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BRETT MANDEL, et al.,	:	COURT OF COMMON PLEAS
Plaintiffs	:	PHILADELPHIA COUNTY
	:	
v.	:	
	:	January Term, 2011
CITY OF PHILADELPHIA,	:	
Defendant	:	No. 3848

AMENDED COMPLAINT—CIVIL ACTION
(EQUITY)

Plaintiffs, by their undersigned counsel, hereby file this Amended Complaint in Equity, for Declaratory Judgment, Injunctive relief and Mandamus relief, and, in support thereof, allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs request the assistance of the Court in order to adopt and implement a real property assessment system for the City of Philadelphia (the “City”) that is operated in accordance with the law. Judicial intervention is necessitated by the City’s longstanding and ongoing failure to address or correct the known inequities of its real property assessment system and practices, which has resulted in an arbitrary and discriminatory scheme of real property taxation. The scheme continues to be carried out and imposed upon thousands of property owners in a manner that is unconstitutional and otherwise illegal.

2. The City taxes real property based upon its assessed value. For years, the City’s elected decision makers and other senior policy makers publicly decried the City’s faulty system

for assessing the value of real property. At the same time, through their actions and omissions on behalf of the City, they knowingly permitted the dysfunctional and illegal system to become worse. The City's decision makers have failed and refused to take the steps necessary to implement assessment practices that are fair, accurate, transparent or legal.

3. Despite the endemic flaws, the City continues to collect taxes under a system that remains, in the words of its current Mayor, "broken." The publicly-announced steps taken by the City are insufficient to correct the serious and continuing constitutional or statutory deficiencies. Moreover, in utter disregard of the foreseeable disproportionate effect of its actions, the City recently has deliberately *increased* the existing inequities by freezing them in place with a "moratorium," and increasing property taxes by 9.9 percent. The City also announced a tripling of the number of tax delinquent properties the City sends to sheriff sale, but it has failed to take any steps to determine the portion of the underlying tax bills that are the result of historical and ongoing overassessment. Whatever hopes the public pinned on the recent reorganization of the assessment bureaucracy, the City's new Office of Assessment's accomplishments in fixing the system, if any, are entirely hidden. The Court's intervention is therefore necessary and appropriate to remedy the continuing illegal assessment policies and practices that show no sign of remediation or abatement.

The Parties

4. Plaintiff Brett Mandel resides at and owns residential real estate situated within the City and County of Philadelphia at 2303 Lombard Street, Philadelphia, Pennsylvania 19146.

5. Plaintiff Lisa Parsley resides at and owns residential real estate situated within the City and County of Philadelphia at 2327 St. Albans Street, Philadelphia, Pennsylvania 19146.

6. Plaintiff Grace D'Agostino resides at and owns residential real estate situated within the City and County of Philadelphia at 1003 Dickinson Street, Philadelphia, Pennsylvania 19147.

7. Plaintiff Joanne Bursich resides at and owns residential real estate situated within the City and County of Philadelphia at 1011 Carpenter Street, Philadelphia, Pennsylvania 19147.

8. Plaintiff Christina Bradley resides at and owns residential real estate situated within the City and County of Philadelphia at 801 N. Capitol Street, Philadelphia, Pennsylvania 19130.

9. Plaintiff Janis Moore Campbell resides at and owns residential real estate situated within the City and County of Philadelphia at 5237 Arlington Ave., Philadelphia, Pennsylvania 19131.

10. Plaintiff Janis Barksdale resides at and owns residential real estate situated within the City and County of Philadelphia at 8338 Michener Avenue, Philadelphia, Pennsylvania 19150.

11. Plaintiff Darlene Chester resides at and owns residential real estate situated within the City and County of Philadelphia at 6516 N. 13th Street, Philadelphia, Pennsylvania 19126.

12. Plaintiffs Iyad Obeid and Jodi Obeid, husband and wife, reside at and own residential property situated within the City and County of Philadelphia situated at 925 League Street, Philadelphia, PA 19147. They also own residential property situated within the City and County of Philadelphia at 247 S. 46th Street, Philadelphia, Pennsylvania 19139.

13. Plaintiffs Richard Snyderman and Ruth Snyderman, husband and wife, reside at and own commercial real estate situated within the City and County of Philadelphia at 301-03 Cherry Street, Philadelphia, Pennsylvania 19106. They also own commercial property situated within the City and County of Philadelphia at 319 South Street, Philadelphia, Pennsylvania 19147.

14. Plaintiffs Isaiah Zagar and Julia Zagar, husband and wife, reside at and own residential property situated within the City and County of Philadelphia at 826 South Street,

Philadelphia, PA 19147. They also own commercial real estate situated within the City and County of Philadelphia at 402 South Street, Philadelphia, PA 19147.

15. Plaintiff Karen Jackson resides at and owns residential real estate situated within the City and County of Philadelphia at 842 North 19th Street, Unit A, Philadelphia, PA 19130. She also owns residential real estate situated within the City and County of Philadelphia at 5928 Catharine Street, Philadelphia, Pennsylvania 19143.

16. Plaintiff Sharyn Solomon resides at and owns residential real estate situated within the City and County of Philadelphia at 6601 Rutland Street, Philadelphia, Pennsylvania 19149.

17. Plaintiff Shaun Smith resides at 372 Fifth Avenue in New York City, NY 10018 and owns residential real estate situated within the City and County of Philadelphia at 6912 Woodland Avenue, Philadelphia, Pennsylvania 19142.

18. Plaintiff Valentino Rudi resides at and owns residential real estate situated within the City and County of Philadelphia at 1135 Carpenter Street, Philadelphia, Pennsylvania 19147 and he also owns residential real estate situated within the City and County of Philadelphia at 1133 Carpenter Street, Philadelphia, Pennsylvania 19147. The City has imposed liens on Mr. Rudi's properties for unpaid property taxes.

19. Each of the Plaintiffs is an individual taxpayer whose real property assessments have been and are determined by the actions and omissions of Defendant, the City.

20. Each Plaintiff is aggrieved by the actions and omissions discussed herein of the City, as such actions and omissions have resulted in the non-uniform and unequal assessment of their respective properties as compared to other parcels of real property in the City. All of the properties owned by Plaintiffs are overassessed because they each bear a disproportionately high tax burden relative to, at least, hundreds of comparable or higher value properties throughout the

City. Plaintiffs will suffer irreparable harm if the City is permitted to continue its present tax assessment practices in that Plaintiffs will be put to the task of appealing each year the assessments which they receive, an undertaking which will cost Plaintiffs considerable time and expense for which they will receive no reimbursement.

21. Defendant the City of Philadelphia is a city and county of the first class organized pursuant to the Philadelphia Home Rule Charter and Pennsylvania Statutes with an address for service of process at c/o City Solicitor's Office, 1515 Arch Street, Philadelphia, PA 19102. At all times relevant to the allegations herein, the City has funded, maintained, facilitated and controlled the systems, methods, policies, procedures and practices used for the determination of valuations, assessments and taxation of real property within the City and County of Philadelphia. Currently, the City intentionally and systematically undervalues, at least, hundreds of properties that are comparable to, or that are of higher value than, the properties owned by each Plaintiff, resulting in each Plaintiff being overassessed.

Why a Valid Property Assessment System Matters

22. The City collects approximately \$1 billion dollars annually in property taxes based on its assessments on approximately 578,000 taxable properties. For the City's fiscal year 2010, approximately \$600 million of the levied property taxes are for the School District of Philadelphia, while about \$400 million of such levied taxes are allocated to the City.

23. An accurate and legal property assessment scheme is important to all City residents because it affects (a) *The City's general operations*. Revenues from property taxes account for approximately 11 percent of the City's General Fund revenues. (b) *The City's public schools*. About 75 percent of the local tax revenues that support the School District of Philadelphia (approximately \$600 million), are derived from real estate taxes. (c) *The real estate market*.

Because real estate taxes are capitalized into the sale prices of properties, owners of improperly overassessed properties are deprived of the full sale price while owners of improperly underassessed properties are able to command artificially higher prices for their properties. (d) *Money management of property owners.* The arbitrariness and unpredictability in property taxes, caused by the City's illegal practices, make it difficult for property owners to plan or project their personal or business finances from year to year. (e) *The City's credit rating.* When Fitch IBCA, the credit rating agency, downgraded the City's debt in December 2009 it stated: "The City's overall debt burden remains very high...although Fitch's believes the market value ratio is overstated due to antiquated property assessment practices." (f) *The City's ability to borrow/issue debt.* Pennsylvania law limits the City's tax-supported general obligation debt to 13 percent of the average assessed valuations of properties over the past ten years. (g) *Property foreclosures and real estate tax liens.* The City referred over 100,000 allegedly tax delinquent properties to an outside collection agency for processing under its recent tax amnesty project and announced, in July 2010, a tripling of properties to be sold at sheriff sale. A property owner's failure to pay property taxes that are illegally determined, as alleged herein, cannot be a legitimate basis on which to predicate tax liens or the forced sale of property via sheriff sale. (h) *Business use and occupancy taxes.* The City assesses and collects these taxes based in large part on commercial properties' underlying assessed values, which, if illegally determined as alleged herein, cannot form a legitimate basis on which to tax. (i) *Assessments by special services districts.* Most of these assessments, which are used primarily to support services that the City otherwise would have to provide, are based on the district properties' underlying assessed values, which, if illegally determined as alleged herein, cannot form a legitimate basis on which to make such assessments. The City's creation and maintenance of an illegal property tax assessment

scheme, as alleged herein, subjects all such special services districts to potential liability and deprivation of revenue, for their reliance on the City's illegally determined assessments.

24. In sum, as the Mayor's Task Force on Tax Policy and Economic Competitiveness aptly stated in its October 2009 report (at p. 25):

“Without significant improvements in the property assessment system, Philadelphia will be unable to implement a competitive tax structure and will continue to struggle economically.”

The City has Controlled the Assessment Process for Years

25. For several decades prior to October 6, 2009, as well as from on or about April 7, 2010 through September 30, 2010, property valuations and assessments were made by an agency known as the Board of Revision of Taxes (the “BRT”). At all relevant times, however, the City has held the BRT out to the public as a City agency. Moreover, the City has controlled the BRT in fact. The BRT's proposed annual budget was, and still is, presented at public City Council hearings and subject to City Council's annual approval. For decades, the BRT's property assessors were employees of the City. The directors of the BRT were, and still are, employees of the City. The BRT also was subjected to audits by the City Controller on the same basis as every other City agency and department. In addition, for over 50 years, the Pennsylvania Supreme Court has recognized the BRT as a “City office” and the City has consistently maintained in representations before all three levels of the courts of Pennsylvania that the BRT was and is a “City agency.”

26. From on or about October 6, 2009 through on or about April 6, 2010, the City also directly determined real estate valuations and assessments pursuant to an “intragovernmental Memorandum of Understanding” dated as of October 5, 2009, entered into by and between the Office of the City's Mayor, the Office of the City's Director of Finance and the BRT (the

27. Since October 1, 2010, the City has directly determined valuations and assessments of real property through a City office known as the Office of Property Assessment (the “OPA”). The vast majority of the OPA’s current property assessors previously were assessors at the BRT. Almost all of the assessors in supervisory roles at the OPA, including without limitation, Assistant Administrators Michael Piper and Kevin Keene, were at the BRT immediately prior to joining the OPA. The OPA’s current assessors and supervisors rely upon the same historical property and tax data that was used at the BRT.

28. Appeals of real estate assessments are handled by the BRT. Taxpayers who appeal their property assessments before the BRT are denied their right to due process. For example, taxpayers do not have the right to cross-examine the assessors who determine their assessment or the witnesses who appear to testify before the BRT on behalf of the OPA, which may include, depending on the appeal hearing, the evaluating assessor, the supervisor of the evaluating assessors and/or the City’s Chief Assessment Officer. The BRT also regularly engages in ex parte communications with assessors and supervisory staff of the OPA, about the very properties that are subject to appeal, without the knowledge of appealing taxpayers. By way of example only, and not by way of limitation, the BRT regularly receives and relies upon data from the OPA in a document known to the BRT and OPA as the “Evaluator’s Answer to Appeal,” which purports to justify the OPA’s assessment determination. Neither the content nor the existence of the “Evaluator’s Answer to Appeal” is regularly disclosed to appealing taxpayers. Rather, only if a particular taxpayer, or the taxpayer’s legal representative, affirmatively asks for the “Evaluator’s Answer to Appeal” is s/he given a copy. Very few taxpayers ask for the

“Evaluator’s Answer to Appeal,” however, because they simply do not know of its existence. Nevertheless, the BRT regularly considers the extra-record, “Evaluator’s Answer to Appeal” in making its appeal determinations.

29. The BRT does not have the authority: (a) to make initial valuations or assessments of taxable properties; (b) to modify or direct in any way the assessment practices, timing, policies or methodologies of the City; (c) to implement a City-wide reassessment of properties; or (d) to declare any assessment practices of the City unconstitutional or otherwise illegal. The BRT does not have the authority to award Plaintiffs, or any other taxpayer, any of the relief requested in this litigation.

The City has Hindered Property Assessment Reform Efforts for Years

30. For many years, the City has effectively exercised control over particular assessment practices of the BRT.

31. For example, in 2004, the BRT began working on implementation of its “Full Value Project” (later known as the “Actual Value Initiative.”) In these undertakings, the BRT planned to reassess all properties within the City at their fair market value thereby ending the City’s persistent and ongoing deficiencies in its assessment practices. Nonetheless, the City took numerous steps to delay and prevent implementation these initiatives. The City’s efforts included, without limitation: (a) *passing legislation* that purported to prohibit the BRT from implementing actual values unless and until City Council lowered the millage rate (which it never did) (see, for example, Bill No. 040022 enacted June 10, 2004); (b) *passing resolutions* urging the BRT to delay its Full Valuation Project (see, for example, Resolution 051152 enacted December 1, 2005); (c) *introducing a voter referendum* calling on the BRT to abandon its planned “Full Valuation” method (see, for example, Bill No. 060590-A, enacted March 1, 2007);

and (d) *calling for the resignation* of the members of the BRT in May 2009, shortly after the BRT released to City Council its proposed actual value calculations.

32. In mid 2010, the City publicly lauded a City Finance Department official for overhauling the assessment valuation models previously used by the BRT but the work, to the extent that it was even done, is not available to the public. In an August 11, 2010 press release from the Mayor's Office, the City stated that its Budget Director, Stephen Agostini, had been "instrumental" in "the complete overhaul of the Board of Revision of Taxes (BRT) proposed Actual Value models." Yet, in response to a subsequent Right to Know Law Request, an affiant for City's Office of the Director of Finance testified on October 29, 2010, that she was unable to find *any* "data, reports, analyses, memoranda, summaries, studies and any other documents created, in whole or in part, by City Budget Director Stephen Agostini or under the direction of Mr. Agostini concerning 'the complete overhaul...'"

Elected Politicians Fear Property Assessment Reform

33. Elected politicians appear to be aware of political risks of moving from the current system of artificially low "market values" to a system of true values, as indicated by this 2005 exchange between City Council President Anna Verna and the former Chairman of the BRT, David Glancey:

COUNCIL PRESIDENT VERNA: Mr. Glancey, when do you anticipate going to 100 percent of market price?

MR. GLANCEY: 2007...

COUNCIL PRESIDENT VERNA: I'm thinking that's when Council is up for re-election.

Transcript, City Council Committee of the Whole, April 5, 2005 at pp. 184-185.

34. The Pennsylvania Intergovernmental Cooperation Authority (“PICA”), the financial oversight body that has veto power over the City’s Five Year Financial plans, also has identified this risk:

Another unknown is how elected officials will respond to the new assessment system. The new system should result in property assessments that rise and fall with the real estate market...*The current system has generally insulated elected officials from the necessity of raising tax rates...*Elected officials did not have to raise the overall real estate tax rate for twenty years because under the current assessment system, aggregate assessments increased year after year in small increments based on ad hoc adjustments made by the Board of Revision of Taxes. *The new system will place responsibility for increased tax burdens squarely on the shoulders of elected officials.*” (emphasis added).

PICA Staff Report on FY11-FY15 Five Year Plan, dated August 10, 2010 (at p. 21).

35. In 2010, journalist Elmer Smith wrote about the lack of political will in Philadelphia to bring about much-needed assessment reform as follows:

So, how has the system successfully resisted every effort to reform it in the last 50 years? Because tax reform is the third rail of local politics. Any politician who touches it risks his life. Actual value is such a frightening phrase, they only whisper it around City Hall. No matter how you say it, it comes out sounding like a tax hike. Some homeowners would actually get a tax cut. But even if only 10 percent saw their taxes go up, you’d have tens of thousands of voters looking to unseat someone.

Elmer Smith: Real-estate tax reform? It’s no laughing matter, Philadelphia Daily News, Feb. 5, 2010.

The City Takes Official Responsibility for Property Assessments

36. Starting in late 2009, following extensive press coverage of the City’s dysfunctional property assessment system, including, most comprehensively, by the *Philadelphia Inquirer* (see, for example, the articles linked at www.philly.com/philly/hot_topics/39325332.html), the City took more public steps to exert power over the BRT by, for example, entering into the MOU. In addition, following expiration of the MOU on or about April 7, 2010, the City seized control of the BRT’s budget by executive order of the Mayor. This mayoral directive, to City Finance

Director Robert Dubow, was made pursuant to Section 8-102 of the City's Home Rule Charter, which applies to officers, departments, boards, commissions or agencies of the City.

The Moratorium

37. On January 26, 2010, the City called a halt to all routine reassessments of property throughout the City (the "Moratorium"). The City's decision was announced by Mayor Michael Nutter and Interim Executive Director of the BRT (and current Deputy Mayor and Managing Director) Richard Negrin.

38. At the January 26, 2010 press conference announcing the imposition of the Moratorium, which he described as "the only fair thing to do," the Mayor stated that "the problems of the BRT are unfortunately legendary" and he specifically cited "bad or inaccurate data" and "lack of uniformity in assessing properties."

39. At the same press conference above, Mr. Negrin, who had been appointed to run the BRT by the Mayor, stated that the primary rationale for the Moratorium was to fix the underlying data, which he described as "a classic garbage in, garbage out scenario."

40. Upon information and belief, details concerning the breadth of the myriad problems with the City's property assessment practices and systems are more fully articulated by Mr. Negrin in a "Moratorium Memo" he circulated to, at least, Mayor Nutter, City Finance Director Robert Dubow, City Solicitor Shelley Smith and certain of their respective staff in or about January 2010. The City has refused to disclose the "Moratorium Memo" in response to at least two separate requests made under Pennsylvania's Right to Know Law.

41. The City-imposed Moratorium remains in effect today. Moreover, the City's Chief Assessment Officer Richie McKeithen testified before City Council on April 18, 2011, that the OPA would not be in a position to release updated assessment data to the public on a citywide

basis until Fall 2012. Accordingly, whatever the reason for the City's failure to reform the system, the City has shown that it will keep the status quo for as long as it wishes to.

The Property Tax Increase

42. In May 2010, just a few months after the press conference at which he decried the pervasive "bad or inaccurate data" and "lack of uniformity" when announcing the Moratorium, the Mayor signed into law a 9.9 percent increase in real estate taxes passed by City Council for fiscal years 2011 and 2012 (hereinafter, the "2011-2012 Tax Increase"). This was the first increase in Philadelphia's property tax rates in nearly twenty years.

43. The Mayor signed this property tax increase into law even though he had stated only two months earlier that because "the real estate tax system requires major reform," a tax increase "is simply not a viable option." See the Mayor's Budget Address to City Council on March 4, 2010.

44. The Uniformity Clause prohibits the imposition of varying rates of effective taxation on different properties. Yet, the City's current assessment scheme causes and ensures wild variations in the effective tax rates imposed on properties throughout the City. Indeed, the combination of the Moratorium and the 2011-2012 Tax Increase harms owners of over-assessed properties, including Plaintiffs, twice. First, their illegally disproportionate assessments are frozen in place by the Moratorium and then those assessments are used to calculate the higher taxes mandated by the 2011-2012 Tax Increase. The result of this combination of the City's recent actions is that the effective rates of taxation on Plaintiffs' properties exceed the taxation rates of, at least, hundreds of other properties throughout the City. The tax disparities imposed upon the Plaintiffs, and upon thousands of other property owners, by the City's continuing acts and omissions are illegal under the Uniformity Clause.

45. An example of how the 2011-2012 Tax Increase disproportionately harms over-assessed properties is illustrated below:

Table 1. Effective Tax Rate on \$100K Home Before the 9.9 Percent Tax Increase

	OPA Market Value (\$)	Assessed Value (\$)	Tax Rate (%)	Effective Tax Rate	Tax Bill (\$)
\$100,000 Home at fair market value	100,000.00	32,000.00	8.264%	2.644%	2,644.48
\$100,000 Home @ Highest IAAO-Acceptable Value	115,000.00	36,800.00	8.264%	3.041%	3,041.15
\$100,000 Home @ Lowest IAAO-Acceptable Value	85,000.00	27,200.00	8.264%	2.248%	2,247.81
\$100,000 Home valued at \$20,000	20,000.00	6,400.00	8.264%	0.529%	528.90
\$100,000 Home valued at \$50,000	50,000.00	16,000.00	8.264%	1.322%	1,322.24

Table 2. Effective Tax Rate on Same \$100K Home After the 9.9 Percent Tax Increase

	OPA Market Value (\$)	Assessed Value (\$)	Tax Rate (%)	New Effective Tax Rate	Tax Bill (\$)	Effective Tax Rate Increase
\$100,000 Home at fair market value	100,000.00	32,000.00	9.082%	2.906%	2,906.24	0.262%
\$100,000 Home @ Highest IAAO-Acceptable Value	115,000.00	36,800.00	9.082%	3.342%	3,342.18	0.301%
\$100,000 Home @ Lowest IAAO-Acceptable Value	85,000.00	27,200.00	9.082%	2.470%	2,470.30	0.222%
\$100,000 Home valued at \$20,000	20,000.00	6,400.00	9.082%	0.581%	581.25	0.052%
\$100,000 Home valued at \$50,000	50,000.00	16,000.00	9.082%	1.453%	1,453.12	0.131%

Table 1 shows how differing valuation causes the underlying effective tax rates to vary. The City has taken a situation where the initial effective tax rates already differ and then raised the tax rate by 9.9 percent. While the 9.9 percent increase, on its face, may appear to treat all properties the same, the result is that the effective tax rate of the already disproportionately-overassessed house goes up even more than houses that are underassessed. Table 2 shows this. A house assessed at 20 percent of its actual value sees an effective tax rate increase of much less than the house assessed at 50 percent of its actual value. The variation in effective tax rates caused by the City’s ongoing assessment practices, including as exacerbated by the 2011-2012 Tax Increase, harms the Plaintiffs as well as thousands of property owners throughout the City, and it is illegal.

The City Has Known for Decades that Its Assessment System is Broken

46. The City has been aware for decades of the significant problems with its property assessment system. As early as 1980, the Pennsylvania Economy League issued a report, “The Problems with Philadelphia Real Property Assessment Practices and Solutions,” that began as follows:

It is no secret that Philadelphia has big problems...one problem...cries out for immediate attention and corrective action. It is the unfair, inequitable and non-uniform assessment of real property in Philadelphia...*The problem is not a new one. For over 30 years...the unsound administration and assessment of property have been addressed and solutions proposed. Nothing has happened.* (emphasis added)

Preface to Report no. 417 (Aug. 1980) by Pennsylvania Economy League (Eastern Division) (hereinafter, the “PEL Report”). The PEL report recommended a reassessment of all property in the City at a uniform ratio of market value, and the reorganization of the structure for administering the City’s assessment function, including abolition of the BRT. The PEL report noted that its second recommendation had been made before – in 1957, 1963 and 1973. PEL Report at pp. 19, 27.

47. Thirty years ago, the City and various City entities even litigated among themselves over the then-longstanding assessment problems. City Council, the Mayor, the City and the BRT were all parties to a 1981 lawsuit that was sparked by City Council’s attempt to impose a three-year moratorium on reassessments by an ordinance passed over the Mayor’s veto. See *Coleman v. Green*, No. 228, 1983 WL 265484, 16 Phila.Co.Rptr. 26. A 1981 settlement agreement in the *Coleman* case, later supplemented by a 1983 Consent Decree, was supposed to restore uniformity to the assessment system by requiring gradual equalization of property assessments throughout the City over a six-year phase-in period.

48. Equalization has never been attained, however, despite the *Coleman* Court's order. As former Chairman of the BRT, David Glancey, noted in 2006 testimony: "We are 26 years from *Coleman v. Green* and we are still equalizing property values..." Testimony before the Pennsylvania House Urban Affairs Committee, April 21, 2006, at p. 13.

49. The City has been on notice that the historic and pervasive inequities in the assessment system persist. The City's current Mayor repeatedly made public statements, before and since imposing the Moratorium, demonstrating the City's awareness of the serious ongoing assessment problems. For example, in 2009, when Mayor Nutter proposed a real estate tax increase, he acknowledged that "some people are paying more than they should while others are not paying enough..." Mayor Nutter's Budget Address to City Council, March 19, 2009. Since this announcement over two years ago, the City has not disclosed any plan or intention to compensate citizens who have been "paying more than they should."

50. Similarly, the following public exchange in 2010 between former BRT Chairman Charlesretta Meade and City Councilman W. Wilson Goode, Jr. serves as a reminder that the inequities in the City's property assessment system are of very long duration:

COUNCILMAN GOODE: Okay. Let's say if we don't know which areas have been overassessed or underassessed at this moment, let's just say that there are areas that have been overassessed and underassessed and that may have changed since the '90s or *it may be a problem that dates back several decades.*

MS. MEADE: *It does.*

Transcript of hearing of City Council's Committee of the Whole, April 20, 2010, p. 176

(emphasis added).

51. More recently still, Mayor Nutter stated that the BRT has “bad or completely inaccurate data due to lack of uniformity... .You cannot correctly value property if it is based on bad data. That is the situation today.” Mayor’s Press Conference of September 1, 2010.

52. And just a few weeks ago, at his most recent budget address to City Council, the Mayor announced his intention “to fix – once and for all – our broken property assessment system,” noting that “citizens have waited long enough. It’s time to finish the job.” Mayor Nutter’s Budget Address to City Council, March 3, 2011.

53. The City, however, is under no legal obligation “to finish the job.” The City also has not implemented or announced any plan to protect the thousands of property owners throughout the City, including the Plaintiffs, who currently are disproportionately and illegally over-assessed.

54. Despite recent pronouncements, without a judicially-imposed timetable to “finish the job,” deadlines will continue to shift as they have in the past. On March 19, 2009, the Mayor said, “I fully expect a new system of setting assessments, with fairness and transparency, is coming for the 2011 tax year.” On December 14, 2009, he said, “change must happen now.” On January 26, 2010, the Mayor said, “at least a year, possibly two.” The sources of the above statements are, respectively, the Mayor’s Budget Address to City Council of March 19, 2009; the Mayor’s Press Conference of December 14, 2009; and the Mayor’s Press Conference of January 26, 2010 announcing the Moratorium.

THE CLAIMS

Count I – Violations of Statutory Assessment Laws

55. Plaintiffs repeat and incorporate by reference all prior paragraphs of this Amended Complaint as if set forth in full herein.

56. The Pennsylvania state legislature has enacted strict statutory procedures that each county must follow with regard to its real estate tax assessments.

57. The law requires that the City value all properties at their “actual value.” Specifically, Section 13(a) of the First Class County Assessment Law provides that “[a]ll real property within the county . . . shall be valued by the assessor and assessed by the Board at the actual value thereof” 72 P.S. § 5341.13(a). Section 13(c) of the First Class County Assessment Law provides:

(a) In arriving at actual value, the price at which any property may actually have been sold . . . shall be considered but shall not be controlling. In arriving at the actual value, all three methods: namely, cost . . . , comparable sales, and income approaches, must be considered in conjunction with one another.

72 P.S. § 5341.13(c).

The Pennsylvania Courts have stated that “actual value” is a property’s fair market value defined as the price a purchaser, willing but not obliged to buy, would pay an owner, willing but not obliged to sell, considering all uses to which the property is adapted and might reasonably be applied.

58. In addition to valuing each property at its actual, fair market value, the City also is required to set such values every year. Section 7 of the First Class County Assessment Law provides that “[t]he Board shall issue, *annually* . . . its precepts to the real estate assessors . . . and the assessors shall . . . value each parcel of real property within the districts to which they are assigned, and shall return such valuations to the Board” 72 P.S. § 5341.7 (emphasis added).

59. The City also is required to equalize property values within the City so as to achieve uniformity. Section 1.1 of the First Class County Assessment Law provides that “[r]eal property

market values shall be equalized within the county” 72 P.S. § 5341.1a. Section 402(a) of the General County Assessment Law provides:

(b) It shall be the duty of the several elected and appointed assessors . . . to rate and value all objects of taxation . . . according to the actual value thereof In arriving at such value, the price at which any property may actually have been sold . . . shall be considered but shall not be controlling. Instead *such selling price . . . shall be subject to revision by increase or decrease to accomplish equalization with other similar property within the taxing district . . .*

72 P.S. § 5020-402(a) (emphasis added). Section 8 of the First Class County Assessment Law provides:

Upon the date fixed for receiving the returns of the assessors, the Board shall proceed to examine the returns, and inquire whether the same have been made in conformity with the laws of this Commonwealth, and whether all property has been valued as provided in this Act, and may revise, alter, and amend the valuation, by raising or lowering the valuations, either in individual cases or by district; shall rectify all errors, and make valuations where they have been omitted.

72 P.S. § 5341.8.

60. The City, in violation of applicable law, does not “inquire whether the [assessments] have been made in conformity with the laws of this Commonwealth” and does not “rectify all errors.”

61. The City, in violation of applicable law, does not value all properties at their actual value. Indeed, for many years, the City has intentionally undervalued properties, though not all of them consistently, and it continues to do so today.

62. That the City has historically undervalued, and currently undervalues, the vast majority of properties in the City is evidenced by very recent public testimony. On April 18, 2011, City Finance Director Robert Dubow testified before City Council that the City “doesn’t capture” properties’ actual values but rather values them at “about 70 percent” of their actual value.

63. According to 2010 public testimony, the City has adopted a current policy and practice of valuing properties *at an even lower percentage* of their actual values. For example, at the 2010 City Council hearing on the BRT's budget, Mr. Kevin Keene, employed by the City then and now as Assistant Administrator of Residential Properties, testified as follows: "Currently, any changes to market values that we're making, we're aiming for a level of about 35% of what we think the property is actual [*sic*] worth." Transcript of hearing of City Council's Committee of the Whole, April 20, 2010, p. 182.

64. Further evidence of the City's current policy and practice of setting recent values of real property at 35 percent of their actual value (the "35 Percent Rule") is to be found in the 2010 "Moratorium Guidelines." Those guidelines (attached hereto as Exhibit D) provide, in relevant part, as follows: "2. New construction and any value added for permits, etc. *will be put on at 35% of sale price or actual value*....4. Subdivisions and consolidations should be processed as usual; value *put on at 35% of sale price or actual value*." (emphasis added).

65. The City, in violation of applicable law, does not currently assess each property every year. Indeed, the Moratorium expressly prohibits the City from following this clear requirement of Pennsylvania law.

66. When Allegheny County sought to impose a similar moratorium, "freezing" most property assessments in that County, it was struck down by Judge R. Stanton Wettick, Jr. who ordered the County to commence the revision and equalization of assessments according to a Court-imposed schedule. *See Miller v. Board of Property Assessment, Appeals and Review of Allegheny County*, (C.P. Allegheny County, No. GD96-7312, April 18, 1997), *appeal dismissed, Miller v. Board of Property Assessment, Appeals and Review of Allegheny County*, 703 A.2d 733 (Pa. Cmwlth., 1997).

67. Rather than assessing all properties every year as required by law, to the extent that the City revises any assessments at all it does so in arbitrary fashion, revising the market values of limited groups of properties, without due regard to either the actual fair market values of the properties or the uniformity with the valuation of other properties throughout the City.

68. More than 75 percent of all properties in the City are residential. According to City documents, the percentage of residential properties reassessed was as follows for the following years:

Year	Percentage Reassessed
2000	4.3%
2001	27.86%
2002	36.69%
2003	53.56%
2004	43.33%
2005	1.65%
2007	6.56%
2008	66.88%
2009	2.65%
2010	3.56%

69. City Finance Director, Robert Dubow, recently testified that the City has not conducted a City-wide assessment of properties for “almost a decade... since, you know, the middle of the last decade.” Transcript of Testimony before City Council Committee of the Whole, March 22, 2011 at pages 162, 168.

70. As a result of the City's deliberate and ongoing failure and refusal to follow the law with respect to property assessment, the City has not properly taken account of the varying rates of change (i.e., depreciation and appreciation) in the values of real property throughout the City.

71. As a result of the City's deliberate and ongoing failure and refusal to follow the law with respect to property assessments, the market values assigned by the City, for almost all properties, are far lower than their actual fair market values. The degree of under-valuation among properties, however, varies wildly throughout the City, all in violation of the law. By way of example only, vacant lands, of which there are more than 44,000 in the City, are far more underassessed by the City than other categories of real property. By way of further example only, commercial properties, of which there are more than 13,000 in the City, are less underassessed by the City than other categories of real property.

72. Indeed, according to Mr. Dubow's testimony, the City and the Philadelphia School District have "missed out" on hundreds of millions of dollars in property tax revenue over the last decade due to the City's inaccurate assessments. In a recent exchange with Councilman Bill Green, Mr. Dubow testified as follows:

MR. DUBOW: "Yes. We're saying if you go to actual value and you get good assessments, that we will actually capture the last decade of changes in values, and that will result in a 20 percent increase." Transcript of Testimony before City Council Committee of the Whole, March 22, 2011 at page 170. The "20 percent increase" Mr. Dubow was referring to amounts to approximately \$120 million for the School District and approximately \$80 million for the City on an annual basis.

73. The City also is prohibited by Pennsylvania assessment law from performing spot assessments. A "spot assessment" is defined as "[t]he reassessment of a property or properties

that is not conducted as part of a countywide revised reassessment and which creates, sustains or increases disproportionality among properties' assessed values." 72 P.S. § 5342.1. Inasmuch as disproportionality has existed Citywide among the assessments of properties since at least 2002, all reassessments since at least that date, including, without limitation, reassessments of the Plaintiffs' respective properties, are unlawful spot assessments.

74. Plaintiffs are unaware of all of the methodologies, if any, that the City employs with respect to its limited selection of properties for revised assessments. However, upon information and belief, the City in recent years has targeted for revised reassessment properties whose owners file for building permits for work done on their properties. This practice is a form of spot assessment that is also likely to create a disincentive against filing for such permits.

75. In addition, upon information and belief, the City in recent years has targeted for revised reassessment certain properties that it deems to be "newer" or "newer titled," that is, properties that the City determines have recently been sold or transferred. When the City revises assessments for these "newer" or "newer titled" properties it does not, at the same time, revise the assessments for similar properties that the City deems to be "older" or "older titled," that is, properties that the City determines have not been recently sold or transferred. The result of this practice is that property owners who are relatively recent purchasers of properties are penalized with higher effective tax rates than those property owners who have held title to their properties for longer periods of time.

76. The City, in violation of applicable law, does not equalize real property market values within the City. In fact, the 2010 Moratorium Guidelines currently in effect expressly prohibit such equalization, providing, in relevant part: "No individual revaluation projects *of any kind* will be undertaken during the term of the moratorium. *This includes revaluations for purposes of*

uniformity.” (emphasis added). Consistent with these guidelines, at a November 23, 2010 market value appeal hearing before the BRT, an assessor for the City testified that she was prohibited by the Moratorium from making adjustments to properties in order to equalize them with similar properties in the neighborhood.

77. In sum, the following policies, practices and customs of the City, (the “Flawed Assessment Practices”) individually and collectively, violate applicable Pennsylvania statutory assessment laws: (a) the failure to assess all properties annually; (b) the failure to assess all properties at their actual values; (c) the failure to equalize properties; (d) the imposition and continuance of the Moratorium; (e) the implementation and maintenance of the 35 Percent Rule; (f) spot assessment; (g) selective assessment of “newer” or “newer titled” properties ; (h) the failure to “rectify all errors” in assessments; and (i) the implementation and maintenance of different effective tax rates on different classifications of properties, including without limitation, higher effective tax rates on commercial property compared to residential property and lower effective tax rates on vacant lands compared to other properties.

78. The City has knowingly and deliberately adopted and applied the Flawed Assessment Practices and continues to do so.

79. The City has failed to perform its statutory duty of providing for the uniform and equalized valuation of all parcels of real property located in the City, in violation of the General County Assessment Law and the First Class County Assessment Law.

80. As a result of the ongoing failures of the City to comply with Pennsylvania assessment law, thousands of properties throughout the City are underassessed while the Plaintiffs’ properties in contrast, are disproportionately overassessed. All of the Plaintiffs have been harmed because they bear more than their proportionate share of property taxes compared

to, at least, hundreds of other properties. Some of the Plaintiffs are additionally harmed because their properties are valued by the City at a higher percentage of their fair market value than the common level percentage of assessed-to-market value that the City applies throughout the County. These Plaintiffs are Lisa Parsley, Sharyn Solomon, Darlene Chester, Janis Barksdale, Karen Jackson, Shaun Smith, Mr. and Mrs. Zagar and Mr. and Mrs. Snyderman.

81. The statutory remedies provided for assessment appeals are inadequate as a means to redress the pervasive non-uniform and unlawful City-wide assessment practices that are the subject of this lawsuit. Administrative appeals affect only the property immediately before the BRT. The hearings available to individual appellants regarding their particular property assessments cannot determine the legality of the property tax assessments and taxation procedures on a Citywide basis. Successful appeals by individual owners of over-assessed properties: (a) do not decrease the values of other overassessed properties whose owners may not have the awareness, time, fortitude or resources to appeal; and (b) cannot increase the assessments of underassessed properties, whose owners have no reason to appeal. Moreover, as alleged above (Paragraph 28), the administrative appeals process before the BRT is legally defective in violation of taxpayers' fundamental right to due process. In addition, the process established by the property assessment statutes for appealing individual assessments presumes the existence of a uniform method of assessment in the county in question, against which uniform method the assessment of the particular property in an appeal can be measured or compared. For the reasons alleged above, however, there is no uniform method of assessment in use in the City against which to measure or compare the property assessments of any of the individual Plaintiffs or any other individual taxpayer.

82. Finally, very few taxpayers are aware of any reason to file an administrative appeal because the City deliberately undervalues most properties in the City relative to their actual values. The pervasive and intentional practice by the City of undervaluing most properties relative to their actual values dupes the owners of such properties into believing that they are being underassessed and undertaxed when, in reality, tens of thousands of property owners, including Plaintiffs, are being disproportionately overassessed and overtaxed.

83. Therefore, the Plaintiffs are entitled to equitable, declaratory and mandamus relief to cure the illegal actions of the City and, accordingly, Plaintiffs respectfully request that this Court grant the relief requested below in the Prayer for Relief.

Count II -- Violations of Commonwealth Constitutional Law of Equal Protection

84. Plaintiffs repeat and incorporate by reference all prior paragraphs of this Amended Complaint as if set forth in full herein.

85. The Equal Protection Clause of the Pennsylvania Constitution provides, in relevant part: “[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” Pa. Const. art. 1 § 26 (the “Equal Protection Clause”).

86. The Pennsylvania Supreme Court has held that claims under the Pennsylvania Equal Protection Clause are analyzed under the same standards established by the United States Supreme Court with respect to claims under the federal equal protection clause found in the Fourteenth Amendment of the United States Constitution. The United States Supreme Court has found that the federal equal protection clause requires uniformity in the assessment of real property among similarly situated taxpayers.

87. When the City values and assesses real property and collects taxes on that basis, the City is a person acting under color of state law. Acting under color of state law, including through its actions and omissions as described above, the City, via the scheme of property assessments it has created and maintained, has singled-out categories of persons, including the individual Plaintiffs, who are treated discriminatorily and who are thereby denied the equal protection of the laws.

88. Specifically, the City's Flawed Assessment Practices have resulted in the creation by the City of, at least, the following forbidden classifications of persons and subjected them to less favorable treatment than similarly situated persons (the "Discriminatory Classifications"): (a) owners of any properties that are not vacant lands; (b) owners whose properties have been "spot assessed"; (c) owners of properties that were non-uniformly assessed as of the imposition of the Moratorium; (d) owners of properties that are non-uniformly assessed as of the effective date of the 2011-2012 Tax Increase ; (e) owners of properties whose market value assigned by the City exceeds 35 percent of the property's actual market value; (f) owners whose properties the City considers to be "newer" or "newer-titled" vs. "older" or "older-titled"; (g) owners of commercial properties; (h) property owners who have applied for building permits; and (i) property owners who have applied for partial real estate tax abatements.

89. Each Plaintiff is a member of more than one of the above forbidden Discriminatory Classifications created by the City and therefore each Plaintiff, and all others similarly situated throughout the City, has been harmed. By way of illustration only, not by way of limitation: each Plaintiff is disparately treated as each is a member of the forbidden classifications (a) through (d) above; Plaintiffs Lisa Parsley, Sharyn Solomon, Darlene Chester, Janis Barksdale, Karen Jackson, Shaun Smith, Mr. and Mrs. Zagar and Mr. and Mrs. Snyderman are disparately

treated as each is a member of the forbidden classification (e); Plaintiffs Bursich, Mr. and Mrs. Obeid, Parsley and Smith are disparately treated as each is a member of the forbidden classification (f); Plaintiffs Mr. and Mrs. Zagar and Mr. and Mrs. Snyderman are disparately treated as each is a member of the forbidden classification (g); Plaintiffs Parsley and Bradley are disparately treated as each is a member of the forbidden classification (h); and Plaintiff Parsley is disparately treated as she is a member of the forbidden classification (i).

90. The disparate treatment to which the City has subjected the Plaintiffs, and all others similarly situated, by virtue of the City's creation and maintenance of the above Discriminatory Classifications bears no rational relationship to any legitimate state interest.

91. The City is subject to liability because the City's deliberate actions and omissions as described above result in the deprivation of Plaintiffs' constitutional rights to equal protection and are the result of policies and customs officially adopted by the City.

92. As detailed throughout this Amended Complaint, the City's actions and omissions, including, without limitation, its Flawed Assessment Practices as well as its Discriminatory Classifications, have directly contributed, and continue to contribute, to the non-uniform and inequitable assessment and taxation of real property within the City, in violation of all applicable constitutional and statutory requirements and to the great detriment of Plaintiffs and all others similarly situated.

93. This Court has equity jurisdiction over this matter because Plaintiffs have presented a substantial question of the constitutionality of the City's assessment scheme, and the remedies prescribed by statutory assessment laws are inadequate, as the City's actions affect all real property within the City and it is unrealistic and impracticable to expect each property owner

within the City to file an appeal of the value of their property and for the City to hear such appeals.

94. Plaintiffs' request for declaratory relief is proper under the Declaratory Judgments Act, 42 Pa. C.S. § 7531 *et seq.*, because it constitutes a constitutional challenge that questions the scope of a governmental body's action pursuant to statutory authority.

95. Plaintiffs' request for mandamus relief is appropriate, as the City's failure to perform its duties with respect to the lawful assessment of properties has reached unconstitutional proportions.

96. Therefore, Plaintiffs are entitled to equitable, declaratory and mandamus relief to cure the unconstitutional and illegal actions of the City and, accordingly, Plaintiffs respectfully request that this Court grant the relief requested below in the Prayer for Relief.

Count III -- Violations of Pennsylvania Constitution's Requirement of Uniformity

97. Plaintiffs repeat and incorporate by reference all prior paragraphs of this Amended Complaint as if set forth in full herein.

98. Article VIII, Section 1 of the Pennsylvania Constitution provides that “[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax” Pa. Const. art, VIII, § 1 (the “Uniformity Clause”).

99. The Uniformity Clause requires that taxes be applied uniformly upon similar properties within the City, with owners of comparable properties shouldering relatively equal property tax burdens. Currently, in violation of the Uniformity Clause, taxes are not applied uniformly upon similar properties within the City and owners of comparable properties do not shoulder relatively equal property tax burdens.

100. The Uniformity Clause mandates that similarly situated taxpayers be taxed similarly. Indeed, the Pennsylvania Supreme Court has held that claims under Pennsylvania's Uniformity Clause are generally analyzed in the same manner as claims under the Equal Protection Clause of the United States Constitution, which claims the Pennsylvania Supreme Court also has stated are co-terminous with Equal Protection claims under the Pennsylvania Constitution. Accordingly, the Commonwealth Equal Protection violations discussed above in Count II (and incorporated herein by reference) also demonstrate that the City has violated the Uniformity Clause.

101. The constitutional requirement of uniformity also mandates both accuracy and equity in the assessment of real property. Both assessment accuracy and assessment equity are currently lacking in the City's real estate assessment and taxation scheme, in violation of the Uniformity Clause.

102. The most common indicator of the accuracy of property assessments is a statistical measure known as the coefficient of dispersion ("COD"). The COD measures the average percentage deviation of the assessment-to-market value ratios of properties from the median assessment-to-market value ratio for the properties, the median ratio being the middle ratio when the ratios are arrayed in order of magnitude. According to assessment standards published by the International Association of Assessment Officers ("IAAO"), acceptable CODs that show adequate general accuracy in the assessment of real property range from 10% to 15% for residential properties and 15% to 20% for income-producing properties and vacant land. CODs that are higher than these standards indicate unacceptable inaccuracy in the assessment of real property.

103. The most commonly accepted indicator of equity, or fairness, in property assessments is a statistical measure known as the price-related differential (“PRD”). According to assessment standards established by the IAAO, acceptable PRDs range from 0.98 to 1.03. A PRD above 1.03 indicates assessment regressivity; that is, low-value properties have a higher assessment-to-market value ratio than high-value properties. A PRD below 0.98 indicates assessment progressivity; that is, low-value properties have a lower assessment-to-market value ratio than high-value properties.

104. The IAAO standards for CODs and PRDs have been identified by the Supreme Court of Pennsylvania as relevant criteria by which to judge the uniformity and hence constitutionality of real property assessments. *Clifton v. Allegheny County*, 969 A.2d 1197 (2009). In *Clifton*, the Supreme Court ordered a reassessment in Allegheny County where the COD ranged from 22.3 to 30.2 and the PRD ranged from 1.10 to 1.12 for the relevant period.

105. Well prior to the *Clifton* case, numerous Pennsylvania Commonwealth courts had adopted the IAAO standards for CODs and PRDs for the purpose of judging the adequacy and equity of real property assessment practices. *See, e.g., Millcreek Township School Dist. v. County of Erie*, 714 A.2d 1095 (Pa. Commw. Ct. 1998); *Ackerman v. Carbon County*, 703 A. 2d 82 (Pa. Commw. Ct. 1997); *City of Harrisburg v. Dauphin County Board of Assessment Appeals*, 677 A.2d 350 (Pa. Commw. Ct. 1996); *City of Lancaster v. County of Lancaster*, 599 A.2d 289 (Pa. Commw. Ct. 1991).

106. Indeed, the City has known for years the importance of both the COD and the PRD as measurements of assessment accuracy and equity. For example, seven years ago, then-Councilman Michael Nutter introduced a proposed ordinance at City Council that would have required the BRT to annually assess all properties within the City and to adopt certain objective

assessment standards, including industry standards for COD and PRD measurements. See, for example, Bill No. 040011 introduced on January 22, 2004. Councilman Nutter's legislative initiative followed release of a report entitled *Challenges and Solutions to Real Property Assessment Uniformity in Philadelphia*, prepared in October 2003 by Dr. Kevin C. Gillen, for the Philadelphia Tax Reform Commission (the "2003 Gillen Report")

107. The 2003 Gillen Report showed the following CODs by property type in the City based on BRT-supplied property data in August, 2003: for residential properties, 34.4%; for hotels and apartments, 32.2% ; for retail properties, 48.6%; for commercial properties, 46.7%; for industrial properties, 58.9%; and for vacant land, 77.4%. The COD in 2003 for each type of property within the City exceeded by a wide margin the IAAO standards of 10% to 15%.

108. The 2003 Gillen Report highlighted the overall assessment error in Philadelphia as follows:

- Barely half of Philadelphia's stock of single-family housing meets acceptable industry standards of appraisal accuracy. The same is true for multi-family properties like hotels and apartment buildings.
- For commercial, retail and industrial properties, only a third are valued within satisfactory professional standards of error.
- Compared to other major cities for which comparable information is available, only Buffalo, New York has a higher level of assessment error than Philadelphia's.
- Although cities like Boston, Baltimore and Chicago have older, heterogeneous housing stocks similar to Philadelphia's, they manage to have a significantly lower level of general assessment error.

109. The 2003 Gillen Report also showed the following PRDs by property type in the City for 2003: 1.19 for residential properties, 1.12 for hotels and apartments, 1.22 for retail properties, 1.15 for commercial properties, 1.21 for industrial properties, and 1.46 for vacant land. The PRD in 2003 for each type of property within the City far exceeded the IAAO standard of 1.03 and showed severe regressivity in the assessment of all real property in the City. The 2003 Gillen Report concluded that “the current system of property assessments in Philadelphia is highly regressive.” It further stated:

- The degree of regressivity is especially pronounced in the very low-income neighborhoods of North and West Philadelphia, with many homes assessed at several times their actual values.
- Philadelphia has the highest degree of assessment regressivity among any major U.S. city for which equivalent data is available, surpassing such comparable cities as Baltimore, Chicago, Pittsburgh and D.C. by several orders of magnitude.

110. The findings of the 2003 Gillen Report were widely reported and were the subject of public testimony before City Council, including, but not limited to, on February 24 and 25, 2004 and on October 31, 2005.

111. In 2007, City Council also was reminded, by former Mayor John F. Street, of the inequities in the property assessment system:

As the Tax Reform Commission concluded based on 2002 data, Philadelphia has the most regressive system of assessments in our region and among comparable cities throughout the country – that is, poorer homeowners are paying taxes based on more of their home’s full value than wealthier homeowners. A city-wide reassessment would solve this problem.

Communication from Mayor Street to City Council dated March 14, 2007 (Legislative File 070198).

One day after this Communication, City Council voted unanimously to override Mayor Street's veto of what he called a "misleading" ballot question that "urges the continuation of a system that is both unfair and confusing." City Council thereby placed before the City's voters a question as to whether the BRT should be urged to stop its Full Valuation project.

112. The following 2008 dialogue between BRT member, former Pennsylvania Supreme Court Justice Russell Nigro and Councilman Bill Green spoke directly to the unlawful inequities that are at the heart of this lawsuit:

JUSTICE NIGRO: ...And the system...is substantially broken. It's out of skew. And you have to have fundamental fairness in the process...But we do have the element of the unfairness, since there's not the uniformity. And we can't sit back forever and a day and not address that problem because it's not fundamentally fair to the people...Why should somebody come in who has a property that's worth two million dollars be taxed at eight percent rate and somebody has a property that's worth \$200,000 and they're taxed at 75 percent rate? It just simply isn't fair, and we need to address it...

COUNCILMAN GREEN: Not only is it unfair, it's not Constitutional and it violates State law...The poorest neighborhoods in this City where people are most needy, where our poverty rate and crime rate are highest are overtaxed, and the wealthiest, most prosperous areas of this City are undertaxed.

Minutes of Formal Meeting of the Board of Revision of Taxes, July 17, 2008 at pp. 50-52.

113. Nearly one year later, Councilman Green again focused on the illegality of the assessment system, this time in an exchange with then-Chair of the BRT, Charlesretta Meade:

COUNCILMAN GREEN: ...[W]ould you say that our current property tax assessment system is legal?

MS. MEADE: Is legal?

COUNCILMAN GREEN: Is it legal? If someone would sue the City of Philadelphia today about our quality of our assessments, would we be required to go to full value immediately? Is our current system legal?

MS. MEADE: We were faced with this problem last summer when we were threatened with a lawsuit by Philadelphia Forward...Our position with that lawsuit was that we recognized the problem that we faced. We contacted the Law Department...But this is the reason that we believe that we need actual value because if we were to go forward,

Councilman Green, this would be what we'd have to present. This is the status. And when you just look at that status, I think it answers the question...

COUNCILMAN GREEN: So our current tax system, then, according to your testimony, is not legal...

Transcript of City Council Committee of the Whole, May 4, 2009 at pp. 502-503.

114. Other City leaders, past and current, also have publicly discussed the illegality of the City's assessment practices. For example, in 2002, then-Councilman Michael Nutter, the City's current Mayor, quoted at length from *January 8, 1981* testimony by then-Councilman John F. Street:

COUNCILMAN NUTTER (quoting Mr. Street): Well, I don't know anybody who is violating more state laws than the Board of Revision of Taxes right now because every year ...every assessment that goes out...is in technical and actual violation of the state laws...

Transcript, City Council Finance Committee September 25, 2002 at p. 127.

Councilman Nutter went on to state at the 2002 hearing: "It's the same process 21 years ago...That's where we are today." Transcript, City Council Finance Committee, September 25, 2002 at p.132.

And in 2005, City Council President Anna Verna directly inquired of the then-Chairman of the BRT, David Glancey, as follows:

COUNCIL PRESIDENT VERNA: And are you also insinuating that the BRT has not been in compliance with state law until now?

MR. GLANCEY: Well, I think that's a great question...If you're asking me whether we were not in compliance, I think in the very literal sense we probably were not...

Transcript City Council Committee of the Whole, October 25, 2005 at pp. 26-27.

115. In February 2008, Dr. Gillen prepared an update to the 2003 Gillen Report, *Updated Results on Property Assessment Accuracy, Uniformity and Equity in Philadelphia* (the "2008 Gillen Report"). The 2008 Gillen Report showed that the inaccuracy in the assessment of

real property *worsened* in the intervening years, as the CODs by property type in the City (for 2006-2007) increased as follows: for residential properties, from 34.4% to 40.7%; for hotels and apartments, from 32.2% to 47.8% ; for retail properties, from 48.6% to 69.6%; for commercial properties, from 46.7% to 80.6%; for industrial properties, from 58.9% to 64.6%; and for vacant land, from 77.4% to 159.8%.

116. Further, the 2008 Gillen Report showed that the average COD for all types of property in the City for 2006-2007 was 50.1 percent—more than three times the IAAO-recommended industry standard.

117. The 2008 Gillen Report also showed that the inequity of assessment within the City for all types of properties continued to be outside acceptable ranges pursuant to the IAAO standards, as the PRDs by property type in the City for 2006-2007 were as follows: 1.20 for residential properties; 1.08 for hotels and apartments; 1.37 for retail properties; 0.89 for commercial properties; 1.08 for industrial properties; and 0.97 for vacant land.

118. The high CODs and PRDs in the 2008 Gillen Report are paralleled by the most recent, publicly available calculations by the Pennsylvania State Tax Equalization Board (the “STEB”). The STEB for 2008 calculated an average COD of 43.3 percent for all types of property in the City, according to the June 2010 report, “Pennsylvania’s System for Property Valuation and Reassessment” (at Appendix D thereof) issued by the Legislative Budget and Finance Committee (the “LBFC”) of the Pennsylvania General Assembly, and also according to the STEB’s official website.

119. The LBFC’s 2010 report also cited a PRD for the City of Philadelphia of 96.58. Currently, the STEB website reports a PRD of 1.15 for the City of Philadelphia. Both of these

statistics are outside of the ranges permitted by the IAAO standards and by the law in Pennsylvania.

120. Plaintiffs are informed and believe, and they will prove at trial that the COD and PRD for the City as a whole are currently outside of the ranges permitted by the IAAO standards and by the law in Pennsylvania.

121. The City is in possession of information that permits it to identify (a) which properties in the City have been historically overassessed and (b) which properties are currently overassessed. The City, however, has failed to make the information public. Nearly one year ago, Councilman Wilson Goode, Jr. asked the BRT for “data that shows which areas have been historically overassessed and which have been historically underassessed...and particularly any mapping of that data that would show us who has a right to even more relief due to decades of overassessment.” Transcript of Testimony before City Council Committee of the Whole April 20, 2010 at p. 178. This exchange followed Councilman Goode’s request:

MS. MEADE: Right. And we do have mapping, and we can provide you with that mapping.

MR. GOODE: Provide it through the Chair [meaning, Council President Anna Verna].
Id. at p. 180.

122. The City has failed to produce the same “mapping” data in response to at least five separate Right to Know Law requests made upon it in 2010 – including at least one such request that was made after the City officially established the Office of Property Assessment in Fall of 2010. Upon information and belief, the City has not provided this data to City Council, despite its ability to do so.

123. Under the Uniformity Clause, all real estate is considered a single class for taxation purposes. This means that all real estate must be uniformly assessed and there must be equalization across sub-classifications of real property. For example, commercial property cannot be taxed at a higher tax rate than residential property, and neither residential nor commercial property can be taxed at a higher tax rate than vacant land.

124. In Philadelphia, however, commercial property is in fact taxed at a higher effective tax rate than residential property. The BRT's former Acting Director of Assessments, Barry Mescolotto, who was responsible for directing the day-to-day operations of all City property evaluators, testified in 2009 that "the commercial properties are generally assessed higher than the citywide average. They are closer to actual their values...." Transcript of City Council Committee of the Whole, May 4, 2009, p. 430.

125. Mr. Mescolotto's 2009 testimony is consistent with data disclosed by the City's Department of Finance in 2010 in response to a Right to Know Law request (see the chart attached hereto as Exhibit A), which indicates that, at least with respect to 2008 transactions, commercial property is taxed by the City at an effective rate that is approximately 50 percent higher than the effective tax rate that the City applies to residential property.

126. In addition, the same data (see Exhibit A) indicates that the City assesses different categories of properties at different effective tax rates. For example, vacant land is effectively taxed by the City at a mere fraction of the effective tax rate that the City applies to residential and commercial properties.

127. The City does not make such ratio data generally available to the public. However, Plaintiffs are informed and believe, and will prove at trial that the significant

variations in effective property tax rates among various sub-classifications of real estate persist today.

128. Each of the Plaintiffs has been harmed as a result of the non-uniform valuations and assessments made by the City of their respective properties. In addition to the harm alleged above, including but not limited to in Paragraphs 20, 21, 44, 45, 53, 73, 87 and 89-92, commercial property owners, including Plaintiffs Richard and Ruth Snyderman and Isaiah and Julia Zagar, and all others similarly situated, have suffered additional harm as a result of the City's illegal assessments because they also are required by the City to pay Business Use and Occupancy Taxes and by their respective special services/business improvement districts to pay assessments, the calculations for each of which are based, in significant measure, on property assessments determined by the City. Owners of properties against which the City has imposed tax liens, including Plaintiff Valentino Rudi, and all others similarly situated, also have suffered additional harm including, without limitation, damaged credit ratings, encumbered properties and the fear of losing their homes because the City's assessments underlying the liens are illegally determined.

129. But the harm caused to Plaintiffs by the non-uniform assessments made by the City is hardly unique to the named Plaintiffs. Rather, throughout the City, the lack of uniformity is apparent and results in arbitrary, irrational and illegally disparate property tax liabilities. For example, as illustrated in Exhibit B (three charts of recently sold properties located within the City):

- A two-story twin home in Kingsessing that sold in 2009 for \$27,000 pays almost 50% more in taxes than a two-story twin home in Mill Creek that sold in 2010 for \$129,000

- A two-story row home in Olney that sold in 2009 for \$25,000 pays almost 50% more in taxes than a two-story row home in Girard Estates that sold in 2010 for \$237,000
- A three-story row home in Pennsport that sold in 2009 for \$75,000 pays 30% more in taxes than a three-story row home in Schuylkill that sold in 2010 for \$423,000.

130. The charts attached hereto as Exhibit B provide additional current examples of such irrational and illegal tax assessments. The Moratorium, the other Flawed Assessment Practices and the Discriminatory Classifications currently enforced by the City ensure that these illegal inequities, and those suffered by the Plaintiffs, will continue.

131. As all of the above demonstrates, in Philadelphia the real estate taxing scheme as presently operated by the City is not applied with uniformity on all properties or even on properties that are similar to each other. As a result, large and illegal disparities in property tax liability exist throughout the City. Plaintiffs are subjected to numerous of these illegal disparities as detailed above. The City therefore has failed to perform its constitutional duty of providing for the uniform and equalized valuation of all real properties located in the City, in violation of the Uniformity Clause.

132. Therefore, the Plaintiffs are entitled to equitable, declaratory and mandamus relief to cure the unconstitutional and illegal actions of the City and, accordingly, Plaintiffs respectfully request that this Court grant the relief requested below in the Prayer for Relief.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request the Court to enter an Order in favor of the Plaintiffs:

(a) Declaring that the City's system for assessing and taxing real property violates the Uniformity and the Equal Protection Clauses of the Pennsylvania Constitution, the General County Assessment Law and the First Class County Assessment Law;

(b) Declaring that the Moratorium on reassessments that was announced by Mayor Nutter in January 2010 and currently imposed by the City is illegal and unenforceable;

(c) Declaring that the City's policy of setting "market value" of certain properties at 35 percent of their actual value is illegal and unenforceable;

(d) Ordering the City to establish and implement, as expeditiously as possible, assessment policies and procedures that will ensure uniformity and equity in the assessment of all real property in the City;

(e) Ordering the City to reassess, as expeditiously as possible, all properties located within the City of Philadelphia at their fair market value;

(f) Ordering the City to make available to the public, and to directly notify each affected property owner, of the City's calculations, for the periods 2007 to present: (i) of each property's ratio of assessed value to actual market value, broken down by property type; (ii) of the COD and PRD; and (iii) the applicable Common Level Ratio and Established Predetermined Ratio (as those terms are defined by Pennsylvania law), in a format and manner reasonably designed to be understandable by the ordinary taxpayer;

(g) Ordering the City to develop and implement procedures to ensure that any real property tax increase, including but not limited to the 9.9 percent tax increase for 2011-2012, does not worsen existing non-uniformity within the City's real estate taxation scheme.;

(h) Ordering the City to determine, as of the effective date of the 2011-2012 Tax Increase, and continuing thereafter until constitutional uniformity has been achieved in the

property assessment scheme, the amounts by which overassessed properties are disproportionately penalized by the 2011-2012 Tax Increase, and any subsequent tax increases, and setting aside such amounts as a reserve for future claims by the affected taxpayers;

(i) Ordering the City to develop and implement procedures to review all properties subject to existing tax liens to ensure that no portion of the alleged delinquency reflected in the tax lien is attributable to an historic overassessment and if any such portion is so attributable, then ordering the City to so notify each affected taxpayer in a format and manner reasonably designed to be understandable by the ordinary taxpayer;

(j) Prohibiting the City from imposing any additional, or enforcing any existing, property tax liens on over-assessed properties unless and until the City has conducted the review and notification referenced in subsection (i) above; and

(k) Granting the Plaintiffs such other and additional relief as is just and proper.

Dated: May 5, 2011

Respectfully submitted by,

/s/ Kenneth L. Metzner

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VERIFICATION

I, Brett Mandel, hereby state:

1. I am lead plaintiff in this action;
2. I verify that the statements made in the foregoing Amended Complaint are true and correct to the best of my knowledge, information and belief; and
3. I understand that the statements in said Amended Complaint are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Dated: May 5, 2011

/s/ Brett Mandel

Plaintiff