

CAUSE NO. _____

1620 HAWTHORNE LTD.,
ON BEHALF OF ITSELF AND
ON BEHALF OF ALL OTHER
PERSONS OR ENTITIES
SIMILARLY SITUATED
Plaintiff

vs.

MONTROSE MANAGEMENT
DISTRICT, THE MONTROSE
MANAGEMENT DISTRICT BOARD
OF DIRECTORS, CONSISTING OF
THE FOLLOWING: CLAUDE
WYNN, CHAIRMAN, POSITION 1;
TAMMI WALLACE, POSITION 2;
RANDY MITCHMORE, VICE-
CHAIRMAN, POSITION 3; LANE
LLEWELLYN, SECRETARY,
POSITION 5; ROBERT JARA,
POSITION 6; RYAN HALEY,
POSITION 7; STEPHEN MADDEN,
POSITION 8; KATHY HUBBARD,
TREASURER, POSITION 9;
MICHAEL GROVER, POSITION 10;
ELLYN WULFE, POSITION 11;
BRAD NAGAR, ASSISTANT
SECRETARY, POSITION 12; AND
TODD EDWARDS, POSITION 14.
Defendants.

§ IN THE DISTRICT COURT

§ HARRIS COUNTY, TEXAS

§ _____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION FOR REFUND OF ILLEGALLY
ASSESSED AND INVOLUNTARILY PAID MONTROSE MANAGEMENT
DISTRICT CHARGES, REQUEST FOR CLASS CERTIFICATION AND
DESIGNATION OF CLASS REPRESENTATIVE AND CLASS COUNSEL**

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff, 1620 Hawthorne, Ltd., (hereinafter “Hawthorne”), hereby files this suit alleging claims and causes of action for Refund of Illegally Assessed and Involuntarily Paid Montrose Management District Charges, Request for Class Certification and Designation of Class Representative and Class Counsel, against Defendant Montrose Management District (hereinafter “MMD” or the “District”), and also against Defendants Claude Wynn, Chairman, Position 1; Tammi Wallace, Position 2; Randy Mitchmore, Vice Chairman, Position 3; Lane Llewellyn, Secretary, Position 5; Robert Jara, Position 6; Ryan Haley, Position 7; Stephen L. Madden, Position 8; Kathy Hubbard, Treasurer, Position 9; Michael Grover, Position 10; Ellyn Wulfe, Position 11; Brad Nagar, Assistant Secretary, Position 12; and Todd Edwards, Position 14 (these Defendants will be collectively referred to herein as the “Ultra Vires Board Defendants,” and are sued solely in their respective official capacities), and in support hereof, would show as follows:

I.
PARTIES/SERVICE

1. Plaintiff is a Texas Limited Partnership which owns commercial real property within the boundaries of Defendant. Plaintiff has its principal place of business in Harris County, Texas.

2. Defendant Montrose Management District is a Municipal Management District created by the Texas Legislature and subject to the provisions

of Chapter 375 of the Local Government Code. The address for service is: Attn: David Hawes at Hawes, Hill & Calderon LLP, 10103 Fondren Rd., Suite 300, Houston, TX 77096.

3. Defendants Claude Wynn, Chairman, Position 1; Tammi Wallace, Position 2; Randy Mitchmore, Vice Chairman, Position 3; Lane Llewellyn, Secretary, Position 5; Robert Jara, Position 6; Ryan Haley, Position 7; Stephen L. Madden, Position 8; Kathy Hubbard, Treasurer, Position 9; Michael Grover, Position 10; Ellyn Wulfe, Position 11; Brad Nagar, Assistant Secretary, Position 12; and Todd Edwards, Position 14 are all members of the Montrose Management District Board of Directors (“Ultra Vires Board Defendants”). The Ultra Vires Board Defendants are sued in each of their respective representative capacities only, in order to comply with the Texas Supreme Court’s requirements for necessary and proper parties in an ultra vires suit. The address for service for each of these Board Defendants is the same: Attn: David Hawes at Hawes, Hill & Calderon LLP, 10103 Fondren Rd., Suite 300, Houston, TX 77096.

II.
SUMMARY OF THE CONTROVERSY AND
RELIEF SOUGHT BY THE PLAINTIFF

4. Plaintiff files this suit because the MMD and/or the Ultra Vires Board Defendants have unconstitutionally¹ and illegally assessed and collected millions

¹ Notice has been provided to the Attorney General of Texas.

of dollars from 2011 to 2016 (the “Void MMD Assessments”) from thousands of innocent and law-abiding Houston taxpayers who are landowners within the geographic boundaries of the District pursuant to a void West Montrose Management District Assessment Petition (the “Void MMD Assessment Petition”) and a void West Montrose Management District Order dated January 10, 2011 (the “Void MMD Assessment Order”). Despite the filing of a previous lawsuit in the 333rd Judicial Civil District Court on this exact same issue², and despite that sister Trial Court’s findings that all of the MMD assessments which derived collected from 2011-2016 are illegal, void, paid under duress, and must be reimbursed to those persons or entities who paid them, the District and each of the Ultra Vires Board Defendants arrogantly continue to ignore these findings and instead engage in this unconstitutional and illegal conduct until the present time. Because the District acts by and through its Board, and because the Board Defendants are allowing the District to engage in unauthorized, illegal and unconstitutional conduct, each Board Defendant has and is currently engaged in ultra vires acts which are not legally permitted or constitutionally authorized, and is hereby sued in their official capacities for that reason.

5. By this suit, Plaintiff seeks reimbursement of all assessed and collected but unexpended amounts of the Void MMD Assessments, on behalf of

² Cause No. 2012-20396; *1620 Hawthorne Ltd. v. Montrose Management District*; In the 333rd Judicial District Court in Harris County, Texas.

itself, and on behalf of all other persons and entities that paid these illegal charges. Plaintiff also seeks reimbursement of all assessed and collected but expended amounts of the Void MMD Assessments, on behalf of itself, and on behalf of all other persons and entities that paid these illegal charges.

6. Plaintiff also seeks that a class be certified, that Plaintiff be selected as class representative, and that Plaintiff's counsel be selected as class counsel.

III. JURISDICTION, VENUE AND DISCOVERY

7. Jurisdiction in this action is proper and maintainable in Harris County, Texas. Venue in this action is proper and maintainable in Harris County, Texas under Civil Practice and Remedies Code § 15.002(a) because the events or omissions giving rise to the claim occurred in Harris County, Texas. Specifically, this lawsuit involves whether the Void MMD Assessments should be reimbursed to those persons and entities who paid same. Furthermore, the Defendants' illegal assessment, collection and expenditure of Void MMD Assessments, from 2011 until the present time, occurred in Harris County, Texas. Additionally, the creation of the Void MMD Assessment Petition, as well as the Void MMD Assessment Order, dated January 10, 2011, occurred in Harris County, Texas. Jurisdiction in this action is proper and maintainable in Harris County, Texas. Discovery in this matter is intended to be conducted under Level 3 in accordance with T.R.C.P. 190.3. Pursuant to Tex. R. Civ. P. 47(c)(5), Plaintiffs seek damages in an amount

within the jurisdiction of this Court, including non-monetary declaratory relief, which includes ancillary and injunctive relief provided by law, and monetary relief greatly in excess of \$1 million.

IV. STANDING

8. Plaintiff Hawthorne has standing to assert the claims and causes of action in this case, not only for itself, but also for all other persons or entities similarly situated. Hawthorne has been a named party in related litigation in Cause No. 2012-20396; *1620 Hawthorne Ltd. v. Montrose Management District*; In the 333rd Judicial District Court in Harris County, Texas. (hereinafter referred to as the “2012 MMD Lawsuit”), which is the sole and exclusive reason why the current class action is now available to reimburse every payor for their pro rata payment of the Void MMD Assessments. More specifically, Hawthorne and the undersigned counsel filed the 2012 MMD Lawsuit in April of 2012 challenging the legality of the District’s assessments. On November 28, 2016, Hawthorne won the case, and, after a bench trial on the merits, the Trial Court entered findings of fact and conclusions of law in favor of Plaintiff, finding that the District’s assessments from 2011 to 2017 were illegal and void and should be reimbursed to those persons and entities which had paid them. A true and correct copy of these findings are

attached hereto as Exhibit 1³. Additionally, the Trial Court found that the payments were made under duress, which is an important element to prove up a reimbursement claim.

9. Plaintiff has standing to bring various claims against all of the Defendants. With respect to Plaintiff's claims for reimbursement against the Defendants that MMD's unspent tax assessments are illegal and/or unconstitutional, Plaintiff asserts that it is a taxpayer within the MMD. 1620 Hawthorne Ltd. has been assessed by MMD for each of the years and has paid those assessments by MMD. These specific assessments, as well as all other assessed and collected tax assessments, are used by MMD for its operations and activities.

V. FACTS

10. On June 17, 2005, the Texas Legislature enacted Chapter 3843 of the Texas Special District Local Laws Code. By this legislation, the Texas Legislature created a special district called the Harris County Improvement District no. 6, commonly referred to locally as the East Montrose Management District. On June 19, 2009, the Texas Legislature similarly enacted Chapter 3878 of the Texas

³ In reaction to the Trial Court's findings, MMD filed a literal plethora of motions, responses, objections and legal argument in an effort to persuade the Judge to withdraw his findings. After a spirited oral hearing on December 29, 2016, the Trial Court orally announced he would not withdraw or modify his findings. Thus, on December 30th, the Trial Court entered an order expressly reaffirming his prior findings of fact and conclusions of law.

Special District Local Laws Code. By this legislation, the Texas Legislature created a special district called the Harris County Improvement District no. 11, commonly referred to locally as the West Montrose Management District. On February 15, 2011, the East Montrose Management District and the West Montrose Management District were consolidated into one combined unit, commonly referred to locally as the Montrose Management District (hereafter referred to as either “the District” or “MMD”). Plaintiff owns commercial property within the District and has been illegally assessed and/or taxed by the District.

11. The purpose of the Montrose Management District (“MMD”) is to provide services and improvements to all property owners within the improvement district by assessing solely the owners of the commercial properties contained within its boundaries.

12. The property subject to MMD assessments was the land and improvements of the commercial property owners within the boundaries of the District. Properties exempt from the assessments were single-family detached residential, duplexes, triplexes, quadraplexes, condominiums, municipalities, counties, other political subdivisions, entities exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, public utilities, and recreational property or scenic use property the meets the requirements of Section 375.163, Texas Local Government Code.

13. Thus, only a subset percentage of the actual owners of real property within the MMD will bear the brunt of the assessment that benefits everyone.

14. MMD has no legal authority whatsoever to assess any property owners other than commercial property owners.

15. Section 3878.204(2) of the Texas Special District Local Laws Code empowered that entity to assess or finance a service or improvement project so long as a petition of “at least 25 owners of real property in the district that will be subject to the assessment, if more than 25 persons own real property subject to the assessment in the district according to the most recent certified tax appraisal roll for Harris County” (the “Assessment Petition”).

16. The Void MMD Assessment Petition was signed by 26 owners of real property located within the MMD, including Bailey E. Moore, Mitchmore Living Trust, and Michael M. Carter.

17. MMD’s Assessment Roll, did not list the real properties owned by Bailey E. Moore, Mitchmore Living Trust, or Michael M. Carter.

18. MMD’s Void Assessment Order, dated January 10, 2011, approved the Assessment Roll, but did not include the real properties of Bailey E. Moore, Mitchmore Living Trust, or Michael M. Carter.

19. On January 10, 2011, MMD levied seven annual assessments for the years 2010 through 2017, solely against all real properties shown on the MMD Assessment Roll.

20. MMD's Void Assessment Order, dated January 10, 2011, did not levy any assessments for the real properties owned by Bailey E. Moore, Mitchmore Living Trust, or Michael M. Carter.

21. MMD did not levy any assessments on the real properties owned by Bailey E. Moore, Mitchmore Living Trust, or Michael M. Carter prior to the summer of 2012.

22. MMD did not levy any assessments on other real properties owned by persons or entities that received a residential homestead exemption until 2015.

23. MMD did not attempt to retroactively assess any other real properties owned by persons or entities which were assessed in 2015.

24. MMD did not levy any assessments on the real properties owned by Bailey E. Moore, Mitchmore Living Trust, or Michael M. Carter in calendar years 2010 and 2011.

25. No assessments were paid by Bailey E. Moore, Mitchmore Living Trust, or Michael M. Carter during calendar years 2010 or 2011.

26. Bailey E. Moore's real property has a HCAD number of 044-184-000-0055. At the time MMD levied seven annual assessments for the years 2010

through 2017, Bailey Moore's real property was a residential property. MMD did not include this real property on the Assessment Roll because it was listed as residential property.

27. Mitchmore Living Trust's real property has a HCAD number of 054-234-000-0015. At the time MMD levied seven annual assessments for the years 2010 through 2017, Randy Mitchmore operated a dental business from this property, but he also claimed a residential homestead exemption. MMD did not include this property on the Assessment Roll because of the residential homestead exemption on the real property.

28. Michael M. Carter's real property has a HCAD number of 054-234-000-0012. At the time MMD levied seven annual assessments for the years 2010 through 2017, Michael Carter operated a funeral business from this property, but he also claimed a residential homestead exemption. MMD did not include this property on the Assessment Roll because of the residential homestead exemption on the real property.

29. In its Void MMD Assessment Order dated January 10, 2011, MMD authorized itself to supplement its Assessment Roll in years 2011 through 2017 by adding new improvements or substantially rehabilitated improvements (collectively, "Improvements") under construction on January 1, 2010, or constructed in the District after January 1, 2010.

30. In its Order dated January 10, 2011, MMD also authorized itself to levy assessments in years 2011 through 2017 on new improvements or substantially rehabilitated improvements (collectively, “Improvements”) under construction on January 1, 2010, or constructed in the District after January 1, 2010.

31. No Improvements have been made to real property owned by Bailey E. Moore, Mitchmore Living Trust, and Michael M. Carter.

32. No Improvements have been made to real property owned by any persons or entities that were assessed in 2015 and listed on the Supplemental Assessment Roll.

33. MMD did not levy any assessments on any real properties not included in the Assessment Roll in its Order dated January 10, 2011.

34. MMD did not levy any assessments on any real properties not included in the Assessment Roll in any Order subsequent to MMD’s Order dated January 10, 2011.

35. In the summer of 2012, MMD attempted to retroactively assess real property owned by Bailey E. Moore, Mitchmore Living Trust, and Michael M. Carter, for 2010 and 2011. Those retroactive assessments were paid in the summer of 2012 by Bailey E. Moore, Mitchmore Living Trust, and Michael M. Carter.

These attempts to “cure” were only initiated after Plaintiff had filed suit and identified that the Assessment Petition was void and incurable.

36. Although there were other properties owned within the District containing a residential homestead exemption which included commercial activities, MMD did not attempt to assess any of those other properties in the summer of 2012, and did not attempt to retroactively assess those properties.

37. MMD has assessed and collected an amount that is no less than \$6,589,092.70, the entirety of which derived its legal authority from the Void MMD Assessment Petition.

38. After conducting a final trial on the merits in the 2012 MMD Lawsuit, the Trial Court made the following conclusions of law:

- i. The assessments paid by owners of real property within the District were not made voluntarily, but were paid under duress;
- ii. Failure to pay assessments when due could subject delinquent payers to interest, penalties, additional penalties, liens, costs and attorneys’ fees.
- iii. The West Montrose Management District’s Assessment Petition was not in compliance with state law and the total amount of the assessment is void as a matter of law.
- iv. Irrespective of whether MMD had the legal authority to levy assessments on the real properties owned by Bailey E. Moore, Mitchmore Living Trust, and Michael M. Carter, the fact remains that MMD did not do so. That being the case, MMD failed to obtain an Assessment Petition whereby at least 25 signers met the requirement that their properties “will be

subject” to the assessments imposed. Accordingly, none of the levied assessments were valid and are void as a matter of law.

- v. MMD must reimburse its unlawful assessment to those who paid them.

VI.

WAIVER OF GOVERNMENTAL IMMUNITY

39. Plaintiff incorporates all previous allegations plead above. Plaintiff asserts that no governmental immunity exists for a claim brought under the “ultra vires” exception to sovereign and/or governmental immunity. As explained in *City of El Paso v. Heinrich*, 284 S.W.3d 366, 369-76 (Tex. 2009), the ultra vires exception allows a plaintiff to sue a state official in his official capacity, thereby binding the State through its agent, for prospective declaratory relief to restrain the official from violating statutory or constitutional provisions. Sovereign and/or governmental immunity does not bar such a suit because, in concept, acts of state officials that are not lawfully authorized are not considered to be acts of the State. Thus, the remedy of compelling such officials to comply with the law, while binding on the State, does not attempt to exert control over the State, but instead attempts to reassert the control of the State. It is for this reason that Plaintiff has sued the Board Defendants in their respective official capacities. The acts of these Board Defendants constitute ultra vires acts, in that each Board Member has acted without legal authority in carrying out their duties in permitting the illegal assessment, collection and expenditure of Void MMD Assessments, in acting

pursuant to a Void MMD Assessment Petition, in passing an Order on January 10, 2011 imposing invalid, illegal and void assessments, in ignoring Plaintiff's 2012 MMD Lawsuit, in continuing to assess, collect and expend Void MMD Assessments even after the Trial Court's findings of fact and conclusions of law in the previous 2012 trial of the MMD Lawsuit, and in passing budgets for FY 2011 to FY 2017 which include Void MMD Assessments.

40. In addition, the Texas Declaratory Judgments Act contains a waiver of immunity from suit. Plaintiff asserts claims under this Act against each of the Defendants. With respect to the District, this entity is a necessary party to Plaintiff's claim for declaratory relief that no Defendant has any statutory authority or constitutional authority to pass budgets and/or assess, collect, or spend public funds derived from the Void MMD Assessments. Accordingly, governmental immunity does not preclude prospective equitable remedies in official-capacity suits against government actors who have violated statutory and constitutional provisions, by acting without legal authority, and by failing to perform a purely ministerial act. *Heinrich*, 284 S.W.3d at 372-73. Of significance, suits to require state officials to comply with the law and the constitution are not prohibited, even if a declaration to that effect compels the payment of money. Thus, to the extent this Court rules that neither the City of Houston nor its officials have the legal authority to spend previously-collected Illegal Rain Tax fees or other public

monies for the reasons asserted herein, and assuming such monies remain unspent; such monies should be reimbursed to the taxpayers who paid them.

41. In addition, the Texas Declaratory Judgments Act contains a waiver of immunity from suit. Plaintiff asserts claims under this Act against each of the Defendants. With respect to Defendant MMD, this entity is a necessary party to Plaintiff's claim for injunctive relief that MMD does not have any statutory authority or constitutional authority to assess, collect or spend any monies derived from the Void MMD Assessment Petition, as well as a necessary party to Plaintiff's claim for reimbursement of all Void MMD Assessments. Thus, immunity from suit is waived. Accordingly, governmental immunity does not preclude prospective equitable remedies in official-capacity suits against government actors who have violated statutory and constitutional provisions, by acting without legal authority, and by failing to perform a purely ministerial act. *Heinrich*, 284 S.W.3d at 372-73. Of significance, suits to require state officials to comply with the law and the constitution are not prohibited, even if a declaration to that effect compels the payment of money.

VII. CAUSES OF ACTION

A. CLAIM FOR REIMBURSEMENT OF VOID ASSESSMENTS

42. For all of the foregoing reasons, Plaintiff seeks reimbursement of all

Void MMD Assessments. Texas law is clear that one who pays under duress a penalty, fee, tax or other amount to a State, local authority or governmental unit that is illegal or unlawful is entitled to bring an action against such governmental entity for reimbursement of such illegal or invalid amount assessed by the state, local authority, or governmental unit. See *Camacho v. Samaniego*, 831 S.W.2d 804, 815 (Tex. 1992) (Supreme Court authorizing cause of action to collect illegal bond fees paid); *Austin National Bank v. Sheppard*, 123 Tex. 272, 71 S.W.2d 242, 246 (1934) (acknowledging right of taxpayer to maintain action to recover payment of taxes illegally extracted, even where taxes had already been paid, where taxes paid under duress).

43. A person who pays government fees and taxes under duress has a valid claim for their repayment. *Union Cent. Life Ins. v. Mann*, 158 S.W.2d 477, 479 (Tex. 1941); *Nabisco*, 135 S.W.2d at 692-93; *Austin Nat'l Bank*, 71 S.W.2d at 246. Reimbursement of illegal fees and taxes is allowed, in essence, when the public entity compels compliance with a void law and subjects the person to punishment if he refuses or fails to comply. *State v. Akin Prods. Co.*, 286 S.W.2d 110, 111-12 (Tex. 1956); *see also In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 758 (Tex. 2001). Texas Courts have applied these rules to the imposition of illegal fees as well as illegal taxes, holding that a party may seek reimbursement of illegal

license fees paid under duress. *Akin Prods. Co.*, 286 S.W.2d at 111-12; *Crow v. City of Corpus Christi*, 209 S.W.2d 922, 925 (Tex. 1948).

44. Plaintiff Hawthorne has always, from the inception of the assessment, until the present time, paid the Void MMD Assessments under duress, knowing that late payment could and would result in late charges for interest, penalties, liens, costs and attorneys' fees. Under those circumstances, Plaintiff Hawthorne had (and continues to have) no choice but to continuing paying the Void MMD Assessments. *See, e.g., Highland Church of Christ v. Powell*, 640 S.W.2d 235, 237 (Tex. 1982) (finding property tax payment involuntary as statute provided for penalties and interest); *State v. Akin Prods. Co.*, 286 S.W.2d 110, 111-12 (Tex. 1956) (same); *Nat'l Biscuit Co.*, 135 S.W.2d at 691 (same).

B. TAKINGS CLAUSE OF THE 5TH AMENDMENT TO THE U.S. CONSTITUTION

45. Plaintiff incorporates all of the allegations contained in the previous paragraphs of this suit.

46. The enactment of the Void MMD Assessments, as well as the assessment, collection and expenditure of any and all of the Void MMD Assessments, substantially deprived Plaintiff of its personal property without due process of law in violation of the Takings Clause of the 5th Amendment to the United States Constitution.

C. TAKINGS CLAUSE OF ARTICLE I, SECTION 17 OF THE

TEXAS CONSTITUTION

47. Plaintiff incorporates all of the allegations contained in the previous paragraphs of this suit.

48. The enactment of the Void MMD Assessments, as well as the assessment, collection and expenditure of any and all Void MMD Assessments, substantially deprived Plaintiff of its personal property without due process of law in violation of the Takings Clause of the Texas Constitution.

D. DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE U.S. CONSTITUTION

49. Plaintiff incorporates all of the allegations contained in the previous paragraphs of this suit.

50. The enactment of the Void MMD Assessments, as well as the assessment, collection and expenditure of any and all Void MMD Assessments, substantially deprived Plaintiff of its liberty and property interests without due process of law in violation of the Due Process Clause of the 14th Amendment to the United States Constitution.

E. DUE COURSE OF LAW PROVISION OF ARTICLE I, SECTION 19 OF THE TEXAS CONSTITUTION

51. Plaintiff incorporates all of the allegations contained in the previous paragraphs of this suit.

52. The enactment of the Void MMD Assessments, as well as the assessment, collection and expenditure of any and all Void MMD Assessments, substantially deprived Plaintiff of its liberty and property interests without due course of law in violation of the Due Course of Law Provision Texas Constitution.

VIII. **CLASS ACTION**

53. Plaintiff seeks this lawsuit to be certified as a class action pursuant to Rule 42 of the Texas Rules of Civil Procedure. The persons in the proposed class—all payers of the Void MMD Assessments—are so numerous that joinder of all members is impracticable. The questions of law and fact are common to the class, the claims of the Plaintiff are typical of the claims of the class, and the Plaintiff will fairly and adequately protect the interests of the class. Plaintiff wants to serve as the Class Representative, is willing to pay all costs of notice and litigation, has no interest adverse to other members of the class, and has suffered the same harm as others in the class.

54. A class should also be certified because the prosecution of separate actions by individual members of the class would create a risk of: (1) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, as well as the fact that (2) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other

members not parties to the adjudications or substantially impair or impede their ability to protect their interests. Moreover, the Defendants have acted or refuse to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. Further, the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The fact of the matter is that: (A) there is no interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by Hawthorne and its attorney make clear that certification of the class is prudent and desirable; (C) it is desirable to concentrate the litigation of the claims in one particular forum; and it will not be (D) difficult to manage a class action of the type sought herein.

55. Andy Taylor and Andy Taylor & Associates, P.C., requests to be appointed as Class Counsel. Andy Taylor is an expert in this area of the law and is the same lawyer who successfully won 2012 litigation referred to herein. He also has extensive experience in prosecuting actions against the government, including these Defendants.

IX. **CONCLUSION**

56. For the reasons detailed above, Plaintiff respectfully requests that upon final hearing, this Court declare that the Void MMD Assessments must be reimbursed to those who paid them. Moreover, Plaintiff seeks the following:

- a. Reimbursement of all assessed and collected Void MMD Assessments, whether imposed by declaratory, injunctive, or ancillary relief or otherwise;
- b. Liability and damage findings for all constitutional claims brought herein;
- c. Certification of a class;
- d. Designation of Plaintiff Hawthorne as the Class Representative;
- e. Designation of Plaintiff Hawthorne's counsel as Class Counsel;
- f. Monetary damages;
- g. Equitable, just, reasonable and necessary attorneys' fees;
- h. All costs of suit; and
- i. All other and further relief to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

ANDY TAYLOR & ASSOCIATES, P.C.

By: /s/Andy Taylor

ANDY TAYLOR

State Bar No. 19727600

2628 Highway 36S, #288

Brenham, Texas 77833

Tel: (713) 222-1817

Fax: (713) 222-1855

ataylor@andytaylorlaw.com

ATTORNEY FOR PLAINTIFF