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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

14 ADAM HOFFMAN, and SAMUEL JASON,
15 Individually and on Behalf of All Others
16 Similarly Situated,

17 Plaintiff,

18 v.

19 CITY OF LOS ANGELES,
20 Defendant.

Case No. BC672326

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

- 21 **(1) Money Had and Received**
- 22 **(2) Violation of Cal. Const., art. 13 D, § 6**
- 23 **(3) Declaratory Relief**
- 24 **(4) Accounting**

25 **JURY TRIAL DEMANDED**

1 Plaintiffs Adam Hoffman and Samuel Jason (“Plaintiffs”), individually, and on behalf of all
2 other putative Class members, allege as follows:

3 **INTRODUCTION**

4
5 1. This class action against the City of Los Angeles (“the City” or “City”) arises from the
6 City’s overcharging residential properties of four or fewer units (“Residential Properties” or
7 “Residential Customers”) for sewer use as a result of overstating the amount of sewage generated by
8 those customers.

9 2. Residential Properties have water meters to keep track of the actual volume of
10 incoming water, but do not have sewer meters for measuring the actual volume of outgoing sewage.
11 Thus, to bill for sewer use based on volume, as the City does, it is necessary to infer the sewage
12 volume indirectly.

13 3. For the relatively few Residential Properties with separate water meters for indoor
14 (tributary to the sewer system) and outdoor (non-tributary) uses, inferring sewage volume is
15 straightforward. Sewer use is simply equal to the indoor water meter read, because all of the water
16 traveling through the indoor meter ends up in the sewer, through sinks, showers, toilets, washing
17 machines, and other fixtures connected to the sewer system. The outdoor water meter is ignored,
18 since the incoming water goes into the ground and is absorbed or evaporated, and does not enter the
19 sewer.

20 4. However, the vast majority of Residential Properties in Los Angeles do not have
21 separate indoor and outdoor water meters. So, it is necessary to have a method to determine how
22 much of the incoming water enters the sewer, versus how much is going to outdoor irrigation, and
23 thus, not into the sewer.

24 5. The Los Angeles Municipal Code (LAMC) provides the method for making that
25 determination. While outdoor water use for Residential Properties fluctuates seasonally due to
26 increased irrigation needs during the hotter and drier months, sewer use is generally stable, since
27 indoor water needs are not seasonally dependent. Accordingly, the LAMC requires the City to
28 estimate annual use by reference to the billing period in the rainy season with the least water use. If

1 rain obviates the need for outdoor irrigation during that billing period, then all the incoming water
2 during that billing period goes into the sewer. That volume is then used as the fixed sewage volume
3 per billing period (subject to small adjustments for billing period length differences) throughout the
4 year.

5 6. The LAMC also recognizes a potential problem with this method. The method requires
6 that a billing period have sufficient rainfall to obviate the need for outdoor irrigation. If residential
7 properties need to irrigate during the “wet” billing period, then not all the incoming water will go into
8 the sewer. Thus, if all the water use during that period is assumed to be for indoor use, that would
9 lead to an overestimate of sewer use. The water used for irrigation would be incorrectly counted as
10 going into the sewer.

11 7. The LAMC solves that problem by requiring the application of an adjustment factor to
12 account for dry winters—winters with insufficient rainfall to obviate the need for irrigation of outdoor
13 planting. This “Dry Winter Compensation Factor” (“DWCF”) is a number, 1 in a winter wet enough
14 to obviate the need for outdoor irrigation, and less than 1 in a drier winter, that is multiplied by the
15 winter billing period in which the residence uses the least water. This then provides the sewer
16 volume. Thus, for example, if 90% of the water use is for indoor purposes, because 10% of the
17 incoming water is needed for outdoor irrigation, the DWCF should be 0.9, and the sewage volume is
18 90% of the incoming water amount.

19 8. Thus, properly applied, the DWCF ensures that Residential Properties pay for the
20 volume of sewage they actually generate, and not a greater amount that would be caused by failing to
21 recognize that some of the incoming water is used to irrigate outdoor planting.

22 9. As explained in L.A. Sanitation’s 2015 “Sewer Service Charge Information”
23 publication, the calculation for Residential Customers is as follows:

24 your average daily sewage volume is calculated for the upcoming year, from July 1 through
25 June 30, based on the lowest average daily sewage volume during the previous winter. the
26 sewage volume is determined by evaluating the water usage for the premises during the Rainy
27 Season Review Period (RSRP). The RSRP changes each year, but generally begins in
28

1 other inputs, in selecting the next fiscal year’s DWCF. Again, these trial runs have nothing to do with
2 calculating how much water is needed for irrigation in a dry winter and what DWCF would be
3 necessary to compensate for a Rainy Season with insufficient rainfall to obviate irrigation of outdoor
4 planting. Instead, they simply present the revenue that would be gained or lost by adopting various
5 DWCFs. The use of the Winter Water Use Sewer Trial runs to select a DWCF, instead of the use of
6 data necessary to calculate a DWCF that would “compensate for a Rainy Season with insufficient
7 rainfall to obviate irrigation of outdoor planting,” violates LAMC § 64.41.03(g) and Cal. Const. art.
8 13D § 6.

9 23. Indeed, other than attempting to hit a shifting revenue target, L.A. Sanitation lacks a
10 fixed methodology for calculating the DWCF. As a result, the lack of correlation between Rainy
11 Season rainfall and the DWCF demonstrates that the City has failed to calculate DWCFs to
12 compensate for a Rainy Season with insufficient rainfall to obviate irrigation of outdoor planting.

13 24. The City does not adjust the DWCF solely for accuracy and proportionality, but instead
14 manipulates the DWCF to ensure certain revenue figures from the Sewer Service Charge. Thus,
15 instead of compensating for a Rainy Season with insufficient rainfall to obviate irrigation of outdoor
16 planning, L.A. Sanitation’s calculation undercompensates for insufficient rainfall in favor of providing
17 additional Sewer Service Charge funds to the City.

18 25. The 2015-2016 fiscal year DWCF was 0.84. That number was artificially inflated,
19 meaning that the City overstated the average daily sewer volume for Residential Properties for the
20 entire fiscal year, and overcharged them accordingly. Plaintiffs and the Class paid this overcharge.

21 26. The 2016-2017 fiscal year DWCF was 0.90. That number was artificially inflated,
22 meaning that the City overstated the average daily sewer volume for Residential Properties for the
23 entire fiscal year, and overcharged them accordingly. Plaintiffs and the Class paid this overcharge.

24 27. The 2017-2018 fiscal year DWCF was 0.98. That number was artificially inflated,
25 meaning that the City overstated the average daily sewer volume for Residential Properties for the
26 entire fiscal year, and overcharged them accordingly. Plaintiffs and the Class paid this overcharge.

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1 owner of each identified parcel upon which the fee or charge is
2 proposed for imposition, the amount of the fee or charge proposed to
3 be imposed upon each, the basis upon which the amount of the
4 proposed fee or charge was calculated, the reason for the fee or charge,
5 together with the date, time, and location of a public hearing on the
6 proposed fee or charge.

7 (2) The agency shall conduct a public hearing upon the proposed fee or
8 charge not less than 45 days after mailing the notice of the proposed
9 fee or charge to the record owners of each identified parcel upon which
10 the fee or charge is proposed for imposition. At the public hearing, the
11 agency shall consider all protests against the proposed fee or charge. If
12 written protests against the proposed fee or charge are presented by a
13 majority of owners of the identified parcels, the agency shall not
14 impose the fee or charge.” Cal. Const., art. 13 D, § 6(a)(1)-(2).

15 52. Further, Prop. 218 places several substantive limitations on an agency seeking to
16 impose or increase a fee or charge, including that, “Revenues derived from the fee or charge shall not
17 be used for any purpose other than that for which the fee or charge was imposed[]” (Cal. Const., art.
18 13 D, § 6(b)(2)), and, that, “No fee or charge may be imposed for general governmental services
19 including, but not limited to, police, fire, ambulance or library services, where the service is available
20 to the public at large in substantially the same manner as it is to property owners.” Cal. Const., art. 13
21 D, § 6(b)(5).

22 53. The City, by adjusting and manipulating the DWCF in order to meet its revenue goals,
23 without following the procedural requirements delineated by Prop. 218, as admitted by the City in its
24 Motion for Summary Adjudication in this matter, has enacted *de facto* sewer service rate increases to
25 Plaintiffs and the Class. This type of conduct—increasing the per-unit charge without giving
26 ratepayers notice and without allowing them an opportunity to vote and be heard—is precisely what
27 Prop. 218 was enacted to prevent. The City has used the DWCF to effectuate sewer service charge
28 increases without giving the required notice, without allowing ratepayers to vote, and without holding
the required public hearing, and, as such, the City has failed to comply with the procedural
requirements of Prop. 218.

54. In addition to violating Prop. 218’s procedural requirements, the City has also violated
the California Constitution’s substantive limitations. The City has failed to demonstrate that revenues
derived from the sewer service charges (which is based on the DWCF) are used solely for the purpose

1 of sewer services; and, the City has failed to demonstrate that the sewer service charges have *not* been
2 imposed for general governmental services. Instead, the City has used revenue derived from sewer
3 service charges in violation of Cal. Const., art. 13 D, § 6(b) by spending the revenue on general city
4 services.

5 55. The City’s calculation of the DWCF has resulted in the systematic overcharge of
6 wastewater customers. Plaintiffs and the wastewater customers that comprise the Class, have been
7 damaged as a result of these overcharges and accordingly, Plaintiffs, on their own behalf and on
8 behalf of the Class, seek refunds of the amount of overcharges paid since May 4, 2016.

9 56. Plaintiffs also seek declaratory relief, in the absence of which the City will continue to
10 impose its DWCF-based sewer service charges in violation of Cal. Const., art. 13 D, § 6. Plaintiffs, on
11 their own behalf and on behalf of the Class, desire and are entitled to a judicial declaration that the
12 City’s DWCF-based sewer service charges violate art. 13 D, § 6 of the Cal. Const. Such declaratory
13 relief is necessary and appropriate, as the City has made clear that it views its DWCF-based sewer
14 service charges are valid and will continue to impose them on wastewater customers.

15 **THIRD CAUSE OF ACTION**

16 (Declaratory Relief)

17 57. Plaintiffs repeat, re-allege, and incorporate by reference the foregoing paragraphs.

18 58. A declaration of rights concerning the proper calculation of the DWCF to “compensate
19 for a Rainy Season with insufficient rainfall to obviate irrigation of outdoor planting” is a proper
20 subject of declaratory relief. There is an actual controversy involving justiciable questions relating to
21 Plaintiffs’ and the Class’s rights and the City’s obligations.

22 **FOURTH CAUSE OF ACTION**

23 (Accounting)

24 59. Circumstances appropriate to an accounting are present here because the City collects
25 Sewer Service Charges without indicating the extent to which the charges exceed those that would be
26 made pursuant to a properly-calculated DWCF. The City has not disclosed to Plaintiffs and the Class
27 the methodology it employs to calculate the DWCF.
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