

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>LISA KRAGNES, et al Plaintiff, vs. CITY OF DES MOINES, IOWA, Defendant.</p>	<p>Equity No. 49273 PLAINTIFF'S RESISTANCE TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON REFUND ISSUE</p>
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POLK COUNTY

COMES NOW the Plaintiff, on behalf of herself and all others similarly situated, and resists the Motion for Partial Summary Judgment as to Refund Issue filed by the Defendant City of Des Moines and respectfully states:

1. Plaintiff agrees that part of the relief sought is a refund of the excess franchise fees that have been illegally imposed and collected, although Plaintiff denies the City's mischaracterization of Plaintiff's petition.

2. Plaintiff denies the City's statement and characterization of the Supreme Court's ruling in this case at paragraph 2 of Defendant's Statement of Material Facts not in Dispute in support of its Motion for Partial Summary Judgment. The Iowa Supreme Court in *Kragnes v. City of Des Moines*, 714 NW2d. 632 (Iowa 2006) determined that if a fee charged by a city exceeds the amount necessary to inspect, license, supervise or otherwise regulate the activity it is nothing more than a tax levy which the legislature has strictly prohibited. *Id* at 641 citing Iowa Code Section 364.3(4).

3. Plaintiff urges that refunds should be ordered in this case. The monies were exacted by the City through legal duress which was a device and scheme which made them part

of a gas and/or electric billing for which a summary procedure exists for the disconnection of these essential utility services and should be properly refunded.

4. The Plaintiff further urges that any and all payments made were made under a mistake of fact and thereby subject to refund under applicable Iowa law.

5. The Statement of material facts offered by the Defendant is a mischaracterization of the facts, is incomplete and is erroneous as it pertains to this issue. It is denied that the Defendant is entitled to partial summary judgment.

6. This Resistance is supported by the separate Response to Statement of Material Facts relating to facts in dispute, the Statement of Additional Facts, and the Plaintiff's Brief filed in Resistance to the Defendant's Motion for Partial Summary Judgment on Refund Issue, filed simultaneously herewith.

WHEREFORE the Plaintiff requests that the Court overrule the Defendant's Motion for Partial Summary Judgment on Refund Issue.

Respectfully Submitted,



By: _____

Brad Schroeder PK# 000015582
Hartung & Schroeder LLP
Equitable Building, Suite 100
608 Locust Street
Des Moines, Iowa 50309
Telephone: (515) 282-7800
Facsimile: (515) 282-8700
E-mail: schroeder@handslawfirm.com
ATTORNEY FOR PLAINTIFF

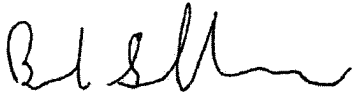
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CERTIFICATE OF SERVICE:

A COPY of the foregoing has been mailed
this 7th day of February, 2007, to the following:

Mark Godwin
Deputy City Attorney
City Hall
400 Robert D. Ray Drive
Des Moines, Iowa 50309-1891
ATTORNEY FOR DEFENDANT

Judge Don C. Nickerson
Polk County Courthouse
5th and Mulberry
Des Moines, Iowa 50309

A handwritten signature in black ink, appearing to be "B. S. H.", written over a horizontal line.

By: _____