STATE OF MICHIGAN
IN THE COURT OF APPEALS

DETROIT ALLIANCE AGAINST THE RAIN TAX, a voluntary unincorporated association, and GALILEE MISSIONARY BAPTIST CHURCH, DANTO FURNITURE COMPANY, a Michigan Corporation, CENTRAL AVENUE AUTO PARTS, INC., a Michigan Corporation, and JUDITH SALE, individually and on behalf of similarly situated persons,

Plaintiffs,

v.

CITY OF DETROIT, a municipal corporation, the DETROIT WATER AND SEWERAGE DEPARTMENT, and the DETROIT BOARD OF WATER COMMISSIONERS,

Defendants.

Case No.

COMPLAINT PURSUANT TO MCR 2.112(M)

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A civil action between these parties or other parties arising out of the transaction or occurrence alleged in this complaint has been filed previously in this Court, and remains pending, namely *Binns, et al., v City of Detroit, et al*., Case No. 337609. It was assigned to Judges Saad, Murphy, and Boonstra for ruling on a motion for preliminary injunction, but had not been certified as a class action nor submitted for decision as of the date on which this complaint was filed.

CLASS ACTION COMPLAINT FOR DECLARATORY AND OTHER RELIEF PURSUANT TO THE HEADLEE AMENDMENT

NATURE OF THE ACTION

1. This action is brought pursuant to Mich Const 1963, art 9, §§ 31 through 34 ("**the Headlee Amendment**"),[1] MCL 600.308a,[2] and MCR 2.112(M),[3] to challenge the storm water drainage charge ("**the drainage charge**") of $750 per impervious acre that was instituted on October 1, 2016,[4] by the City of Detroit ("**the City**"), the Detroit Board of Water Commissioners ("**the Board**"), and the Detroit Water and Sewerage Department (the "**DWSD**").

2. This Headlee Amendment claim is brought as a class action, as required by *Bolt v City of Lansing* (*"**Bolt**"*).[5]

3. The Headlee Amendment, Const 1963, art 9, § 31, prohibits a unit of local government to levy any tax not authorized by law or charter, or to increase the rate of an existing tax above the rate authorized by law or charter when that section was ratified,[6] without the approval of a majority of the qualified electors of that unit of local government voting thereon. See **Ex 1**.

4. The drainage charge was adopted without a vote of the people.

5. For the reasons alleged within, the drainage charge is a tax under *Bolt's* test for distinguishing between a fee and a tax.

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1 **Ex 1.** Per MCR 2.112(M), copies of all sources of law cited are appended.

2 **Ex 2.**

3 **Ex 3.**

4 **Ex 4,** DWSD publication, "Detroit Water and Sewerage Department Drainage Charge Questions and Answers, ¶¶ 5, 6; **Ex 5-A,** DWSD publication, "A Guide to the Drainage Charge," (August 2016 Revision), p. 5.

5 **Ex 6-A**, *Bolt v City of Lansing*, 459 Mich 152 (1998), *on remand*, **Ex 6-B**, 238 Mich App 37 (1999).

6 November 7, 1978, effective December 23, 1978. See **Ex 1**.

JURISDICTION

6. As taxpayers, Plaintiffs have standing under Mich Const 1963, art 9, §§ 32, to enforce the Headlee Amendment. See **Ex 1**.

7. This action is within this Court's original jurisdiction pursuant to Mich Const 1963, art 9, § 32, MCL 600.308a (1), and MCR2.112(M). See **Exs 1, 2,** and **3.**

THE PARTIES

8. The City is a Home Rule City empowered by law, 1909 PA 279, to adopt the Charter approved by the voters of the City on November 5, 1996 ("**the Charter**"). See **Ex 7.**

9. The DWSD and the Board were established and exist pursuant to the Charter. **Ex 7**, Detroit Charter, Art. 7, ch 15, §§ 7-1501 – 1504.

10. The DWSD, through the Board, exercises the powers conferred upon it by Detroit Ordinances, § 56-3-1, *et seq*., including the power to establish rates for sewage services the DWSD furnishes for the drainage of lots. **Ex 8**, Detroit Ordinances, § 56-3-10, 56-3-12.

11. Plaintiff Detroit Alliance Against the Rain Tax ("**DAART**") is a voluntary unincorporated association formed of and by owners of property situated in the City of Detroit to challenge the constitutionality of the drainage charge. **Ex 9.**

12. DAART's members include owners of Detroit residential, commercial, industrial, and tax-exempt religious property subject to the drainage charge.

13. DAART's members also include owners of Detroit residential, commercial, industrial, and tax-exempt religious property that was subject to the storm water drainage charge program

instituted in 2013 that preceded the drainage charge, was in effect on and before October 1, 2016, and currently remains in effect ("**the prior drainage charge**").

14. Under the prior drainage charge program, residential customers were charged a fixed fee for drainage based on meter size, and non-residential customers were charged based on a four-tiered class average percentage of impervious area associated with their property. **Ex 4**, ¶ 4-6; **Ex 5-A**, p 5.

15. Plaintiff Galilee Missionary Baptist Church ("**Galilee")** owns property situated at 5251 East Outer Drive, Detroit, Michigan, 48234, parcel 17005144 ("**the Galilee parcel**"), comprising 6.47 acres, 5.86 acres of which DWSD classifies as "impervious" under the definition on which the prior drainage charge and the drainage charge are based. See **Exs 10-A** to **10-C**.[7]

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[7] See **Ex 5,** p 1 of 3; **Ex 5-A**, p 7. The DWSD's definition of "impervious" is found at **Ex 5-A**, p 7:

> The definition of impervious area DWSD applies to calculate the drainage charge is as follows:
>
> > Hard surface areas which either prevent or retard the entry of water into the soil in the manner that such water entered the soil under the natural conditions pre-existent to development, or which cause water to run off the surface in greater quantities or at an increased rate of flow that that present under natural conditions pre-existent to development, including but not limited to such surfaces as roof tops, gravel, asphalt or concrete paving, driveways and parking lots, walkways and sidewalks, patio areas, storage areas, or other surfaces which similarly affect the natural infiltration or runoff patterns existing prior to development.
> > **Important note:** Any surface that experiences routine vehicular traffic (e.g., gravel, dirt, and grass) is considered impervious regardless of surface material as it causes compaction.

Ex 5-A, p. 7 (bold emphasis in original).

16. Plaintiff Central Avenue Auto Parts, Inc. ("**Central Auto"**), owns or has contracted to purchase (and is the equitable owner of), parcels of property situated in the City of Detroit for which it is liable to pay the prior drainage charge and/or the drainage charge assessed or to be assessed against them ("**the Central Auto parcels").** See **Exs 11-A** to **11-L**.

17. Plaintiff Judith Sale is an owner of two residential parcels, located at 1667 Church Street and 1802 Church Street ("**the Sale parcels**"), which currently are subject to the prior drainage charge, and to which the drainage charge will apply in the future. See **Exs 12-A** to **12-B**, **Ex 4**, p 2 of 15, **Ex 18**.

18. Plaintiff Danto Furniture Company owns parcels of property situated in the City of Detroit for which it is liable to pay the prior drainage charge and/or the drainage charge assessed or to be assessed against them, including a parcel located at 7741 Dix Street ("**the Danto Furniture parcel")** that is currently subject to the prior drainage charge. See **Exs 13-A** to **13-D.**

THE INDIVIDUAL PLAINTIFFS' DRAINAGE CHARGES

19. The Galilee parcel is subject to the prior drainage charge system, and is currently being assessed, and is paying on its current account, $3,538.78 per month, based on DWSD's calculation of its impervious area. **Ex 10-B and 10-C.** See DWSD website: http://dwsd.maps.arcgis.com/apps/webappviewer/index.html?id=aa5e687db0b9430b8b29408569bedd61 (last accessed 7/6/17).

20. The following Central Auto parcels are subject to the prior drainage charge:

A. 3005 Central Street, DWSD Acct. No. 360-3773.300, is a ¾" metered commercial property comprising .46 acres, which Central Auto is purchasing on a land contract under which it is contractually obligated to pay the drainage charges. In August 2013 DWSD imposed the prior drainage charge on this parcel, in the

amount of **$205.23 per month ($2,462.76 annually),** to which this parcel remains subject as of the date of this suit. **Ex 11-A,** and see **Ex 5-A,** p 5.

B. 3022 Central Street, DWSD Acct. No. 360-3771.300, a metered commercial property, is and remains subject to the fixed monthly "Low" prior drainage charge of **$20.36 ($244.32 annually)**, based on its 5/8" meter size. **Ex 11-B**; see **Ex 5-A,** p 5.

C. 3021 Central Street, DWSD Acct. No. 360-3772.300, is a 5/8" metered commercial property, which Central Auto is purchasing on a land contract under which it is obligated to pay the drainage charges. In 2008, before the prior drainage charge was instituted, the drainage charge for this parcel was $53.05 per month. In August 2014, this parcel's drainage charge was increased to $102.62 per month, pursuant to the prior drainage charge system. As of the date of this suit, this parcel is subject to a prior drainage charge of **$125.81 per month ($1,509.72 annually**). **Ex 11-C,** and see **Ex 5-A,** p 5.

21. Effective October 1, 2016, the following unmetered Central Auto parcels, which have no water or sewage service, were subjected to the drainage charge in the following amounts, supposedly based on their impervious area:

A. 7286 Dix Street, DWSD Acct. No. 916-0472.300, **$277.50 per month ($3,330.00 annually)**. **Ex 11-D.**
B. 7276 Dix Street, DWSD Acct. No. 916-0473.300, **$2,385.00 per month ($28,620.00 annually)**. **Ex 11-E.**
C. 2936 Central Ave, DWSD Acct. No. 916-2275.300, **$75.00 per month ($900.00 annually)**. **Ex 11-F.**
D. 2980 Central Ave., DWSD Acct. No. 916-2280.300, **$202.50 per month ($2,430.00 annually)**. **Ex 11-G.**
E. 2986 Central Ave., DWSD Acct. No. 916-2282.300, **$157.50 per month ($1,890.00 annually)**. **Ex 11-I.**
F. 2994 Central Ave., DWSD Act. No. 916-2281.300, **$150.00 per month ($1,800.00 annually)**. **Ex 11-H.**

G. 3008 Central Ave., DWSD Acct. No. 916-2283.300, **$157.50 per month ($1,890.00 annually)**. **Ex 11-J**.

H. 3030 Central Ave., DWSD Acct. No. 916-2284.300, **$457.50 per mo. ($5,490.00 annually)**. **Ex 11-K.**

I. 3032 Central Ave., DWSD Acct. No. 916-2285.300, $**15.00 per month ($180.00 annually)**. **Ex 11-L.**

22. After the adoption and imposition of the drainage charge, on and after October 1, 2016, Central Auto's total drainage charges on all of the Central Auto parcels identified in ¶¶ 20 and 21 (A) through (I) rose from **$351.40 monthly ($4,216.80 annually)** to **$4,228.90 monthly ($50,746.80 annually)**, an **annual increase of $46,530.00**, a more than **1200% increase** in the drainage charges on the Central Auto parcels in a single year.

23. The Central Auto parcel identified in ¶ 21 (A) located at 7286 Dix Street, DWSD Acct. No. 916-0472.300, is unpaved, and so topographically configured that it does not discharge storm water to the City's sewer system. Rather, storm water accumulates in low areas within that parcel, forms ponds, and then gradually evaporates and percolates into the soil. See **Ex 11-M**.[8]

24. Though the Central Auto parcel identified in ¶ 21 (A) located at 7286 Dix Street, DWSD Acct. No. 916-0472.300, imposes no burden on, and derives no benefit from DWSD's storm water sewer and treatment system, it is nevertheless subject to the full drainage charge, based on the "impervious area" that DWSD imputes to that parcel based on Central Auto's use of vehicles on its unpaved area, See **Ex 5-A**, pp. 8-9, because DWSD does not actually measure the storm water discharged from any parcel in calculating and assessing the drainage charge.

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[8] **Ex 11-M** is printed from the DWSD website:

http://dwsd.maps.arcgis.com/apps/webappviewer/index.html?id=aa5e687db0b9430b8b29408569bedd61 (last accessed 7/7/17).

25. The Sale parcels are currently subject to the fixed monthly drainage fee of $20.06, based on meter size, that the prior drainage charge program prescribed for residential property. **Ex 12-A** and **12-B**; see **Ex 5-A,** p. 5.

26. The Sale parcels originally were not to be subject to the drainage charge until October 2017, the original date for phasing in the drainage charge on residential customers. **Ex 4**, p. 2 of 15.

27. The drainage charge was thus designed to be implemented so that residential customers would not experience the increased drainage charge until DWSD's November billing, **Ex 4**, p. 2 of 15, which they would not receive until after the November 7, 2017, mayoral election. See **Exs 10-B**, **11-A** to **11-C**, **12-A**, **12-B**, **13-A** to **13-A** (DWSD's monthly service period dates billed to Plaintiffs for metered properties end no earlier than the 6th of the month, and the next mayoral/general election is scheduled for November 7, 2017). See https://ballotpedia.org/Municipal_elections_in_Detroit,_Michigan_(2017) (last accessed July 6, 2017).

28. The effective date of the drainage charge was later changed so that "[c]ustomers who [like the Sale parcels] currently pay based on meter size or who have never been billed for drainage will pay $125 per impervious acre starting April 2018. Customers will phase to the full rate over 5 years with transition credits applied." **Ex 18** (emphasis added).

29. The Danto Furniture parcel, which has no water or sewer service, and has no water meter, is subject to the prior drainage charge, which was first assessed in the amount of $472.92 per month in August 2013 ($5,675.04 annually), was increased to $515.87 per month in August 2014 ($6,180.44 annually), was then increased to $559.95 per month in August 2015 ($6,719.40 annually), and was then increased to $579.78 in August 2016 ($6,957.36 annually), for total prior

drainage charges of $24,372.64 since the prior drainage charge was first assessed against the Danto Furniture parcel in August 2013 through the date this suit was filed. **Ex 13-A**.

30. Danto Furniture has paid monthly amounts ranging from $200.00 to $879.78, as it could afford to do so, toward the total of $24,372.64 monthly drainage charges imposed on the Danto Furniture parcel from August 2013 through the date of filing suit, but has not been able to pay the entire amount due; as of the date of filing suit, Danto Furniture Company had an unpaid past due balance (including late charges assessed by DWSD) for the Danto Furniture parcel of $2,456.08 in prior drainage charge assessments. **Ex 13-A.**

31. Danto Furniture Company has paid not less than $21,916.56 in prior drainage charges on the Danto Furniture parcel in the 3 years and 10 months since the prior drainage charge was first assessed against the Danto Furniture parcel in August 2013.

32. DWSD has advised Danto Furniture Company in writing that the past due and unpaid prior drainage charges against the unmetered Danto Furniture parcel subjects that parcel to "shut off" if the bill is unpaid, **Ex 13-A** (last page).

33. DWSD has advised Danto Furniture Company in writing that the past due and unpaid drainage charges against the unmetered Danto Furniture parcel "is [sic] a lien against the property served." **Ex 13-B.**

34. The total of the summer and winter property taxes assessed against the Danto Furniture Company parcel in 2015 and 2016 was $7,756.81 ($4,156.81 in 2015 and not less than $3,600.00 in 2016). **Ex 13-C**. In the same two-year period, the total of the prior drainage charges assessed against the Danto Furniture parcel was $13,165.48 ($6366.76 in 2015 and $6798.72 in 2016. **Ex 13-A**.

35. Danto Furniture Company has made partial payment toward the 2015 and 2016 summer property taxes on the Danto Furniture parcel, which were $3,719.48 and $3,314.73, respectively, **Ex 13-C**, but, as of the date of filing this complaint, owes unpaid property taxes and the unpaid balance of the prior drainage charges totaling $11,306.77, which The Wayne County Treasurer has notified Danto Furniture Company constitutes a lien against the Danto Furniture parcel, and subjects it to foreclosure by tax sale. **Ex 13-D**.

CLASS ACTION ALLEGATIONS

36. MCR 3.501(A), **Ex 14**, pertinently provides:

> (A) Nature of Class Action.
>
> (1) One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:
>
> (a) the class is so numerous that joinder of all members is impracticable;
>
> (b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members;
>
> (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
>
> (d) the representative parties will fairly and adequately assert and protect the interests of the class; and
>
> (e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

37. **Numerosity:** The class consists of the owners of the over 380,000 parcels in the City, the over 200,000 existing customer accounts billed for the services rendered to the owners of those 380,000 parcels, and the owners of the over 22,000 unmetered parcels that had not previously been billed for drainage before the drainage charge was adopted and extended to such properties. **Ex 4**, "Understanding the Drainage charge," ¶¶4, p. 2 of 15; "Billing and Program Implementation," ¶ 2, p. 3 of 15. Plainly, "the class is so numerous that joinder of all members is impracticable" within the meaning of MCR 3.501(A)(1)(a).

38. **Common questions of law and fact:** MCR 3.501(A)(1)(b)'s requirement that questions of law or fact common to the members of the class predominate over questions affecting only individual members is plainly satisfied, because the constitutionality of the drainage charge does vary with the individual circumstances of individual property owners subject to it, but turns on whether the drainage charge, which is uniform and derived by application of a formula ($750 x impervious acre x per month = annual drainage charge),[9] satisfies *Bolt's* test for distinguishing between a fee and a tax. According to DWSD:

> "Drainage charges are applied to all parcel ownerships and classifications. The parcel may be owned by a resident, business, governmental, or tax-exempt organization. It may be classified by the City Assessor's Office as industrial, commercial, residential, or tax exempt. Drainage charges are billed on all parcels whether or not there is water service provided to the parcel or if the water service is active." **Ex 5-A**, p 2.

39. **Representative claims and defenses of DAART:** DAART's members include owners of residential, commercial, industrial, and tax-exempt property, as well as property that is metered, and property that is without water service, and thus includes class representatives having claims typical of the claims or defenses of the class of Detroit property owners subject to both the drainage charge and the prior drainage charge, satisfying the typicality requirement of MCR 3.501(A)(1)(c).

40. **Representative claims and defenses of individual plaintiffs:** The individual plaintiffs have claims representative of residential, non-residential (commercial and industrial), and tax-exempt property owners subject to the drainage charge and the prior drainage charge, because the drainage charge and the prior drainage charge are uniform, being derived, in each instance, by application of a single formula applicable to each type of property. They too, satisfy MCR 3.501(A)(1)(c)'s typicality requirement.

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[9] **Ex 4**, ¶ 4, p 2 of 15.

41. **Fair and adequate representation (DAART):** With regard to MCR 3.501(A)(1)(d)'s requirement that the representative parties will fairly and adequately assert and protect the interests of the class, each of the individual DAART member plaintiffs enrolled in the organization for the "purpose of protecting and exercising the right to vote on any new or increased tax guaranteed by the Michigan Constitution of 1963, … by contributing to a fund ('the Challenge Fund') established for the purpose of retaining counsel to challenge the so-called 'Drainage charge' assessed against Detroit property owners by the Detroit Water and Sewerage Department ('DWSD') ('the Challenge'), and to defray the expenses of all activities related to the Challenge." **Ex** 9, DAART Membership Enrollment Agreement. By joining together and contributing to the expense of asserting and protecting the constitutional rights conferred by the Headlee Amendment on all Detroit property owners, DAART and its members have demonstrated that they satisfy this requirement.

42. **Fair and adequate representation (Named Plaintiffs):** Plaintiffs Central Auto (whose President, Roger Skrsynski, is President of the DAART Steering Committee), Danto Furniture Company (whose President, Irwin Danto, is DAART's Treasurer), and Judith Sales were actively and instrumentally involved in DAART's organization and formation. Plaintiff Galilee's Pastor, Reverend Tellis Chapman, has devoted great effort to securing support for DAART from the members of Detroit's religious community. Collectively, the individual plaintiffs' contributions of time, money, effort, and thought to organizing this challenge of the drainage charge demonstrate their commitment to satisfying MCR 3.501(A)(1)(d)'s requirement that the representative parties will fairly and adequately assert and protect the interests of the class.

43. **A class action is not only a superior means of adjudication in this case, <u>it is the mandatory</u> means of asserting a Headlee Amendment claim that seeks collective declaratory**

and refund relief: As a matter of law, under the decision in *Bolt (on remand)*, **Ex 6-B,** an action for declaratory relief under Const 1963, art 9, § 31, must be brought as a class action to secure relief for all persons subject to an unlawful tax. This legal requirement, to which Michigan courts recognize no exception when common relief is sought, is dispositive in determining whether the maintenance of this action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice within the meaning of MCR 3.501(A)(1). The drainage charge cannot be challenged effectively in individual actions.

THE DRAINAGE CHARGES ARE UNCONSTITUTIONAL UNDER THE HEADLEE AMENDMENT

44. As the *Bolt* Court observed, determining whether a storm water service drainage charge is properly characterized as a fee or a tax requires consideration of several factors. Generally, a "fee" is "exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit. A "tax," on the other hand, is designed to raise revenue. Exactions imposed primarily for public rather than private purposes are taxes. Generally, revenue from taxes inures to the benefit of all, while exactions from a few for benefits that will inure only to the persons or group assessed are fees. **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 161.

45. *Bolt* articulated three criteria to be considered when distinguishing between a fee and a tax:

A. **Regulatory Purpose:** The first criterion is that a user fee must serve a regulatory purpose rather than a revenue-raising purpose. **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 161.

B. **Proportionality:** A second, and related, criterion is that user fees must be proportionate to the necessary costs of the service. To be sustained as a regulatory

fee, the exaction must be for regulation only, and not primarily as a means of producing revenue. A charge will be upheld by the courts when it is plainly intended as a police regulation, and the revenue derived from it is not disproportionate to the cost of regulating the activity to which it applies. "Generally, a 'fee' is "exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit." **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 161.

C. **Volition:** The third criterion is "voluntariness": "The water rates paid by consumers are in no sense taxes, but are nothing more than the price paid for water as a commodity, just as similar rates are payable to gas companies, or to private water works, for their supply of gas or water. No one can be compelled to take water unless he chooses, and the lien, although enforced in the same way as a lien for taxes, is really a lien for an indebtedness, like that enforced on mechanics' contracts, or against ships and vessels. The price of water is left to be fixed by the board in their discretion, and the citizens may take it or not as the price does or does not suit them. We believe the same reasoning that was applied to water drainage charges in the above-mentioned case should be applied to sewage drainage charges in the present case. Thus, one of the distinguishing factors in *Ripperger* was that the property owners were able to refuse or limit their use of the commodity or service." **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 162-163, citing *Ripperger v. Grand Rapids,* 338 Mich. 682, 686-687 (1954) (quoting *Jones v. Detroit Water Comm'rs,* 34 Mich. 273, 275 (1876)) (emphasis added).

FACTOR I:

BECAUSE THE DRAINAGE CHARGE IS AN INFRASTRUCTURE-FUNDING REVENUE MEASURE, IT FAILS *BOLT'S* REGULATORY PURPOSE REQUIREMENT.

46. The *Bolt* Court observed that "[i]n instituting the storm water service drainage charge, the city of Lansing has sought to fund fifty percent of the $176 million cost of implementing the CSO control program over the next thirty years. A major portion of this cost (approximately sixty-three percent) constitutes capital expenditures. ***This constitutes an investment in infrastructure*** *as opposed to a fee designed simply to defray the costs of a regulatory activity. Consequently, the ordinance fails both the first and second criteria*. **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 163 (emphasis added).

47. As in *Bolt*, DWSD's stated purpose for imposing the drainage charge includes "***pay[ing] for capital****, operations and maintenance* ***costs for the [overflow control facilities], wastewater treatment plant and combined sewer system components***." **Ex 4**, "Understanding the Drainage charge," ¶ 3, p. 1 of 15 (emphasis added). Compare *Bolt*, in which the City established the fund to which the unconstitutional storm water drainage charges were deposited, "*to help defray the cost of the administration, operation, maintenance,* ***and construction*** *of the storm water system*." **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 155 (emphasis added).

48. The drainage charge is imposed and collected to enable DWSD to satisfy its past, current, and future capital expenditure obligations under the consent judgment, the 2002 second amended consent judgment entered by the United States District Court for the Eastern District of Michigan, and the July 2011 Administrative Consent Order between DWSD and the Michigan Department of Environmental Quality, each of which obligated and obligate DWSD to perform capital improvements. **Ex 15,** DWSD's NPDES Fact Sheet, at p 11.

49. DWSD acknowledges that it has adopted and imposed the drainage fee because: "Federal and State mandates have required DWSD to invest more than $1 billion in CSO [Combined Sewer Overflow] control facilities to help prevent untreated combined sewer overflows into waterways to preserve water quality in the southeast Michigan region. Fees from drainage charges pay for capital, operations and maintenance costs for the CSOs, wastewater treatment plant and combined sewer system components." **Ex 4**, p 1 of 15 (emphasis added).

50. DWSD acknowledges that: "In compliance with EPA [Environmental Protection Agency] regulations and to stop excessive pollution into our waterways, DWSD invested over $1 billion in Combined Sewer Overflow (CSO) control facilities. The CSO control facilities were built to help prevent untreated, combined sewer overflows from entering into waterways and to help preserve water quality. The cost was financed almost entirely through bonds which are being repaid by the drainage fee. Direct CSO costs have two components: $25.7 million for annual CSO bond debt, and $6.2 million in annual operating costs specific to the control facilities." **Ex 4**, p 9 of 15 (emphasis added).

51. The DWSD's NPDES permit includes a Facility Improvement Program and a Long-Term CSO Control Program that require DWSD to make extensive additional capital investments in storm water control and CSO storage and treatment facilities through 2019, and beyond. **Ex 15,** NPDES Fact Sheet, at pp 11, 13-14.

52. DWSD's NPDES permit also includes Green Infrastructure requirements, under which "DWSD will be required to spend an average of $3 million per year during the life of this permit." **Ex 15,** NPDES Fact Sheet, at p 15.

53. The capital improvement purposes for which the drainage fee proceeds are now being used, and are to be used in the future, do not satisfy the first factor of the *Bolt* test, because the drainage

fee is imposed to raise revenue to pay for public improvements that benefit all, rather than in exchange for a service rendered to, and benefitting, the particular property owners subject to the charge: "A 'tax,' on the other hand, is designed to raise revenue. *Bray v Dep't of State*, 418 Mich 149, 162; 341 NW2d 92 (1983). *Exactions which are imposed primarily for public rather than private purposes are taxes*. Revenue from taxes, therefore, must inure to the benefit of all, as opposed to exactions from a few for benefits that will inure to the persons or group assessed." **Ex 6**, *Bolt*, *supra*, 459 Mich at 161 (emphasis added).

54. The drainage charge also violates the rule in *Bolt* that, to the extent that the useful life of a capital improvement funded by a fee exceeds the period required to amortize the capital investment required to construct it, the balance must be allocated to the general fund. Thus, the drainage charge is not a "fee" structured to defray the cost of a "regulatory" activity, but is, rather, a revenue source designed to yield revenue in excess of the direct and indirect costs of actually using the structures to be constructed throughout its useful life.[10]

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[10] This was one of the principal grounds on which the Lansing rain tax was held unconstitutional:

> "[N]o effort has been made to allocate even that portion of the capital costs that will have a useful life in excess of thirty years to the general fund. This is an investment in infrastructure that will substantially outlast the current 'mortgage' that the storm water charge requires property owners to amortize. At the end of thirty years, property owners will have fully paid for a tangible asset that will serve the city for many years thereafter. Accordingly, the "fee" is not structured to simply defray the costs of a "regulatory" activity, but rather to fund a public improvement designed to provide a long-term benefit to the city and all its citizens. The revenue to be derived from the charge is clearly in excess of the direct and indirect costs of actually using the storm water system over the next thirty years and, being thus disproportionate to the costs of the services provided and the benefits rendered, constitutes a tax. See *Merrelli v. St. Clair Shores,* 355 Mich. 575, 585-588, 96 N.W.2d 144 (1959)."

Ex 6-A, *Bolt*, *supra*, 459 Mich at 163-164 (emphasis added).

55. To the extent that, as DWSD admits, **Ex 4,** ¶ 24, p7 of 15, ¶ 11, p 9 of 15, the drainage charge will be used to amortize debt that existed before the drainage charge was adopted and assessed, it does not constitute a true fee: "Conceptually, ratepayers are charged for the amortization expense when it occurs and, therefore, rates coincide with the expense and are not retroactive." **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 164 (emphasis added).

FACTOR II:

THE DRAINAGE CHARGE IS NOT PROPORTIONATE TO THE NECESSARY COSTS OF THE SERVICE DWSD RENDERS, AND CONFERS SPECIAL BENEFITS ON SELECTED PROPERTIES AND PROPERTY OWNERS IN DISTRICTS OF THE CITY THAT DWDS IS REQUIRED BY ITS NPDES PERMIT TO "PRIORITIZE" THAT EXCEED THE DRAINAGE CHARGE THEY ARE REQUIRED TO PAY.

56. "A proper fee must reflect the bestowal of a corresponding benefit on the person paying the charge, which benefit is not generally shared by other members of society. *Nat'l Cable Television Ass'n v. United States & Federal Communications Comm,* 415 U.S. 336, 340-342, 94 S.Ct. 1146, 39 L.Ed.2d 370 (1974). Where the charge for either storm or sanitary sewers reflects the actual costs of use, metered with relative precision in accordance with available technology, including some capital investment component, sewerage may properly be viewed as a utility service for which usage-based charges are permissible, and not as a disguised tax." **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 164-165.

57. The drainage charge fails the fundamental constitutional requirement that it reflect the actual cost of use,[11] because it cannot be escaped. Even if a property owner institutes Green

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[11] DWSD's own ordinance embodies the same requirement:

> *Sewage* shall mean a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and storm waters as may be present.

Infrastructure improvements that capture 100% of the storm water discharge from the property, or, like Central Auto, has a parcel that does not discharge storm water to the DWSD sewer and treatment works, at least 20 % of the drainage charge will still apply, even though no service is being rendered to the property subject to the drainage charge. **Ex 4,** "Drainage Credits and Green Infrastructure," p 11 of 15 ("Up to 80% credit on drainage can be applied."); **Ex 5-C,** DWSD "Guide to Drainage Charge Credits," p 3 ("The maximum total drainage charge credit is 80%.").

Ex 8, Detroit City Code, § 56-3-2 (emphasis added).

> The rates for sewage services furnished by the water and sewerage department shall be levied upon each lot or parcel of land, building or premises having any connection with the water and sewerage department's sewage system on the basis of the quantity of water used thereon or therein as the same is measured by the city water meter there in use, or by such other equitable method as shall be determined by the board of water commissioners pursuant to rules and regulations adopted by the board of water commissioners in accordance with Section 2-111 of the Charter. The rates shall be collected at the same time and in the same manner as provided for the payment of water bills; provided that, the city acting by and through the board of water commissioners, shall be empowered to make such adjustments for sewage charges as may be equitable.
>
> (b) Charges against property served and/or users, including manufacturing and industrial plants, obtaining all or a part of their water supply from sources other than the water and sewerage department's water system shall be determined by gauging, metering or any other equitable method of measuring, in a manner approved by the city, acting by and through its board of water commissioners, the actual sewage entering the sewage system or the corresponding water use. Meters or other means for gauging or metering as above provided shall be installed by the property served, where applicable, and/or the user of the sewage system as required by and under the supervision of the director of the water and sewerage department, as a condition to the use of the sewage system.

Ex 8, Detroit City Code, § 56-3-12 (emphasis added).

58. The drainage charge also fails the second "proportionality" requirement of the *Bolt* test because, like the Lansing storm water ordinance scheme in *Bolt*, the drainage charge is based solely upon the amount (calculated or presumed) of the parcel's "impervious area," without regard to the level or type of contamination present in the storm water discharge from that parcel: "The second failing that supports the conclusion that the ordinance fails to satisfy the first two criteria is the lack of a significant element of regulation. See *Bray, supra* at 161-162, 341 N.W.2d 92; *Vernor, supra* at 167-169, 146 N.W. 338. The ordinance only regulates the amount of rainfall shed from a parcel of property as surface runoff; it does not consider the presence of pollutants on each parcel that contaminate such runoff and contribute to the need for treatment before discharge into navigable waters." **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 166-167.

59. The drainage charge fails the second "proportionality" requirement of the *Bolt* test because, as in *Bolt*, it "fails to distinguish between those responsible for greater and lesser levels of runoff," **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 167, instead applying the same charge to all impervious area, regardless of the actual level of runoff from the parcel, as in the case of Plaintiff Central Auto's parcel at 7286 Dix Street, DWSD Acct. No. 916-0472.300, described in ¶¶ 21(A), 23 and 24, which discharges essentially no storm water to DWSD's sewer.

60. The drainage charge also fails the second "proportionality" requirement of the *Bolt* test because, as in *Bolt*, it fails to take into account for which parcels "there is no end-of-pipe treatment for the storm water runoff," which is consequently "discharged into the river untreated," **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 167, because of the admitted present inadequacy of DWSD's storm water treatment system to cope with CSOs during wet weather events.

61. The drainage charge also fails the *Bolt* test's "proportionality" requirement because DWSD's NPDES permit expressly requires that DWSD develop and apply "prioritization criteria

for sites where green infrastructure practices will be implemented," which must "focus on locations and designs that will provide the greatest benefits in terms [of] keeping flows out of the sewer system and help reduce CSOs … and help reduce localized flooding or basement back-ups." **Ex 16,** NPDES Permit, p. 38 of 64, Pt I, Section A (5) (a) (7). Such priorities mean that prioritized properties and areas of the City will benefit disproportionately more than unprioritized properties and areas of the City from the green infrastructure capital improvements mandated by the NPDES permit and funded by DWSD's drainage charge.

62. The drainage charge also fails the second "proportionality" requirement of the *Bolt* test because DWSD's NPDES permit also includes capital expenditure requirements that are targeted at specific areas of the City served by specific wastewater outfalls to the Detroit River and the Rouge River (Outfalls 5-9, 11, and 12), **Ex 16**, p 39 of 64, and expressly provides that DWSD's "storm water control requirement is primarily a focus within the Rouge Sewer District and Central Sewer District, as it is these two districts that have untreated CSOs." **Ex 16,** p 41 of 64 (emphasis added). Such a primary focus of CSO control projects and capital expenditures on selected districts of the City, and selected outfalls within those districts, means that the drainage charge does not benefit all property owners subject to the drainage charge in a manner compliant with *Bolt's* proportionality requirement.

63. In summary, as to the first and second parts of *Bolt* test, the drainage charge fails to satisfy both of those criteria for the constitutionality of a fee, and is, in fact, a tax: Because the DWSD's drainage charge is used to defray capital costs, it "constitutes an investment in infrastructure as opposed to a fee designed simply to defray the costs of a regulatory activity. Consequently, the [drainage charge] fails both the first and second criteria." **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 163.

FACTOR III:

THE DRAINAGE CHARGE IS UNCONSTITUTIONAL BECAUSE IT LACKS ANY ELEMENT OF VOLITION.

64. The DWSD's drainage charge fails the third part of *Bolt's* test for distinguishing a fee from a tax, the requirement that a fee have an element of volition, that is, that the property owner to whom the service is rendered, or who is subject to the regulation prescribed, must be able to refuse, or limit their use of, the service. The *Bolt* Court stated:

> "The water rates paid by consumers are in no sense taxes, but are nothing more than the price paid for water as a commodity, just as similar rates are payable to gas companies, or to private water works, for their supply of gas or water. No one can be compelled to take water unless he chooses, and the lien, although enforced in the same way as a lien for taxes, is really a lien for an indebtedness, like that enforced on mechanics' contracts, or against ships and vessels. The price of water is left to be fixed by the board in their discretion, and **the citizens may take it or not as the price does or does not suit them. We believe the same reasoning that was applied to water drainage charges in the above-mentioned case should be applied to sewage drainage charges**. … Thus, one of the distinguishing factors in *Ripperger* was that **the property owners were able to refuse or limit their use of the commodity or service**."

Ex6, *Bolt*, *supra*, 459 Mich at 162, quoting *Ripperger v Grand Rapids*, 338 Mich. 682, 686 (1954) (emphasis added).

65. According to DWSD, even a property owner who makes no use whatsoever of the so-called "service" it renders by collecting, transporting, and treating storm water, either because the property does not in fact discharge storm water to DWSD's sewer and treatment facilities, or because the owner has instituted Green Infrastructure improvements that capture and prevent 100% of storm water discharges from the property to DWSD's drainage and treatment facilities, can obtain no more than an 80% reduction in the drainage charge. **Ex 4,** "Drainage Credits and Green Infrastructure," p 11 of 15 ("Up to 80% credit on drainage can be applied."); **Ex 5-C,** DWSD "Guide to Drainage Charge Credits," p 3 ("The maximum total drainage charge credit is 80%.");

Ex 5-D, DWSD "Drainage Charge Guide," p 50 (Volume credit calculation for 100% retention); **5-E**, DWSD "Guide to Non-Residential Credit Application Process and Renewals."

66. As the Court observed in *Bolt*: "One of the distinguishing factors of a tax is that it is compulsory by law, "whereas payments of user fees are only compulsory for those who use the service, have the ability to choose how much of the service to use, and whether to use it at all." **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 167.

67. Under DWSD's ordinance, "sewage service charges shall be assessed against the premises served and shall be a lien against the same and shall have the same force and effect and shall be subject to the same terms and conditions as provided for water charges in division 3 of article II of this chapter and Section 7-1502 of the Charter. **Ex 8,** Detroit City Code, § 56-3-14.

68. If the drainage charge is not paid, "DWSD has several collection options available. Water service can be terminated for failure to pay for any portion of your bill, including drainage. State and local law[12] provides that any unpaid water, sewer, or drainage bill is a lien on the property. DWSD may also institute a legal action to recover unpaid fees. Additionally, a City of Detroit license to do business may be suspended or revoked for failure to pay a DWSD bill." **Ex 4,** "General Information," ¶ 5, p 14 of 15. See also, **Ex 13-A** (shut off), **13-B** (lien), **13-D** (foreclosure at tax sale).

69. That DWSD may employ such broad and draconian enforcement measures to collect the drainage charge reinforces the conclusion that the element of volition required under the *Bolt* test is absent here: "The fact that the storm water service charge may be secured by placing a lien on property is relevant. While ordinarily the fact that a lien may be imposed does not transform an otherwise proper fee into a tax, this fact buttresses the conclusion that the charge is a tax in the

[12] See **Ex 22, DWSD's** "Interim Collection Rules and Procedures," Rule 19.

present case, where the charges imposed are disproportionate to the costs of operating the system and to the value of the benefit conferred, and the charge lacks an element of volition." **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 168. See **Ex 13-D**.

70. The drainage charge fails *Bolt's* volition requirement because, as in *Bolt*, "The charge in the present case is effectively compulsory. The property owner has no choice whether to use the service and is unable to control the extent to which the service is used." **Ex 6-A**, *Bolt*, *supra*, 459 Mich at 168.

DEFENDANTS HAVE ADOPTED AD HOC MODIFICATIONS OF THE DRAINAGE CHARGE SINCE ITS EFFECTIVE DATE THAT GIVE RISE TO ADDITIONAL GROUNDS FOR FINDING A HEADLEE VIOLATION.

71. According to DWSD, implementation of the drainage charge for residential properties, such as the Sale parcels, originally was to be deferred until October 1, 2017, one year after the drainage charge's effective date. **Ex 4**, "Understanding the Drainage Charge," p 2 of 15, ¶ 4; "Billing and Program Implementation," p 3 of 15, ¶ 1.

72. On March 31, 2017, Mayor Mike Duggan announced modifications of the drainage charge and the prior drainage charge ("**the March 31 modifications**"). **Exs 17 and 18**.

73. Under the March 31 modifications, DWSD's implementation of the drainage charge for "[c]ustomers who currently pay based on meter size or who have never been billed for drainage will pay $125 per impervious acre starting April 2018. Customers will phase to the full rate over 5 years with transition credits applied." **Ex 18** (emphasis added).

74. Under the March 31 modifications, non-residential customers being assessed under the prior drainage charge, such as the Central Auto parcels identified in ¶ 17, "who were billed $852 per impervious acre (Fiscal Year 2015-2016) will see a 30% reduction in their rate in 2018, which will drop to $598." **Ex 18.**

75. Thus, under the March 31 modifications, the drainage charge for property that was not previously subject to drainage assessment will be $125 per month per impervious acre, **exactly one-sixth of the $750 per impervious acre monthly drainage charge that supposedly became effective on October 1, 2016, and has been assessed as against the Central Auto parcels described in ¶¶ 21 (A) – (I).**

76. Further, under the March 31 modifications, the approximately one-half of DWSD's commercial customers currently being billed under the prior drainage charge of $852 per impervious acre per month would see a 30% reduction in that rate, to $661 per impervious acre per month, effective on July 1, 2017. **Ex 18,** p2.

77. On April 19, 2017, however, less than three weeks after the March 31 modifications, the Board adopted, and DWSD announced, a further modification of the drainage charge, further deferring its implementation for the 22,000 parcels comprising the 850 impervious acres of the City that were not being assessed under the prior drainage charge program ("**the April 19 modification**"). **Exs 19, 20, and 21A to 21-C**.

78. Under the April 19 modification, three significant implementation changes will occur: (1) Detroit churches (such as Galilee) already assessed for and paying the prior drainage charge will receive a further reduction of the prior drainage charge on July 1, 2018, from the $661 per impervious acre monthly reduced rate announced in the March 31 modifications, to a new, even lower, $598 per impervious acre per month rate; and (2) Detroit churches that have been paying no drainage charge at all, or that have been paying a flat fee under the prior drainage charge program, will not be subject to the reduced one-sixth of the drainage charge ($125 per impervious acre per month) until July 1, 2018 (rather than the originally announced January 1, 2018 implementation date for the drainage charge for faith-based properties found in **Ex 4,** p 2 of 15);

and (3) the drainage charge will now be phased in over a five-year period, ultimately reaching a (reduced) maximum charge of $677 per impervious acre per month in 2022. **Exs 19**, **20,** and **Exs 21-A**, **21-C,** as published at DWSD's website:

http://detroitmi.gov/drainagefeeupdate (last accessed 7-7-17).

http://detroitmi.gov/Portals/0/docs/DWSD/Drainage%20Fees/5%20Year%20Drainage%20Plan%20Faith.pdf (faith based customers) (last accessed 7-7-17).

79. Meanwhile, those churches, businesses, industrial properties, and other parcels already subject to and paying the prior drainage charge based on impervious acreage will pay at a rate so disproportionately higher than the rate that will be imposed on properties newly subject to the (twice-modified) drainage charge that, even after March 31 modification's 30% reduction or the prior drainage charge to $661, and April 19 modification's further reduction of the prior drainage charge to $598 for commercial properties, **the rate paid by owners of property subject to the prior drainage charge based on impervious acreage will exceed the $125 drainage charge based on impervious acreage to all other Detroit properties by 400%**. **Exs 19**, **20,** and **Ex 21-B**, as published at DWSD's website:

http://detroitmi.gov/Portals/0/docs/DWSD/Drainage%20Fees/5%20Year%20Drainage%20Plan.pdf (commercial customers) (last accessed 7-7-17).

80. According to the DWSD's own description of these modifications of the prior drainage charge and the drainage charge, **this rate disparity between customers subject to the drainage charge and customers subject to the prior drainage charge will continue for a period of at least 5 years**, until (unless the DWSD and the City adopt further modifications of the drainage charge) the rates charged to all property owners subject to a drainage charge based on impervious acreage will converge at $677 per acre per month, in 2022. **Exs 19** to **21-C**, inclusive.

81. The City and DWSD have thus created a two-tiered, and inherently inequitable system for defraying the cost of transporting and treating storm water.

82. By hypothesis, the drainage charges to DWSD customers who are paying rates that differ by a factor of 400% are not and cannot be paying at a rate that satisfies the fundamental constitutional requirement under the Headlee Amendment and the *Bolt* test that, to be valid, a user fee must be proportionate to the necessary costs of the service, and therefore the modified drainage charge and the prior drainage charge do not and cannot pass constitutional muster under the *Bolt* test, as a matter of law.

83. In addition, according to the City and DWSD, all owners of impervious acreage are subject to the drainage charge, including the City. **Ex 4**, ¶ 20 states:

> "**20. Is the City of Detroit, the Land Bank, state and county properties, and roads and railroads charged?**
>
> All parcels in Detroit with impervious area will be charged for drainage services. Every retail customer is billed for drainage services using the same methodology. The City of Detroit, the Land Bank, and other government owned parcels are billed in the same manner as private property. Wayne County and State of Michigan roads and highways are charged pursuant to settlement agreements entered into Federal Court in 1989." (Emphasis added).

84. In fact, DWSD has exempted the City's own streets from the drainage charge, even though they generate and contribute to the City's storm water collection and treatment system the single largest quantity of untreated, contaminated storm water during wet weather events. DWSD did so by the simple expedient of categorizing the city's streets as a storm water "conveyance" – that is, as part of the storm water collection system:

> "9. **How is the term 'conveyance' being defined as it applied to city streets?**
> City streets, which are lower than parcels, are part of the conveyance infrastructure for facilitating the flow of storm water from Detroit properties into the catch basins, then into the combined sewer system, then finally terminating at the wastewater treatment plant.

> **10. What is the total acreage of city owned/controlled property that will be characterized as a conveyance? Is the conveyance exception being applied to any other property than city owned streets?**
>
> City owned parcels will not be characterized as a conveyance. This term applies only to city streets, i.e. areas common to all that serve as a storm water conveyance."

Ex 4, "Infrastructure and Storm Water Management," p 9 of 15.

85. Thus, though City streets commonly contribute runoff to limited access and other state and federal roads and highways that traverse the City at elevations lower than the surrounding cityscape, though City streets contribute to the flooding that occurs when impervious surfaces cause increased flow and accumulation of storm water discharged during wet weather events, and though privately owned impervious property also "conveys" storm water to the City's sewers, DWSD has relieved the City of all responsibility for alleviating the storm water discharge and overflow problems to which its streets contribute by the simple expedient of classifying them as "a part of the conveyance infrastructure for facilitating the flow of storm water."

86. DWSD's classification of the City's streets as "conveyance infrastructure" shifts to the owners of all other privately and publicly owned impervious property subject to the drainage charge the entire cost of storm water collection and treatment, creating a further departure from, and violation of, the Headlee Amendment's constitutional proportionality requirement, i.e., that the rate imposed for a service or regulatory fee must reflect the bestowal of a corresponding benefit on the person paying the charge.

87. As a matter of law, the exemption that DWSD has created for the impervious areas of the City's streets violates the Headlee Amendment under the *Bolt* Court's explicit ground for holding the Lansing storm water ordinance unconstitutional: "[T]he ordinance … excludes street rights of

way from the properties covered by the ordinance." **Ex 6**, *Bolt*, *supra*, 459 Mich at 167 (emphasis added).

FACTUAL QUESTIONS ANTICIPATED TO REQUIRE RESOLUTION BY THE COURT

88. MCR 2.112 (M) requires the plaintiff in a Headlee Amendment Action to "indicate whether there are any factual questions that are anticipated to require resolution by the Court."

89. Whether a storm water service drainage charge a "tax" or a "user fee" is a question of law that this Court reviews de novo. **Ex 6**, *Bolt*, *supra*, 459 Mich at 158.[13]

90. Pursuant to MCR 2.112 (M), Plaintiffs designate the factual allegations set forth in paragraphs 44 to 87 of this Complaint as those requiring resolution by the Court.

91. Because, as in *Bolt*, the factual allegations about the drainage charge in paragraphs 44 to 87 are drawn from Defendants' own documents and public statements describing the drainage charge, and therefore are not reasonably subject to dispute, Plaintiffs submit that, pursuant to the rule in *Bolt* that distinguishing between a tax and a fee is a question of law, this Court can determine, exactly as the Court did in *Bolt*, that DWSD's drainage fee fails each factor of the *Bolt* test, both as a matter of law and fact.

[13] Indeed, the undersigned, who served as counsel for Alexander Bolt in *Bolt, supra,* can attest that *Bolt* was decided solely on the basis of the City of Lansing's own publications and descriptions of its storm water fee program. No testimony was taken or introduced.

RELIEF

Plaintiffs request that this Court certify this cause as a class action pursuant to MCR 3.501, and that, on the merits of the claim, the Court grant the following relief:

First, that the Court order and declare that DWSD's drainage charge is not a fee exempt from the requirements of the Headlee Amendment, but is, rather, a tax requiring voter approval under the Headlee Amendment, Mich Const 1963, art 9, §§ 31.

Second, that this Court order and declare that the drainage charges that DWSD has billed since October 1, 2016, are void and of no effect, because they are a tax that has not been approved by a vote of the people, as required by the Headlee Amendment.

Third, that this Court order and declare that all drainage charges that DWSD has collected since October 1, 2016, must and shall be refunded.

Fourth, that this Court order and declare that any lien that has accrued against any property on which DWSD has levied a drainage charge that has not been paid is void and dissolved, and that any forfeiture resulting from the assertion or enforcement of any such lien shall be enjoined.

Fifth, that this Court order and declare, pursuant to Mich Const 1963, art 9, §§ 32, that Plaintiffs are entitled to recover the costs incurred in maintaining this suit, including attorney fees.

Sixth, that this Court award any other relief necessary to effectuate the relief here requested, and the purposes of the Headlee Amendment, including, but not limited to, requiring the City to conduct any vote of the electors of the City of Detroit that the Court may deem to be required by Mich Const 1963, art 9, §§ 31.

Seventh, that this Court order such other relief and further relief as may be consistent with its rulings, equity, and good conscience.

Respectfully submitted,

_____
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Dated: July 11, 2017