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COMPLAINT OF JEFF CONORS	§	PUBLIC UTILITY COMMISSION
AGAINST THE GALLERY	§	
APARTMENTS, ROSCOE PROPERTY	§	OF TEXAS
MANAGEMENT, AND CONSERVICE	§	

**THE GALLERY APARTMENTS AND ROSCOE PROPERTY MANAGEMENT’S
MOTION TO DISMISS**

Pursuant to Rule 22.181 of the PUC Procedural Rules, The Gallery Apartments and Roscoe Property Management (collectively, the “Respondent”) respectfully submit this Motion to Dismiss, and in support thereof would show as follows:

BACKGROUND AND FACTS

1. The Complainant alleges he was overcharged for water and wastewater by his landlord and the various respondents. According to the flings on record, the current allegation is that Complainant was overcharged \$85.06 from August 2019 to October 2020. The Complainant believes the alleged overcharges are the result of leaks in the irrigation system or other improper irrigation related charges.

2. The Complainant was not overcharged for water or wastewater, and he was not charged for water used in the irrigation system. Notwithstanding the Respondent’s numerous meritorious defenses, all of which are reserved, and to avoid further cost of litigation, Complainant recently received a check for the full amount of the relief sought. *See* Check to Mr. Connors dated September 20, 2022, with delivery and tracking information, attached hereto as **Exhibit A**. This was an unconditional payment. No consideration was sought in return.

GROUND FOR DISMISSAL

3. Much like practice in a civil court, jurisdiction is a fundamental issue that can be challenged at any time. “Upon the motion of the presiding officer or the motion of any party, the

presiding officer may recommend that the commission dismiss, with or without prejudice, *any proceeding* for any reason specified in this section.” See PUC Procedural Rule § 22.181(a). Upon the motion of the presiding officer or the motion of any party, the presiding officer may dismiss or may recommend that the commission dismiss, with or without prejudice, *one or more issues within a proceeding* for any reason specified in this section. See PUC Procedural Rule § 22.181(b).

4. A proceeding or issue may be dismissed if it becomes moot or obsolete. See PUC Procedural Rule § 22.181(d)(2). A proceeding or issue may also be dismissed for other good cause shown. See PUC Procedural Rule § 22.181(d)(11).

5. The issue in this case is whether it is moot or absolute. A case is moot if a controversy ceases to exist or the parties lack a legally cognizable interest in the outcome. *Allstate Ins. Co. v. Hallman*, 159 S.W.3d 640, 642 (Tex. 2005). The Supreme Court of the United States has said that a case is moot if the court can no longer grant any effectual relief to the complaining party. See *Mills v. Green*, 159 U.S. 651, 653 (1895)

6. The Complainant’s request for relief, which is already in the record, is moot and obsolete because it has already been afforded to him. See **Exhibit A**. Because the Complainant has already been given all relief sought, he has no remaining cognizable interest in the outcome of this proceeding. This proceeding should be dismissed.

7. If Complainant fails and refuses to accept the funds in Exhibit A, this case should be dismissed for other good cause pursuant to PUC Procedural Rule § 22.181(d)(11). In such a situation, good cause exists for dismissal because Complainant would have failed to mitigate damages. He would be estopped from wasting public resources seeking relief that he has already been offered to him. Proceeding in a case where the Complainant seeks a mere \$85.06, yet has

refused to accept the same, would be a complete waste of public and private resources. **No strings were attached to the payment in Exhibit A. The Complainant simply got the refund he believed he was due. If Complainant refuses to accept the funds, he will have waived his right to ask the Commission for the same.**

8. Mr. Conners should not be allowed to refuse money that he thinks he is owed, and then turn around and ask the Commission to give him the same money that he just refused, all the while wasting public time and resources that could be better spent fighting homelessness, crime, COVID-19, monkeypox, and hunger.

PRAYER

WHEREFORE PREMISES CONSIDERED, The Gallery Apartments and Roscoe Property Management request that this case and all issues and claims be dismissed with prejudice, and for all other and further relief to which it is justly entitled, whether at law or in equity, including attorneys' fees.

Respectfully submitted,

HOOVER SLOVACEK LLP

By: /s/Daniel S. Edmunds
Daniel S. Edmunds
Texas Bar Number: 24115624
edmunds@hooverslovacek.com
Xinyi (Cindy) Liu
Texas Bar Number: 24121726
liu@hooverslovacek.com
5051 Westheimer, Suite 1200
Houston, Texas 77056
Telephone: (713) 977-8686;
Facsimile: (713) 977-5395

ATTORNEYS FOR RESPONDENT

CERRTIFICATE OF SERVICE

I hereby certify by my signature below that a true and correct copy of the foregoing document was filed through the Interchange on this the 27th day of September, 2022.

/s/Xinyi (Cindy) Liu

Xinyi (Cindy) Liu