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	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
11	COUNTY OF LOS ANGELES, CENTRAL DISTRICT		
12			
13	ADAM HOFFMAN, and SAMUEL JASON, Individually and on Behalf of All Others	Case No. BC672326	
14	Similarly Situated,		
15	Plaintiff,	SECOND AMENDED CLASS ACTION COMPLAINT FOR:	
16	v.	(1) Money Had and Received	
17	CITY OF LOS ANGELES,	(2) Violation of Cal. Const., art. 13 D, § 6	
18	Defendant.	(3) Declaratory Relief	
19		•	
20		(4) Accounting	
21		JURY TRIAL DEMANDED	
22		JUNI TRIAL DEMANDED	
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Plaintiffs Adam Hoffman and Samuel Jason ("Plaintiffs"), individually, and on behalf of all other putative Class members, allege as follows:

## **INTRODUCTION**

- 1. This class action against the City of Los Angeles ("the City" or "City") arises from the City's overcharging residential properties of four or fewer units ("Residential Properties" or "Residential Customers") for sewer use as a result of overstating the amount of sewage generated by those customers.
- 2. Residential Properties have water meters to keep track of the actual volume of incoming water, but do not have sewer meters for measuring the actual volume of outgoing sewage. Thus, to bill for sewer use based on volume, as the City does, it is necessary to infer the sewage volume indirectly.
- 3. For the relatively few Residential Properties with separate water meters for indoor (tributary to the sewer system) and outdoor (non-tributory) uses, inferring sewage volume is straightforward. Sewer use is simply equal to the indoor water meter read, because all of the water traveling through the indoor meter ends up in the sewer, through sinks, showers, toilets, washing machines, and other fixtures connected to the sewer system. The outdoor water meter is ignored, since the incoming water goes into the ground and is absorbed or evaporated, and does not enter the sewer.
- 4. However, the vast majority of Residential Properties in Los Angeles do not have separate indoor and outdoor water meters. So, it is necessary to have a method to determine how much of the incoming water enters the sewer, versus how much is going to outdoor irrigation, and thus, not into the sewer.
- 5. The Los Angeles Municipal Code (LAMC) provides the method for making that determination. While outdoor water use for Residential Properties fluctuates seasonally due to increased irrigation needs during the hotter and drier months, sewer use is generally stable, since indoor water needs are not seasonally dependent. Accordingly, the LAMC requires the City to estimate annual use by reference to the billing period in the rainy season with the least water use. If

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

- 6. The LAMC also recognizes a potential problem with this method. The method requires that a billing period have sufficient rainfall to obviate the need for outdoor irrigation. If residential properties need to irrigate during the "wet" billing period, then not all the incoming water will go into the sewer. Thus, if all the water use during that period is assumed to be for indoor use, that would lead to an overestimate of sewer use. The water used for irrigation would be incorrectly counted as going into the sewer.
- 7. The LAMC solves that problem by requiring the application of an adjustment factor to account for dry winters—winters with insufficient rainfall to obviate the need for irrigation of outdoor planting. This "Dry Winter Compensation Factor" ("DWCF") is a number, 1 in a winter wet enough to obviate the need for outdoor irrigation, and less than 1 in a drier winter, that is multiplied by the winter billing period in which the residence uses the least water. This then provides the sewer volume. Thus, for example, if 90% of the water use is for indoor purposes, because 10% of the incoming water is needed for outdoor irrigation, the DWCF should be 0.9, and the sewage volume is 90% of the incoming water amount.
- 8. Thus, properly applied, the DWCF ensures that Residential Properties pay for the volume of sewage they actually generate, and not a greater amount that would be caused by failing to recognize that some of the incoming water is used to irrigate outdoor planting.
- 9. As explained in L.A. Sanitation's 2015 "Sewer Service Charge Information" publication, the calculation for Residential Customers is as follows:

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

October or November and ends in April or May. After the average daily usage has been calculated, the SSC billed is more or less constant throughout the year, changing only slightly due to the number of days in each billing period. . . . Dry winters may cause a customer's WWU to still include irrigation water. Therefore, a "Dry Winter Compensation Factor" (DWCF) is applied to the WWU amount, which may reduce the estimated sewage volume. The reduction due to the DWCF is usually greater for dry winters than more wet ones to allow us to reduce your estimated sewage volume. The DWCF is a number equaling 1.0 or less (usually about 0.9) selected after a study of the rainfall, pattern of rainfall and total water consumption that occurred during the previous rainy season. This study is also used to determine the RSRP.

(emphasis in original.)

- 10. However, in violation of the LAMC, the City has treated the DWCF as a more flexible concept: one that rises and falls not just with the need for winter irrigation, but with the City's financial needs. Financial needs are not a factor included in the LAMC's definition of the DWCF. But instead of simply calculating a DWCF to, as required, compensate for dry winters, the City has instead looked to the revenue that would be generated by picking a DWCF at one of a range of possible values. In choosing to apply elevated DWCFs to enhance City revenues, the City has charged residential customers for a greater sewage volume than they use. This increases the revenue to the City, and causes residential customers to pay a disproportionately large part of the citywide sewer service charge.
- 11. These inflated charges have been collected from all Residential Properties serviced by L.A. Sanitation that do not have separate meters for water used indoors (tributary) and outdoors (non-tributary).

### **PARTIES**

12. Plaintiff Adam Hoffman is a resident of Los Angeles, California. Mr. Hoffman has directly paid sewer service charges that have been inflated by an artificially increased DWCF.

- 13. Plaintiff Samuel Jason is a resident of Los Angeles, California. Mr. Jason has directly paid sewer service charges that have been inflated by an artificially increased DWCF.
- 14. Defendant City of Los Angeles is a government entity operating under the laws of the State of California. The City operates L.A. Sanitation as a bureau of its Department of Public Works.
- 15. Plaintiffs are informed and believe, and thereon allege, that the City is responsible for the acts, omissions, occurrences, and transactions alleged herein.

## **JURISDICTION AND VENUE**

- 16. This class action is brought pursuant to California Code of Civil Procedure Section382.
- 17. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10. The monetary damages sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.
- 18. This Court has personal jurisdiction over the City because it is a governmental entity located in this County.
- 19. Venue lies within this judicial district because the City is located in this County and the acts and omissions alleged herein took place in this county.

### **FACTUAL ALLEGATIONS**

- 20. The City has been improperly calculating the DWCF and implementing a Dry Winter Compensation Factor higher than that calculated, causing systemic overcharges throughout the applicable statutory period of limitations. The City has been understating the impact of drought on the calculation of sewer discharge for Residential Properties.
- 21. By using an incorrectly high DWCF, the City overestimates the sewage volume for Residential Customers, and thus imposes a higher Sewer Service Charge than permitted by law.
- 22. Each year, L.A. Sanitation generates one or more Winter Water Use Sewer Trial runs, a report presenting, depending on the year, hypothetical DWCFs from 0.70 to 1.0, in increments of either 0.01 or 0.05. The DWCFs are hypothetical because no rainfall data is used to generate them—they are only financial projections. L.A. Sanitation's Director makes use of these projections, among

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

- 23. Indeed, other than attempting to hit a shifting revenue target, L.A. Sanitation lacks a fixed methodology for calculating the DWCF. As a result, the lack of correlation between Rainy Season rainfall and the DWCF demonstrates that the City has failed to calculate DWCFs to compensate for a Rainy Season with insufficient rainfall to obviate irrigation of outdoor planting.
- 24. The City does not adjust the DWCF solely for accuracy and proportionality, but instead manipulates the DWCF to ensure certain revenue figures from the Sewer Service Charge. Thus, instead of compensating for a Rainy Season with insufficient rainfall to obviate irrigation of outdoor planning, L.A. Sanitation's calculation undercompensates for insufficient rainfall in favor of providing additional Sewer Service Charge funds to the City.
- 25. The 2015-2016 fiscal year DWCF was 0.84. That number was artificially inflated, meaning that the City overstated the average daily sewer volume for Residential Properties for the entire fiscal year, and overcharged them accordingly. Plaintiffs and the Class paid this overcharge.
- 26. The 2016-2017 fiscal year DWCF was 0.90. That number was artificially inflated, meaning that the City overstated the average daily sewer volume for Residential Properties for the entire fiscal year, and overcharged them accordingly. Plaintiffs and the Class paid this overcharge.
- 27. The 2017-2018 fiscal year DWCF was 0.98. That number was artificially inflated, meaning that the City overstated the average daily sewer volume for Residential Properties for the entire fiscal year, and overcharged them accordingly. Plaintiffs and the Class paid this overcharge.

- 28. The 2018-2019 fiscal year DWCF was 0.79. That number was artificially inflated, meaning that the City overstated the average daily sewer volume for Residential Properties for the entire fiscal year, and overcharged them accordingly. Plaintiffs and the Class paid this overcharge.
- 29. The 2019-2020 fiscal year DWCF was 0.95. That number was artificially inflated, meaning that the City overstated the average daily sewer volume for Residential Properties for the entire fiscal year, and overcharged them accordingly. Plaintiffs and the Class paid this overcharge.
- 30. Plaintiffs each received a bill from the Los Angeles Department of Water and Power each bimonthly billing period during the class period that represented that the Sewer Service Charge had been calculated using the DWCF. For example, Mr. Hoffman received a bill dated April 13, 2017, stating:

Your Sewer Service Charge, shown in the "Sewer Charges" section, later in this bill, was calculated as follows:

SSC =days in billing cycle (61) xWWU (0.21429 HCF/day) = 13.07169 HCF xSewer Service Rate (\$4.51/HCF) = \$58.95

WWU is Winter Water Use, DWCF is Dry Winter Compensation Factor

Your most recent WWU was calculated during the billing period 12/11/15 - 2/12/16 as follows: Water usage during the period (15 HCF)/days in the period(63) xDWCF (0.90) = 0.21429. Your WWU is adjusted each July 1. For more information, go to www.lacitysan.org

31. Plaintiffs paid the Sewer Service Charge reported on their bills during the Class period. Each was inflated due to the inflation in the DWCF.

# ADMINISTRATIVE REMEDIES

- 32. Mr. Hoffman filed a timely government claim pursuant to the California Government Tort Claims Act on May 4, 2017. The claim was delivered to the Los Angeles City Clerk, City Hall, Room 360, 200 North Spring Street, Los Angeles, CA 90012.
- 33. The claim was forwarded to the Office of the City Attorney in accordance with City Council rules, and assigned Claim Number C17-11542.

- 40. **Typicality:** Plaintiffs' claims are typical of the members of the proposed Class. All residential customers of L.A. Sanitation are subject to the same DWCF and their average sewage volume is calculated accordingly. Plaintiffs suffered the same injury as the Class.
- 41. **Adequacy of Representation:** Plaintiffs, as representatives of the Class, will fairly and adequately protect the interests of the putative Class and have no interests that conflict with or are antagonistic to the interests of the class members. Plaintiffs have retained attorneys competent and experienced in class action litigation. No conflict exists between Plaintiffs and members of the Class.
- 42. **Predominance and Superiority:** Plaintiffs and the Class have all suffered and will continue to suffer harm and damages as a result of the City's conduct, and that common harm predominates over any individual issues. A class action is superior to any other method for the resolution of the issues raised herein. Absent a class action, most Class members would likely find the cost of litigating their claims prohibitively high. And class treatment of common questions will be superior to multiple individual actions. The remedy will include applying a corrected DWCF to past bills, which can be done uniformly across the class, and the injunctive relief sought, including the proper calculation of DWCFs on a going-forward basis, will benefit the entire class proportionately. The City has acted or refused to act on grounds applicable to the Class as a whole, so class-wide injunctive relief is warranted.

# FIRST CAUSE OF ACTION

(Money Had and Received)

- 43. Plaintiffs repeat, re-allege, and incorporate by reference the foregoing paragraphs.
- 44. The City received money that was intended to be used for the benefit of the Class, to pay their proportionate share of Sewer Service Charge liability. However, unbeknownst to the Class, part of the stated charge was not in fact for that purpose, but instead represented more sewage volume than used by the Class, due to the miscalculation of the DWCF. The overpayment of the money caused by the manipulation of the DWCF was therefore not used to pay the Class's proportionate share of Sewer Service Charge liability as determined by the LAMC. The City has retained this money, and not given it to the Class.

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

- (2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge." Cal. Const., art. 13 D, § 6(a)(1)-(2).
- 52. Further, Prop. 218 places several substantive limitations on an agency seeking to impose or increase a fee or charge, including that, "Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed[]" (Cal. Const., art. 13 D, § 6(b)(2)), and, that, "No fee or charge may be imposed 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." Cal. Const., art. 13 D, § 6(b)(5).
- 53. The City, by adjusting and manipulating the DWCF in order to meet its revenue goals, without following the procedural requirements delineated by Prop. 218, as admitted by the City in its Motion for Summary Adjudication in this matter, has enacted *de facto* sewer service rate increases to Plaintiffs and the Class. This type of conduct—increasing the per-unit charge without giving ratepayers notice and without allowing them an opportunity to vote and be heard—is precisely what Prop. 218 was enacted to prevent. The City has used the DWCF to effectuate sewer service charge 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

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

- 55. The City's calculation of the DWCF has resulted in the systematic overcharge of wastewater customers. Plaintiffs and the wastewater customers that comprise the Class, have been damaged as a result of these overcharges and accordingly, Plaintiffs, on their own behalf and on behalf of the Class, seek refunds of the amount of overcharges paid since May 4, 2016.
- 56. Plaintiffs also seek declaratory relief, in the absence of which the City will continue to impose its DWCF-based sewer service charges in violation of Cal. Const., art. 13 D, § 6. Plaintiffs, on their own behalf and on behalf of the Class, desire and are entitled to a judicial declaration that the City's DWCF-based sewer service charges violate art. 13 D, § 6 of the Cal. Const. Such declaratory relief is necessary and appropriate, as the City has made clear that it views its DWCF-based sewer service charges are valid and will continue to impose them on wastewater customers.

# THIRD CAUSE OF ACTION

(Declaratory Relief)

- 57. Plaintiffs repeat, re-allege, and incorporate by reference the foregoing paragraphs.
- 58. A declaration of rights concerning the proper calculation of the DWCF to "compensate for a Rainy Season with insufficient rainfall to obviate irrigation of outdoor planting" is a proper subject of declaratory relief. There is an actual controversy involving justiciable questions relating to Plaintiffs' and the Class's rights and the City's obligations.

### **FOURTH CAUSE OF ACTION**

(Accounting)

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

1	60. Accordingly, an accounting is necessary to determine the excess balance due to			
2	Plaintiffs and the Class.			
3	WHEREFORE, Plaintiffs respectfully request that this Court issue an Order for the			
4	following:			
5	a.	An Order that this action may proceed as a class action under Section 382 of the		
6	California Code of Civil Procedure;			
7	b.	o. An Order designating Plaintiffs as class representatives and designating Plaintiffs'		
8	counsel as counsel for the putative class;			
9	c.	An Order directing proper notice to be mailed to the putative class at Defendant's		
10	expense;			
11	d.	. An Order finding that Defendant overcharged the Class and requiring repayment, plus		
12	pre-judgment and post-judgment interest;			
13	e. An Order enjoining Defendant from continuing to engage in the unlawful conduct			
14	described herein;			
15	f.	An Order awarding reasonable	le attorney's fees and costs;	
16	g.	An Order granting other and	further relief, in law or equity as this Court may deem	
17	appropriate and just.			
18	DEMAND FOR JURY TRIAL			
19	Plaintiffs hereby demand a trial by jury of any and all issues in this action so triable of right.			
20				
21	DATED: Jun	ne 22, 2020 <b>G</b>	LANCY PRONGAY & MURRAY LLP	
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SECOND AMENDED CLASS ACTION COMPLAINT