

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

ERIC L. FRANK, on behalf of
himself and all others
similarly situated,

Plaintiff,

vs.

CLASS REPRESENTATION

Case No. 2015 CA 001298
Division: D

CITY OF PENSACOLA, a Florida
Municipal Corporation,

Defendant.

_____ /

NOTICE OF PENDENCY OF CLAIM

The Plaintiff, Dr. Eric Frank, on behalf of the certified class, by and through his undersigned attorneys, pursuant to Rule 1.220(d)(2), Florida Rules of Civil Procedure, and provides the following notice of the pendency of class claim:

I. The Claims Asserted by the Plaintiff.

1. Plaintiff, on behalf of himself and others similarly situated, initiated the above-styled class action lawsuit (the "Lawsuit") against the Defendant, City of Pensacola, ("City") seeking to:

a. Enjoin the City from continuing to charge and collect "Franchise Fees" from the "Customers;"

b. Require the City to return to and reimburse the Customers for all Franchise Fees paid by the Customers during the "Relevant Period of Time;" and

c. Require the City to return to and reimburse the Customers for all the Utility Services Taxes which the City charged and collected upon the "Franchise Fees."

2. On June 7, 2019, the Court entered an *Order Granting Plaintiff's Motion for Class Certification* in which the Court certified the class (the "Class") as "*All natural gas customers of the Defendant, City of Pensacola, located within the Pensacola city limits upon which Defendant has imposed, and from whom Defendant collected, franchise fees within the applicable statute of limitations period and in the future continue to impose and collect franchise fees.*"

3. As used herein the following terms shall have the meaning ascribed thereto:

a. “Customer” or “Customers” shall mean the members of the Class.

b. “Franchise Fees” shall have the same meaning as ascribed thereto in the *Partial Summary Judgment* herein dated July 18, 2024, as “*The “franchise fee” charges paid by the Customers as reflected on their natural gas utility bills from the Defendant for the period from Aug. 6, 2011, to the present as well as any future such charges imposed upon the Customers.*”

c. “Relevant Time Period” shall mean the period from August 6, 2011 to the present.

d. “Utility Services Tax” shall have the same meaning as contemplated in the *Partial Summary Judgment* herein dated July 18, 2024, to wit: the taxes which the Defendant, City of Pensacola, levied pursuant to Florida Statute Section 166.231 on the Customers’ payment of Franchise Fees and which the Customers paid to the Defendant.

4. The Lawsuit alleges:

a. The City enacted a series of three ordinances through which it purported to charge itself a franchise fee on its own natural gas utility operations. Then, without City Council authorization to do so, City staff passed those charges on to the Customers.”

b. Two general grounds for relief, to wit:

i. That the ordinances do not authorize City staff to pass the Franchise Fees to, or require them to be paid by, the Customers. Rather, the ordinances simply provide that the Franchise Fees are to be charged to and collected from only the City’s gas utility department. In absence of express authorization from the Pensacola City Council, the City’s staff was not permitted to pass the Franchise Fees on to the Customers; rather, the staff’s unauthorized efforts to collect the Franchise Fees were improper.

ii. That the Franchise Fees are not valid municipal user fees; rather, they are impermissible taxes charged in violation of the Tax Preemption Doctrine of the Florida Constitution. Impermissible taxes charged in violation of the Tax preemption Doctrine must be returned.

c. The City has levied a Utility Service Tax on the Franchise Fees and, because the Franchise Fee charges are improper, Customers’ payments of Utility Service Taxes on those Franchise Fees is also improper and must be returned to the Customers.

5. The Plaintiff filed a motion seeking partial summary judgment (“Plaintiff’s Motion”) as to the first general ground for relief. On July 18, 2024, the Honorable Jan Shackelford, presiding Circuit Court Judge, entered a *Partial Summary Judgment* granting Plaintiff’s Motion. The Court’s Partial Summary Judgment ordered and adjudged that:

a. The City is enjoined from charging and collecting Franchise Fees from the Customers;

b. The City must return to the Customers all Franchise Fees (and the Utility Service Taxes thereupon) charged to and collected from the Customers after August 5, 2011; and

c. Plaintiff is entitled to recover from Defendant: (i) all Franchise Fees charged to and collected from the Customers after August 5, 2011; (ii) all Utility Service Taxes charged to and collected from the Customers on the Franchise Fees; (iii) prejudgment interest as provided by law upon the amounts contemplated in subparagraphs (i) and (ii), above; and (iv) interest on the amounts contemplated in subparagraphs (i) and (ii), above, from July 18, 2024, at the rate of 9.46% a year until paid.

II. Notice to Class Members per Rule 1.220(d)(2)

6. Any member of the Class who files a statement with the Court by the April 1, 2025, asking to be excluded shall be excluded from the Class.

7. A judgment entered in the Lawsuit, whether favorable or not, will include all members of the Class who do not request exclusion

8. Any member of the Class who does not request exclusion may make a separate appearance on or before the April 1, 2025.

Respectfully submitted,

/s/ Matt E. Dannheisser

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