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FILED
AMADOR SUPERIOR COURT

3/11/02
CLERK OF THE SUPERIOR COURT
BY 10075

5 Attorneys for Petitioner and Plaintiff
6 William Orescan

CASE ASSIGNED FOR ALL PURPOSES TO
HON. ~~SUSAN C. HARLAN~~
GC 68616 (i)

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF AMADOR
9

10
11 WILLIAM ORESCAN, an individual,
12
13 Petitioner and Plaintiff

14 v.

15 CITY OF JACKSON, a municipal corporation,
16 and DOES 1 - 5,
17
18 Respondents and Defendants.
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Case No. **12-CV-7862**

**VERIFIED PETITION FOR WRIT OF
MANDATE; and**

**COMPLAINT FOR VIOLATION OF
CALIFORNIA CONSTITUTION AND
DECLARATORY RELIEF**

20 Petitioner and Plaintiff William Orescan ("Petitioner" or "Plaintiff") alleges as follows:
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22 **I.**
23 **NATURE OF THE ACTION**

24 1. This is an action brought by Petitioner against the City of Jackson ("Jackson") for
25 violations of a constitutional provision enacted through Proposition 218. Petitioner seeks a writ
26 of mandate, injunctive relief, and a judicial declaration to ensure Jackson complies with
27 Proposition 218's mandates with respect to Jackson's imposition of waste collection fees. He
28

1 also requests that the Court declare rate increases imposed by Jackson in 2009, 2011, and 2012 to
2 be invalid.

3 **II.**
4 **PARTIES**

5 2. Petitioner owns property in and is a resident of Jackson. He has paid and continues to
6 pay the fees at issue in this action.

7 3. The City of Jackson is a municipal corporation in the County of Amador. It is an
8 "agency" subject to Proposition 218 as defined in Cal. Const., article XIII D, § 2(a). The City
9 can sue and be sued under Government Code § 34501.

10 4. Petitioner is unaware of the true names and capacities of defendants sued herein as
11 DOES 1 through 5, inclusive, and therefore sue those defendants by such fictitious names.
12 Petitioner is informed and believes, and thereon alleges, that each of said fictitiously-named
13 defendants is in some manner responsible for the acts, violations, injuries and/or damages
14 alleged herein. Petitioner will amend this petition and complaint to allege the true names and
15 capacities of said fictitiously-named defendants when the same have been ascertained.

16 5. Petitioner is informed and believes, and thereon alleges, that at all times herein
17 mentioned, each of the defendants was the agent, employee, representative, partner, joint
18 venturer, and/or alter ego of each of the other defendants and, in doing the things alleged herein,
19 was acting within the course and scope of such agency, employment, representation, on behalf of
20 such partnership or joint venture, and/or as such alter ego, with the authority, permission,
21 consent, and/or ratification of each of the other defendants.

22 **III.**
23 **GENERAL ALLEGATIONS**

24 6. Under California law, Jackson is required to provide refuse collection services to its
25 citizens. *See* Cal. Public Resources Code § 40001 ("the responsibility for solid waste
26 management is a shared responsibility between the state and local governments"). In an effort
27 to fulfill this legal obligation, Jackson entered into an agreement entitled "Franchise for Solid
28 Waste Collection, Disposal and Recycling Services" ("Contract") with private entity ACES

1 Waste Services, Inc. ("ACES") on approximately April 13, 1998, effective July 1, 1998. The
2 Contract sets forth the terms and conditions under which ACES is required to collect and dispose
3 of the solid waste for the residents of Jackson (i.e. curbside refuse collection services) on
4 Jackson's behalf. The Contract states that "[n]otwithstanding this grant of franchise, City retains
5 and reserves to itself the full authority to regulate, correct and control all activities of the
6 franchise, including removal, termination, and suspension."

7 7. The Contract dictates the manner by which ACES conducts its operations
8 regarding matters such as the frequency of collection, equipment maintenance, hours of
9 collection, customer complaints, and expected performance level. The Contract requires ACES
10 to pay to Jackson, a 5% "franchise fee" of the gross annual revenues it collects on a quarterly
11 basis.

12 8. Jackson imposes waste collection fees on Jackson residents through the Contract with
13 ACES. On or about November 23, 2009, Jackson adopted a resolution to amend "Article J,
14 Rates" of the Contract; Jackson and ACES so amended the Contract thereafter. The amended
15 Article J sets forth a Rate Adjustment Methodology ("RAM") that governs the fees and is used to
16 calculate future fee increases. Under the Contract, all fee increases are reviewed and must be
17 approved by Jackson. ACES is prohibited from charging any amount in excess of the fees fixed
18 pursuant to the RAM. Thus, Jackson imposes the refuse collection fees through this carefully
19 negotiated Contract with ACES. Alternatively, ACES acts as Jackson's agent with respect to the
20 imposition of fees.

21 9. The RAM allows for "Interim Compensation Adjustments" when "extraordinary or
22 unanticipated events" occur including, but not limited to increases in "tip" fees. Tip fees are fees
23 that ACES must pay to dump the waste at landfills. Under the Contract, Jackson has the sole
24 discretion to determine whether to allow ACES to recover Interim Compensation Adjustments.

25 10. On or about December 14, 2009, Jackson adopted Resolution No. 2009-48 which
26 approved a 9.15% rate increase as requested by ACES, effective January 1, 2010.

27 11. On or about September 26, 2011, Jackson adopted Resolution No. 2011-28 which
28 approved a 2.55% rate increase as requested by ACES, effective January 1, 2012.

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V.
SECOND CAUSE OF ACTION
DECLARATORY RELIEF
(Against All Defendants)

19. Plaintiff realleges and incorporates by reference each of the paragraphs set forth above.

20. An actual controversy exists between the parties in that Plaintiff believes that fees previously imposed and to be imposed by Defendants violate a state constitutional provision because Defendants are required to comply with the notice, hearing, and protest provisions set forth in Article XIII D § 6(a)(2), but have refused to do so because they do not believe that Proposition 218 governs their actions.

21. Plaintiff desires a judicial determination of the rights and duties of the parties, including a declaration stating that Defendants are required to comply with Article XIII D § 6(a)(2).

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VI.
THIRD CAUSE OF ACTION
VIOLATION OF CAL. CONST. ART. XIII D
(Against All Defendants)

22. Plaintiff realleges and incorporates by reference each of the paragraphs set forth above.

23. Defendants have violated and intend to violate Art. XIII D § 6(a)(2) in the future.

24. Plaintiff seeks an order restraining and enjoining Defendants from violating Article XIII D § 6(a)(2).

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PRAYER FOR RELIEF

WHEREFORE, Petitioner / Plaintiff prays for judgment as follows:

ON THE FIRST CAUSE OF ACTION AS TO ALL RESPONDENTS

1. For the issuance of a peremptory writ of mandate directing Respondents to comply with Article XIIIID § 6(a)(2) regarding all fees previously imposed and to be imposed in the future pursuant to the Franchise for Solid Waste Collection, Disposal and Recycling Services.

ON THE SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS

1. For a declaratory judgment declaring that Defendants' practices have violated and continue to violate Article XIIIID § 6(a)(2) and declaring the 2009, 2011, and 2012 Resolutions (2009-48, 2011-28, and 2012-16) to be invalid.

ON THE THIRD CAUSE OF ACTION AS TO ALL DEFENDANTS

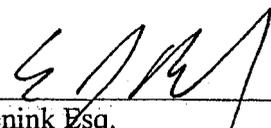
1. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants from violating Article XIIIID § 6(a)(2).

ON ALL CAUSES OF ACTION

1. For attorney's fees and costs, including those recoverable pursuant to California Code of Civil Procedure § 1021.5.

2. For such other relief as the Court deems necessary and proper.

DATED: June 6, 2012


Eric J. Benink Esq.
Krause, Kalfayan, Benink & Slavens, LLP
Attorneys for Petitioner / Plaintiff

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VERIFICATION

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Violation of California Constitution and Declaratory Relief and know the contents thereof. The matters stated therein are true and correct of my own knowledge.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct.

Executed on June 5, 2012 in Jackson, CA.


William Orescan