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

CIRCUIT CIVIL DIVISION

GEORGE SUAREZ; **TANIA SUAREZ**; **ROSCOE PENDLETON**; **ADEL RAAD**; **CHARAF RAAD**; **STEVEN BARRETT**; **NATASHA ERVIN**; **TAXES BY NATASHA ERVIN**, a Florida Corporation; and **ALFONSO J. ERVIN, III**,

Plaintiffs,

vs.

CITY OF OPA-LOCKA, FLORIDA, a municipal corporation authorized to do business under the laws of the State of Florida,

Defendant.
_____/

CASE NO. 17-8285 CA-01 (43)
Complex Business Litigation Unit

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF LAW

Pursuant to Rule 1.220(b)(3) of the Florida Rules of Civil Procedure, Plaintiffs individually, and as Representatives of a Class of all similarly situated others (collectively "Plaintiffs"), by and through their undersigned attorneys, file this Motion for Class Certification, pursuant to Florida Rule of Civil Procedure 1.220, and as grounds states:

Plaintiffs are individuals and businesses residing in or doing business in the City of Opa-Locka, Florida ("City"). The City is a municipal corporate entity and water utility provider providing water utilities to individuals and businesses living within the City boundaries. As a result of the City's mismanagement of its water utilities, the City has failed or refused to return deposits to Plaintiffs and overcharged Plaintiffs for water utilities in violation of state law, county and city codes and in breach of the City's contractual obligations to Plaintiffs.

I. THE AMENDED COMPLAINT

The operative complaint is the Amended Complaint. It contains claims for breach of

contract, civil theft and preliminary and permanent injunctive relief. The operative complaint involves facts identical to each prospective Class Member arising out of the City's improper handling of its water utilities billing system, and damages arising from the equally applicable facts – all of which are in the City's possession. The City is in possession, or is required to be in possession, of all water utility deposit accounts and, to the extent the City has failed or refused to return water utility deposits, damages as to each potential class member are ascertainable. The City is in possession of all water utility billings, and therefore is able to prove with certainty the actual amount of water each potential class member consumed during the relevant time period. Accordingly, damages in the form of overpayments involving each potential class member – both residential and business – are readily ascertainable with certainty and precision.

With respect to injunctive relief, the Plaintiffs demand that the City be required to implement an accurate, fair, and reliable system of accounting and billing for the water utility services it is required by law to provide.[1] Additionally, the City must be prohibited from terminating any customer water service until corrective action is implemented.

II. CLASS DESCRIPTION

All Plaintiffs and members of the Class are known to the City, which has the official records identifying each water customer and user, the amount of water provided to each customer and water user, the amount billed to each customer and water user, and the status of customer deposits, among other water service information. The City has actual notice of each water customer constituting the members of the Class improperly billed for water service. The City has

[1] The Court can enjoin the City's operation of its water utility function using an inequitable and inaccurate accounting and billing system. In fact, Judge Jose Rodriguez did so on February 1, 2018 in a related case just filed on an emergency basis: *Opa-Locka Warehouse Condos v. City of Opa-Locka*; M-D Case No.: 18-2828 CA 15. A copy of that Order is being filed contemporaneously herewith. The Court can enjoin the City from illegally and improperly spending or withholding customer deposits.

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custody of all records identifying each water customer and user comprising all members of the Class. The City has records identifying the status of all customer water deposits. The City's records include the contracts for water service, deposit information, water usage, billings to water customers, payments made by water customers, and other information related to the City's water system.

The City maintains all records identifying the amount of money billed to water customers, as well as the amount of water actually provided to the customers. The City's water records include specific information detailing the amount of money improperly, inaccurately, and falsely billed to water customers. Those records detail the amounts overcharged or improperly charged to customers, an amount exceeding $20 million.

A. Proposed Class I.

Plaintiffs ask this Court to certify the following Classes of persons who seek class certification in the operative complaint as Members of **Proposed Class I**, all of whom constitute City water utility customers who placed deposits with the City for water utility access on and after January 1, 2000, to the time of the filing of the initial complaint in this case on April 7, 2017, and who are entitled to the return of those deposits and whose deposits have not been maintained by the City or returned.

Proposed Class I is defined as:

> All City of Opa-Locka residents and businesses, commencing January 1, 2000, required to place water utility deposits with the City, who are entitled to have those deposits safeguarded in segregated accounts, who are entitled to the return of those deposits, and who have not received the return of deposits from the City.

B. Proposed Class II.

Plaintiffs ask this Court to certify the following Class of persons who seek class certification in the operative complaint as Members of **Proposed Class II**, all of whom are are

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City water utility customers, both individuals and businesses, who were overbilled for water utilities by the City on and after January 1, 2000, to the time of the filing of the initial complaint in this case on April 7, 2017.

Proposed Class II is defined as:

> All City of Opa-Locka water utility customers who paid for water utility services in excess of the amounts they were liable to pay as calculated based on reasonable rates and functioning and accurate water meters and readings commencing January 1, 2000.
>
> ***To be clear, this class includes every single Opa-Locka water utility customer from January 1, 2000, who the Defendant cannot prove with certainty received all of the water they paid for.***

III. BACKGROUND

Pursuant to Chapter 21 of the Code of the City of Opa-Locka, the Plaintiffs and other water customers were required to purchase water from the City in order to live and operate within the City. Water is a necessary component of an adequate quality of life and the operation of ongoing businesses in the City and elsewhere in the State of Florida. The City is required to provide water service at reasonable rates and in a manner that is not arbitrary, irrational, or capricious. Studies by the City, County, and private vendors have demonstrated that the City's water meters do not and have not worked for many years - more than a decade - and that the City has been well aware of that fact. The City has not informed the Plaintiffs, potential Class Members, or water customers of this fact concerning the status of the deficient and defective water meters and water services billings, even though the City and its responsible officials have known and reasonably understood the fact of the deficient water system.

Plaintiffs and all members of the Class have contracted with the City to obtain water service in exchange for reasonable payment for the water service provided and used. Plaintiffs and all members of the Class are customers and water users of the City. Plaintiffs and all members of the

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Class paid required deposits for the contracted for water service, or the deposit requirement was waived by the City. The City contracted with the Plaintiffs and all Class members to provide continuous water service, to install and maintain accurate water meters, to bill for water service at allowable and published rates – and no more, to maintain customer deposits as segregated and accounted for funds, to properly and accurately read water meters, and to bill for only the water used by each water customer.

The City further agreed and contracted with its water customers to comply with the City's Code, Florida Law, and the Constitutions of the United States and the State of Florida when providing water service to customers and to accurately bill for water service. The City contracted with the Plaintiffs and at all times agreed to provide an accurate payment and billing system that was not arbitrary and capricious.

IV. CLASS CERTIFICATION IS WARRANTED

A. GENERAL CONSIDERATIONS.

Florida class actions are governed by Rule 1.220 of the Florida Rules of Civil Procedure, which rule is modeled after Rule 23 of the Federal Rules of Civil Procedure. *See Johnson v. Plantation General Hosp. Ltd. Partnership*, 641 So. 2d 58, 59 (Fla. 1994) (citing *The Florida Bar. In re Rules of Civil Procedure*, 391 So. 2d 165 (Fla. 1980); *Concerned Class Members v. Sailfish Point*, 704 So. 2d 200, 201 (Fla. 4th DCA 1998). Florida courts look to federal cases as persuasive authority in interpreting Rule 1.220. *Commonwealth Land Title Inc. Co. v. Higgins*, 975 So. 2d 1169, 1175 (Fla. 1st DCA 2008) ("Florida has a long standing tradition of relying on federal [class action] case law" when construing Rule 1.220.). As such, our courts consistently interpret Rule 1.220 in a manner consonant with federal court construction of Rule 23. *See Powell v. River Ranch Property Owners Ass'n, Inc.*, 522 So. 2d 69, 70 (Fla. 2d DCA 1988); *Broin v. Philip Morris Companies, Inc.*, 641 So. 2d 888, 889 (Fla. 3d DCA 1994).

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Courts cannot conduct a preliminary inquiry into the merits of the case in deciding whether to certify the class. *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 177, 94 S. Ct. 2140 (1974); *Miles v. America Online, Inc.*, 202 F.R.D. 297 (M.D. Fla. 2001). Instead, for class certification purposes, courts are obligated to accept the plaintiff's factual allegations as true. *See Broin v. Philip Morris Companies, Inc.*, 641 So. 2d 888 (Fla. 3d DCA 1994); *Estate of Bobinger v. Deltona Corp.*, 563 So. 2d 739, 743 (Fla. 2d DCA 1990).

B. THE COMPLAINT SATISFIES CLASS ACTION REQUIREMENTS.

Rule 1.220(a) sets forth the prerequisites for obtaining class certification:

> One or more members of a class may sue or be sued as representative parties on behalf of all, only if:
>
> (1) The class is so numerous that joinder of all members is impractical;
> (2) There are common questions of law or fact common to the class;
> (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
> (4) The representative parties will fairly and adequately protect and represent the interests of the class.

These prerequisites are commonly referred to as Numerosity, Commonality, Typicality, and Adequacy of Representation. All prerequisites are met here, since the current population of the City, without even considering businesses, is greater than 15,000. The readily accessible records in the possession and control of the City indicate thousands of potential class members. Miami-Dade County identified nearly 6,000 active water accounts, two-thirds of which are potentially incorrect or inoperative. See Exhibit "A" to the Amended Complaint.

1. Numerosity.

To satisfy the numerosity requirement, the proposed class must be so numerous that joinder of all members is impractical. A plaintiff does not have to prove the exact size of the proposed class, but simply needs to demonstrate that "the number is exceedingly large, and joinder

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impractical." I*n re Alexander Grant & Co. Litigation*, 110 F.R.D. 528, 533-534 (S.D. Fla. 1986). In *Smith v. Glen Cove Apartments Condominiums Master Ass'n, Inc.*, 847 So. 2d 1107 (Fla. 4th DCA 2003), *decision approved*, 73 So. 3d 91 (Fla. 2011), the court determined that a class of approximately 100 members who were low income housing residents met the numerosity requirement in a claim against owner/lessors of the condominiums for failure to maintain the roofs of the condominium complex. The *Smith* court noted that the numerosity requirement is tied to the impracticality of joinder of the individual claims. *Smith* explained that impracticality of joinder does not mean impossibility of joinder, but instead it is sufficient if it is inconvenient or difficult to join all members of the class in a single action.

The U.S Court of Appeals for the Eleventh Circuit held that while there is no fixed numerosity rule, generally less than 20 is inadequate and more than 40 is adequate. *Cox v. American Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986). *See Maner Properties, Inc. v. Siksay*, 489 So. 2d 842 (Fla. 4th DCA 1986) (classes with 40 members meet the numerosity requirement for class treatment). The number of class members in this case meets this standard because the number of prospective class members is in the thousands based on the report sponsored by Governor's Oversight Board, and cited by Special Assistant Merrett R. Stierheim. The County identified nearly 6,000 active water accounts, two-thirds of which are potentially incorrect or inoperative. See Exhibit "A" to the Amended Complaint.

2. Commonality.

Rule 1.220(a) requires that class members have questions of law and fact in common. In *Smith v. Glen Cove Apartments Condominiums Master Ass'n, Inc.*, 847 So. 2d 1107 (Fla. 4th DCA 2003), *decision approved*, 73 So. 3d 91 (Fla. 2011), the Court stated:

> The primary concern in determining commonality is whether the representative member's claim arise from the same course of conduct that give rise to the other claims and whether the claims are based on the same legal theory. *See*

Terry L. Braun, P.A. v. Campbell, 827 So. 2d 261, 267 (Fla. 5th DCA 2002).

The threshold for this requirement is not high, and the rule requires only that the resolution of the common questions affect all or a substantial number of class members. *See McFadden v. Staley*, 687 So. 2d 357, 359 (Fla. 4th DCA 1997); *Broin v. Phillip Morris*, *supra*; *Paladino v. American Dental Plan, Inc.*, 697 So. 2d 897, 898 (Fla. 1st DCA 1997), *dismissed*, 717 So. 2d 527 (Fla. 1998); *W.S. Badcock Corp. v. Myers*, 696 So. 2d 776, 780 (Fla. 1st DCA 1996) (finding commonality where all class members had the same right of recovery based on the same financing terms). As stated in *Broin v. Phillip Morris Cos.*, 641 So. 2d at 890:

> "The threshold of 'commonality' is not high. Aimed in part at 'determining whether there is a need for combined treatment and a benefit to be derived therefrom,' the rule requires only that resolution of the common questions affect all or a substantial number of the class members." *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 473 (5th Cir.1986) (citations omitted). Rule 1.220 does not require denial of class certification "merely because the claim of one or more class representative arises in a factual context that varies somewhat from that of other plaintiffs." *Powell v. River Ranch Property Owners Ass'n, Inc.*, 522 So.2d 69, 70 (Fla. 2d DCA), *rev. denied*, 531 So.2d 1354 (Fla.1988); *Pottinger*, 720 F.Supp. [955] at 958 [(S.D. Fla. 1989)]. The class in this case meets the threshold.

Commonality is not the same as being identical. Rarely are claims of individual plaintiffs identical, but they are regularly common when based on the same facts or incident. *Broin* explained this commonality precept, 641 So. 2d at 891-892:

> It would be a perversion of the spirit behind rule 1.220, and the cases interpreting the rule, to hold, as defendants urge, that plaintiffs' class action allegations fail because plaintiffs do not present identical claims. If class actions were dependent on class members presenting carbon copy claims, there would be few, if any, instances of class action litigation. It is virtually impossible to design a class whose members have identical claims. Even in the context of a mass disaster, each afflicted member experiences the impact differently, according to the member's relative location and proximity to the event. Defendants' proposed holding would nullify the class action rule, a course of conduct we decline to follow.
>
> "The very purpose of a class suit is to save a multiplicity of suits, to reduce the expense of litigation, to make legal processes more effective and expeditious, and to make available a remedy that would not otherwise exist." *Tenney v. City of*

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> *Miami Beach*, 11 So.2d 188, 189 (Fla.1942). Here, as in *Tenney*, if we were to construe the rule to require each person to file a separate lawsuit, the result would be overwhelming and financially prohibitive. Although defendants would not lack the financial resources to defend each separate lawsuit, the vast majority of class members, in less advantageous financial positions, would be deprived of a remedy. We decline to promote such a result.

The operative complaint here sufficiently alleges common questions of law and fact. The issue giving rise to potential class member damages is the failure of the City to provide accurate water billing services resulting in significant overbilling. See Exhibit "A" to the Amended Complaint.

> A class suit is maintainable where the subject of the action presents a question of common or general interest, and where all members of the class have a similar interest in obtaining the relief sought. The common or general interest must be in the object of the action, in the result sought to be accomplished in the proceedings, or in the question involved in the action. There must be a common right of recovery based on the same essential facts.

Imperial Towers Condominium, Inc. v. Brown, 338 So.2d 1081, 1084 (Fla. 4th DCA 1976) (quoting *Port Royal, Inc. v. Conboy*, 154 So.2d 734 (Fla. 2d DCA 1963)), *appeal dismissed*, 354 So.2d 978 (Fla.1977).

The facts asserted in the operative complaint, which must be accepted as true for class certification purposes, *Estate of Bobinger v. Deltona Corp.*, 563 So.2d 739, 743 (Fla. 2d DCA 1990), demonstrate that the members of the class were systematically overbilled for water services, since more than 50% of the water meters in the City were not functioning correctly and more than 10% of the meters are inaccessible and subject to estimated usage billing. See Exhibit "A" to the Amended Complaint. As the complaint describes, the only significant questions implicated in this litigation are (1) whether the billings were incorrect, and (2) what are the amounts of the improper billings. These questions are universally common to all class members, and are not dependent on individual customers. In short, they are uniformly at issue throughout the class.

Importantly, all questions of law and fact do not have to be common. *Powell v. River Ranch*

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Property Owners Ass'n, Inc., 522 So. 2d 69 (Fla. 2d DCA 1988); *Broin*, 641 So.2d at 890; *Cox v. American Cast Iron Pipe Co.*, 784 F.2d at 1546-1547; *Diaz v. Hillsborough County Hosp. Authority*, 165 F.R.D. 689, 693 (M.D. Fla. 1996). The relevant questions of law and fact here are sufficiently similar, if not identical, and the position of the prospective class members are generally related so as to justify a unified trial to resolve the claims presented.

3. Typicality.

Typicality is linked closely with the concept of commonality. As stated in *Smith v. Glen Cove Apartments Condominiums Master Association, Inc.*, 847 So. 2d at 1110-1111, Rule 1220(a)(3) requires that the class representative claims be typical of the claim of each member of the class. The *Smith* court indicated that the typicality requirement is met when "the representatives' claims and the class members' claims are not antagonistic in any way. The mere presence of factual differences will not defeat typicality." *See Colonial Penn Ins. Co. v. Magnetic Imaging Sys. I, Ltd.*, 694 So. 2d 852, 854 (Fla. 3d DCA 1997) (absence of antagonism between class representatives and members' claims). The "key inquiry for a trial court when it determines whether a proposed class satisfies the typicality requirement is whether the class representative possesses the same legal interest and has endured the same legal injury as the class members." *Sosa v. Safeway Premium Finance Co.*, 73 So. 3d 91, 115 (Fla. 2011)

In the present case, the Plaintiffs alleged misconduct on the City's part that gives rise to both the claims of the Class Representative and the claims of the Class Members. The class claims are based on the same legal theories and the same facts as those involving the named Plaintiffs, all of whom are similarly situated to all Class Members in that they, too, have been damaged by the water utility overbilling and failure to return water utility deposits.

Once the Class Members are determined as comprising overbilled City water customers or customers entitled to the return of the deposits, the class members and the class representatives all

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seek the same damages based on a simple mathematical formula that can be applied with precision. The class members and the class representatives' claims all arise from the same improper City water utility mismanagement practices. S*ee Cole v. Echevarria, McCalla, Raymer, Barrett & Frappier*, 965 So. 2d 1228 (Fla. 1st DCA 2007) (class certification approved for claims pursuant to Florida Consumer Collection Practices Act as to property owners who defaulted on mortgages against defendant attorneys representing mortgage holders).

4. Adequacy of Representation.

Rule 1.220(a)(4) requires the representative parties to fairly and adequately protect class interests. *Smith v. Glen Cove Apartments Condominiums Masters Association, Inc.*, 847 So. 2d at 1111-1112, adopted *Pottinger v. City of Miami*, 720 F.Supp. 955, 959 (S.D. Fla. 1989), and *Broin v. Phillip Morris*, 641 So. 2d at 892, to hold that "the adequacy of representation requirement is met if the class representative has interests in common with the proposed class members, and the representative and its qualified attorneys will properly prosecute the action."

Here, the Plaintiffs easily satisfy both prongs of the "Adequacy of Representation" test. Because their interests and claims are aligned with Class Members, the Class Representatives have no conflicting interests or antagonism toward other Class Members. The named Plaintiffs will protect and advance the interest of the Class Members because, in so doing, the interests of the Class Representatives will be furthered. The City cannot legitimately identify any antagonism from the Plaintiffs to the Class. Instead, Plaintiffs have a willingness and desire to pursue this action against the City to remedy actions that have injured both the Class Representatives and the Class Members in similar ways.

The Plaintiffs' adequacy as Class Representatives is also bolstered by their choice of qualified trial counsel who exhibit the desire and the expertise to prosecute the class action vigorously. The lawyers and law firms representing the proposed Class have been and are

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experienced in complex litigation and collective actions. The lawyers have unique and particularized knowledge of the underlying facts giving rise to the claims. The lawyers have particular knowledge of City practices. The participation of the legal team is especially pertinent to this Class action. All three law firms routinely litigate serious, complex, and factually intensive matters in federal and state trial and appellate courts, and have significant experience in civil litigation. They are veterans in handling matters involving municipal government practices. One member of the legal team, Benedict P. Kuehne, is a Certified Fraud Examiner whose experience in analyzing financial claims is a significant benefit to the Class.

C. THE CONDITIONS OF RULE 1.220(b)(3) ARE MET.

In addition to the elements of Rule 1.220(a), the operative complaint satisfies the criteria of Rule 1.220(b)(3), requiring that the common questions of law or fact predominate over any question of law or fact affecting the individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy. "Florida courts have held that common questions of fact predominate when the defendant acts toward the class members in a similar or common way." *Sosa v. Safeway Premium Finance Co.*, 73 So. 3d 91, 111 (Fla. 2011). "A class representative accomplishes this if he or she, by proving his or her own individual case, necessarily proves the cases of the other class members." *Id.*

Here, each Class Member is asserting the same claims against the City. The City acted in the same manner concerning each member of the class. The only individual issue relates to the computation of individual damages, but even that issue is a formulaic one not dependent on individualized circumstances. The damages computation will be a mathematical determination calculated based on the City's records (or lack thereof).

The predominance analysis requires the court to focus on the liability issue in determining whether common questions predominate over individual questions. *See Oce Printing Systems USA,*

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Inc. v. Mailers Data Services, Inc., 760 So. 2d 1037, 1043 (Fla. 2d DCA 2000); *In re Alexander Grant & Co. Litigation*, 110 F.R.D. 528, 534 (S.D. Fla. 1986). Just as with the Plaintiffs' discussion of commonality and typicality, the nature of this case and the elements of the asserted claims primarily involve issues focusing on the City's conduct, not the class members' acts.

The operative complaint alleges mismanagement in providing water utilities and billing functions arising from the same conduct by the City. Each Class Member is or was a City water customer injured by the City's improper supply, accounting, and billing practices. These underlying allegations predominate over any factual issues that may differ among the class. *See Fuller v. Becker & Poliakoff, P.A.*, 197 F.R.D. 697, 701, 48 Fed. R. Serv. 3d 721 (M.D. Fla. 2000) (common link was similar language in letters sent to class members).

Even if the City argues that individual issues of damages exist, such a contention does not provide any basis to deny class certification. In *Freedom Life Ins. Co. of America v. Wallant*, 891 So. 2d 1109 (Fla. 4th DCA 2004), *rev. denied*, 974 So. 2d 386 (Fla. 2008), the Court stated:

> Any eventual monetary recovery may require some individualized inquiry into the particular claims that each class member had delayed or denied, but it is not inappropriate to certify a class under the circumstances at bar, because common issues predominate and subclasses or other innovative solutions are available to address any individualized pitfalls. Therefore, because the common issues involving the enforceability of the dispute resolution provision in compliance with statutes predominate to an extent that minimizes the risks stemming from any individualized damage inquiry required, certification under Rule 1.220(b)(3) was appropriate. *See Ouellette v. Wal-Mart Stores, Inc.*, 888 So. 2d 90 (Fla. 1st DCA 2004).

Additionally, this class action is superior to individual claims because it will avoid unnecessary and wasteful multiplication of actions, precisely the consequence the class action procedure is designed to ameliorate. *Califano v. Yamasaki*, 442 U.S. 682, 690 (1972); *In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 145, 166-167 (2d Cir. 1987) (class treatment will promote judicial efficiency and economy by avoiding duplicative litigation of class member claims). *Broin*

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best articulated the test governing the superiority determination, 641 So. 2d at 891-892:

> The very purpose of a class suit is to save a multiplicity of suits, to reduce the expense of litigation, to make legal processes more effective and expeditious, and to make available a remedy that would not otherwise exist. *Tenney v. City of Miami Beach*, 152 Fla. 126, 11 So. 2d 188, 189 (1942). Here, as in *Tenney*, if we were to construe the rule to require each person to file a separate lawsuit, the result would be overwhelming and financially prohibitive. Although the Defendants would not lack the financial resources to defend each separate lawsuit, the vast majority of class members, in less advantageous financial positions, would be deprived of a remedy. We decline to promote such result.

This class action is the only feasible method for those who have been damaged to seek legal redress. This is so because many Class Members would have little individual ability and knowledge to challenge the City's misconduct. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809, 105 S. Ct. 2965 (1985). Without a class action, there would be little likelihood of any legal claims being made on behalf of the majority of the Class Members. The Class Members who are able to bring individual claims could ultimately file hundreds or thousands of claims in Circuit and County Court alleging the same fraudulent or negligent mismanagement and damages. That would create a huge burden on the Class Members, the City, and the courts. The class action device was designed to provide a procedure for vindicating just these types of claims. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 617, 117 S. Ct. 2231 (1997); *S.D.S. Autos, Inc. v. Chrzanowski*, 976 So. 2d 600 (Fla. 1st DCA 2007), *rev. denied*, 993 So.2d 513 (Fla. 2008).

While there may be the need for a claims process to determine individual damages, that process can be easily developed utilizing a formulaic algorithm applied by the Court or a special master.

D. MANAGEABILITY AS A CLASS ACTION.

Rule 1.220(b) requires that upon determining that an action is maintainable as a class, notice be given to each member of the class who can be identified and located. Notice shall be given in the manner most practical under the circumstances. Plaintiffs anticipate that notice will

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be accomplished without significant difficulty. A list of persons described in the class definition can be either developed through public property ownership records and/or provided by the City through their billing and accounting records. The management of this action is not especially difficult.

CONCLUSION

The Court should liberally interpret the rules governing class actions to encourage class action litigation when factual circumstances warrant. *Maywalt v. Parker & Parsley Petroleum Co.*, 147 F.R.D. 51, 57, 26 Fed. R. Serv. 3d 472 (S.D. N.Y. 1993). The interests of justice require that even in a doubtful case, any error, if there is to be one, should be committed in favor of allowing a class action. *Esplin v. Hirschi*, 402 F.2d 94, 101, 12 Fed. R. Serv. 2d 525 (10th Cir. 1968), *cert. denied*, 394 U.S. 928 (1969); *In re Amerifirst Securities Litigation*, 139 F.R.D. 423, 427 (S.D. Fla. 1991). This case is not, however, a speculative or doubtful one. It cries out for class action treatment where the individual claims may be modest and individual action significantly burdensome.

In *Cole v. Echevarria*, 965 So. 2d at 1232, the First District expanded the class certified by the trial court, and indicated that the class should include all persons who received a reinstatement letter, whether the borrower reinstated the mortgage, or lost their home to foreclosure. Similarly, the claims raised in this case are appropriate for class treatment, since all of the aggrieved water utility consumers have similar, if not identical, claims – all received inaccurate, estimated or speculatively arrived at inflated water billings. The failure of the City's water utilities accounting system was universal.

For all these reasons that are consistent with Rule 1.220, Plaintiffs ask that this Court certify the two classes identified in this submission: 1) All City of Opa-Locka residents and businesses, commencing January 1, 2000, required to place water utility deposits with the City, who are

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entitled to have those deposits safeguarded in segregated accounts, who are entitled to the return of those deposits, and who have not received them; and 2) Every single Opa-Locka water utility customer from January 1, 2000, who the Defendant cannot prove with certainty received all of the water they paid for. Both of these classes are identifiable based on Defendant's own records and both of these classes consist of members who have been damaged.

CERTIFICATE OF CONFERRRAL

Undersigned counsel, pursuant to CBL 4.3 and the Court's Case Management Order, hereby certifies that counsel for the Plaintiffs and the Defendant have conferred on a number of occasions including in person on December 28, 2017 and by telephone on February 2, 2018 regarding class certification and will continue to discuss the merits, the scope and the substance of this motion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY *that on* ***February 2, 2018****, we electronically filed the foregoing document with the Clerk of the Court using Florida Courts eFiling Portal. We also certify that the foregoing document is being served this day on all counsel of record or pro se parties in the manner specified, either via transmission of Notices of Electronic Filing generated by Florida Court e-Filing Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.*

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