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VENTURA SUPERIOR COURT

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SUPERIOR COURT
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MAR 27 2017

MICHAEL D. PLANET
Executive Officer and Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

AARON STARR, an individual,

Petitioner and Plaintiff,

v.

CITY OF OXNARD, a general law city; and
DOES 1-10,

Respondents and Defendants.

Case No.:

VERIFIED PETITION FOR WRIT OF
MANDATE

AND

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

[VIOLATION OF PROPOSITION 218
(Cal. Const., art. XIII D, § 6, subd. (b))]

Petitioner and Plaintiff Aaron Starr ("Petitioner" or "Plaintiff") alleges as follows:

INTRODUCTION

1. Petitioner brings this action to enjoin the City of Oxnard's imposition of water, wastewater (sewer), and environmental resources (solid waste collection) fees and charges in amounts that fund transfers from its utility enterprise funds to its General Fund (Fund 101) and Street Fund (Fund 105). These transfers totaled \$3,000,000 to the General Fund and \$4,080,000 to the Street Fund in fiscal year 16-17. The monies transferred are collected from water, sewer, and solid waste utility ratepayers as property-related charges and fees and thus, are subject to the restrictions set forth in Proposition 218. (Cal. Const. art. XIII D, § 6, subd. (b) ("section 6(b).").) Proposition 218 prohibits local governments from (a) charging more than it costs to provide utility

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1 service, (b) using utility fees for non-utility purposes, and (c) using utility fees for pay for general
2 governmental services. (See § 6, subd. (b)(1)(2) and (5).) The transfers are used to fund general
3 governmental services available to the public at large. Accordingly, the transfers and the City's
4 monthly imposition of the charges and fees on utility customers violate section 6(b).

6 PARTIES

7 A. Petitioner/Plaintiff

8 2. Petitioner and Plaintiff Aaron Starr is a resident of the City of Oxnard. He is a City
9 of Oxnard water, sewer, and solid waste customer and has, during the past year, paid the water,
10 sewer, and solid waste service fees and charges which are used to fund the illegal transfers at issue
11 herein.

12 B. Respondents/Defendants

13 3. Respondent and Defendant City of Oxnard ("City") is a general law city located in
14 Ventura County. It is an "agency" and "local government" subject to Prop. 218. (See Cal. Const.
15 art. XIII C, § 1, subd. (b); art. XIII D, § 2, subd. (a).)

16 4. Petitioner is unaware of the true names and capacities of Respondents/Defendants
17 sued as DOES 1 through 10, and therefore sues them by such fictitious names. Petitioner is
18 informed and believes and thereon alleges, that each DOE Respondent/Defendant is responsible for
19 the acts, violations and injuries alleged herein. Petitioner will amend this complaint to allege the
20 true names and capacities of the DOE Respondents/Defendants when their identities are
21 ascertained.

22 5. Petitioner is informed and believes and thereon alleges, that at all times, each of
23 DOE Respondent/Defendants is the agent, employee, representative, partner, joint venturer, and/or
24 alter ego of each other Respondent/Defendant and, in doing the things alleged herein, was acting
25 within the course and scope of such agency, employment and representation on behalf of such
26 partnership or joint venture, and/or as such alter ego, with the authority, permission, consent, and/or
27 ratification of each other Respondent/Defendant.

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GENERAL ALLEGATIONS

6. The City, through its Public Works Department, provides water, wastewater, and solid waste collection service to persons within the City. It provides water service to customers at approximately 44,000 meters. It provides wastewater collection and treatment services to persons within the City through 400 miles of sewer lines, 15 lift stations and a treatment plant. Its Environmental Resources Division provides solid waste collection (i.e. trash) services to 40,000 residential customers, 2,000 commercial business and apartment complexes, and 150 industrial businesses.

7. The City's water, wastewater, and solid waste collection services are property-related services because they are public services having a direct relationship to property ownership. (See Cal. Const. art. XIII D, § 2, subd. (h).) The City imposes water, wastewater, and solid waste collection fees and charges on properties as an incident of property ownership, including on Plaintiff's property. (See § 2, subd. (e).) These fees and charges are for property related services (water, sewer, and solid waste services.) (*Id.*)

8. Prop. 218 added articles XIII C and D to the California constitution in 1996. It places constitutional limitations on the manner by which local governments may impose fees and charges imposed as an incident of property ownership. A local government may not impose any fee or charge that exceeds the funds required to provide the property-related service. (See § 6, subd. (b)(1).) A local government is prohibited from using fees or charges for any purpose other than that for which the fee or charge is imposed. (See § 6, subd. (b)(2).) A local government may not impose any fee or charge for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. (See § 6, subd. (b)(5).)

9. The City has, for many years, maintained a Water Operating Fund (Fund 601), a Wastewater Collection Operating Fund (Fund 611), a Wastewater Treatment Operating Fund (Fund 621), and Solid Waste Operating Fund (Fund 623). The funds (monies) accounted for in these funds are derived from the fees and charged paid by the City's water, wastewater, and solid waste collection service customers, respectively.

1 10. The City's General Fund (Fund 101) is used to account for all financial resources
2 traditionally associated with government activities which are not required legally to be accounted
3 for in another fund. The primary expenditures in the General Fund are made for general
4 administration, police and fire protection, parks and streets maintenance, recreation and
5 transportation services, and community development.

6 11. The true purpose of the City's Street Maintenance Fund (Fund 105) is unknown to
7 Petitioner. The City contends that it "is for the reimbursement of costs related to right-of-way
8 improvements." Petitioner is unaware of what costs relate to "right of way improvements." Street
9 maintenance expenses are paid out of the General Fund (see, e.g., Account Nos. 3103, 5704) and
10 other accounts as well, including out of the State Gas Tax Fund (Fund 181) and from Fund 104 -
11 Measure O (Sales Tax initiative). Street maintenance is a general governmental service.

12 12. The City has imposed and continues to impose on its utility customers, water, sewer,
13 and solid waste collection fees and charges that exceed the cost of providing said services, or for
14 purposes other than providing said services. Specifically, the fees and charges are designed to
15 recover the expense of transferring monies to the General Fund and to the Street Maintenance Fund.
16 The City has characterized the transfers as "Infrastructure Use Fees" (IUFs). The precise nature of
17 these IUFs, including how their amounts were calculated and allocated to each of the four funds is
18 unknown, but the fact that the total transferred amounts were mostly round (tidy) figures (as shown
19 below) demonstrates that they were not based on true costs, but rather were created as a device to
20 boost general fund revenue on the backs of ratepayers. Proposition 218 was designed to close such
21 government-devised loopholes.

22 13. During the past four fiscal years, the City has transferred and/or budgeted to transfer,
23 fees and charges that it imposed and/or imposes on its ratepayers to its General Fund (Fund 101),
24 the following amounts as such IUFs:
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<u>Fiscal Year</u>	<u>Fund 601</u>	<u>Fund 611</u>	<u>Fund 621</u>	<u>Fund 623</u>	<u>Total</u>
FY 13-14	\$1,304,748	\$839,592	\$677,940	\$1,177,720	\$4,000,000
FY 14-15	\$1,304,748	\$839,592	\$677,940	\$1,177,720	\$4,000,000
FY 15-16	\$1,156,322	\$548,095	\$443,696	\$ 851,887	\$3,000,000
FY 16-17	\$1,156,322	\$548,095	\$443,696	\$ 851,887	\$3,000,000

14. During the past four fiscal years, the City has transferred and/or budgeted to transfer, fees and charges that it imposed and/or imposes on its ratepayers to its Street Maintenance Fund (Fund 105), the following amounts:

<u>Fiscal Year</u>	<u>Fund 601</u>	<u>Fund 611</u>	<u>Fund 621</u>	<u>Fund 623</u>	<u>Total</u>
FY 13-14	\$0	\$0	\$0	\$0	\$0
FY 14-15	\$1,895,301	\$127,717	\$1,171,529	\$916,515	\$4,111,062
FY 15-16	\$1,541,763	\$730,792	\$591,593	\$1,135,852	\$4,000,000
FY 16-17	\$1,877,978	\$529,905	\$538,304	\$1,133,813	\$4,080,000

15. The services funded with the monies transferred as IUFs are general governmental services that are available to the public at large in substantially the same manner as they are to property owners.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Petition for Writ of Mandate

C.C.P. § 1085

16. Petitioner hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

17. As alleged herein, Respondents have refused to comply with California Constitution article XIII D, section 6, subdivision (b)(1)(2) and (5). Specifically, they have extended, imposed, and increased property-related fees and charges that exceed the funds required to provide property-related service; have used property-related fees and charges for purposes other than that for which the fees and charges was imposed; and/or have used property-related fees and charges to fund general governmental

1 services that are available to the public at large in substantially the same manner as they are to property
2 owners. Specifically, they have diverted such illegal fees and charges to the General Fund (Fund
3 101) and Street Maintenance Fund (Fund 105) so that they may never be used for the provision of
4 water, wastewater, and solid waste collection services. Such unlawful practices are continuing.

5 18. There is a clear, present, and ministerial duty upon the part of the Respondents to
6 comply with these constitutional mandates.

7 19. Petitioner has a clear, present and beneficial right to the performance of those duties.

8 20. Petitioner also has public interest standing; he seeks to procure the enforcement of
9 a public duty on behalf of all City utility ratepayers.

10 21. Petitioner does not have an adequate remedy at law.

11 22. Accordingly, Petitioner is entitled to a writ of mandate pursuant to Code of Civil
12 Procedure section 1085 as specified more fully below.

13 **SECOND CAUSE OF ACTION**

14 **Declaratory Relief**

15 **C.C.P. § 1060**

16 **(Against All Defendants)**

17 23. Plaintiff hereby incorporates by reference each of the preceding allegations as
18 though fully set forth herein.

19 24. An actual, present, and substantial controversy exists between Plaintiff and
20 Defendants. Plaintiff contends that Defendants have violated and will continue to violate California
21 Constitution article XIII D section 6 subdivision (b)(1)(2) and (5). Defendants contend that they
22 have complied, and will continue to comply with said constitutional restrictions and requirements.

23 25. Plaintiff is entitled to a judicial declaration declaring that Defendants' acts violate
24 California Constitution article XIII D, section 6, subdivision (b)(1)(2) and (5).

THIRD CAUSE OF ACTION
Taxpayer Injunction
C.C.P. § 526a
(Against All Defendants)

26. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

27. Plaintiff, as a taxpayer within the City and as the payor of the fees and charges at issue herein, is entitled to and hereby brings this action pursuant to Code of Civil Procedure section 526a to enjoin Defendants from the illegal expenditure of, waste of, and injury to monies in Funds 601, 611, 621, and 623.

PRAYER FOR RELIEF

WHEREFORE, Petitioner/Plaintiff prays that the Court:

ON THE FIRST CAUSE OF ACTION AS TO ALL RESPONDENTS

1. Issue a peremptory writ of mandate that directs Respondents to cease the imposition and collection of water, wastewater, and solid waste collection fees and charges that exceed the cost of providing such services and to cease the transfer of funds from Funds 601, 611, 621, and 623 to the General Fund (Fund 101) or to the Street Maintenance Fund (Fund 105) as IUFs.

ON THE SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS

1. Enter a declaratory judgment declaring that Defendants' practices have violated California Constitution article XIII D, section 6, subdivision (b)(1)(2) and (5).

ON THE THIRD CAUSE OF ACTION AS TO ALL DEFENDANTS

2. Issue a permanent injunction enjoining Defendants from transferring funds as IUFs from Funds 601, 611, 621, and 623 to General Fund (Fund 101) and Street Maintenance Fund (Fund 105).

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1 **ON ALL CAUSES OF ACTION AS TO ALL RESPONDENTS/DEFENDANTS**

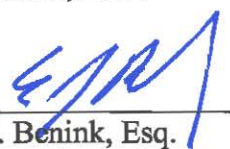
2 1. Order that the Respondents/Defendants restore to its respective enterprise funds
3 (Funds 601, 611, 621 and 623), all amounts previously transferred to the General Fund (Fund 101)
4 and Street Maintenance Fund (Fund 105) as IUFs during the period three years prior to the date this
5 action is filed through the date of judgment.

6 2. Award costs and attorney's fees as permitted by law.

7 3. Grant further relief that the Court deems just and proper and in the interest of justice.
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10 DATED: 3-27-17

KRAUSE KALFAYAN BENINK &
SLAVENS, LLP.

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13 Eric J. Benink, Esq.
14 Attorneys for Petitioner/Plaintiff
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VERIFICATION

I, Aaron Starr, declare:

I am a party to this action, and I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The matters stated therein are true based on my own knowledge or I believe them to be true based on the investigation of my attorneys.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on MARCH 26, 2017 in Oxnard, California.



Aaron Starr