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MAURI B. KELLY  
LACKAWANNA COUNTY

2017 MAR 22 PM 3 01

CLERK OF JUDICIAL  
RECORDS CIVIL DIVISION

GARY ST. FLEUR, NICHOLAS GETTEL, : IN THE COURT OF COMMON PLEAS  
CASEY DURKIN, DAMIAN : OF LACKAWANNA COUNTY  
BIANCERELLI, RICH JOHNSON, :  
ETHAN GREEN, ANGELA GILGALLON :  
and MICHELE McGOVERN :

Plaintiffs

CIVIL ACTION

v.

THE CITY OF SCRANTON,  
MAYOR WILLIAM L. COURTRIGHT and :  
BUSINESS ADMINISTRATOR :  
DAVID BULZONI :

Defendants

No.: 2017-CV-1403

**NOTICE**

To The Within Named Plaintiffs:

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE WITHIN PRELIMINARY  
OBJECTIONS TWENTY (20) DAYS FROM THE DATE OF SERVICE OR A DEFAULT  
JUDGMENT MAY BE ENTERED AGAINST YOU.

Respectfully submitted,

Abrahamsen, Conaboy & Abrahamsen, P.C.

BY: 

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Atty ID 84384

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THE CITY OF SCRANTON, :  
MAYOR WILLIAM L. COURTRIGHT and :  
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DAVID BULZONI :

Defendants : No.: 2017-CV-1403  
.....

**DEFENDANTS' PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT**

Defendants, The City of Scranton, Mayor William L. Courtwright, and Business Administrator David Bulzoni, through their attorneys, Abrahamsen, Conaboy & Abrahamsen, P.C., hereby submits the following Preliminary Objections to Plaintiffs' Complaint as follows:

1. This action concerns the Plaintiffs' Complaint in Mandamus which seeks to compel the Defendants, The City of Scranton, Mayor William L. Courtwright ("Mayor Courtwright"), and Business Administrator David Bulzoni ("Bulzoni"), to comply with the requirements of 53 P.S. § 6924.320.

2. Plaintiffs instituted this matter with the filing of a Complaint on March 2, 2017. A true and correct copy of the Complaint is attached hereto as **Exhibit "A"**.

3. Generally, the Complaint alleges that the Defendants have failed to comply with the statutory cap on taxes pursuant to 53 P.S. § 6924.320.

4. The law on which Plaintiffs rely, 53 P.S. § 6924.320, provides as follows:

(a) Over-all Limit of Tax Revenues.--The aggregate amount of all taxes imposed by any political subdivision under this section and in effect during any fiscal year shall not exceed an amount equal to the product obtained by multiplying the latest total market valuation of real estate in such political subdivision, as determined by the board for the assessment and revision of taxes or any similar board established by the assessment laws which determines market values of real estate within the political subdivision, by twelve mills. In school districts of the second class, third class and fourth class and in any political subdivision within a county where no market values of real estate have been determined by the board for the assessment and revision of taxes, or any similar board, the aggregate amount of all taxes imposed under this section and in effect during any fiscal year shall not exceed an amount equal to the product obtained by multiplying the latest total market valuation of real estate in such school district, or other political subdivision, as certified by the State Tax Equalization Board, by twelve mills. In school districts of the third and fourth class, taxes imposed on sales involving the transfer of real property shall not be included in computing the aggregate amount of taxes for any fiscal year in which one hundred or more new homes or other major improvements on real estate were constructed in the school district.

The aggregate amount of all taxes imposed by any independent school district under this section during any fiscal year shall not exceed an amount equal to the product obtained by multiplying the latest total valuation of real estate in such district by fifteen mills.

(b) Reduction of Rates Where Taxes Exceed Limitations; Use of Excess Moneys.--If, during any fiscal year, it shall appear that the aggregate revenues from taxes levied and collected under the authority of this chapter will materially exceed the limitations imposed by this chapter, the political subdivision shall forthwith reduce the rate or rates of such tax or taxes to stay within such limitations as nearly as may be. Any one or more persons liable for

the payment of taxes levied and collected under the authority of this chapter shall have the right to complain to the court of common pleas of the county in an action of mandamus to compel compliance with the preceding provision of this subsection. Tax moneys levied and collected in any fiscal year in excess of the limitations imposed by this chapter shall not be expended during such year, but shall be deposited in a separate account in the treasury of the political subdivision for expenditure in the following fiscal year. The rates of taxes imposed under this chapter for the following fiscal year shall be so fixed that the revenues thereby produced, together with the excess tax moneys on deposit as aforesaid, shall not exceed the limitations imposed by this chapter.

53 P.S. § 6924.320.

5. Preliminary objections are governed by Pa. R.C.P. 1028, which provides, in relevant part, as follows:

(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

...

(2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;

(3) insufficient specificity in a pleading;

(4) legal insufficiency of a pleading (demurrer);

(5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;

... [.]

Pa. R.C.P. 1028.

**A. Demurrer**

6. "Preliminary objections in the nature of [a] demurrer test the legal sufficiency of the plaintiff's complaint." Sexton v. PNC Bank, 792 A.2d 602, 604 (Pa.Super.2002).

7. "The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible." Mistick Inc. v. Northwestern Nat'l Cas. Co., 806 A.2d 39, 42 (Pa.Super.2002) (citation omitted).

8. Accepting all material averments as true, the Court must determine "whether the complaint adequately states a claim for relief under any theory of law." Id.

9. In the instant matter, Plaintiffs' Complaint fails to state a cause of action upon which relief may be granted.

10. The City of Scranton is a Home Rule Charter municipality.

11. The General Powers and Limitations of Home Rule Charter Municipalities are set forth in 53 Pa. C.S.A. § 2962, which provides as follows:

(a) Powers granted by statute.--With respect to the following subjects, the home rule charter shall not give any power or authority to the municipality contrary to or in limitation or enlargement of powers granted by statutes which are applicable to a class or classes of municipalities:

(1) The filing and collection of municipal tax claims or liens and the sale of real or personal property in satisfaction of them.

(2) The procedures in the exercise of the powers of eminent domain and the assessment of damages and benefits for property taken, injured or destroyed.

(3) Boundary changes.

(4) Regulation of public schools.

(5) The registration of electors and the conduct of elections.

(6) The fixing of subjects of taxation.

(7) The fixing of the rates of nonproperty or personal taxes levied upon nonresidents.

(8) The assessment of real or personal property and persons for taxation purposes.

(9) Defining or providing for the punishment of any felony or misdemeanor.

(10) Municipal planning under the act of July 31, 1968 (P.L. 805, No. 247),<sup>1</sup> known as the Pennsylvania Municipalities Planning Code.

(b) Taxing power.--Unless prohibited by the Constitution of Pennsylvania, the provisions of this subpart or any other statute or its home rule charter, a municipality which has adopted a home rule charter shall have the power and authority to enact and enforce local tax ordinances upon any subject of taxation granted by statute to the class of municipality of which it would be a member but for the adoption of a home rule charter at any rate of taxation determined by the governing body. No home rule municipality shall establish or levy a rate of taxation upon nonresidents which is greater than the rate which a municipality would have been authorized to levy on nonresidents but for the adoption of a home rule charter. The governing body shall not be subject to any limitation on the rates of taxation imposed upon residents.

(c) Prohibited powers.--A municipality shall not:

(1) Engage in any proprietary or private business except as authorized by statute.

(2) Exercise powers contrary to or in limitation or enlargement of powers granted by statutes which are applicable in every part of this Commonwealth.

(3) Be authorized to diminish the rights or privileges of any former municipal employee entitled to benefits or any present municipal employee in his pension or retirement system.

(4) Enact or promulgate any ordinance or regulation with respect to definitions, sanitation, safety, health, standards of identity or labeling pertaining to the manufacture, processing, storage, distribution and sale of any foods, goods or services subject to any Commonwealth statutes and regulations unless the municipal ordinance or regulation is uniform in all respects with the Commonwealth statutes and regulations thereunder. This paragraph does not affect the power of any municipality to enact and enforce ordinances relating to building

codes or any other safety, sanitation or health regulation pertaining thereto.

(5) Enact any provision inconsistent with any statute heretofore enacted prior to April 13, 1972, affecting the rights, benefits or working conditions of any employee of a political subdivision of this Commonwealth.

(d) Reduction of police force.--Notwithstanding any provision of this subpart or any other statute to the contrary, any municipality that is or was a city of the second class A may reduce its police force or its firefighting force for economic reasons, as determined by ordinance.

(e) Statutes of general application.--Statutes that are uniform and applicable in every part of this Commonwealth shall remain in effect and shall not be changed or modified by this subpart. Statutes shall supersede any municipal ordinance or resolution on the same subject.

(f) Regulation of business and employment.--A municipality which adopts a home rule charter shall not determine duties, responsibilities or requirements placed upon businesses, occupations and employers, including the duty to withhold, remit or report taxes or penalties levied or imposed upon them or upon persons in their employment, except as expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities. This subsection shall not be construed as a limitation in fixing rates of taxation on permissible subjects of taxation.

(g) Regulation of firearms.--A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.

(h) Levying taxes.--This section does not limit or take away any right of a municipality which adopts a home rule charter from levying any tax which it had the power to levy had it not adopted a home rule charter.

(i) Establishment of rates of taxation.--No provision of this subpart or any other statute shall limit a municipality which adopts a home rule charter from establishing its own rates of taxation upon all authorized subjects of taxation except those specified in subsection (a)(7).

(j) Retroactive fee increase prohibited.--A municipality which adopts a home rule charter may not retroactively increase any fee or charge for any municipal service which has been provided.

53 Pa. C.S.A. § 2962.

12. The Home Rule Charter Law supercedes other statutes which limit the rates of taxation that a Home Rule Municipality may impose on its residents.

13. “The governing body shall not be subject to any limitation on rates of taxation imposed upon residents.” 53 Pa. C.S.A. §2962(b). “No provision of this subpart or **any other statute** shall limit a municipality which adopts a home rule charter from establishing its own rates of taxation upon all authorized subjects of taxation except those specified in subsection (a)(7).”<sup>1</sup>

14. Act 511, by its plain language, seeks to limit the rates of taxation imposed by the municipalities to which it applies, as it states, “[i]f, during any fiscal year, it shall appear that the aggregate revenues from taxes levied and collected under the authority of this chapter will materially exceed the limitations imposed by this chapter, **the political subdivision shall forthwith reduce the rate or rates of such tax or taxes to stay within such limitations** as nearly as may be.” 53 P.S. § 6924.320(b) (emphasis added).

15. As Scranton is a home rule charter municipality, Act 511 cannot be interpreted to limit the City’s rates of taxation.

16. As such, Plaintiffs’ Complaint fails to allege a valid cause of action under Pennsylvania law and must be dismissed.

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<sup>1</sup>Subsection (a)(7) limits the power of a home rule charter municipality with regard to “[t]he fixing of rates of nonproperty or personal tax levied upon nonresidents.” 53 Pa. C.S.A. § 2962(a)(7).



**B. Failure to join a necessary party**

17. Pennsylvania Rule of Civil Procedure 1094 governs the parties to be named as defendants in an action in mandamus, providing as follows:

(a) When an action is commenced to compel performance of a public act or duty by a political subdivision of the Commonwealth, it shall be sufficient to name as defendants such officers in their official capacities as are concerned in the act or duty.

(b) When an action is commenced against a corporation or similar entity, it shall be joined as a defendant with the particular person or body of persons concerned in the performance of the act or duty.

(c) When a public act or duty is required to be performed by an executive or administrative department, by a departmental administrative board or commission or by an independent administrative board or commission of the Commonwealth or by a board or body of a political subdivision, it shall be sufficient to name the department, board, commission or body as the defendant without joining as a defendant the head of the department or the members of the board, commission or body.

Pa. R.C.P. 1094.

18. In the instant matter, the taxes of which Plaintiffs complain are enacted via legislation promulgated by the Mayor and enacted through a vote of City Council.

19. Further, the taxes are collected for by the City Tax Collector.

20. Finally, the taxes are accounted for by the City Treasurer.

21. Plaintiffs' Complaint fails to name any member of City Council, the City Tax Collector or the City Treasurer, or any of their respective offices, as parties Defendant in this action.

22. Pursuant to Pa. R.C.P. 1094, the members of City Council, the City Tax Collector or the City Treasurer, or their respective offices are necessary parties to this action, as the matters complained of concern the performance of their act or duty.

23. As Plaintiffs have failed to name necessary parties as Defendants in their Complaint, the Complaint must be dismissed.

**C. Failure to comply with law or rule of Court**

24. Plaintiffs' Complaint names as a part Defendant, David Bulzoni in his capacity as Business Administrator for the City of Scranton.

25. As indicated above, Pa. R.C.P. 1094(c) provides:

(c) When a public act or duty is required to be performed by an executive or administrative department, by a departmental administrative board or commission or by an independent administrative board or commission of the Commonwealth or by a board or body of a political subdivision, it shall be sufficient to name the department, board, commission or body as the defendant without joining as a defendant the head of the department or the members of the board, commission or body.

Pa. R.C.P. 1094(c).

26. Here, Bulzoni heads an executive department within the City of Scranton, namely, the Office of Business Administration.

27. Pursuant to Rule 1094(c), it is unnecessary for the Plaintiffs to name Bulzoni, the head of the department, as a party.

28. Accordingly, Plaintiffs' Complaint as to David Bulzoni must be dismissed.

**D. Insufficient specificity of pleading**

29. The pertinent question under Rule 1028(a)(3) is "whether the complaint is sufficiently clear to enable the defendant to prepare his defense," or "whether the plaintiff's complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense." Ammlung v. City of Chester, 224 Pa.Super. 47, 302 A.2d 491, 498 n. 36 (1973).

30. Plaintiffs' Complaint alleges that each Plaintiff is "an adult and competent individual residing in Scranton[.]" Exhibit A, paragraphs 1-8.

31. The Complaint further alleges that "[a]s residents of the City, each of the Plaintiffs were, are or may be subject to the various taxes levied by the City under Act 511." Exhibit A, para. 16.

32. The Complaint also alleges that "[a]s persons who conduct a trade or business in the City, each of the Plaintiffs were, are or may be subject to the various taxes levied by the City under Act 511." Exhibit A, para. 17.

33. A plaintiff, to meet that requirement of standing, must allege and prove an interest in the outcome of the suit which surpasses "the common interest of all citizens in procuring obedience to the law." Wm. Penn Parking Garage v. City of Pittsburgh, 464 Pa. 168, 192, 346 A.2d 269, 281 (1975).

34. Plaintiffs' Complaint alleges insufficient facts to prove an interest in the Plaintiffs in the outcome of the suit which surpasses the common interest in procuring obedience with the law, as the Complaint as written leaves open to question whether the Plaintiffs are, in fact, subject to the taxes at issue.

35. Plaintiffs' Complaint is insufficiently specific, as it indicates that the Plaintiffs "were, are, or may be subject to the various taxes levied by the City under Act 511."

36. Defendants are prejudiced in the preparation of their defense and in their ability to answer the Plaintiffs' Complaint, as the Complaint does not sufficiently plead facts which support a finding that the Plaintiffs have standing to assert their claims against the City.

37. Accordingly, Plaintiffs' Complaint must be dismissed for lack of specificity.

WHEREFORE, Defendants, The City of Scranton, Mayor William L. Courtwright, and Business Administrator David Bulzoni, respectfully request the entry of an Order dismissing Plaintiffs' Complaint.

Respectfully submitted,

Abrahamsen, Conaboy & Abrahamsen, P.C.

BY: 

\_\_\_\_\_  
Edwin A. Abrahamsen, Esquire  
Atty ID 23139

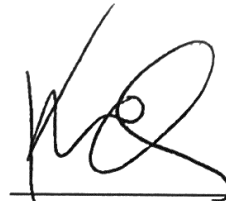
Kevin M. Conaboy, Esquire  
Atty ID 84384

1006 Pittston Ave.  
Scranton, PA 18505  
(570) 348-0200

**CERTIFICATE OF SERVICE**

I, Kevin M. Conaboy, Esquire, hereby certify that I have this 22 day of March, 2017 served a true and correct copy of the foregoing DEFENDANTS' PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT upon the following listed below, via United States Postal Service, postage prepaid.

John J. McGovern, Jr., Esquire  
321 Spruce Street, Suite 201  
Scranton, PA 18503

A handwritten signature in black ink, appearing to be 'K. Conaboy', written over a horizontal line.

Kevin M. Conaboy, Esquire



GARY ST. FLEUR, NICHOLAS  
GETTEL, CASEY DURKIN, DAMIAN  
BIANCERELLI, RICH JOHNSON,  
ETHAN GREEN, ANGELA GILGALLON  
and MICHELE MCGOVERN  
PLAINTIFFS

v.

THE CITY OF SCRANTON, MAYOR  
WILLIAM L. COURTRIGHT and  
BUSINESS ADMINISTRATOR DAVID  
BULZONI,  
DEFENDANTS

IN THE COURT OF COMMON PLEAS  
OF LACKAWANNA COUNTY

CIVIL DIVISION

2017-CV-

1403

**NOTICE TO DEFEND**

MAURIE B. KELLY  
LACKAWANNA COUNTY  
2017 MAR - 2 A 9:12  
CLERK OF  
JUDICIAL RECORDS  
CIVIL DIVISION

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICES SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**Pa. Lawyer Referral Service**

**Lackawanna Bar Association**

**338 N. Washington Avenue – 3<sup>rd</sup> Floor**

**Scranton, PA 18503**

**(570) 969-9600**

**Northern Pa. Legal Services, Inc.**

**33 North Main Street**

**Suite 200**

**Pittston, PA 18640**

**(570) 299-4100**

GARY ST. FLEUR, NICHOLAS  
GETTEL, CASEY DURKIN, DAMIAN  
BLANCERELLI, RICH JOHNSON,  
ETHAN GREEN, ANGELA GILGALLON  
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THE CITY OF SCRANTON, MAYOR  
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DEFENDANTS

IN THE COURT OF COMMON PLEAS  
OF LACKAWANNA COUNTY

CIVIL DIVISION

2017-CV-

1403

ACTION OF MANDAMUS

NOW COMES, Gary St. Fleur, Nicholas Gettel, Casey Durkin, Damian Biancerelli, Rich Johnson, Ethan Green, Angela Gilgallon and Michele McGovern (hereinafter collectively referred to as "Plaintiffs"), by and through their counsel John J. McGovern, Jr., Esquire, file the within Action of Mandamus, and in support thereof aver as follows:

**PARTIES**

1. Plaintiff, Gary St. Fleur, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
2. Plaintiff, Nicholas Gettel, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
3. Plaintiff, Casey Durkin, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
4. Plaintiff, Damian Biancerelli, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.

PAUL B. KELLY  
LACKAWANNA COUNTY  
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CIVIL DIVISION



5. Plaintiff, Rich Johnson, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
6. Plaintiff, Ethan Green, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
7. Plaintiff, Angela Gilgallon, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
8. Plaintiff, Michele McGovern, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
9. Defendant, the City of Scranton (the "City") is a duly incorporated City of the Class 2A, with offices at 340 North Washington Avenue, in the City of Scranton, County of Lackawanna, Commonwealth of Pennsylvania 18503.
10. Defendant, William L. Courtright is the Mayor of the City with an office in City Hall at 340 North Washington Avenue, in the City of Scranton, County of Lackawanna, Commonwealth of Pennsylvania 18503. Defendant Mayor Courtright is named in his official capacity in accordance with Pennsylvania Rule of Civil Procedure 1094(a).
11. Defendant, David Bulzoni is the Business Administrator of the City with an office in City Hall at 340 North Washington Avenue, in the City of Scranton, County of Lackawanna, Commonwealth of Pennsylvania 18503. Defendant Business Administrator Bulzoni is named in his official capacity in accordance with Pennsylvania Rule of Civil Procedure 1094(a).

#### **JURISDICTION and VENUE**

12. Jurisdiction in this Honorable Court is based on 53 P.S. § 6924.320(b) which states:

"If, during any fiscal year, it shall appear that the aggregate revenues from taxes levied and collected under the authority of this chapter will materially exceed the limitations imposed by this chapter, the political subdivision shall forthwith reduce the rate or rates of such tax or taxes to stay within such limitations as nearly as may be. **Any one or more persons liable for the payment of taxes levied and collected under the authority of this chapter shall have the right to complain to the court of common pleas of the county in an action of mandamus to compel compliance with the preceding provision of this subsection.** Tax moneys levied and collected in any fiscal year in excess of the limitations imposed by this chapter shall not be expended during such year, but shall be deposited in a separate account in the treasury of the political subdivision for expenditure in the following fiscal year. The rates of taxes imposed under this chapter for the following fiscal year shall be so fixed that the revenues thereby produced, together with the excess tax moneys on deposit as aforesaid, shall not exceed the limitations imposed by this chapter."

53 P.S. § 6924.320(b) (2016) (emphasis added).

13. Venue in this Honorable Court is based on Pennsylvania Rule of Civil Procedure

1092(c)(2).

#### STATUTES and FACTS

14. The preceding paragraphs are incorporated as if fully set forth at length herein.

15. The City levies various taxes under 53 P.S. § 6901 et. seq. (collectively hereinafter referred to as "Act 511.")

16. As residents of the City, each of the Plaintiffs were, are or may be subject to the various taxes levied by the City under Act 511.

17. As persons who conduct a trade or business in the City, each of the Plaintiffs were, are or may be subject to the various taxes levied by the City under Act 511.

18. According to 53 P.S. § 6924.320(a) of Act 511:

"The aggregate amount of all taxes imposed by any political subdivision under this section and in effect during any fiscal year shall not exceed an amount equal to the product obtained by multiplying the latest total market valuation of real estate in such political subdivision, as determined by the board for the assessment

and revision of taxes or any similar board established by the assessment laws which determines market values of real estate within the political subdivision, by twelve mills. In school districts of the second class, third class and fourth class and in any political subdivision within a county where no market values of real estate have been determined by the board for the assessment and revision of taxes, or any similar board, the aggregate amount of all taxes imposed under this section and in effect during any fiscal year shall not exceed an amount equal to the product obtained by multiplying the latest total market valuation of real estate in such school district, or other political subdivision, as certified by the State Tax Equalization Board, by twelve mills. In school districts of the third and fourth class, taxes imposed on sales involving the transfer of real property shall not be included in computing the aggregate amount of taxes for any fiscal year in which one hundred or more new homes or other major improvements on real estate were constructed in the school district.”

53 P.S. § 6924.320(a) (2016) (emphasis added).

19. The City is located within Lackawanna County, Pennsylvania.
20. The Lackawanna County Assessor’s Office maintains the real estate assessment valuations for real estate taxes within Lackawanna County including the City.
21. The Lackawanna County Assessor’s Office does NOT maintain the market valuation of real estate within the City.
22. The Pennsylvania State Tax Equalization Board maintains the total market valuation of real estate located within the City.
23. According to the Pennsylvania State Tax Equalization Board, the 2015 total market valuation of all property in the City was \$2,273,875,550.00.
24. The Pennsylvania State Tax Equalization Board has not released its 2016 or 2017 total market valuation of all the property in the City.
25. In calculating real estate taxes, one mill is equal to \$1.00 for every \$1,000.00 in value.

26. In calculating real estate taxes, 12 mills is equal to \$12.00 for every \$1,000.00 in value.
27. 12 mills multiplied by the Pennsylvania State Tax Equalization Board's total market valuation of \$2,273,875,550.00 for the City is approximately \$27,286,506.00.
28. Pursuant to 53 P.S. § 6924.320(a) the current aggregate amount of all Act 511 taxes the City can currently impose in a fiscal year cannot exceed \$27,286,506.00.
29. Pursuant to Page 11 of the City of Scranton, Financial Statements and Single Audit for the year Ended December 31, 2015, the City collected \$34,477,500.00 in Act 511 taxes."<sup>1</sup>
30. Pursuant to Revenues Section of the City of Scranton 2017 Operating Budget, the City budgeted \$36,792,500.00 in "Total Local Taxes (Act 511)" for its fiscal year 2016.
31. Pursuant to Revenues Section of the City of Scranton 2017 Operating Budget, the City budgeted \$38,045,091.99 in "Total Local Taxes (Act 511)" for its fiscal year 2016.
32. \$36,792,500.00 is greater than \$27,286,506.00.
33. \$38,045,091.99 is greater than \$27,286,506.00.
34. When a municipality exceeds the 53 P.S. § 6924.320(a) cap, statutory law specifically directs what the municipality must do. 53 P.S. § 6924.320(b) states:
- "If, during any fiscal year, it shall appear that the aggregate revenues from taxes levied and collected under the authority of this chapter will materially exceed the limitations imposed by this chapter, the political subdivision shall forthwith reduce the rate or rates of such tax or taxes to stay within such limitations as nearly as may be. Any one or more persons liable for the payment of taxes levied and collected under the authority of this chapter shall have the right to complain to the court of common pleas of the county in an action of mandamus to compel compliance with the preceding provision of this subsection. Tax moneys levied and collected in any fiscal year in excess of the limitations imposed by this chapter shall not be expended during such year, but shall be deposited in a separate account in the treasury of the political subdivision**

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<sup>1</sup> The last available audit is fiscal year 2015.

for expenditure in the following fiscal year. The rates of taxes imposed under this chapter for the following fiscal year shall be so fixed that the revenues thereby produced, together with the excess tax moneys on deposit as aforesaid, shall not exceed the limitations imposed by this chapter.”

53 P.S. § 6924.320(b) (2016) (emphasis added).

35. Plaintiffs notified the Defendants about the 53 P.S. § 6924.320(a) cap when Plaintiffs objected to the City’s request to increase its increase its 2017 Local Services Tax in the Court of Common Pleas at case number 2016-CV-7123.
36. Plaintiffs notified the Defendants about their obligations under 53 P.S. § 6924.320(b) when Plaintiffs objected to the City’s request to increase its 2017 Local Services Tax in the Court of Common Pleas at case number 2016-CV-7123.
37. The Defendants responded to Plaintiffs’ notification and objections by proceeding with their request and obtaining approval to increase the 2017 Local Services Tax despite knowledge of the cap and Plaintiffs’ objections.
38. When a municipality exceeds the 53 P.S. § 6924.320(a) cap, statutory law specifically directs what a Court of Common Pleas must order. 53 P.S. § 6924.320(b) states:

“If, during any fiscal year, it shall appear that the aggregate revenues from taxes levied and collected under the authority of this chapter will materially exceed the limitations imposed by this chapter, the political subdivision shall forthwith reduce the rate or rates of such tax or taxes to stay within such limitations as nearly as may be. **Any one or more persons liable for the payment of taxes levied and collected under the authority of this chapter shall have the right to complain to the court of common pleas of the county in an action of mandamus to compel compliance with the preceding provision of this subsection.** Tax moneys levied and collected in any fiscal year in excess of the limitations imposed by this chapter shall not be expended during such year, but shall be deposited in a separate account in the treasury of the political subdivision for expenditure in the following fiscal year. The rates of taxes imposed under this chapter for the following fiscal year shall be so fixed that the revenues thereby produced, together with the excess tax moneys on deposit as aforesaid, shall not exceed the limitations imposed by this chapter.”

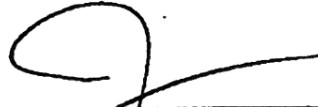
53 P.S. § 6924.320(b) (2016) (emphasis added).

39. The Defendants' refusal to acknowledge and follow the statutory cap under 53 P.S. § 6924.320(a) of Act 511 subjects the Defendants as well as the general public to illegal, excessive and unreasonable extractions by the City.

40. As such, the Plaintiffs request that this Honorable Court order: a) the City/Defendants forthwith reduce the rate or rates of such tax or taxes to stay within such 53 P.S. §6924.320(a) limitations as nearly as may be; b) deposit any Act 511 taxes collected in excess of the \$27,286,506.00 cap into a separate account for expenditure in fiscal year 2018; and c) adjust its Act 511 tax rates for fiscal year 2018 so that those Act 511 taxes collected, together with the excess money set aside for fiscal year 2018, not exceed the City's 2018 Act 511 aggregate cap.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court grant the Mandamus so desired.

Respectfully Submitted:

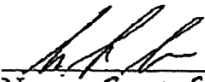


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John J. McGovern, Jr., Esquire  
321 Spruce Street  
Suite 201  
Scranton, PA 18503

VERIFICATION

I, Gary St Fleur, hereby verify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 related to unsworn falsification to authorities.

  
Name: Gary St Fleur  
Address: 1649 Wyoming Apt #3  
Scranton, PA 18509

VERIFICATION

I, CASEY DURKAN, hereby verify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 related to unsworn falsification to authorities.

Joseph J. Durkan

Name:

Address: 1200  $\frac{1}{2}$  DARTMOUTH ST.  
SCRANTON PA 18504



VERIFICATION

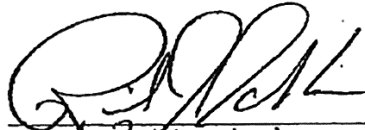
I, Damian Blancarelli, hereby verify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 related to unsworn falsification to authorities.



Name: Damian Blancarelli  
Address: 1649 Wyoming Ave  
Scranton Pa 18509

VERIFICATION

I, Rich Johnson hereby verify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 related to unsworn falsification to authorities.



Name: Rich Johnson

Address:

630 N. Main Ave  
Scranton, PA  
18504

VERIFICATION

I, Ethan Green, hereby verify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 related to unsworn falsification to authorities.

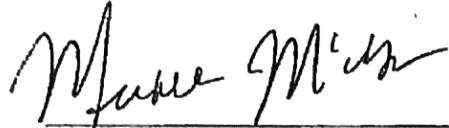
Ethan Green

Name: Ethan Green

Address: 1404 Ash St. Apt B  
Scranton PA 18510

VERIFICATION

I, MICHELE MCGOVERN, hereby verify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 related to unsworn falsification to authorities.

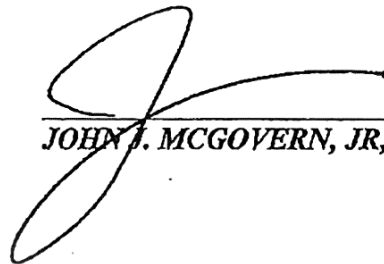


Address: SCRANTON, PA

1216 Oregon St  
Scranton 18504

**VERIFICATION**

I, JOHN J. MCGOVERN, JR., Esquire, hereby verify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief, and it is based upon my discussions and conferences with the Plaintiff(s). It is hereby further verified that the Plaintiff(s) is unavailable for signature within the time allowed for the filing of this pleading.



JOHN J. MCGOVERN, JR., Esquire