

IN THE IOWA DISTRICT COURT  
FOR POLK COUNTY

LISA KRAGNES, et. al., )  
 ) Law No. CE 49273  
 Plaintiff, )  
 )  
 vs. ) AFFIDAVIT OF  
 ) BRIAN MEYER  
 CITY OF DES MOINES, IOWA, ) REGARDING CLASS  
 ) OPT-OUT PROVISION  
 Defendant. )

2008 MAR 19 PM 2:22  
DISTRICT COURT

STATE OF IOWA )  
 ) ss:  
 COUNTY OF POLK )

I, Brian Meyer, after first being duly sworn upon oath, do depose and state as follows:

1. At all times material hereto I have been an elected official for the City of Des Moines serving in the capacity of Council Member.
2. This Affidavit is made of my personal knowledge.
3. I have been told that there is no opt-out provision in this lawsuit.
4. As an electricity and natural gas user in the City of Des Moines, I would be a member of the class.
5. However, as an elected official for the City of Des Moines, I do not wish to be a member of the class.
6. As an elected official I have taken an oath of office, attached as Exhibit A, and I believe being forced to be a member of that class would cause me to violate that oath of office.
7. In addition, I believe being made a member of the class against my will violates my substantive and/or procedural due process rights.

8. In addition, I believe that being forced to be a member of the class against my will violates my freedom of association rights under the Federal and State Constitutions.

9. My belief as an elected official for the City and as a homeowner in Des Moines is that the financial consequences of this litigation will be unfavorable to me and to other homeowners.

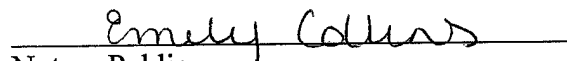
10. The Court should grant and opt out provision to the class because of the inherent conflicts among class members in this case.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
Brian Meyer

Subscribed and sworn to before me this 14<sup>th</sup> day of August, 2008.



  
Notary Public

Original filed.

Copies to:

Honorable Joel D. Novak  
Judge, Fifth Judicial District

Mr. Brad Schroeder  
Hartung & Schroeder LLP  
Equitable Building, Suite 100  
608 Locust Street  
Des Moines, IA 50309  
ATTORNEY FOR PLAINTIFF

Bruce H. Stoltze  
Stoltze & Updegraff, P.C.  
P.O. Box 93295  
300 Walnut, Ste. 260  
Des Moines, IA 50393  
ATTORNEY FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above-entitled cause by transmittal to each of the attorneys of record at their respective addresses disclosed on the pleadings of record on the 19<sup>th</sup> day of August 2008.

By:  U.S. Mail  Fax  
 Hand-Delivered

Signature:

*Lisa M. Mickey*

EXHIBIT A



OATH OF OFFICE  
DES MOINES CITY COUNCIL



All-America City  
1949 1976 1981 2003

I BRIAN MEYER do solemnly swear, that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of

COUNCIL MEMBER - WARD IV

in the City of Des Moines, Iowa, as now or hereafter required by law.

*Brian Meyer*  
\_\_\_\_\_  
SIGNATURE

Subscribed and sworn to me by the said above, signed on this 31st day of December, 2007

*Diane Rauh*  
\_\_\_\_\_  
Notary Public in and for Polk County, Iowa

