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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER
APR 25 2017
JAKE CHATTERS
EXECUTIVE OFFICER & CLERK
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF PLACER

10 JERRY W. JACKSON, an individual, on
11 behalf of himself and all others similarly
12 situated; and CHARLES M. SCHMIDT, an
13 individual, on behalf of himself and all others
14 similarly situated,

14 Petitioners and Plaintiffs,

15 v.

16 CITY OF LINCOLN, a general law city; and
17 DOES 1-10,

18 Respondents and Defendants.

Case No.: SCV0039384

**VERIFIED PETITION FOR WRIT OF
MANDATE; COMPLAINT FOR
DECLARATORY RELIEF AND
VIOLATION OF PROPOSITION 218**

[CLASS ACTION]

BY FAX

19 Petitioners and Plaintiffs JERRY W. JACKSON and CHARLES M. SCHMIDT
20 (“Petitioners” or “Plaintiffs”) allege, on behalf of themselves and on behalf of a Class, as defined
21 herein, as follows:

22 **INTRODUCTION**

23 1. Petitioners bring this action to challenge fees and charges Respondent and
24 Defendant CITY OF LINCOLN (“City” or “Respondent”) has imposed on its single-family
25 residential water customers in violation of Proposition 218 (Cal. Const., art. XIII D, § 6 (“Section
26 6”), subd. (b)).
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1 PARTIES

2 **A. Petitioners/Plaintiffs**

3 2. Petitioner and Plaintiff Jerry W. Jackson owns real property in the City of Lincoln,
4 CA, which receives residential water service from the City. He pays the fees and charges at issue
5 herein.

6 3. Petitioner and Plaintiff Charles M. Schmidt owns real property in the City of
7 Lincoln, CA, which receives residential water service from the City. He pays the fees and
8 charges at issue herein.

9 **B. Respondents/Defendants**

10 4. Respondent and Defendant City of Lincoln is a general law city incorporated on or
11 about August 18, 1890, located in Placer County. The City is governed by the City Council/City
12 Manager form of government. A five-member City Council is elected at large to four-year terms
13 to oversee the City operations and to guide the future development of the City. It is an "agency"
14 subject to Prop. 218. (See Cal. Const., art. XIII C, § 1, subd. (b) & (c); art. XIII D, § 2, subd. (a).)

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

21 6. Petitioners are informed and believe and thereon allege, that at all times, each of
22 DOE Respondents/Defendants the agent, employee, representative, partner, joint venture, and/or
23 alter ego of each other Respondent/Defendant and, in doing the things alleged herein, was acting
24 within the course and scope of such agency, employment and representation on behalf of such
25 partnership or joint venture, and/or as such alter ego, with the authority, permission, consent,
26 and/or ratification of each other Respondent/Defendant.

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1 **GENERAL ALLEGATIONS**

2 7. On or about February 9, 2017, Petitioners filed a claim with Respondent seeking a
3 refund on behalf of themselves and all other single-family residential water customers based on
4 the allegations raised herein. On or about March 28, 2017, the City mailed a letter to Petitioners'
5 counsel rejecting the claim. Petitioners' claim complied with all requirements of the Government
6 Claims Act. (Gov't. Code § 910, *et seq.*)

7 8. The City provides water service to more than 16,000 accounts through a system of
8 wells, reservoirs, booster pumps, and distribution pipelines. All of the City's customers are
9 metered. The City's residential and non-residential water service is a property-related service
10 because it is public service having a direct relationship to property ownership. (See Cal. Const.,
11 art. XIII D, § 2, subd. (h).) The City imposes water fees and charges on properties as an incident
12 of property ownership, including Petitioners' properties. (See § 2 subd. (e).) These fees and
13 charges are for a property-related service. (*Id.*)

14 9. Proposition 218 added articles XIII C and D to the California constitution in 1996.
15 It places constitutional limitations on the manner by which local governments may impose fees
16 and charges imposed as an incident of property ownership. A local government may not impose
17 any fee or charge that exceeds the funds required to provide the property-related service. (See § 6
18 subd. (b)(1)). Furthermore, a local government may not impose any fee or charge that exceeds
19 the proportional cost of the service attributable to the parcel. (See § 6 subd. (b)(3).) The City's
20 residential water service fees and charges violate these two constitutional restrictions as described
21 below.

22 10. On November 12, 2013, the City passed Ordinance No. 888B adopting the City's
23 current water rate structure effective January 1, 2014 through Fiscal Year 2017-18 pursuant to the
24 *City of Lincoln Water, Wastewater, and Solid Waste Rate Study – Revised* prepared by HF&H
25 Consultants, LLC, dated October 14, 2013 ("Study").

26 11. In accordance with the Study and Ordinance, the City charges its single-family
27 residential water customers tiered rates (i.e., higher amounts as consumption increases.) For
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1 example, in the “Verdara Villages” single-family residential area, which represents Petitioners’
2 areas, the City currently charges as follows each month:

3	TIER 1	\$1.60 per 1000 gallons
4	TIER 2	\$2.61 per 1000 gallons
5	TIER 3	\$4.36 per 1000 gallons
6	TIER 4	\$7.99 per 1000 gallons
7	TIER 5	\$11.01 per 1000 gallons

8 12. The water rate tiers (“Tiers”) violate Prop. 218 because the rates assigned to each
9 Tier are arbitrarily set without any relation to the cost of providing water service in each Tier.
10 According to the Study, average cost of water is \$2.90 per 1000 gallons, and the City charges its
11 “Tier 2” rate because “[u]se at this level does not burden the system and is priced at close to the
12 average cost.” Every other Tier is increased or decreased by an arbitrary percentage using Tier 2
13 as the benchmark. For example, according to the Study, Tier 1 is “the most efficient and the
14 least expensive to serve” and water in Tier 1 is priced at “a cost equal to 55% of the average cost”
15 in an effort to “encourage continued conservation”; Tier 3 use “exceeds moderate use...and for
16 that reason is priced at 150% of the average cost [of water]”; Tier 4 use is “unusually high use”
17 and is “priced at 275% of the average cost”; and Tier 5 “includes the highest 4% of excessively
18 high bills” and is “priced at 400% of the average cost to provide a strong deterrent to discourage
19 waste.”

20 13. The cost of providing water at each Tier is the same; in other words, the cost of
21 water provided at Tier 5 is no greater than the cost of providing water at Tier 1. The City never
22 conducted any analysis regarding the *costs* of providing water at the different Tiers to support the
23 creation of Tiers and its consultant HF&H Consultants admitted as such in the Study when it
24 stated: “The rates do not align directly with any specific costs of providing service across the
25 spectrum of demand from lowest to highest.” The only purpose of the Tiers is to encourage water
26 conservation. Thus, the imposition of water fees and charges based on Tiers 1-5 violates section
27 6 subdivisions (b)(1) and (3).

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Customers in violation of Proposition 218.

- b. Whether the Plaintiffs and Class members are entitled to refunds for such violations;
- c. Whether the Plaintiffs and Class members are entitled to declaratory relief; and
- d. Whether the Plaintiffs and Class members are entitled to an order / writ compelling Respondents to comply with the law.

20. **Adequacy of Representation.** Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the other putative Class Members, and because Plaintiffs have retained counsel competent and experienced in complex class action and consumer litigation, including substantial experience in the types of claims alleged herein. Plaintiffs and their counsel will fairly and adequately protect the interests of all putative Class members.

21. **Superiority of Class Adjudication.** The certification of a class in this action is superior to the litigation of a multitude of cases by members of the putative class. Class adjudication will conserve judicial resources and will avoid the possibility of inconsistent rulings. Moreover, there are Class members who are unlikely to join or bring an action due to, among other reasons, their reluctance to sue Respondents and/or their inability to afford a separate action. Equity dictates that all persons who stand to benefit from the relief sought herein should be subject to the lawsuit and hence subject to an order spreading the costs of the litigation among the Class members in relation to the benefits received. The damages, restitution and other potential recovery for each individual member of the Class are modest, relative to the substantial burden and expense of individual prosecution of these claims. Given the amount of the individual class members' claims, few, if any, Class members could afford to seek legal redress individually for the wrongs complained of herein. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

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1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Petition for Writ of Mandate**

4 **C.C.P. § 1085**

5 **(Against All Respondents)**

6 22. Petitioners hereby incorporate by reference each of the preceding allegations as
7 though fully set forth therein.

8 23. Respondents have refused and continue to refuse to comply with California
9 Constitution article XIID section 6 subdivision (b)(1) and (3). Specifically, they impose water
10 utility fees and charges that exceed the cost of providing water services and impose water utility
11 fees or charges that exceed the proportional cost of the service attributable to the parcels.

12 24. There is a clear, present and ministerial duty upon the part of the Respondents to
13 comply with these constitutional mandates.

14 25. Petitioners have a clear, present and beneficial right to the performance of that
15 duty.

16 26. Petitioners do not have an adequate remedy at law.

17 27. Accordingly, Petitioners are entitled to a writ of mandate pursuant to Code of Civil
18 Procedure section 1085 as specified more fully below.

19 **SECOND CAUSE OF ACTION**

20 **Declaratory Relief**

21 **C.C.P. § 1060**

22 **(Against All Defendants)**

23 28. Plaintiffs hereby incorporate by reference each of the preceding allegations as
24 though fully set forth herein.

25 29. An actual, present, and substantial controversy exists between Plaintiffs and the
26 Class, on the one hand, and Defendants, on the other. Plaintiffs contend that Defendants have
27 violated and/or will continue to violate California Constitution article XIII D section 6
28 subdivisions (b)(1) and (3). Defendants contend that they have complied, and will continue to
comply said constitutional restrictions and requirements.

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ON THE THIRD CAUSE OF ACTION AS TO ALL DEFENDANTS

1. Award damages in an amount to be proven at trial.

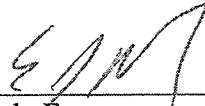
ON ALL CAUSES OF ACTION AS TO ALL DEFENDANTS

1. Enter an order certifying this case as a class action appointing Plaintiffs Jerry W. Jackson and Charles M. Schmidt as the class representatives and appointing their attorneys as class counsel.

2. Award costs and attorneys' fees to Petitioners as permitted by law.

3. Provide any and all further relief that the Court deems just and proper and in the interest of justice.

Dated: April 25, 2017



Eric J. Benink, Esq.
Benjamin T. Benumof, Ph.D., Esq.
Attorneys for Petitioners and Plaintiffs

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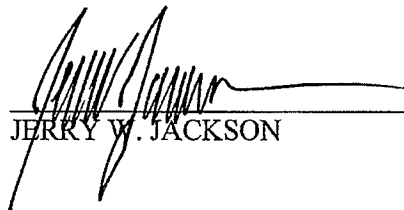
VERIFICATIONS

I, Jerry W. Jackson, have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY RELIEF AND VIOLATION OF PROPOSITION 218. The matters stated therein are true and correct of my own knowledge and belief or on information and belief as indicated therein.

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

Executed in the County of Placer, California.

DATED: April 21, 2017



JERRY W. JACKSON

I, Charles M. Schmidt, have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY RELIEF AND VIOLATION OF PROPOSITION 218. The matters stated therein are true and correct of my own knowledge and belief or on information and belief as indicated therein.

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

Executed in the County of Placer, California.

DATED: April _____, 2017

CHARLES M. SCHMIDT

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VERIFICATIONS

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Executed in the County of Placer, California.

DATED: April ____, 2017

JERRY W. JACKSON

I, Charles M. Schmidt, have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY RELIEF AND VIOLATION OF PROPOSITION 218. The matters stated therein are true and correct of my own knowledge and belief or on information and belief as indicated therein.

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

Executed in the County of Placer, California.

DATED: April 21, 2017

Charles M. Schmidt
CHARLES M. SCHMIDT