasonable.

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Dated: January 12, 2018

ANTOLIN AGARWAL LLP

By: 
Edwin P. Antolin (SBN 172599)

Attorneys for Plaintiff
AVALONBAY COMMUNITIES, INC. AND
MVP I, LLC

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Edwin Antolin (SBN 172599), Monty Agarwal (SBN 191568) Rachel Chanin (SBN 229253) Antolin Agarwal LLP 2175 N. California Blvd. #775, Walnut Creek, CA 94596 TELEPHONE NO.: 925-262-4187 FAX NO.: 925-262-4269 ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civil CASE NAME: AvalonBay Communities, Inc., MVP I LLC v. City/County San Francisco	FILED Superior Court of California County of San Francisco JAN 12 2018 CLERK OF THE COURT BY: <i>[Signature]</i> BOWMAN LIU Deputy Clerk
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: CGC-18-563657 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): one

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 12, 2018
 Edwin P. Antolin

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, std. 3.10
 www.courtinfo.ca.gov

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU
City Attorney

OFFICE OF THE CITY ATTORNEY

SCOTT M. REIBER
Chief Tax Attorney

Direct Dial: (415) 554-4660
Email: scott.reiber@sfcityattty.org

April 26, 2023

Via Certified Mail (7020 1290 0002 3258 1620)

Dr. Leila Azad
180 Montgomery Street, Suite 2440
San Francisco, CA 94104

Re: Request for Disclosure of Tax Claims

Dear Dr. Azad:

In July 2015, you filed a small claims action (Form SC-100) against the City and County of San Francisco related to your payroll expense tax liabilities for tax year 2013. The Form SC-100, attached hereto, did not attach copies of the claim for refund underlying the small claims action (the "Claim").

Amy L. Silverstein has requested that we provide her a copy of your Claim on the grounds that it constitutes a "pre-litigation claim against the City" that must be disclosed under S.F. Admin. Code Section 67.24(b)(i). But because we understand that you may take the position that the information in the Claim should remain confidential taxpayer information under S.F. Bus. & Tax Regs. Code Section 6.22-1, Cal. Gov. Code Sections 7925.000 and/or 7927.705 (formerly Sections 6254(i) and (k)), Cal. Evid. Code Section 1040, general principles of taxpayer confidentiality, and/or otherwise, we are reaching out to give you and other similarly-situated taxpayers the opportunity to file suit objecting to the disclosure of the Claim.

If you file suit (and notify us) within 30 days of the date of this letter, we will not disclose the Claim to Ms. Silverstein unless ordered to do so by the court. If we do not hear from you within 30 days of the date of this letter, we will assume you do not claim a confidentiality interest in the Claim or any of its contents and we will disclose it to Ms. Silverstein.

Please reach out to me at the contact information above if you have any questions.

Very truly yours,

DAVID CHIU
City Attorney

A handwritten signature in dark ink, appearing to read "Scott M. Reiber", written over a horizontal line.

Scott M. Reiber
Chief Tax Attorney

Attachment: Form SC-100



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Jul-23-2015 1:41 pm

Case Number: CSM-15-850229

Filing Date: Jul-23-2015 1:38

Filed by: PAUL FIOL

Juke Box: 001 Image: 05004738

CLAIM OF PLAINTIFF

LEILA AZAD, DDS, INC. VS. MAYOR, CITY OF SAN FRANCISCO

001C05004738

Instructions:

Please place this sheet on top of the document to be scanned.

SC-100**Plaintiff's Claim and ORDER
to Go to Small Claims Court****Notice to the person being sued:**

- You are the Defendant if your name is listed in ② on page 2 of this form. The person suing you is the Plaintiff, listed in ① on page 2.
- You and the Plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Clerk stamps date here when form is filed.

FILED
San Francisco County Superior Court
JUL 23 2015
CLERK OF THE COURT
BY: [Signature] Deputy Clerk

Fill in court name and street address:

Superior Court of California, County of
SMALL CLAIMS
SUPERIOR COURT
400 McALLISTER, ROOM 103
SAN FRANCISCO, CALIFORNIA 94102

Clerk fills in case number and case name:

Case Number:
CSM850229
Case Name:

Order to Go to Court**The people in ① and ② must go to court:** (Clerk fills out section below.)

Trial Date	Date	Time	Department	Name and address of court if different from above
SEP 17 2015	SEP 17 2015	1:30 pm	506	5TH FLOOR
2.				
3.				
Date: 7/22/15		Clerk, by <u>P. F. B. L. R.</u> , Deputy		

Instructions for the person suing:

- You are the Plaintiff. The person you are suing is the Defendant.
- Before you fill out this form, read Form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to: www.courts.ca.gov/smallclaims/forms.
- Fill out pages 2 and 3 of this form. Then make copies of all pages of this form. (Make 1 copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each Defendant a court-stamped copy of all 5 pages of this form and any pages this form tells you to attach. There are special rules for “serving,” or delivering, this form to public entities, associations, and some businesses. See Forms SC-104, SC-104B, and SC-104C.
- Go to court on your trial date listed above. Bring witnesses, receipts, and any evidence you need to prove your case.

Case Number:

Plaintiff (list names): Leila Azad, DDS, Inc.

1 The Plaintiff (the person, business, or public entity that is suing) is:

Name: Leila Azad, DDS, Inc.

Phone: (415)398-4110

Street address: 180 Montgomery Street, Suite 2440, San Francisco, CA 94104

Street

City

State

Zip

Mailing address (if different):

Street

City

State

Zip

If more than one Plaintiff, list next Plaintiff here:

Name:

Phone: ()

Street address:

Street

City

State

Zip

Mailing address (if different):

Street

City

State

Zip

☐ Check here if more than 2 Plaintiffs and attach Form SC-100A.

☒ Check here if either Plaintiff listed above is doing business under a fictitious name. If so, attach Form SC-103.

2 The Defendant (the person, business, or public entity being sued) is:

Name: Mayor, City of San Francisco

Phone: ()

Street address: City Hall, Room 200, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

Street

City

State

Zip

Mailing address (if different):

Street

City

State

Zip

If more than one Defendant, list next Defendant here:

Name:

Phone: ()

Street address:

Street

City

State

Zip

Mailing address (if different):

Street

City

State

Zip

☐ Check here if more than 2 Defendants and attach Form SC-100A.

☐ Check here if any Defendant is on active military duty, and write his or her name here: _____

3 The Plaintiff claims the Defendant owes \$ 6,021.41 (Explain below):

a. Why does the Defendant owe the Plaintiff money? Payroll tax liability for tax year 2013 was \$0.00, however because we were unaware of the Net New Business Exemption, we filed incorrectly and hence overpaid by \$6,021.41. The City now refuses to refund our money and has provided no reason.

b. When did this happen? (Date): 4/28/2014

If no specific date, give the time period: Date started: _____ Through: _____

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.)

We did so by filing an amended return using the Net New Business Exemption.

☐ Check here if you need more space. Attach one sheet of paper or Form MC-031 and write "SC-100, Item 3" at the top.



Case Number:

Plaintiff (list names): Leila Azad, DDS, Inc.

- 4 You must ask the Defendant (in person, in writing, or by phone) to pay you before you sue. Have you done this? ☒ Yes ☐ No

If no, explain why not:

- 5 Why are you filing your claim at this courthouse?

This courthouse covers the area (check the one that applies):

- a. ☒ (1) Where the Defendant lives or does business. (2) Where the Plaintiff's property was damaged. (3) Where the Plaintiff was injured. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant or where the Defendant lived or did business when the Defendant made the contract.
- b. ☐ Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc., § 395(b).)
- c. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civil Code, § 1812.10.)
- d. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civil Code, § 2984.4.)
- e. ☐ Other (specify):

- 6 List the zip code of the place checked in 5 above (if you know): 94102

- 7 Is your claim about an attorney-client fee dispute? ☐ Yes ☒ No

If yes, and if you have had arbitration, fill out Form SC-101, attach it to this form, and check here: ☐

- 8 Are you suing a public entity? ☒ Yes ☐ No

If yes, you must file a written claim with the entity first. ☒ A claim was filed on (date): 4/3/2015

If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

- 9 Have you filed more than 12 other small claims within the last 12 months in California?

☐ Yes ☒ No If yes, the filing fee for this case will be higher.

- 10 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

- 11 I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: 7/23/15 Kaveh Alizadeh
Plaintiff types or prints name here

Plaintiff signs here

Date: _____
Second Plaintiff types or prints name here

Second Plaintiff signs here



Requests for Accommodations

Assistive listening systems, computer-assisted, real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the trial. Contact the clerk's office for Form MC-410, Request for Accommodations by Persons With Disabilities and Response. (Civil Code, § 54.8.)

"Small claims court" is a special court where claims for \$5,000 or less are decided. A "natural person" (not a business or public entity) may generally claim up to \$10,000, including a sole proprietor. (*See below for exceptions.) The process is quick and cheap. The rules are simple and informal.

You are the Defendant—the person being sued. The person who is suing you is the Plaintiff.

Do I need a lawyer?

You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court?

You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read "Be Prepared for Your Trial" at www.courts.ca.gov/smallclaims/prepare.

What if I need an accommodation?

If you have a disability or are hearing impaired, fill out Form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/Access Coordinator.

What if I don't speak English well?

Bring an adult who is not a witness to interpret for you, or ask the court clerk for an interpreter at least five days before your court date. A court-provided interpreter may not be available or there may be a fee for using a court interpreter unless you qualify for a fee waiver. You may ask the court for a list of interpreters and also the *Application for Waiver of Court Fees and Costs* (form FW-001).

Where can I get the court forms I need?

Go to any courthouse or your county law library, or print forms at: www.courts.ca.gov/smallclaims/forms.

What happens at the trial?

The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case?

If you lose, you can appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file Form SC-140, *Notice of Appeal*. You must file within 30 days after the judge's decision.
- If you were *not* at the trial, fill out and file Form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File Form SC-140.

For more information on appeals, see: www.courts.ca.gov/smallclaims/appeals.

*Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc. § 116.220(c).) In an action brought by a natural person for damages for bodily injuries resulting from an automobile accident, a \$7,500 limit applies if a defendant is covered by an automobile insurance policy that includes a duty to defend. (See Code Civ. Proc. § 116.221.)

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the Plaintiff agree on how to settle the case, both of you must notify the court. Ask the Small Claims Advisor for help.
- **Prove this is the wrong court.** Send a letter to the court *before* your trial, explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done this.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To make sure the witnesses go to the trial, fill out Form SC-107, and the clerk will subpoena (order) them to go.
- **Sue the person who is suing you.** File Form SC-120, *Defendant's Claim*. There are strict filing deadlines you must follow.
- **Agree with the Plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.
- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the Plaintiff what he or she is asking for plus court costs. If this happens, the Plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial) *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county) *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out Form SC-150 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.



Need help?

Your county's Small Claims Advisor can help for free.

Or go to www.courts.ca.gov/smallclaims/advisor.

CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU
City Attorney

OFFICE OF THE CITY ATTORNEY

SCOTT M. REIBER
Chief Tax Attorney

Direct Dial: (415) 554-4660
Email: scott.reiber@sfcityattty.org

April 26, 2023

Via Email (wtyler@chancellorhotel.com)
Via Certified Mail (7020 1290 0002 3258 1613)

Chancellor Hotel and Wes Tyler
433 Powell Street
San Francisco, CA 94102

Re: Request for Disclosure of Tax Claims

Dear Mr. Tyler and To Whom It May Concern:

In January and April 2018, you and the Chancellor Hotel filed two small claims actions (Forms SC-100) against the City and County of San Francisco related to your San Francisco hotel tax liabilities. The Forms SC-100, attached hereto, did not attach copies of the claim for refund underlying the small claims actions (the "Claim").

Amy L. Silverstein has requested that we provide her a copy of your Claim on the grounds that it constitutes a "pre-litigation claim against the City" that must be disclosed under S.F. Admin. Code Section 67.24(b)(i). But because we understand that you may take the position that the information in the Claim should remain confidential taxpayer information under S.F. Bus. & Tax Regs. Code Section 6.22-1, Cal. Gov. Code Sections 7925.000 and/or 7927.705 (formerly Sections 6254(i) and (k)), Cal. Evid. Code Section 1040, general principles of taxpayer confidentiality, and/or otherwise, we are reaching out to give you and other similarly-situated taxpayers the opportunity to file suit objecting to the disclosure of the Claim.

If you file suit (and notify us) within 30 days of the date of this letter, we will not disclose the Claim to Ms. Silverstein unless ordered to do so by the court. If we do not hear from you within 30 days of the date of this letter, we will assume you do not claim a confidentiality interest in the Claim or any of its contents and we will disclose it to Ms. Silverstein.

Please reach out to me at the contact information above if you have any questions.

Very truly yours,

DAVID CHIU
City Attorney

A handwritten signature in black ink, appearing to read "Scott M. Reiber".

Scott M. Reiber
Chief Tax Attorney

Attachment: Forms SC-100



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
Document Scanning Lead Sheet**

Jan-10-2018 2:17 pm

Case Number: CSM-18-857147

Filing Date: Jan-10-2018 2:08

Filed by: PAUL FIOL

Image: 06172821

CLAIM OF PLAINTIFF

WES TYLER VS. CITY AND COUNTY OF SAN FRANCISCO (TAX ASSESSORS

001C06172821

Instructions:

Please place this sheet on top of the document to be scanned.

Notice to the person being sued:

- You are the defendant if your name is listed in ② on page 2 of this form. The person suing you is the plaintiff, listed in ① on page 2.
- You and the plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Order to Go to Court

The people in ① and ② must go to court: (Clerk fills out section below.)

Trial Date	Date	Time	Department	Name and address of court, if different from above
1.	FEB 22 2018	3:30	506	5TH FLOOR
2.				
3.				
Date:		JAN 10 2018		Clerk, by P. FLO, Deputy

Instructions for the person suing:

- You are the plaintiff. The person you are suing is the defendant.
- Before you fill out this form, read form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to www.courts.ca.gov/smallclaims/forms.
- Fill out pages 2 and 3 of this form. Then make copies of **all** pages of this form. (Make one copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each defendant a court-stamped copy of all five pages of this form and any pages this form tells you to attach. There are special rules for “serving,” or delivering, this form to public entities, associations, and some businesses. See forms SC-104, SC-104B, and SC-104C.
- Go to court on your trial date listed above. Bring witnesses, receipts, and any evidence you need to prove your case.

Clerk stamps date here when form is filed.

FILED
San Francisco County Superior Court
JAN 10 2018
CLERK OF THE COURT
BY: P. FLO Deputy Clerk

Fill in court name and street address:

Superior Court of California, County of
SMALL CLAIMS
SUPERIOR COURT
400 McALLISTER, ROOM 103
SAN FRANCISCO, CALIFORNIA 94102

Court fills in case number when form is filed.

Case Number:
CSA-17 857147
Case Name:
TYLER vs. CCSF

Plaintiff (list names):

Case Number:

1 The plaintiff (the person, business, or public entity that is suing) is:

Name: Wes Tyler Phone: 415 362 2004
Street address: 433 Powell St SF CA 94102
Mailing address (if different):
Street City State Zip

If more than one plaintiff, list next plaintiff here:

Name: _____ Phone: _____
Street address: _____
Mailing address (if different):
Street City State Zip

- ☐ Check here if more than two plaintiffs and attach form SC-100A.
☐ Check here if either plaintiff listed above is doing business under a fictitious name. If so, attach form SC-103.
☐ Check here if any plaintiff is a "licensee" or "deferred deposit originator" (payday lender) under Financial Code sections 23000 et seq.

2 The defendant (the person, business, or public entity being sued) is:

Name: City & County SF (Tax Assessor Office) Phone: _____
Street address: 1 Carlton B. Goodlett Pl. # 190 CA 94102
Mailing address (if different):
Street City State Zip

If the defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process here:

Name: County Clerk Job title, if known: _____
Address: 1 Carlton B. Goodlett Pl #190 SF CA 94102
Street City State Zip

- ☒ Check here if your case is against more than one defendant, and attach form SC-100A.
☐ Check here if any defendant is on active military duty, and write his or her name here: _____

3 The plaintiff claims the defendant owes \$ 8253.29. (Explain below):

a. Why does the defendant owe the plaintiff money?
Improper assessment of late tax payment penalty

When did this happen? (Date): 10/6/17

b. If no specific date, give the time period: Date started: _____ Through: _____
c. How did you calculate the money owed to you? (Do not include court costs or fees for service.)

amount city & county assessed

- ☐ Check here if you need more space. Attach one sheet of paper or form MC-031 and write "SC-100, Item 3" at the top.



Plaintiff (list names):

Case Number:

- 4 You must ask the defendant (in person, in writing, or by phone) to pay you before you sue. If your claim is for possession of property, you must ask the defendant to give you the property. Have you done this?

☐ Yes ☐ No If no, explain why not:

- 5 Why are you filing your claim at this courthouse?

This courthouse covers the area (check the one that applies):

- a. ☒ (1) Where the defendant lives or does business. (2) Where the plaintiff's property was damaged. (3) Where the plaintiff was injured. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the defendant or where the defendant lived or did business when the defendant made the contract.
- b. ☐ Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim, is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc., § 395(b).)
- c. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civ Code, § 1812.10.)
- d. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civ Code, § 2984.4.)
- e. ☐ Other (specify):

- 6 List the zip code of the place checked in 5 above (if you know): 94102

- 7 Is your claim about an attorney-client fee dispute? ☐ Yes ☒ No

If yes, and if you have had arbitration, fill out form SC-101, attach it to this form, and check here: ☐

- 8 Are you suing a public entity? ☒ Yes ☐ No

If yes, you must file a written claim with the entity first. ☐ A claim was filed on (date): 10/6/17

If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

- 9 Have you filed more than 12 other small claims within the last 12 months in California?

☐ Yes ☒ No If yes, the filing fee for this case will be higher.

- 10 Is your claim for more than \$2,500? ☒ Yes ☐ No

If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

- 11 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: 1/10/18 Wes Tyler
Plaintiff types or prints name here

Plaintiff signs here

Date: _____
Second plaintiff types or prints name here

Second plaintiff signs here



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the trial. Contact the clerk's office for form MC-410, Request for Accommodations by Persons With Disabilities and Response. (Civ. Code, § 54.8.)



"Small claims court" is a special court where claims for \$10,000 or less are decided. Individuals, including "natural persons" and sole proprietors, may claim up to \$10,000. Corporations, partnerships, public entities, and other businesses are limited to claims of \$5,000. (See below for exceptions.*) The process is quick and cheap. The rules are simple and informal. You are the *defendant*—the person being sued. The person who is suing you is the *plaintiff*.

Do I need a lawyer? You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court? You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read "Be Prepared for Your Trial" at www.courts.ca.gov/smallclaims/prepare.

What if I need an accommodation? If you have a disability or are hearing impaired, fill out form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/ Access Coordinator.

What if I don't speak English well? Ask the court clerk as soon as possible if your court has a court-provided interpreter available and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness or an attorney to interpret for you or ask the court for a list of interpreters for hire.

Where can I get the court forms I need? Go to any courthouse or your county law library, or print forms at www.courts.ca.gov/smallclaims/forms.

What happens at the trial? The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case? If you lose, you may appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file form SC-140, *Notice of Appeal*. You must file within 30 days after the clerk hands or mails you the judge's decision (judgment) on form SC-200 or form SC-130, *Notice of Entry of Judgment*.
- If you were *not* at the trial, fill out and file form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File form SC-140.

For more information on appeals, see www.courts.ca.gov/smallclaims/appeals.

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the plaintiff agree on how to settle the case, the plaintiff must file form CIV-110, *Request for Dismissal*, with the clerk. Ask the Small Claims Advisor for help.

- **Prove this is the wrong court.** Send a letter to the court *before* your trial explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done so.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To have the court order a witness to go to the trial, fill out form SC-107 (*Small Claims Subpoena*) and have it served on the witness.
- **Sue the person who is suing you.** If you have a claim against the plaintiff, and the claim is appropriate for small claims court as described on this form, you may file *Defendant's Claim* (form SC-120) and bring the claim in this action. If your claim is for *more* than allowed in small claims court, you may still file it in small claims court if you give up the amount over the small claims value amount, or you may file a claim for the full value of the claim in the appropriate court. If your claim is for more than allowed in small claims court *and* relates to the same contract, transaction, matter, or event that is the subject of the plaintiff's claim, you may file your claim in the appropriate court and file a motion to transfer the plaintiff's claim to that court to resolve both matters together. You can see a description of the amounts allowed in the paragraph above titled "Small Claims Court."
- **Agree with the plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.
- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the plaintiff what he or she is asking for plus court costs. If this happens, the plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial), or
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county), or
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out form SC-150 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.



Need help?

Your county's Small Claims Advisor can help for free.



Or go to www.courts.ca.gov/smallclaims/advisor.

* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 116.220(c).)



La "Corte de reclamos menores" es una corte especial donde se deciden casos por \$10,000 o menos. Los individuos, o sea las "personas físicas" y los propietarios por cuenta propia, pueden reclamar hasta \$10,000. Las corporaciones, asociaciones, entidades públicas y otras empresas solo pueden reclamar hasta \$5,000. (Vea abajo para las excepciones.) El proceso es rápido y barato. Las reglas son sencillas e informales. Usted es el Demandado—la persona que se está demandando. La persona que lo está demandando es el Demandante.

¿Necesito un abogado? Puede hablar con un abogado antes o después del caso. Pero no puede tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación de un caso de reclamos menores).

¿Cómo me preparo para ir a la corte? No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos y pruebas que apoyan su caso. Y lea "Esté preparado para su juicio" en www.courts.ca.gov/reclamosmenores/preparesse.

¿Qué hago si necesito una adaptación? Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, Request for Accommodations. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

¿Qué pasa si no hablo bien inglés? Pregúntele al secretario de la corte lo más pronto posible si en el juzgado habrá un intérprete disponible y cómo solicitarlo. No siempre están disponibles los intérpretes de la corte. Otra opción es llevar a un adulto que pueda interpretar para usted siempre que esa persona no sea un testigo ni un abogado. O puede pedir a la corte una lista de intérpretes particulares disponibles para contratar.

¿Dónde puedo obtener los formularios de la corte que necesito? Vaya a cualquier edificio de la corte, la biblioteca legal de su condado, o imprima los formularios en www.courts.ca.gov/smallclaims/forms (página está en inglés).

¿Qué pasa en el juicio? El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

¿Qué pasa si pierdo el caso? Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, *Aviso de apelación* (Notice of Appeal). Tiene que presentarlo dentro de 30 días después de que el secretario le entregue o envíe la decisión (fallo) del juez en el formulario SC-200 o SC-130, *Aviso de publicación del fallo* (Notice of Entry of Judgment).
- Si no estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración* para pedirle al juez que anule el fallo (decisión). Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140.

Para obtener más información sobre las apelaciones, vea www.courts.ca.gov/reclamosmenores/apelaciones.

¿Tengo otras opciones? Sí. Si lo están demandando, puede:

- **Resolver su caso antes del juicio.** Si usted y el Demandante se ponen de acuerdo en cómo resolver el caso, el Demandante tiene que presentar el formulario CIV-110, *Solicitud de desestimación* (Request for Dismissal) ante el secretario de la corte. Pídale al Asesor de Reclamos Menores que lo ayude.

- **Probar que es la corte equivocada.** Envíe una carta a la corte antes del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despida el reclamo. Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- **Ir al juicio y tratar de ganar el caso.** Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Si desea que la corte emita una orden de comparecencia para que los testigos vayan al juicio, llene el formulario SC-107, *Citatorio de reclamos menores* (Small Claims Subpoena) y entrégueselo legalmente al testigo.
- **Demandar a la persona que lo demandó.** Si tiene un reclamo contra el Demandante, y el reclamo se puede presentar en la corte de reclamos menores, tal como se describe en este formulario, puede presentar el formulario SC-120, *Reclamo del demandado* (Defendant's Claim) y presentarlo en este mismo caso. Si su reclamo excede el límite permitido en la corte de reclamos menores, puede igualmente presentarlo en la corte de reclamos menores si está dispuesto a limitar su reclamo al máximo permitido, o puede presentar un reclamo por el monto total en la corte apropiada. Si su reclamo excede el límite permitido en la corte de reclamos menores y está relacionado con el mismo contrato, transacción, asunto o acontecimiento que el reclamo del Demandante, puede presentar su reclamo en la corte apropiada y presentar una moción para transferir el reclamo del Demandante a dicha corte, para poder resolver los dos reclamos juntos. Puede ver una descripción de los montos permitidos en el párrafo anterior titulado "Corte de reclamos menores".
- **Aceptar el reclamo del Demandante y pagar el dinero.** O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- **No ir al juicio y aceptar el fallo por falta de comparecencia.** Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

¿Qué hago si necesito más tiempo? Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio), o
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (ó 20 días si vive fuera del condado), o
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-150 (o escriba una carta) y envíelo antes del plazo a la corte y a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.



¿Necesita ayuda? El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.

O visite www.courts.ca.gov/reclamosmenores/asesores.

* Excepciones: Existen diferentes límites en un reclamo contra un garantía. (Vea el Código de Procedimiento Civil, sección 116.220 (c).)

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

Virginia Ho
Claims Adjuster

DIRECT DIAL: (415) 554-3909
E-MAIL: VIRGINIA.K.HO@SFGOV.ORG

January 2, 2018

Wes Tyler
Chancellor Hotel
433 Powell Street
San Francisco, CA 94102

RE: Claim of Chancellor Hotel / Claim Number 18-00969

Department: TAXCOLLH Tax Refund Claims Hotel Tax Refund Claims
Claim Filed: November 1, 2017

NOTICE OF ACTION UPON CLAIM

PLEASE TAKE NOTICE THAT:

An investigation of your claim filed with the City and County of San Francisco has revealed no liability on the part of the City and County. Accordingly, your claim is **DENIED**.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a state court action on this claim. See Revenue and Taxation Code section 5141. This time limitation applies only to causes of action arising under California law for which a claim is mandated by the California Revenue and Taxation Code section 5096 et seq. Other causes of action, including those arising under federal law, may have shorter time limitations for filing.

If you desire to consult an attorney, you should do so immediately.

Please also be advised that, pursuant to Code of Civil Procedure sections 128.7 and 1038, the City and County of San Francisco will seek to recover all costs of defense in the event an action is filed in this matter and it is determined that the action was not brought in good faith and with reasonable cause.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Virginia Ho
Claims Adjuster



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Apr-16-2018 2:51 pm

Case Number: CSM-18-857889

Filing Date: Apr-16-2018 12:56

Filed by: ROBERT CHALOULT

Image: 06297317

CLAIM OF PLAINTIFF

CHANCELLOR HOTEL VS. CITY AND COUNTY OF SAN FRANCISCO

001C06297317

Instructions:

Please place this sheet on top of the document to be scanned.

SC-100**Plaintiff's Claim and ORDER
to Go to Small Claims Court****Notice to the person being sued:**

- You are the defendant if your name is listed in (2) on page 2 of this form. The person suing you is the plaintiff, listed in (1) on page 2.
- You and the plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.


Aviso al Demandado:

- Usted es el Demandado si su nombre figura en (2) de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en (1) de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Order to Go to Court

The people in (1) and (2) must go to court: (Clerk fills out section below.)

Trial Date	Date	Time	Department	Name and address of court, if different from above
1.	MAY 31 2018	3:30pm	506	5 th FLOOR
2.				
3.				

Date: **APR 16 2018** Clerk, by , Deputy

Instructions for the person suing:


- You are the plaintiff. The person you are suing is the defendant.
- Before you fill out this form, read form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to www.courts.ca.gov/smallclaims/forms.
- Fill out pages 2 and 3 of this form. Then make copies of **all** pages of this form. (Make one copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each defendant a court-stamped copy of all five pages of this form and any pages this form tells you to attach. There are special rules for “serving,” or delivering, this form to public entities, associations, and some businesses. See forms SC-104, SC-104B, and SC-104C.
- Go to court on your trial date listed above. Bring witnesses, receipts, and any evidence you need to prove your case.

Clerk stamps date here when form is filed.

FILED
San Francisco County Superior Court

APR 16 2018

CLERK OF THE COURT

By:  Deputy Clerk

Fill in court name and street address:

Superior Court of California, County of
**SMALL CLAIMS
SUPERIOR COURT**
400 McALLISTER, ROOM 103
SAN FRANCISCO, CALIFORNIA 94102

Court fills in case number when form is filed.

Case Number:

CSM . '18 - 857 889

Case Name: CHANCELLOR HOTEL

CCSF

Plaintiff (list names):

Case Number:

① The plaintiff (the person, business, or public entity that is suing) is:

Name: CHANCELLOR HOTEL Phone: 415 3622004
Street address: 433 POWELL ST SF CA 94102
Street City State Zip
Mailing address (if different): SAME
Street City State Zip

If more than one plaintiff, list next plaintiff here:

Name: _____ Phone: _____
Street address: _____
Street City State Zip
Mailing address (if different): _____
Street City State Zip

- ☐ Check here if more than two plaintiffs and attach form SC-100A.
☐ Check here if either plaintiff listed above is doing business under a fictitious name. If so, attach form SC-103.
☐ Check here if any plaintiff is a "licensee" or "deferred deposit originator" (payday lender) under Financial Code sections 23000 et seq.

② The defendant (the person, business, or public entity being sued) is:

Name: CITY OF SAN FRANCISCO Phone: _____
Street address: 1 CARLTON B. GODDLETT PL #200 SF CA
Street City State Zip
Mailing address (if different): _____
Street City State Zip

If the defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process here:

Name: JOHN TUCKER Job title, if known: FISCAL POLICY ASSISTANT
Address: 1 CARLTON B. GODDLETT PL SF CA 94102
Street City State Zip

- ☐ Check here if your case is against more than one defendant, and attach form SC-100A.
☐ Check here if any defendant is on active military duty, and write his or her name here: _____

③ The plaintiff claims the defendant owes \$ 8,253.29 (Explain below):

a. Why does the defendant owe the plaintiff money?

IMPROPER ASSESSMENT OF TAX PENALTY AND INTEREST

When did this happen? (Date): 10/6/17

b. If no specific date, give the time period: Date started: _____ Through: _____

c. How did you calculate the money owed to you? (Do not include court costs or fees for service)

AMOUNT PAID

- ☐ Check here if you need more space. Attach one sheet of paper or form MC-031 and write "SC-100, Item 3" at the top.

Plaintiff (list names):

Case Number:

- ④ You must ask the defendant (in person, in writing, or by phone) to pay you before you sue. If your claim is for possession of property, you must ask the defendant to give you the property. Have you done this?

☒ Yes ☐ No If no, explain why not:

- ⑤ Why are you filing your claim at this courthouse?

This courthouse covers the area (check the one that applies):

- a. ☒ (1) Where the defendant lives or does business. (2) Where the plaintiff's property was damaged. (3) Where the plaintiff was injured. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the defendant or where the defendant lived or did business when the defendant made the contract.
- b. ☐ Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim, is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc., § 395(b).)
- c. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civ Code, § 1812.10.)
- d. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civ Code, § 2984.4.)
- e. ☐ Other (specify):

- ⑥ List the zip code of the place checked in ⑤ above (if you know): 94102

- ⑦ Is your claim about an attorney-client fee dispute? ☐ Yes ☒ No

If yes, and if you have had arbitration, fill out form SC-101, attach it to this form, and check here: ☐

- ⑧ Are you suing a public entity? ☒ Yes ☐ No

If yes, you must file a written claim with the entity first. ☒ A claim was filed on (date): 11/30/17 2 Jan 2018

If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

- ⑨ Have you filed more than 12 other small claims within the last 12 months in California?

☐ Yes ☒ No If yes, the filing fee for this case will be higher.

- ⑩ Is your claim for more than \$2,500? ☒ Yes ☐ No

If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

- ⑪ I understand that by filing a claim in small claims court, I have no right to appeal this claim.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: 4/16/18 CHANCELLOR HOTEL
Plaintiff types or prints name here

Date: _____
Second plaintiff types or prints name here

Plaintiff signs here

Second plaintiff signs here



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the trial. Contact the clerk's office for form MC-410, Request for Accommodations by Persons With Disabilities and Response. (Civ. Code, § 54.8)

"Small claims court" is a special court where claims for \$10,000 or less are decided. Individuals, including "natural persons" and sole proprietors, may claim up to \$10,000. Corporations, partnerships, public entities, and other businesses are limited to claims of \$5,000. (See below for exceptions.)* The process is quick and cheap. The rules are simple and informal. You are the *defendant*—the person being sued. The person who is suing you is the *plaintiff*.

Do I need a lawyer? You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court? You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read "Be Prepared for Your Trial" at www.courts.ca.gov/smallclaims/prepare.

What if I need an accommodation? If you have a disability or are hearing impaired, fill out form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/ Access Coordinator.

What if I don't speak English well? Ask the court clerk as soon as possible if your court has a court-provided interpreter available and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness or an attorney to interpret for you or ask the court for a list of interpreters for hire.

Where can I get the court forms I need? Go to any courthouse or your county law library, or print forms at www.courts.ca.gov/smallclaims/forms.

What happens at the trial? The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case? If you lose, you may appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file form SC-140, *Notice of Appeal*. You must file within 30 days after the clerk hands or mails you the judge's decision (judgment) on form SC-200 or form SC-130, *Notice of Entry of Judgment*.
- If you were *not* at the trial, fill out and file form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File form SC-140.

For more information on appeals, see www.courts.ca.gov/smallclaims/appeals.

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the plaintiff agree on how to settle the case, the plaintiff must file form CIV-110, *Request for Dismissal*, with the clerk. Ask the Small Claims Advisor for help.

- **Prove this is the wrong court.** Send a letter to the court *before* your trial explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done so.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To have the court order a witness to go to the trial, fill out form SC-107 (*Small Claims Subpoena*) and have it served on the witness.
- **Sue the person who is suing you.** If you have a claim against the plaintiff, and the claim is appropriate for small claims court as described on this form, you may file *Defendant's Claim* (form SC-120) and bring the claim in this action. If your claim is for *more* than allowed in small claims court, you may still file it in small claims court if you give up the amount over the small claims value amount, or you may file a claim for the full value of the claim in the appropriate court. If your claim is for more than allowed in small claims court *and* relates to the same contract, transaction, matter, or event that is the subject of the plaintiff's claim, you may file your claim in the appropriate court and file a motion to transfer the plaintiff's claim to that court to resolve both matters together. You can see a description of the amounts allowed in the paragraph above titled "Small Claims Court."
- **Agree with the plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.
- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the plaintiff what he or she is asking for plus court costs. If this happens, the plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial), *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county), *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out form SC-150 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.



Need help?

Your county's Small Claims Advisor can help for free.

Or go to www.courts.ca.gov/smallclaims/advisor.

* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 116.220(c).)



La "Corte de reclamos menores" es una corte especial donde se deciden casos por \$10,000 o menos. Los individuos, o sea las "personas físicas" y los propietarios por cuenta propia, pueden reclamar hasta \$10,000. Las corporaciones, asociaciones, entidades públicas y otras empresas solo pueden reclamar hasta \$5,000. (Vea abajo para las excepciones.)* El proceso es rápido y barato. Las reglas son sencillas e informales. Usted es el Demandado—la persona que se está demandando. La persona que lo está demandando es el Demandante.

¿Necesito un abogado? Puede hablar con un abogado antes o después del caso. Pero no puede tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación de un caso de reclamos menores).

¿Cómo me preparo para ir a la corte? No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos y pruebas que apoyan su caso. Y lea "Esté preparado para su juicio" en www.courts.ca.gov/reclamosmenores/preparesse.

¿Qué hago si necesito una adaptación? Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, Request for Accommodations. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

¿Qué pasa si no hablo bien inglés? Pregúntele al secretario de la corte lo más pronto posible si en el juzgado habrá un intérprete disponible y cómo solicitarlo. No siempre están disponibles los intérpretes de la corte. Otra opción es llevar a un adulto que pueda interpretar para usted siempre que esa persona no sea un testigo ni un abogado. O puede pedir a la corte una lista de intérpretes particulares disponibles para contratar.

¿Dónde puedo obtener los formularios de la corte que necesito? Vaya a cualquier edificio de la corte, la biblioteca legal de su condado, o imprima los formularios en www.courts.ca.gov/smallclaims/forms (página está en inglés).

¿Qué pasa en el juicio? El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

¿Qué pasa si pierdo el caso? Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, *Aviso de apelación* (Notice of Appeal). Tiene que presentarlo dentro de 30 días después de que el secretario le entregue o envíe la decisión (fallo) del juez en el formulario SC-200 o SC-130, *Aviso de publicación del fallo* (Notice of Entry of Judgment).
- Si no estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración para pedirle al juez que anule el fallo* (decisión). Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140.

Para obtener más información sobre las apelaciones, vea www.courts.ca.gov/reclamosmenores/apelaciones.

¿Tengo otras opciones? Si. Si lo están demandando, puede:

- Resolver su caso antes del juicio. Si usted y el Demandante se ponen de acuerdo en cómo resolver el caso, el Demandante tiene que presentar el formulario CIV-110, *Solicitud de desestimación* (Request for Dismissal) ante el secretario de la corte. Pídale al Asesor de Reclamos Menores que lo ayude.

- Probar que es la corte equivocada. Envíe una carta a la corte antes del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despida el reclamo. Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- Ir al juicio y tratar de ganar el caso. Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Si desea que la corte emita una orden de comparecencia para que los testigos vayan al juicio, llene el formulario SC-107, *Citatorio de reclamos menores* (Small Claims Subpoena) y entrégueselo legalmente al testigo.
- Demandar a la persona que lo demandó. Si tiene un reclamo contra el Demandante, y el reclamo se puede presentar en la corte de reclamos menores, tal como se describe en este formulario, puede presentar el formulario SC-120, *Reclamo del demandado* (Defendant's Claim) y presentarlo en este mismo caso. Si su reclamo excede el límite permitido en la corte de reclamos menores, puede igualmente presentarlo en la corte de reclamos menores si está dispuesto a limitar su reclamo al máximo permitido, o puede presentar un reclamo por el monto total en la corte apropiada. Si su reclamo excede el límite permitido en la corte de reclamos menores y está relacionado con el mismo contrato, transacción, asunto o acontecimiento que el reclamo del Demandante, puede presentar su reclamo en la corte apropiada y presentar una moción para transferir el reclamo del Demandante a dicha corte, para poder resolver los dos reclamos juntos. Puede ver una descripción de los montos permitidos en el párrafo anterior titulado "Corte de reclamos menores".
- Aceptar el reclamo del Demandante y pagar el dinero. O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- No ir al juicio y aceptar el fallo por falta de comparecencia. Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

¿Qué hago si necesito más tiempo? Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio), o
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (o 20 días si vive fuera del condado), o
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-150 (o escriba una carta) y envíelo antes del plazo a la corte y a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.



¿Necesita ayuda? El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.

O visite www.courts.ca.gov/reclamosmenores/asesores.

* Excepciones: Existen diferentes límites en un reclamo contra un garante. (Vea el Código de Procedimiento Civil, sección 116.220 (c).)

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

Virginia Ho
Claims Adjuster

DIRECT DIAL: (415) 554-3909
E-MAIL: VIRGINIA.K.HO@SFGOV.ORG

January 2, 2018

Wes Tyler
Chancellor Hotel
433 Powell Street
San Francisco, CA 94102

RE: Claim of Chancellor Hotel / Claim Number 18-00969

Department: TAXCOLLH Tax Refund Claims Hotel Tax Refund Claims
Claim Filed: November 1, 2017

NOTICE OF ACTION UPON CLAIM

PLEASE TAKE NOTICE THAT:

An investigation of your claim filed with the City and County of San Francisco has revealed no liability on the part of the City and County. Accordingly, your claim is **DENIED**.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a state court action on this claim. See Revenue and Taxation Code section 5141. This time limitation applies only to causes of action arising under California law for which a claim is mandated by the California Revenue and Taxation Code section 5096 et seq. Other causes of action, including those arising under federal law, may have shorter time limitations for filing.

If you desire to consult an attorney, you should do so immediately.

Please also be advised that, pursuant to Code of Civil Procedure sections 128.7 and 1038, the City and County of San Francisco will seek to recover all costs of defense in the event an action is filed in this matter and it is determined that the action was not brought in good faith and with reasonable cause.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Virginia Ho
Claims Adjuster

1390 MARKET STREET, 7TH FLOOR • SAN FRANCISCO, CALIFORNIA 94102
RECEPTION: (415) 554-3900 FACSIMILE: (415) 554-8795

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CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU
City Attorney

OFFICE OF THE CITY ATTORNEY

SCOTT M. REIBER
Chief Tax Attorney

Direct Dial: (415) 554-4660
Email: scott.reiber@sfcityattty.org

April 26, 2023

Via Certified Mail (7020 1290 0002 3258 1644)

Justice Investors, LP and Kearny Street Employers, LLC, c/o Portsmouth Square, Inc.
Attn: Danfeng Xu, Secretary and Chief Financial Officer
1516 S Bundy Dr., Suite 200
Los Angeles, CA 90025

Via Email (lokane@okanelaw.net)

Via Certified Mail (7020 1290 0002 3258 1682)

Laura J. O'Kane
O'Kane Law
777 E. Tahquitz Cyn Way, Suite 200-43
Palm Springs, CA 92262

Via Email (peter@pmichaelslaw.com)

Via Certified Mail (7020 1290 0002 3257 6985)

Peter Michaels, Esq.
Law Office of Peter Michaels
3220 N Street NW, #164
Washington, D.C. 20007-2829

Via Email (edwin@pratherlawoffices.com)

Via Certified Mail (7020 1290 0002 3257 6992)

Edwin K. Prather
Prather Law Offices
245 Fifth Street, Suite 103
San Francisco, CA 94103-4190

Re: Request for Disclosure of Tax Claims

Dear Danfeng Xu, Laura Kane, Peter Michaels, and Edwin Prather:

In October 2015, Justice Investors, LP and Kearny Street Employers, LLC filed a Complaint for Transient Occupancy Tax Refund; and Tourism Improvement District Tax Refund against the City and County of San Francisco seeking a refund of transient occupancy taxes and tourism improvement district fees for tax periods in 2011 through 2013. The complaint, attached hereto, did not attach copies of the claims for refund underlying the complaint (the "Claims").

Amy L. Silverstein has requested that we provide her copies of your Claims on the grounds that they constitute "pre-litigation claim[s] against the City" that must be disclosed under S.F. Admin. Code Section 67.24(b)(i). But because we understand that you may take the position that the information in the Claims should remain confidential taxpayer information under S.F. Bus. & Tax Regs. Code Section 6.22-1, Cal. Gov. Code Sections 7925.000 and/or 7927.705 (formerly Sections 6254(i) and (k)), Cal. Evid. Code Section 1040, general

Letter to Justice Investors, LP and Kearny Street Employers, LLC, c/o Portsmouth Square, Inc., et al.
Page 2
April 26, 2023

principles of taxpayer confidentiality, and/or otherwise, we are reaching out to give you and other similarly-situated taxpayers the opportunity to file suit objecting to the disclosure of the Claims.

If you file suit (and notify us) within 30 days of the date of this letter, we will not disclose the Claims to Ms. Silverstein unless ordered to do so by the court. If we do not hear from you within 30 days of the date of this letter, we will assume you do not claim a confidentiality interest in the Claims or any of their contents and we will disclose them to Ms. Silverstein.

Please reach out to me at the contact information above if you have any questions.

Very truly yours,

DAVID CHIU
City Attorney



Scott M. Reiber
Chief Tax Attorney

Attachment: Complaint



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Oct-19-2015 3:37 pm

Case Number: CPF-15-514532

Filing Date: Oct-19-2015 3:27

Filed by: RONNIE OTERO

Juke Box: 001 Image: 05121047

PETITION

IN RE: JUSTICE INVESTORS, LP A CALIFORNIA LIMITED ET AL

001C05121047

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

JUSTICE INVESTORS, LP, a California limited partnership dba HILTON HOTEL
FINANCIAL DISTRICT; KEARNY STREET EMPLOYERS, LLC

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Francisco Superior Court
Civic Center Courthouse, 400 McAllister St., San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

15-514532

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Laura J. O'Kane; O'Kane & McKee, LLP, 140 N. Luring Dr., Ste. E, Palm Springs CA 92262; 760-904-4152;

DATE:
(Fecha)

OCT 19 2015

Clerk, by
(Secretario)

CLERK OF THE COURT

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

unnie Otero

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)



ORIGINAL

FAXED

FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

15 OCT 19 PM 3:41

CLERK OF THE COURT

BY: _____

DEPUTY

1 O'KANE & McKEE, LLP
2 Laura J. O'Kane (State Bar No. 192143)
3 Michele L. McKee (State Bar No. 224818)
4 140 N. Luring Drive, Suite E
5 Palm Springs CA 92262
6 Telephone: (760) 904-4152
7 Facsimile: (760) 652-4800

8 Attorneys for Plaintiff JUSTICE INVESTORS, LP

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **CITY AND COUNTY OF SAN FRANCISCO**

12 **CPF - 15 - 514532**

13 JUSTICE INVESTORS, LP, a California
14 Limited Partnership dba HILTON HOTEL
15 FINANCIAL DISTRICT; KEARNEY
16 STREET EMPLOYERS, LLC,

17 Plaintiffs,

18 v.

19 CITY AND COUNTY OF SAN
20 FRANCISCO, a municipal corporation;
21 and DOES 1 through 100, inclusive;

22 Defendants.

Case No. _____

**COMPLAINT FOR TRANSIENT
OCCUPANCY TAX REFUND; AND
TOURISM IMPROVEMENT DISTRICT
TAX REFUND**

DEMAND FOR JURY TRIAL

23
24 PLAINTIFFS JUSTICE INVESTORS, LP ("JUSTICE") dba HILTON HOTEL
25 FINANCIAL DISTRICT and KEARNEY STREET EMPLOYERS, LLC ("KEARNEY
26 STREET") (collectively "Plaintiffs"), complain against Defendant CITY AND COUNTY OF
27 SAN FRANCISCO, as follows:

28 **INTRODUCTION**

1. This is an action for refund of Transient Occupancy Tax ("TOT") paid by Plaintiffs
for the period 2011Q1 through 2013Q3 and Tourism Improvement District Assessment ("TID")
paid by Plaintiffs for the period 2012Q1 through 2013Q3, which was imposed by Defendant CITY
AND COUNTY OF SAN FRANCISCO (the "CITY" or "Defendant").

//

I. JUSTICE INVESTORS, LP'S COMPLAINT FOR TAX REFUND FOR TOT & TID.

ORIGINAL

FAXED

1 **THE PARTIES**

2 2. Plaintiff JUSTICE INVESTORS, LP ("JUSTICE") dba HILTON HOTEL
3 FINANCIAL DISTRICT is, and at all times mentioned herein was, a California Limited
4 Partnership located at 750 Kearny Street, San Francisco, California 94108-1809 and is the owner
5 of one hundred percent (100%) of KEARNY STREET EMPLOYERS, LLC, a California Limited
6 Liability Corporation.

7 3. Plaintiff KEARNY STREET EMPLOYERS, LLC is, and at all times mentioned
8 herein was, a California Limited Liability Corporation located at 750 Kearny Street, San
9 Francisco, CA 94108-1809.

10 4. Defendant CITY AND COUNTY OF SAN FRANCISCO is, and at all times
11 mentioned herein was, a municipal corporation created and existing under the laws of the State of
12 California.

13 5. The true names and capacities of Defendants sued herein as DOES 1-100 ("Doe
14 defendants") are unknown to Plaintiff, who therefore sues said Defendants by such fictitious
15 names. Plaintiff will seek leave to amend this complaint to show their true names and capacities
16 when the same are ascertained. Plaintiff is informed and believes, and thereon alleges, that at all
17 material times, each DOE defendant was an employee or agent of Defendant City and County of
18 San Francisco acting within the course and scope of that employment.

19 6. Plaintiff is informed and believes and thereon alleges that each of the Defendants
20 sued herein was negligently, wrongfully and otherwise responsible in some manner for the events
21 and happenings as hereinafter described, and proximately caused injuries and damages to Plaintiff.
22 Further, Plaintiff is informed and believes and thereon alleges that one or more DOE defendants
23 were at all material times responsible for the hiring, training, supervision, and discipline of other
24 defendants, and/or directly responsible for violations of Plaintiff's rights.

25 7. Plaintiff is informed and believes, and thereon alleges, that each of the defendants
26 was at all material times an agent, servant, employee, partner, joint venturer, co-conspirator,
27 and/or alter ego of the remaining defendants, and in doing the things herein alleged, was acting
28 within the course and scope of that relationship. Plaintiff is further informed and believes, and

1 thereon alleges, that each of the defendants herein gave consent, aid and assistance to each of the
2 remaining defendants, and ratified and/or authorized the acts or omissions of each defendant as
3 alleged herein, except as may be hereinafter otherwise alleged

4 8. Plaintiff brings this action pursuant to section 945.6 of the California Government
5 Code.

6 **JURISDICTION AND VENUE**

7 9. Jurisdiction is vested in this Court under California Government Code Sections
8 940 *et seq.*

9 10. Venue for this action is proper in this Court under California Code of Civil
10 Procedure Section 394.

11 **PROCEDURAL POSTURE**

12 11. On or about March 13, 2014, Plaintiffs filed a timely claim for refund in the amount
13 of \$126,771.68 for overpaid TID.

14 12. On or about March 14, 2014, Plaintiffs filed a timely claim for refund in the amount
15 of \$739,511.42 for overpaid TOT.

16 13. On April 20, 2015 Defendant City and County of San Francisco sent a letter to
17 Plaintiffs denying the TOT refund claim.

18 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19 14. Plaintiffs have exhausted all administrative remedies.

20 **I.**

21 **FIRST CLAIM FOR RELIEF**

22 (Refund of Overpayment of TID)

23 15. Plaintiffs repeat and reallege all of the allegations stated above as though fully set
24 forth herein.

25 16. For the tax periods 2009Q1 through 2013Q3, one of the most financially difficult
26 periods for San Francisco's hotel and tourist industry in its history, Plaintiffs paid the Tax
27 Collector \$2,480,044.80 of TID, penalties and interest.

28 //

1 17. Plaintiff initially paid to Tax Collector penalties and interest for late TID payments
2 in the amount of **\$483,556.12** for 2012Q1 through 2013Q3.

3 18. Tax Collector's assessment against Plaintiffs in additional penalties and interest in
4 the amount of **\$130,831.72** was issued to Plaintiff in the form of Tax Collector's *Notice of*
5 *Deficiency* dated December 9, 2013.

6 19. JUSTICE is the 100% owner of Plaintiff Kearny Street Employers, LLC, who also
7 received a *Statement of Account* claiming that Plaintiff Kearny Street Employers, LLC, too, was
8 responsible for payment of the purported aforementioned TID deficiency.

9 20. A Petition for Redetermination was timely filed by Plaintiffs pursuant to Business
10 and Tax Regulation Code, Article 6, Section 6.13-1.

11 21. On February 3, 2014 Tax Collector issued its *Notice of Tax Collector Decision on*
12 *Petition for Redetermination of Assessment Liability* upholding the amount of the deficiency of
13 the TID set forth in the *Notice of Deficiency* in the amount of **\$130,831.72**.

14 22. On February 18, 2014, Plaintiffs timely paid, under protest, the entire additional
15 TID assessed by the Tax Collector in the amount of **\$130,831.72**.

16 23. On or about March 13, 2014, Plaintiffs timely filed a Claim for Tax Refund
17 (hereinafter "TID Claim") to the Controller's Office of the City and County of San Francisco
18 ("Controller") in the amount of **\$126,771.68** on the basis that the Tax Collector of the City and
19 County of San Francisco's ("Tax Collector") assessment of penalties and interest in the amount
20 of \$610,827.79 for Plaintiffs' late payments of the CITY's Tourism Improvement District
21 Assessment ("TID") for the period 2011Q1 through 2013Q3 was excessive and unsupported by
22 the facts and applicable law.

23 24. On or about April 20, 2015, Defendant City and County of San Francisco sent a
24 letter to Plaintiffs denying the TID refund claim.

25 25. During the tax periods 2012Q1 through 2013Q4 Plaintiffs contacted Tax Collector
26 multiple times regarding the amount of TID that was owed to Tax Collector. These discussions
27 and communications focused on how much Plaintiff owed to bring its TID payment current.
28 Plaintiffs contacted Tax Collector regarding the amount due for the TID due to Plaintiffs' previous

1 experience with Tax Collector's improper calculation and untimely posting of Plaintiffs'
2 payments in the tax years 2008 through 2013.

3 26. Tax Collector should have posted Plaintiffs' payments as received pursuant to
4 Business and Tax Regulation Code, Article 6 Section 6.9-6. "Filing And Paying By Mail," which
5 requires Tax Collector's office to post a taxpayer's payment as received by Tax Collector's office
6 as follows:

7 "(a) Filing by Mail. Except as otherwise provided in this Section, taxpayers may
8 file any return or other document with or make any payment to Tax Collector by
9 United States mail.

10 "(b) Date of Postmark. The date of postmark shall be deemed the date of filing
11 for any return or other document, or any payment, delivered to the Tax Collector
12 by United States mail if:

13 (1) The postmark is made by the United States Postal Service;

14 (2) The postmark date falls within the prescribed period, or on or before the
15 prescribed date, including any extension, for filing the return or other document,
16 or for making the payment;

17 (3) The return or other document, or the payment, was, within that time,
18 deposited in the mail in the United States in an envelope or other appropriate
19 wrapper, postage prepaid and properly addressed to the Tax Collector; and

20 (4) The Tax Collector receives the return or other document, or the payment, as
21 a result of the timely mailing.

22 "The Tax Collector may provide by regulation for application of this rule to
23 postmarks not made by the United States Postal Service."

24 27. In the alternative to mailing, under the City and County of San Francisco's
25 Business and Tax Regulation Code, Article 6 Section 6.9-6(e) the taxpayer may deliver its
26 payment by private delivery service, as follows:

27 "(e) Private Delivery Services. References in this Section to the United States
28 mail and a postmark of the United States Postal Service shall include any
designated delivery service and any date recorded or marked as described herein
by any designated delivery service.

1 (1) A "designated delivery service" means any delivery service provided by a
2 trade or business if such service is designated by the Tax Collector for purposes
3 of this Section. The Tax Collector may designate a delivery service only if he or
4 she determines that such service:

5 (A) Is available to the general public;

6 (B) Is at least as timely and reliable on a regular basis as the United States mail;

7 (C) Records electronically to its database, kept in the regular course of its
8 business, or marks on the cover in which any item referred to in this Section is
9 to be delivered or filed, the date on which such item was given to such trade or
10 business for delivery; and

11 (D) Meets such other criteria as the Tax Collector may prescribe."

12 28. After having significant issues with the Tax Collector's office from 2008 forward
13 regarding the proper posting by the Tax Collector's office of the date of Plaintiffs' payment of the
14 TID for those items sent by U.S. mail, regardless of the date of the post mark on the envelope,
15 Plaintiffs hired, at an extra cost to Plaintiffs, a private delivery service to deliver Plaintiffs'
16 payments for the TID to the Tax Collector. As such, the date the delivery service delivered the
17 check to the Tax Collector is the correct date to determine, if any, the amount of penalties and
18 interest due by Plaintiffs.

19 29. Under the CITY AND COUNTY OF SAN FRANCISCO's Business and Tax
20 Regulation Code, Article 6, Section 6.9-7(b), "Partial Payments," the taxpayer can specify how
21 the tax paid to the Tax Collector for the TID (or any other tax due the Tax Collector) is to be
22 allocated against the taxpayer's liability to the Tax Collector. At the time of Plaintiffs' payment
23 of its TID, Plaintiffs' Tax Collector's payment invoice accompanied by Plaintiffs' check show
24 that Plaintiffs' payments were to be allocated to the amount of TID due and that no amounts were
25 to be allocated to penalties and/or interest and all sums paid should have been applied to the TID
26 due, which would have lessened the number of late TID payments and the amount of penalties
27 due. However, Tax Collector did not allocate Plaintiffs' payments in this manner.

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1 34. Section 6.17-1(a) specifically authorizes the imposition of a 5 percent penalty if a
2 payment is even one day late for the first month and an additional 5 percent penalty "each
3 following month or fraction of a month during which such failure continues. . . until the date of
4 payment. . . ." Thus, under 6.17-1(a) if a payment is even 1 day late, the penalty is 5 percent of
5 the tax; if a payment is 1 month and 1 day late, the penalty is 10 percent of the tax, etc. up to the
6 imposition of a 20 percent penalty.

7 35. Conversely, Section 6.17-1(c) states that interest accrues "at the rate of 1 percent
8 per month, or fraction of a month" and not 1 percent for "each month or fraction of a month."
9 Thus, the rate of accrual of interest is fractional under Section 6.17-1(c), while the penalty is
10 imposed for each month or fraction of a month that a payment is late under Section 6.17-1(a).
11 Thus, if a payment is one day late that fraction of 1 percent of interest accrues, while the entire 5
12 percent monthly penalty is imposed.

13 36. The fallacy of Tax Collector's interpretation of Section 6.17-1(c) in calculating
14 interest due thereunder is supported by Tax Collector's own interpretation of the nearly identical
15 language in San Francisco Business & Tax Regulations Code Section 6.15-2, governing refunds
16 and interest, which states in pertinent part:

17 "(a) Any amounts refunded shall bear interest at the rate of 2/3 of 1
18 percent per month or fraction thereof . . . and shall be computed from the date
 of payment to the date of refund."

19 37. Plaintiffs are informed and believe, and thereon allege, that when calculating
20 interest due on refunds under Section 6.15-2, Tax Collector interprets the nearly identical
21 language "fraction thereof" language as allowing Tax Collector to calculate the interest due on a
22 refund fractionally. For example, when Tax Collector issues a refund on the first day of a month,
23 Tax Collector only pays 1 day of interest on that refund, not a full month of interest.

24 38. Importantly, nowhere does Tax Collector give any notice to taxpayers that the
25 nearly identical language in the penalty statute, Section 6.17-1(c), and the refund statute, Section
26 6.15-2, are being interpreted in exactly the opposite manner to Tax Collector's clear benefit and
27 to the detriment of taxpayers.

28 //

1 39. Tax Collector (a) improperly allocated Plaintiffs' payment for TID tax due to the
2 payment of penalties first, then interest, and finally tax due; (b) Tax Collector improperly posted
3 Plaintiffs' dates of payment; (c) Tax Collector improperly calculated the amount of interest due
4 by charging an entire month's interest when a TOT payment was one or more days late, instead
5 of calculating interest so as to comport with the fractional monthly proportion that said payment
6 of late; (d) Tax Collector's improperly posted payment dates; and (e) Tax Collector failed to
7 accurately communicate the TID sums due to Plaintiffs, despite Plaintiffs' repeated requests
8 therefore.

9 40. Further, Tax Collector made a mistake of law under the San Francisco Business
10 and Tax Regulation Code in Tax Collector's application of the TID and penalties and interest the
11 Tax Collector is claiming is owed by Plaintiffs. The inclusion of the "fraction of a month"
12 language in 6.17-1(c) indicates that the amount of interest due on late payments under Section
13 6.17-1(c) should be calculated on a fractional basis, not a per month basis. As a result, Tax Collector
14 has over charged Plaintiffs by at least \$22,875.26 in TID interest payments previously paid by
15 Plaintiffs.

16 41. Plaintiffs are entitled to a refund of interest paid by Plaintiffs on the late TID
17 payments in the amount of \$22,875.26 (as well as a refund of penalties as previously set forth) on
18 the grounds that Tax Collector incorrectly calculated the amount of interest due under Section
19 6.17-1(c) by charging Plaintiffs an entire month's interest, instead of the fractional proportion of
20 interest, for each late TID payment.

21 42. Further, because Plaintiffs exercised ordinary and reasonable care in making
22 payments under the relevant economic circumstances, and there was no willful neglect on
23 Plaintiffs' part in making Plaintiffs' payments, all penalties and interest should have been waived
24 under Business and Tax Regulation Code, Article 6, Section 6.17-4. "Waiver of Penalties."
25 Despite a very difficult environment for the hotel and tourism industry in the city and county of
26 San Francisco Plaintiffs paid all TID due to Tax Collector from 2009Q1 to 2013Q4, in the total
27 amount of \$ 2,480,048.73. As such, there is no willful neglect on Plaintiffs' part to pay its share
28 of TID. Although Plaintiffs' timeliness of payment record is not perfect, Plaintiffs have exercised

1 ordinary and reasonable care under the relevant economic circumstances to pay Tax Collector the
2 TID due. Plaintiffs has a history of contacting the Tax Collector to determine its liabilities owed
3 for the TID and other city taxes Plaintiffs is required to pay. Plaintiffs has, at its own additional
4 expense to try to reduce friction with the Tax Collector's office, had Plaintiffs' payments delivered
5 to Tax Collector by personal delivery service so that there is no controversy surrounding the date
6 of Plaintiffs' payment and as the Tax Collector's own records will demonstrate try to maintain
7 regular communications with the Tax Collector to try to bring its outstanding TID due current.
8 Moreover, all of Plaintiffs' payments of the TID for 2013Q3 and 2013Q4 have been timely made.
9 43. As Plaintiffs has paid all the principal amounts of TID due to Tax Collector in the
10 amount **\$2,480,044.80** from 2012Q1 to 2013Q4, and based on the relevant law and supporting
11 facts as stated above, Plaintiffs seek a refund of penalties and interest for late TID payments from
12 Defendant in the amount of **\$126,771.68**.

13 WHEREFORE, Plaintiffs seek judgment as set forth below.

14 **II.**

15 **SECOND CLAIM FOR RELIEF**

16 (Refund of Overpayment of TOT)

17 44. Plaintiffs repeat and reallege all of the allegations stated above as though fully set
18 forth herein.

19 45. Plaintiffs have paid Tax Collector **\$14,425,575.00** for sums due the Tax Collector
20 related to the payment of TOT for the period 2011Q1 through 2013Q3.

21 46. Tax Collector initially assessed a TOT deficiency in the amount of **\$2,023,001.07**
22 against Plaintiffs, including Tax Collector's *Notice of Deficiency* to Petitioner, dated December
23 9, 2013.

24 47. Tax Collector subsequently issued a *Notice of Jeopardy Determination* to Plaintiffs
25 dated December 17, 2013 for the same deficiency.

26 48. JUSTICE is the 100% owner of Plaintiff Kearny Street Employers, LLC which is
27 located at 750 Kearny Street, San Francisco, CA 94108-1809, who also received a statement of
28 account claiming that it too was responsible for payment of the purported aforementioned TOT

1 deficiency.

2 49. Plaintiffs timely filed a Petition for Redetermination of Transient Occupancy Tax
3 pursuant to Business and Tax Regulation Code, Article 6, Section 6.13-1 on January 2, 2014.

4 50. On February 3, 2014 Tax Collector issued its *Notice of Tax Collector Decision on*
5 *Petition for Redetermination of Transient Occupancy Tax*, reducing the amount of the deficiency
6 of the Transient Occupancy Tax set forth in the Jeopardy Determination by **\$170,051.72** for a
7 revised total tax liability for the Transient Occupancy Tax in the amount of **\$1,865,769.37** for the
8 relevant Tax Period.

9 51. On February 18, 2014, Plaintiffs timely paid, under protest, the entire TOT
10 assessed by the Tax Collector in the amount of **\$1,865,769.37**.

11 52. On or about March 13, 2014, Plaintiffs timely filed a Claim for Tax Refund for
12 **\$739,511.42** in TOT penalties and interest for the Tax Period that Tax Collector incorrectly
13 calculated and improperly assessed, pursuant to the CITY AND COUNTY OF SAN
14 FRANCISCO's Business and Tax Regulation Code, Article 6, Section 6.15-1(a), where in
15 Plaintiffs has 1 year to request such a refund from the date of payment.

16 53. On or about April 20, 2015, Defendant CITY AND COUNTY OF SAN
17 FRANCISCO sent a letter to Plaintiffs denying the TID refund claim.

18 54. During the applicable Tax Periods although some of Plaintiffs' TOT payments
19 were late; those payments, on average, were only 44.4 days late. Additionally, many of the late
20 TOT payments were paid at the beginning or middle of a month and, thus, were only a fraction of
21 a month or months late.

22 55. During the applicable Tax Period Plaintiffs contacted Tax Collector multiple times
23 regarding the amount of TOT that was owed to Tax Collector. These discussions and
24 communications mainly focused on Tax Collector's date of posting of Plaintiffs' payments of the
25 TOT to the Tax Collector's office so that Plaintiffs could determine the amount of penalties and
26 interest actually owed for its late payment of a portion of Plaintiffs' TOT during the Tax Period.
27 Plaintiffs contacted Tax Collector regarding the date the Tax Collector posted Plaintiffs' payments
28 because of Petitioner's prior issues regarding the posting of Plaintiffs' payments in the TOT tax

1 years preceding 2011.

2 56. During the applicable Tax Period, due to the Tax Collector's historically inaccurate
3 posting of the date of Plaintiffs' payments of the TOT, Plaintiffs hired a courier service to
4 personally deliver Plaintiffs' tax payments to insure an accurate record of the date of Plaintiffs'
5 payments to Tax Collector.

6 57. During the applicable Tax Period, Plaintiffs also specifically instructed Tax
7 Collector to allocate all of Plaintiffs' payment to the payment of the TOT. This allocation was
8 made on each payment stub delivered to Tax Collector along with a check for payment of said
9 amount. As such, no portion of Plaintiffs' TOT payments was to be made to either penalties and/or
10 interest and all sums paid should have been applied to the TOT. "). However, Tax Collector did
11 not allocate Plaintiffs' TOT payments in this manner.

12 58. As is more fully set forth above, Tax Collector improperly calculated the amount
13 of interest due on late TOT payments on a monthly basis, instead of on the basis of the fraction of
14 the month that a payment was late. For example, if Plaintiffs' TOT payment was even one day
15 late, Tax Collector incorrectly assessed one entire month's interest, rather than interest on just the
16 fraction of the month that a payment was late. Tax Collector made a mistake of law under the San
17 Francisco Business and Tax Regulation Code in Tax Collector's application of the TOT and
18 penalties and interest the Tax Collector is claiming is owed by Plaintiffs.

19 59. Tax Collector assessed a Tax Installment Penalty against Plaintiffs in the amount
20 of \$411,128.00 for the period Tax Period under the auspices of San Francisco Business & Tax
21 Regulations Code Section 6.17-1 (a) and 6.17-1 (c) for Plaintiffs' failure to timely remit TOT
22 payments. In assessing the amount of penalty due Tax Collector incorrectly charged Plaintiffs a
23 full month's penalty and interest, instead of a "fraction thereof" as required by Section 6.17-1 (c),
24 for each month or fraction thereof that a TOT payment was late.

25 60. As such, Tax Collector's assessment of the amount owed by Plaintiffs to Tax
26 Collector for the TOT for Tax Period is in error. As a result, Tax Collector has over charged
27 Petitioner by at least **\$504,138.73** in penalties and **\$235,372.69** in interest.

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- 3. For reasonable attorneys' fees;
- 4. For costs of suit; and
- 5. For such other and further relief as the Court deems appropriate

DATED: October 19, 2015

O'KANE & MCKEE, LLP

By: Laura J. O'Kane
Laura J. O'Kane, Esq., Attorney for Plaintiffs

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Laura J. O'Kane (SBN 192143); Michele L. McKee (SBN 224818) O'Kane & McKee, LLP 140 N. Luring Dr., Ste. E, Palm Springs CA 92262 TELEPHONE NO.: 760-904-4152 FAX NO.: 760-652-4800 ATTORNEY FOR (Name): Plaintiff, Justice Investors, LP		FILED SAN FRANCISCO COUNTY SUPERIOR COURT 15 OCT 18 PM 3:41 BY: CLERK OF THE COURT DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: SAME CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civic Center Courthouse		
CASE NAME: Justice Investors LP, et al. vs. City and County of San Francisco		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
		CASE NUMBER: 15-514532 JUDGE: _____ DEPT: _____

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/UPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/UPD/WD (23) Non-P/UPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/UPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input checked="" type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☐ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 1
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 19, 2015

Laura J. O'Kane
 (TYPE OR PRINT NAME)

 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

ORIGINAL

FAXED

CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU
City Attorney

OFFICE OF THE CITY ATTORNEY

SCOTT M. REIBER
Chief Tax Attorney

Direct Dial: (415) 554-4660
Email: scott.reiber@sfcityattorney.org

April 26, 2023

Via Email (mike.kelley@microsoft.com)
Via Certified Mail (7020 1290 0002 3258 1651)

Microsoft Corporation
Attn: Michael S. Kelley, State Tax Counsel
One Microsoft Way
Redmond, WA 98052-6399

Via Email (carley.roberts@pillsburylaw.com)
Via Certified Mail (7020 1290 0002 3258 1668)

Carley A. Roberts
Pillsbury Winthrop Shaw Pittman LLP
500 Capitol Mall, Suite 1800
Sacramento, CA 95814

Re: Request for Disclosure of Tax Claims

Dear Michael Kelley and Carley Roberts:

In February and April 2021, Microsoft Corporation filed two Verified Complaints for Refund of San Francisco Gross Receipts Tax against the City and County of San Francisco seeking a refund of gross receipts taxes for 2018. The complaints, attached hereto, did not attach copies of the claims for refund underlying the complaints (the "Claims").

Amy L. Silverstein has requested that we provide her copies of your Claims on the grounds that they constitute "pre-litigation claim[s] against the City" that must be disclosed under S.F. Admin. Code Section 67.24(b)(i). But because we understand that you may take the position that the information in the Claims should remain confidential taxpayer information under S.F. Bus. & Tax Regs. Code Section 6.22-1, Cal. Gov. Code Sections 7925.000 and/or 7927.705 (formerly Sections 6254(i) and (k)), Cal. Evid. Code Section 1040, general principles of taxpayer confidentiality, and/or otherwise, we are reaching out to give you and other similarly-situated taxpayers the opportunity to file suit objecting to the disclosure of the Claims.

If you file suit (and notify us) within 30 days of the date of this letter, we will not disclose the Claims to Ms. Silverstein unless ordered to do so by the court. If we do not hear from you within 30 days of the date of this letter, we will assume you do not claim a confidentiality interest in the Claims or any of their contents and we will disclose them to Ms. Silverstein.

Please reach out to me at the contact information above if you have any questions.

Very truly yours,

DAVID CHIU
City Attorney


Scott M. Reiber
Chief Tax Attorney

Attachment: Complaints

1 PILLSBURY WINTHROP SHAW PITTMAN LLP
2 CARLEY A. ROBERTS (SBN 204225)
3 500 Capitol Mall, Suite 1800
4 Sacramento, CA 95814
5 Telephone No.: (916) 329-4700
6 Facsimile No.: (916) 441-3583

7 RICHARD E. NIELSEN (SBN 72104)
8 Four Embarcadero Center, 22nd Floor
9 Post Office Box 2824
10 San Francisco, CA 94120-7880
11 Telephone No.: (415) 983-1000
12 Facsimile No.: (415) 983-1200

13 Attorneys for Plaintiffs,
14 MICROSOFT CORPORATION AND SUBSIDIARIES

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

17 UNLIMITED JURISDICTION

CGC-21-590032

18 MICROSOFT CORPORATION, a
19 Washington corporation, AND
20 SUBSIDIARIES,
21
22 Plaintiffs,

23 vs.

24 CITY AND COUNTY OF SAN
25 FRANCISCO and OFFICE OF THE
26 TREASURER AND TAX COLLECTOR OF
27 THE CITY AND COUNTY OF SAN
28 FRANCISCO,
29 Defendants.

No.

VERIFIED COMPLAINT FOR
REFUND OF SAN FRANCISCO
GROSS RECEIPTS TAX

30 Plaintiffs, Microsoft Corporation and Subsidiaries (Plaintiffs or Microsoft), in
31 accordance with Government Code section 945.6, hereby file this Verified Complaint
32 (Complaint) for Refund of San Francisco Gross Receipts Tax for the 2018 tax year.
33 Plaintiffs complain of Defendants as follows:

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

02/26/2021
Clerk of the Court
BY: KALENE APOLONIO
Deputy Clerk