

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

THE JOCKEY CLUB CONDOMINIUM  
APARTMENTS, INC., on behalf of itself  
and all others similarly situated,

CASE NO.: 2020-027233-CA-01 43

**CLASS REPRESENTATION**

Plaintiff,

vs.

CITY OF NORTH MIAMI,  
a municipal corporation,

Defendant.

---

**AMENDED CLASS ACTION COMPLAINT  
FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiff, THE JOCKEY CLUB CONDOMINIUM APARTMENTS, INC., on behalf of itself and all others similarly situated, by and through undersigned counsel, hereby brings this Complaint against Defendant, CITY OF NORTH MIAMI, and alleges:

**INTRODUCTION**

1. This action is brought by Plaintiff as a class action, on its own behalf and on behalf of all other similarly situated consumers of water and sewer services provided by the City of North Miami who have been billed for service in violation of City Ordinance Sec. 19-96(d)(3).

2. Each Plaintiff, as defined by City Ordinance 19-96(d)(3), received water utility bills from the City of North Miami that improperly calculated their water commodity consumption in violation of the ordinance.

**PARTIES, JURISDICTION, AND VENUE**

3. Plaintiff, THE JOCKEY CLUB CONDOMINIUM APARTMENTS, INC. (“Plaintiff”), is a condominium association, located just outside the City of North Miami, Florida, in unincorporated Miami-Dade County.

4. Defendant, CITY OF NORTH MIAMI (“City”), is a municipal corporation of the State of Florida located within Miami-Dade County.

5. The cause of action sued upon herein arose within Miami-Dade County.

6. This Court has subject matter jurisdiction pursuant to § 26.012 and Chapter 86, Fla. Stat.

7. This is an action for declaratory relief, injunctive relief, and damages in excess of \$30,000 and other relief.

### **CLASS REPRESENTATION ALLEGATIONS**

8. Plaintiff (the “Class Representative”) brings this class action pursuant to Fla. R. Civ. P. 1.220 (b)(1), (b)(2) and (b)(3) on behalf of itself and all others similarly situated as members of the following class (the “Class”):

For the period from December 17, 2016 through the date of entry of judgment herein (the “Class Period”), each property owner and/or their duly authorized legal representative who has been billed by the City of North Miami in violation of City Ordinance Sec. 19-96(d)(3).

### **Numerosity**

9. The persons comprising the Class are so numerous that joinder of all members is impracticable. It is believed that the Class exceeds 100 in number.

10. A class action is an appropriate means for the fair and efficient prosecution of this action, particularly because the Class members may not be aware that they have been billed in violation of law.

### **Typicality**

11. The facts and circumstances showing that the claims advanced by the Class Representative are typical of the claims of each member of the Class are:

(a) The Class Representative is a consumer of water and sewer service provided by the City, pays water utility charges, and has been injured in exactly the

same manner as all other members of the Class by being billed excessive water commodity charges;

(b) Each Class member has or will be paying the water commodity charges involuntarily and under compulsion to avoid penalties, disconnection, foreclosure of liens, and/or loss of title; and

(c) The legal theories for recovery and the type of injury suffered by the Class Representative is identical to that of all other members of the putative class. Likewise, the claims of the Class Representative are not, in any way, antagonistic to, or in conflict with, the claims of the Class members. To the contrary, the claims are in concert, one with another.

### **Adequate Representation**

12. The interests of the named Plaintiff and the prospective class representative are identical with the interests of the other members of the Class. As a result, the Class Representative will fairly and adequately protect and represent the interests of each member of the Class; the Class Representative has no interest which is adverse to any class member; the Class Representative, as an owner and representative of properties affected by Ordinance Sec. 19-96(d)(3), has a financial interest in this cause and will litigate vigorously to obtain a successful result for itself and others similarly situated; and the Class Representative is aware of the fiduciary duties of a class representative and that the claims of each Class member are entitled to equal dignity with their claims. Class counsel is experienced in class action litigation and will vigorously prosecute the Class claims.

### **Common Questions of Law and Fact**

13. The questions of law or fact common to the claim of the representative party and the claims of the Class members are:

(a) Whether the City is in compliance with City Ordinance Sec. 19-96(d)(3) in the manner in which it bills for water commodity consumption;

(b) Whether the City is permitted to bill class members for water commodity

consumption at a higher tier rate;

(c) Whether the City has billed members of the Class in violation of Ordinance Sec. 19-96(d)(3); and, if so,

(d) Whether the Class members are entitled to recover the excess charges paid to the City and other relief.

### **Other Class Representation Considerations**

14. The facts and circumstances supporting the conclusion that this action may be maintained as a class action pursuant to Fla. R. Civ. P. 1.220(b) are:

(a) The prosecution of separate claims or defenses by or against individual members of the Class would create a risk of inconsistent or varying adjudications which could establish incompatible standards of conduct for the party opposing the Class and adjudications concerning individual members would, as a practical matter, be dispositive of the interests of other members of the Class who are not parties to the adjudication and/or substantially impair or impede their ability to protect their own interests;

(b) The City has acted in a manner generally applicable to all of the members of the Class thereby making injunctive relief or declaratory relief concerning the Class as a whole appropriate; and

(c) The questions of law and fact common to the Class dominate over any questions of law or fact affecting only individual members of the Class and class representation is superior to other available methods for the fair and efficient adjudication of the controversy.

15. This Complaint seeks both injunctive and declaratory relief, as well as incidental monetary relief for the actions of the Defendant in systematically billing for water commodity consumption in a manner that violates its own ordinance.

### **FACTS COMMON TO ALL COUNTS**

16. Plaintiff and each member of the Class own and/or occupy residential properties as that term is defined under Ordinance 19-96(b). Under the ordinance “residential” is defined as:

Residential (single-family, townhouses, duplexes, triplexes, multiple-family dwellings, apartments and condominiums).

17. Plaintiff and each member of the Class are on a shared meter and therefore should be billed pursuant to Ordinance 19-96(d)(3) which governs the *Calculation of Multiple-Family Dwelling consumption with a Common Master Meter for Billing Purposes*.

18. City Ordinance 19-96(d)(3) provides:

(a) The average volume of water used by each condominium or apartment unit *shall* be determined by dividing the total consumption of the condominium or apartment building during its billing period by the total number of units in the condominium or apartment building and rounding to the nearest one thousand (1,000) gallons.

(b) The minimum service charge for each condominium or apartment unit shall be based on a service of three-quarter inch.

(c) The average bill per condominium or apartment unit shall be determined by adding the minimum service charge per unit and the average commodity charge per unit. *The commodity charge shall be based on the average volume of water used by each condominium or apartment unit.*

(d) The total bill for the condominium or apartment building *shall* be calculated by determining the average bill per unit and multiplying the bill by the number of units in the condominium or apartment building. (Emphasis added).

19. The City is miscalculating and continues to miscalculate the water commodity charge for multi-family dwellings where there is a single meter for the entire building.

20. Throughout the period at issue in this Complaint, the City has been billing the Plaintiff in violation of its own ordinance by failing to follow the authorized method for calculating the water commodity charge which results in an excessive total bill. For example: to determine the bill for a 169-unit condominium building that used 678,000 gallons in a month, first it is calculated that each unit used 4,011.8343 (round to the nearest one thousand gallons) gallons on average. Then, according to the tiered system, for the first 2,000 gallons, the charge should have been \$1.77, then \$1.86 for the second 2,000 gallons, which brings the average commodity charge to \$7.26. Under this method, the total bill would be \$3,341.13. The method of calculation being

utilized by the City simply applies the total 678,000 gallons a month to the tiered system, resulting in a total bill of \$3,556.53.<sup>1</sup>

21. Plaintiff has been forced to retain counsel to prosecute this action and Plaintiff's counsel is entitled to be compensated based upon the benefit conferred upon the Class and/or from any common fund created by this class action.

22. All conditions precedent to the bringing of this action have either occurred, have been waived, or have been performed.

**COUNT I**  
**DECLARATORY RELIEF**

23. Plaintiff realleges paragraphs 1 through 22 as if fully set forth herein.

24. Plaintiff and Class members are in doubt as to their rights and/or status in connection with the City's water commodity charges and are entitled to a declaratory decree as to their rights, status, equitable and legal relations thereunder.

25. Plaintiff and Class members are in doubt as to whether they are subject to the collection procedures and penalties if they fail to pay amounts excessively billed in violation of City Ordinance 19-96(d)(3).

26. Pursuant to Section 86.011, Florida Statutes, this Court may render a Declaratory Judgment on whether the City has unlawfully billed and collected excessive water and sewer utility charges in violation of City Ordinance 19-96(d)(3).

27. Declaratory relief is appropriate in that:

(a) There is an immediate, substantial, and actual justiciable controversy between the putative class members and the City as to whether the City has unlawfully billed and

---

<sup>1</sup> Note, this example excludes taxes, surcharge, and any additional fees, as the claim relates solely to the issue of the commodity charge.

collected excessive water and sewer utility charges;

(b) The Class Representative is uncertain and is in doubt as to whether it is subject to the collection procedures and penalties if it fails to pay amounts excessively billed in violation of City Ordinance 19-96(d)(3).

(c) The declaration sought deals with a present controversy as to an ascertainable set of facts;

(d) The rights and privileges of Plaintiff are dependent upon the law applicable to the facts;

(e) Plaintiff has an actual, present, adverse and antagonistic interest in the subject matter of this Complaint;

(f) The antagonistic and adverse interests are all before this Court; and

(g) The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stem from an actual controversy.

28. The adverse legal interests of the parties are of sufficient immediacy and materiality to warrant a Declaratory Judgment.

29. Irreparable harm is occurring because the City is charging and collecting amounts in excess of those authorized under City Ordinance 19-96(d)(3).

30. Plaintiff has no adequate remedy at law.

31. Plaintiff and members of the Class have been damaged as a result of the City's unlawful actions in that they have been forced to pay charges in excess of those authorized under City Ordinance 19-96(d)(3).

32. Members of the Class are entitled to a full refund from the City for the excess amounts billed and collected by the City.

33. All putative Class members should be made parties to this case because each Class Member has a claim and interest which would be affected by this Court's declaration that the City's practice of charging excessive fees to its utility customers is invalid and that the putative Class Members are entitled to a refund of excess charges paid.

WHEREFORE, Plaintiff, on behalf of itself and all other members of the Class, prays that this Court:

A. Enter an Order certifying this lawsuit as a Class action under Fla. R. Civ. P. 1.220, and designate the named Plaintiff as the Class representative;

B. Enter a declaratory decree finding the City has been billing the Plaintiff in a manner that violates City Ordinance 19-96(d)(3) and that the Plaintiff and all members of the Class are entitled to refunds of excessive payments collected;

C. Enter a mandatory injunction directing and compelling the City to cease its unlawful billing practices and to refund to the Plaintiff and all members of the Class those excess payments collected as a result of such billing practices together with prejudgment interest;

D. Award the Plaintiff and the Class members all the costs of this action;

E. Provide for the payment of the attorneys' fees of Plaintiff and the Class members based upon the benefit conferred upon the Class and/or from any common fund created by this action; and

F. Provide such other and further relief as this Court deems just and proper.

**COUNT II**  
**MONEY HAD AND RECEIVED**

32. Plaintiff realleges paragraphs 1 through 22 as if fully set forth herein.

33. Plaintiff and the members of the Class paid to the City, and the City retained, monies which it would be inequitable for the City to continue to retain.



34. Plaintiff and the members of the Class paid excess and undue money to the City as a result of a:

- (a) mistake of fact and/or ignorance of law; and/or
- (b) the City's failure to comply with its own ordinance.

35. The payments of this excess and undue money created an indebtedness on the part of the City to Plaintiff and members of the Class.

36. As a result of the City's unjust retention and collection of the excess money discussed above, the City is indebted to Plaintiff and each member of the Class in a sum certain, the amount of which can be proven at trial by reference to the City's records.

37. It would be inequitable for the City to retain said sums, and Plaintiff and each member of the Class is entitled to recover said sums as money had and received by the City from Plaintiff and each member of the Class.

WHEREFORE, Plaintiff, on behalf of itself and all those other similarly situated, requests that the Court enter an Order certifying this lawsuit as a Class action under Fla. R. Civ. P. 1.220, designating the named Plaintiff as the Class representative, and enter a judgment for damages and interest, costs, and an award of attorneys' fees based upon the benefit conferred upon the Class and/or payable from any common fund created by this action.

**COUNT III**  
**UNJUST ENRICHMENT**

34. Plaintiff realleges paragraphs 1 through 22 as if fully set forth herein.

35. Plaintiff brings this claim on behalf of itself and the Class.

36. Plaintiff and the Class members conferred a benefit upon Defendant in the form of excess money paid to the City.

37. Defendant had knowledge of the benefits conferred upon it by Plaintiff and the Class members. Defendant voluntarily accepted and retained the benefits conferred upon it by Plaintiff when it knew or should have known that it was miscalculating the water commodity charge for the Class.

38. Under the circumstances, it would be inequitable for the City to retain the benefit conferred upon it by Plaintiff and the Class members, particularly because the City knew or should have known that it was miscalculating the water commodity charge which resulted in an inflated water bill.

39. The City has been unjustly enriched and is required to refund Plaintiff and the Class members the benefits they conferred upon the City.

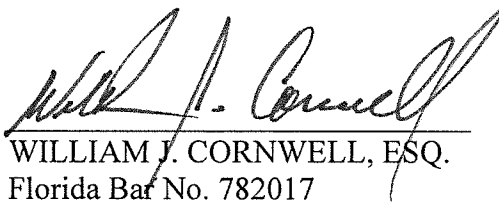
40. This Court should require the City to refund the excessive payments to prevent the wrongful retention of money in violation of good conscience and fundamental principles of justice or equity.

WHEREFORE, Plaintiff, on behalf of itself and all those other similarly situated, requests that the Court enter an Order certifying this lawsuit as a Class action under Fla. R. Civ. P. 1.220, designating the named Plaintiff as the Class representative, and enter a judgment for damages and interest, costs, and an award of attorneys' fees based upon the benefit conferred upon the Class and/or payable from any common fund created by this action.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury of all issues so triable in connection with this action.

WEISS, HANDLER & CORNWELL, P.A.  
*Counsel for Plaintiff*  
One Boca Place, Suite 205E  
2255 Glades Road  
Boca Raton, Florida 33431  
Telephone: (561) 997-9995  
Facsimile: (561) 997-5280

By:   
WILLIAM J. CORNWELL, ESQ.

Florida Bar No. 782017

[wjc@whcfla.com](mailto:wjc@whcfla.com)

[filings@whcfla.com](mailto:filings@whcfla.com)

[bo@whcfla.com](mailto:bo@whcfla.com)

DAVID K. FRIEDMAN, ESQ.

Florida Bar No. 307378

[dkf@whcfla.com](mailto:dkf@whcfla.com)

[gg@whcfla.com](mailto:gg@whcfla.com)

MIRANDA SPRINGFIELD, ESQ.

Florida Bar No. 1022486

and

David S. Hollander, Esq., MBA  
Law Offices of David S. Hollander, P.A.  
*Co-Counsel for Plaintiff*  
150 East Palmetto Park Road, Suite 800  
Boca Raton, FL 33432  
Office: (561) 571-3536  
Fax: (561) 537-7203  
[david@chargingtowardjustice.com](mailto:david@chargingtowardjustice.com)

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11<sup>th</sup> day of March, 2021, a true and correct copy of the foregoing has been furnished in compliance with 2.516, Florida Rules of Judicial Administration, via eService Portal to:

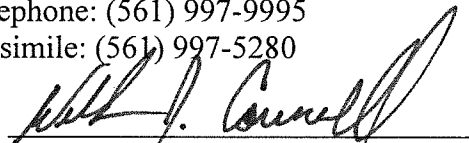
Jennifer Warren, Esq.  
OFFICE OF THE CITY ATTORNEY  
CITY OF NORTH MIAMI  
776 N.E. 125th Street  
North Miami, FL 33161  
Primary: [CityAttorney@northmiamifl.gov](mailto:CityAttorney@northmiamifl.gov)  
Secondary: [jwarren@northmiamifl.gov](mailto:jwarren@northmiamifl.gov)

Joshua Spector, Esq.  
LAW OFFICES OF JOSHUA SPECTOR, P.A.  
One Flagler Building  
14 NE 1st Ave., Suite 1100  
Miami, FL 33132  
[joshua@spectorlegal.com](mailto:joshua@spectorlegal.com)

WEISS, HANDLER & CORNWELL, P.A.  
*Counsel for Plaintiff*

One Boca Place, Suite 205E  
2255 Glades Road  
Boca Raton, Florida 33431  
Telephone: (561) 997-9995  
Facsimile: (561) 997-5280

By:



WILLIAM J. CORNWELL, ESQ.

Florida Bar No. 782017

[wjc@whcfla.com](mailto:wjc@whcfla.com)

[filings@whcfla.com](mailto:filings@whcfla.com)

[bo@whcfla.com](mailto:bo@whcfla.com)

DAVID K. FRIEDMAN, ESQ.

Florida Bar No. 307378

[dkf@whcfla.com](mailto:dkf@whcfla.com)

[gg@whcfla.com](mailto:gg@whcfla.com)

MIRANDA SPRINGFIELD, ESQ.

Florida Bar No. 1022486