

FILED
AMADOR SUPERIOR COURT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF AMADOR

PAUL PRESSNALL, an individual; and
DOROTHY PRESSNALL, an individual,

Petitioners and Plaintiffs

v.

CITY OF SUTTER CREEK, a municipal
corporation, and DOES 1 – 5,

Respondents and Defendants.

Case No.: **11 -CV- 7458**

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

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

Petitioners and Plaintiffs Paul Pressnall and Dorothy Pressnall (“Petitioners”) allege as follows:

**I.
NATURE OF THE ACTION**

1. This is an action brought by Petitioners against the City of Sutter Creek (“Sutter Creek”) for violations of a constitutional provision enacted through Proposition 218. Petitioners seek a writ of mandate, injunctive relief, and a judicial declaration to ensure Sutter Creek complies with Proposition 218's mandates with respect to Sutter Creek’s imposition of waste collection fees.

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**II.
PARTIES**

2. Petitioners own property in and are residents of Sutter Creek. They pay the fees at issue in this action.

3. The City of Sutter Creek is a municipal corporation in the County of Amador. It is an “agency” subject to Proposition 218 as defined in Cal. Const., article XIID, section 2(a). The City can sue and be sued under Government Code § 34501.

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

6. Petitioners are informed and believe, and thereon allege, that at all times herein mentioned, each of the defendants was the agent, employee, representative, partner, joint venturer, and/or alter ego of each of the other defendants and, in doing the things alleged herein, was acting within the course and scope of such agency, employment, representation, on behalf of such partnership or joint venture, and/or as such alter ego, with the authority, permission, consent, and/or ratification of each of the other defendants.

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**III.
GENERAL ALLEGATIONS**

7. Under California law, Sutter Creek is required to provide refuse collection services to its citizens. *See* Cal. Public Resources Code § 40001 (“the responsibility for solid waste management is a shared responsibility between the state and local governments.”) In an effort to fulfill this legal obligation, Sutter Creek entered into a “Franchise for Solid Waste Collection, Disposal and Recycling Services” (“Contract”) with private entity ACES Waste Services, Inc. (“ACES”) on approximately June 4, 2009, effective July 1, 2009. The Contract sets forth the terms and conditions under which ACES is required to collect and dispose the solid waste for the residents of Sutter Creek (i.e. curbside refuse collection services) on Sutter Creek’s behalf. The

1 Contract states that “[n]otwithstanding this grant of franchise, City retains and reserves to itself
2 the full authority to regulate, correct and control all activities of the franchise, including removal,
3 termination, and suspension.”

4 8. Sutter Creek imposes waste collection fees through the Contract with ACES. For
5 example, the Contract sets forth a detailed and complex Rate Adjustment Methodology (“RAM”)
6 that Sutter Creek requires ACES to utilize in setting fees and calculating future fee increases.
7 Under the Contract, all fee increases are reviewed and must be approved by Sutter Creek. In
8 fact, ACES is prohibited from charging any amount in excess of the fees fixed pursuant to the
9 RAM. Thus, Sutter Creek imposes the refuse collection fees through this carefully negotiated
10 Contract with ACES. Alternatively, ACES acts as Sutter Creek’s agent with respect to the
11 imposition of fees.

12 9. The Contract dictates the manner by which ACES conducts its operations regarding
13 matters such as the frequency of collection, equipment maintenance, hours of collection,
14 customer complaints, and expected performance level.

15 10. The Contract requires ACES to pay to Sutter Creek, a 5% “franchise fee” of the
16 gross revenues it collects.

17 11. With regard to waste collection, water, and sewer fees, which are property-related
18 fees, Proposition 218 provides that a local government must, prior to increasing a fee, mail
19 information about the fee to every property owner, conduct a public hearing, and reject the fee if
20 a majority protests. See Cal. Const. article XIII D (“Article XIII D”) § 6(a)(2).

21 12. Sutter Creek imposed the original fees and subsequent fee increases in 2010 and
22 2011 without complying with Proposition 218. It did not mail a Proposition 218-compliant
23 notice regarding the fee increases to the Petitioners or to Sutter Creek’s other property owners or
24 hold a hearing regarding the fee increases. It provided no opportunity to protest. Sutter Creek
25 refuses to comply with Proposition 218 in the future. It wrongly contends that because Sutter
26 Creek has delegated its legal responsibility to a private entity, it is not subject to Proposition
27 218’s mandates.

28 13. The refuse collection services at issue are property-related services and the fees are
imposed by Sutter Creek upon parcels and persons as an incident of property ownership.

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**IV.
FIRST CAUSE OF ACTION
PETITION FOR WRIT OF MANDATE
(Against All Respondents)**

14. Petitioners reallege and incorporate by reference each of the paragraphs set forth above.

15. Respondents refused and continue to refuse to comply with constitutional obligations as set forth above.

16. Accordingly, Petitioners are entitled to a writ of mandate as specified more fully below.

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

17. Plaintiffs reallege and incorporate by reference each of the paragraphs set forth above.

18. An actual controversy exists between the parties in that Plaintiffs believe that fee increases 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 XIIIID § 6(a)(2), but have refused to do so because they do not believe that Proposition 218 governs their actions.

19. Plaintiffs desire a judicial determination of the rights and duties of the parties, including a declaration stating that Defendants are required to comply with Article XIIIID § 6(a)(2).

**VI.
THIRD CAUSE OF ACTION
VIOLATION OF CAL. CONST. ART. XIIIID
(Against All Defendants)**

20. Plaintiffs reallege and incorporate by reference each of the paragraphs set forth above.

1 21. Defendants have violated and intend to violate Art. XIID § 6(a)(2) in the future.

2 22. Plaintiffs seek an order restraining and enjoining Defendants from violating Article
3 XIID § 6(a)(2).

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5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioners / Plaintiffs pray for judgment as follows:

7 **ON THE FIRST CAUSE OF ACTION AS TO ALL RESPONDENTS**

8 1. For the issuance of a peremptory writ of mandate directing Respondents to comply
9 with Article XIID § 6(a)(2) regarding all fees previously imposed and to be imposed in the
10 future pursuant to the Franchise for Solid Waste Collection, Disposal and Recycling Services.
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12 **ON THE SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS**

13 1. For a declaratory judgment declaring that Defendants' practices have violated and
14 continue to violate Article XIID § 6(a)(2).
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16 **ON THE THIRD CAUSE OF ACTION AS TO ALL DEFENDANTS**

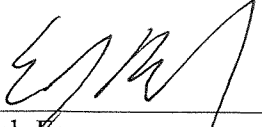
17 1. For a temporary restraining order, preliminary injunction, and permanent injunction
18 enjoining Defendants from violating Article XIID § 6(a)(2).
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20 **ON ALL CAUSES OF ACTION**

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

23 2. For such other relief as the Court deems necessary and proper.
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26 August 29, 2011

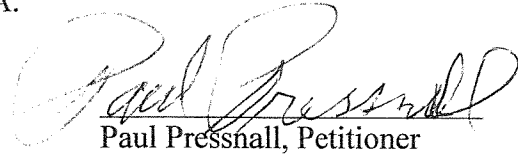
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Eric J. Benink Esq.
Krause, Kalfayan, Benink & Slavens, LLP
Attorneys for Petitioners / Plaintiffs
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1 VERIFICATION

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

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

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8 Executed on August 24, 2011 in Sutter Creek, CA.

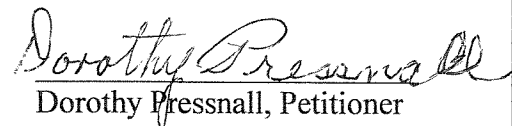
9 
Paul Pressnall, Petitioner

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12 VERIFICATION

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14 Violation of California Constitution and Declaratory Relief and know the contents thereof. The
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16 I declare under penalty of perjury under the laws of the United States and of the State of
17 California that the foregoing is true and correct.

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22 Dorothy Pressnall, Petitioner