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VENTURA SUPERIOR COURT

FILED

07/20/2023

Brenda L. McCormick
Executive Officer and Clerk

Dolores Hernandez

8
9 VENTURA COUNTY SUPERIOR COURT
10 STATE OF CALIFORNIA

11 RICHARD VANE, TRUSTEE OF THE
12 VANE FAMILY TRUST, AND
13 KIMBERLY McLIN, TRUSTEE OF
14 THE KIMBERLY K. TRUST, ON
15 BEHALF OF THEMSELVES AND ALL
16 OTHERS SIMILARLY SITUATED,

Case No.:

CLASS ACTION COMPLAINT FOR:

- 1) DECLARATORY RELIEF
- 2) RESTITUTION
- 3) VIOLATION OF BUS. & PROF. CODE § 17200 ET SEQ.

17 Plaintiffs,

18 v.

19 OJAI VALLEY SANITARY DISTRICT,
20 Defendant.

21
22 **SUMMARY OF ALLEGATIONS**

23 Plaintiffs Richard Vane, trustee of the Vane Family Trust (“Vane”), and
24 Kimberly McLin, trustee of the Kimberly K. McLin Trust (“McLin”)
25 (collectively, “Plaintiffs”), by and through counsel, bring this action individually
26 and on behalf of all similarly situated customers—former, existing and future—of
27 the Ojai Valley Sanitary District’s (“OVSD”) for compensatory damages along
28 with equitable, injunction and declaratory relief, and hereby allege:

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VENUE

11 10. Venue is proper in this judicial district pursuant to Code of Civil
12 Procedure § 395 because Defendant OVSD does business in Ventura County;
13 Defendant OVSD’s conduct occurred and continues to occur in Ventura County;
14 the relevant properties are located in Ventura County; the damage Defendant
15 OVSD causes occurs in Ventura County; and Defendant OVSD’s billing of
16 charges to customers, which are the subject of this action, occurred and occurs
17 within Ventura County – specifically, the Ojai Valley in Ventura County.
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JURISDICTION

20 11. This Court has personal jurisdiction over Defendant OVSD because
21 the OVSD is a California corporation authorized to do business in California, is
22 headquartered in Ventura County and does its business in Ventura County.
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FACTUAL ALLEGATIONS OF PLAINTIFF RICHARD VANE

25 12. At all relevant times Plaintiff Vane has been an OVSD customer with
26 an address of 30 La Cumbra in Oak View, CA 93022, owns an ADU there, and
27 has been and continues to be subject to OVSD’s capacity and sewer service
28 charges and fees.

13. In July of 2020, Plaintiff Vane applied for a permit to build an ADU
on his property. As a prerequisite, Ventura County requires a “will-serve” letter
from the OVSD. OVSD’s withholding of such letter caused substantial delays and
higher costs to the project. Vane’s ADU’s sewer pipe connects to the sewer line
coming from the primary dwelling unit (main house)—and *not* directly to
Defendant OVSD’s main sewer line.

14. Defendant OVSD initially charged Plaintiff Vane over \$16,000 for its
approval of Vane’s ADU; and Plaintiff Vane appealed that decision.

1 15. In November of 2020, The California Department of Housing and
2 Community Development (“HCD”) sent a Letter of Technical Assistance to the
3 OVSD informing it:

4 *“The District’s regulations and current fee structure is not legally*
5 *sound, subjects the District to significant legal risk, is serving a*
6 *significant impediment to housing in this current housing crisis, and*
7 *must be modified to conform to statute.”*

8 16. The OVSD ignored and continues to ignore the HCD’s directive.¹

9 17. In February of 2021, the OVSD requested that the Plaintiff Vane
10 make another application for service. Plaintiff Vane complied and sent the exact
11 same application that he had submitted earlier.

12 18. The OVSD promptly supplied Vane with a “will serve” letter –
13 without any associated fee or obligation to pay. Vane then obtained a building
14 permit for an ADU from Ventura County.

15 19. In April of 2021, the OVSD passed and adopted a new rule dealing
16 with ADUs in which it granted to itself the (unlawful) authority to charge all
17 detached ADUs capacity fees for indirect connections to the OVSD.

18 20. In May of 2021, the OVSD sent an agent to inspect Vane’s ADU and
19 counted the number of Drainage Fixture Units (DFUs), and confirmed the
20 structure was built exactly as planned and submitted in his original application.

21 21. In May of 2021, Vane sent a copy of the County-approved plans to
22 the OVSD as required by the “will serve” letter dated February 1, 2021.

23 22. In June of 2021, Vane received a new invoice from the OVSD in the
24 sum of \$12,653.08, and two months later received a Notice of Violation for
25 unpermitted “connection” to the OVSD sewer system and non-payment of fees.

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¹ OVSD did alter its policy from charging a flat capacity charge of approximately \$16,000 to charging based on the number of fixtures, yielding an average (still illegal) charge closer to \$10,000 per dwelling.

1 23. It was not until October of 2021, that Ventura County issued to Vane
2 a Certificate of Occupancy (“COO”) for his ADU, after inspecting and approving
3 his sewer lines.

4 24. On November 29, 2021, the General Manager of the OVSD ruled for
5 itself that it was justified in charging Vane \$12,653.08 for the privilege of
6 connecting a sewer line from his ADU to the primary dwelling unit’s sewer line;
7 Vane appealed that decision as well.

8 25. On March 28, 2022, the OVSD Executive Board rejected the appeal,
9 reconfirming its decision to charge \$12,653.08 for his indirect lateral connection.

10 26. Defendant OVSD also unlawfully assesses—via Vane’s Ventura
11 County property tax bill – a full, additional, duplicative “service fee” for his ADU
12 (above the regular annual service fee for the primary dwelling) of ~\$740 per year.

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14 **FACTUAL ALLEGATIONS OF PLAINTIFF KIMBERLY McLIN**

15 27. At all relevant times Plaintiff McLin has been an OVSD customer
16 with an address of 307 E. Aliso St., Ojai 93023, and subject to OVSD’s capacity
17 charges and sewer service fees.

18 28. On August 17, 2021, the City of Ojai issued a building permit to
19 McLin to build two ADUs with no direct connection to the OVSD sewer line.

20 29. On August 30, 2021, although McLin had not even yet commenced
21 construction, Defendant OVSD announced to McLin that she was in violation of
22 its regulations for illegally connecting to the OVSD system.

23 30. Ultimately, McLin’s ADU’s sewer pipe will connect to the sewer line
24 of the primary dwelling. As of today, the ADUs are not complete and there are
25 still not even sewer connections for – or tenants in – the ADUs.

26 31. Nonetheless, the OVSD assessed McLin \$15,857.85 in capacity fees,
27 to which McLin objected. In response, the OVSD threatened to cut-off McLin's
28 sewer service altogether.

1 32. On March 5, 2022, to resolve the controversy, the OVSD arranged
2 with McLin (under protest) to allow McLin to pay \$15,000 of the \$15,857.85 of
3 capacity charges without interest over five years via her County tax bill. McLin
4 wrote to the OVSD, stating: “I am not in agreement with your fee structure and
5 the submittal of the application [for deferred loan payment] is completed under
6 protest and is not an agreement to pay any fee you might levy.” Defendant OVSD
7 acknowledged her disagreement.

8 33. Defendant OVSD also unlawfully assesses—via McLin’s County
9 property tax bill – additional “service fees” of approximately \$740 per ADU per
10 year. This translates for her two ADUs additional annual service fees of \$1,480.

11 34. On November 23, 2020, the California Department of Housing and
12 Community Development (“HCD”) wrote an advisory letter to the OVSD, stating:

13 *State ADU Law places significant limits on two kinds of fees: (1)*
14 *impact fees and (2) connection fees and capacity charges. OVSD’s*
15 *regulations and practices appear to exceed the limitations on the*
16 *latter. These fees are prohibited in some cases and limited in others.*

17 * * *

18 *The District regulations do not comply with these requirements and*
19 *thus appear to be impermissible.*

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21 **THE GOVERNING STATUTORY AUTHORITY**

22 35. Government Code § 65852.150 states the general intent of the State
23 —to promote affordable housing in the face of a severe housing crisis:

24 (a) *The Legislature finds and declares all of the following:*

25 (1) *Accessory dwelling units are a valuable form of housing in*
26 *California.*

27 (2) *Accessory dwelling units provide housing for family members,*
28 *students, the elderly, in-home health care providers, the disabled, and*
others, at below market prices within existing neighborhoods.

1 (3) Homeowners who create accessory dwelling units benefit
2 from added income, and an increased sense of security.

3 (4) Allowing accessory dwelling units in single-family or
4 multifamily residential zones provides additional rental housing stock
5 in California.

6 (5) California faces a severe housing crisis.

7 (6) The state is falling far short of meeting current and future
8 housing demand with serious consequences for the state's economy, our
9 ability to build green infill consistent with state greenhouse gas
10 reduction goals, and the well-being of our citizens, particularly lower
11 and middle-income earners.

12 (7) Accessory dwelling units offer lower cost housing to meet the
13 needs of existing and future residents within existing neighborhoods,
14 while respecting architectural character.

15 (8) Accessory dwelling units are, therefore, an essential
16 component of California's housing supply.

17 (b) It is the intent of the Legislature that an accessory dwelling unit
18 ordinance adopted by a local agency... [is] not so arbitrary, excessive,
19 or burdensome so as to unreasonably restrict the ability of homeowners
20 to create accessory dwelling units....

21 36. Government Code § 65852.2(f) amplifies that intent by providing
22 specific language governing ADUs and sewer fees and charges:

23 (f)(2) An accessory dwelling unit shall **not** be considered by a...special
24 district... to be a **new residential use** for purposes of calculating
25 **connection fees or capacity charges** for utilities, **including ... sewer**
26 **service**, unless the accessory dwelling unit was constructed **with** a new
27 single-family dwelling.

28 * * *

(g) **This section shall supersede a conflicting local ordinance.**

37. Despite this clear statutory language prohibiting OVSD from levying
ADU capacity charges and service fees (unless the ADU was constructed
simultaneously with a new home), OVSD unfairly, deceptively, falsely and
misleadingly states that such prohibitions apply only in narrower circumstances:

An accessory dwelling unit, whether in the City of Ojai or the County
of Ventura jurisdiction, must be permitted by The Ojai Valley Sanitary
District to connect to the sewer system. **An Accessory Dwelling Unit is**

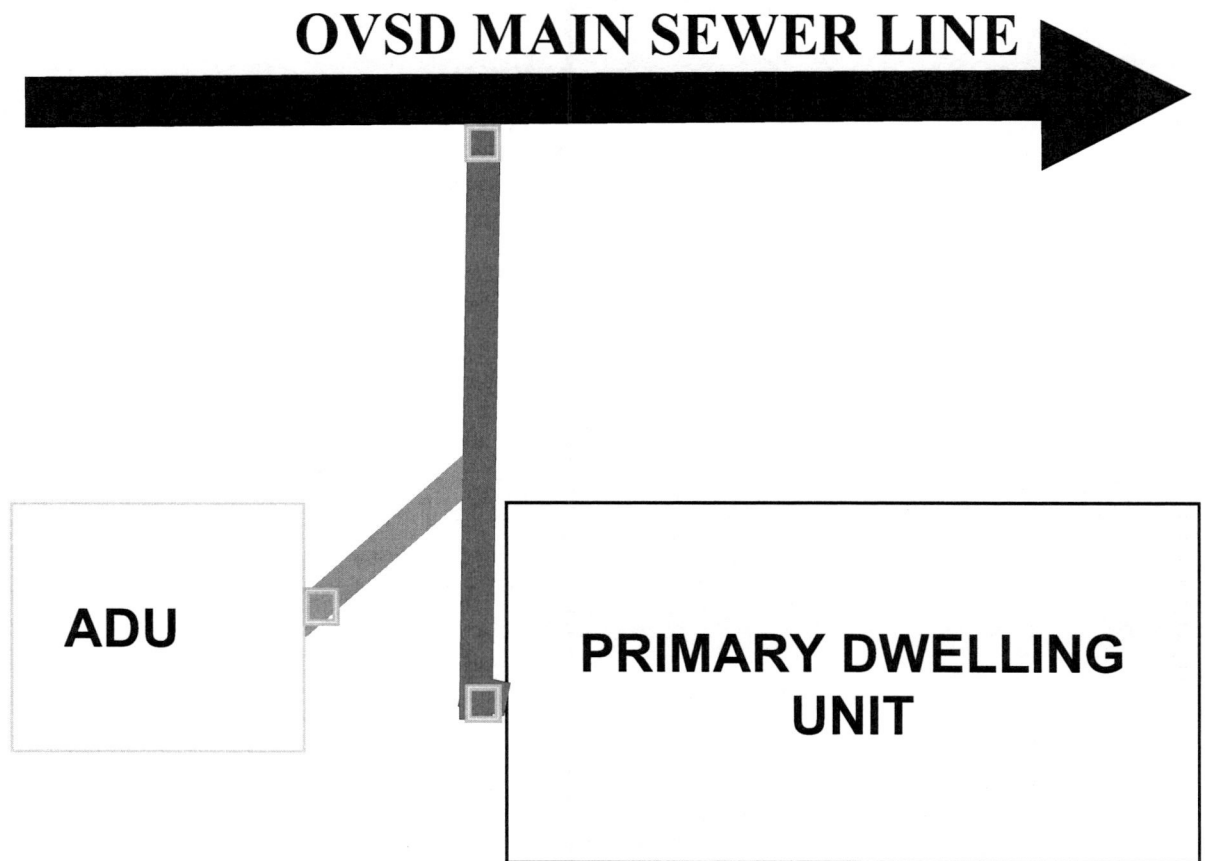
1 **also required to pay a separate sewer service fee, which is, generally,**
2 **collected via the property taxes on the parcel.**

3 *An ADU is subject to the District's Capacity Charges if it does not*
4 *meet the exempt conditions of 1. An **interior** ADU that is located within an*
5 *existing residential dwelling or 2. An ADU created by converting an **existing***
6 *accessory structure located on the property where the conversion does not*
7 *require an expansion of the existing accessory structure of more than 150*
8 *square feet [e.g., a garage conversion]. or 3. A **junior ADU**, [<500 sq. ft.] as*
9 *defined in Government Code § 65852.22(h)(1);*

10 [https://www.ojaisan.org/residential/accessory_dwelling_unit_\(adu\)/index.php](https://www.ojaisan.org/residential/accessory_dwelling_unit_(adu)/index.php)

11 TYPICAL ADU SEWER CONNECTIONS

12 38. The connections of the typical class member's sewer lines between
13 the ADU/primary dwelling unit and the OVSD main line, are as shown below:



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1 **CLASS ACTION ALLEGATIONS**

2 **The Proposed Class**

3 39. Pursuant to California Code of Civil Procedure § 382, Plaintiffs Vane
4 and McLin bring this Class Action on behalf of themselves and all others similarly
5 situated, defining the Class as follows: “Any ADU owner in the service area of the
6 OVSD who has been subject—over the past three years, is now subject, or will
7 become subject to OVSD’s unlawful sewer capacity charges and service fees.”

8 **The Class is Ascertainable**

9 40. Defendant OVSD possesses lists of its customers, whom it bills and
10 can easily identify and contact through its records.

11 **There is a Well-Defined Community of Interest**

12 41. Defendant OVSD has charged all members of the putative class
13 unlawful fees and charges relating to their ADUs.

14 **Common Questions of Law and Fact are Present.**

15 42. There are questions of law and fact common to every member of the
16 class including: Are customers subject to OVSD capacity charges and sewer
17 service fees attributed to their ADUs being charged illegally under California law?
18 Are OVSD’s methods of billing permissible? Equitable?

19 **The Class Representatives’ Claims are Typical of the Class**

20 43. The class representative and all class members are customers of
21 OVSD. Their common defining characteristic is that they all own ADUs governed
22 by Government Code § 65852.2(f).

23 44. The class representative and all class members were, are, or will be
24 assessed by Defendant OVSD for unlawful “capacity” charges, as well as
25 “service” fees through their Ventura County property tax bills.

26 45. Although the class representatives’ claims may involve different
27 degrees of inaccuracy, errors, or unfairness, the bills of all class members were all
28 inaccurate, erroneous or unfair, and thus illegal in their entirety as a matter of law.

1 **The Class is so Numerous that the Individual Joinder of all Members is**
2 **Impractical Under the Circumstances of this Case**

3 46. Although the number of members in the Class is unknown to
4 Plaintiffs at this time, Plaintiffs are informed, believe, and thereon allege that
5 Defendant has unlawfully charged, is charging, and will charge continue to charge
6 unlawful “service fees” to hundreds of customers and unlawful “capacity charges”
7 to scores of customers during the class period and into the future.

8 **The Class Representatives Will Adequately Represent the Class**

9 47. Plaintiffs will adequately represent the interests of the class, as all
10 relevant questions of law and fact apply to both their and class members’ claims.

11 48. Plaintiffs have retained counsel who is experienced in class action
12 litigation. Plaintiffs’ counsel has the resources to litigate the claims in question.

13 49. Although Defendant OVSD provides statements that likely include
14 differing levels of error and unfairness, the alleged sewer costs and associated fees
15 cited in their statements are illegal in their entirety regarding ADUs subject to
16 Government Code § 65852.2(f).

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18 **FIRST CAUSE OF ACTION**

19 **DECLARATORY RELIEF FOR VIOLATION OF § 65852.2(f)**

20 **AGAINST DEFENDANT OVSD**

21 50. The allegations above are realleged and incorporated by reference.

22 51. With one exception not applicable here (ADUs constructed with new
23 homes), all detached ADUs are governed by Government Code § 65852.2(f).

24 52. Defendant OVSD violates Government Code § 65852.2(f) by
25 charging Class Members “capacity” and “service” fees.

26 53. Defendant OVSD disputes that it violates state law.

27 54. Plaintiffs request a declaration from this Court that OVSD, by
28 charging customers capacity and service fees, violates Govt. Code § 65852.2(f).

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**SECOND CAUSE OF ACTION
FOR RESTITUTION AND DAMAGES
AGAINST DEFENDANT OVSD**

17 55. The allegations above are realleged and incorporated by reference.

18 56. Plaintiffs and others similarly situated have paid to Defendant OVSD
19 sums of money pursuant to a contract that was void for illegality.

20 57. Defendant OVSD took undue advantage of plaintiffs by exacting
21 funds from them to which it had no legal right.

22 58. Defendant OVSD thus now owes a duty to make plaintiffs whole by
23 repaying all funds it received from Plaintiffs, including interest and penalties on

24 a) All “service” fees

25 b) All “capacity” or “plant” charges

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**THIRD CAUSE OF ACTION
FOR VIOLATION OF BUS. & PROF. CODE § 17200 et seq.
AGAINST DEFENDANT OVSD**

59. The allegations above are realleged and incorporated by reference.

60. It is a violation of the California’s Unfair Competition law to engage
in any “unlawful, unfair or fraudulent business act or practice and unfair,
deceptive, untrue or misleading advertising” Cal. Bus. & Prof. Code § 17200.

61. “Any person who engages, has engaged, or proposes to engage in
unfair competition may be enjoined in any court of competent jurisdiction.” Cal.
Bus. & Prof. Code § 17203.

62. California’s Unfair Competition Law, Cal. Bus. & Prof. Code §
17203, explicitly allows representative claims.

63. Defendants engage in unlawful and unfair business practices by
engaging in unfair, deceptive, untrue and misleading advertising (see
[https://www.ojaisan.org/residential/accessory_dwelling_unit_\(adu\)/index.php](https://www.ojaisan.org/residential/accessory_dwelling_unit_(adu)/index.php); and

1 by charging, billing, and collecting for unlawful capacity charges and service fees
2 – all in violation of California law.

3 64. Plaintiffs suffered and continue to suffer economic harm in the form
4 of paying unlawful OVSD capacity charges and service fees.

5 65. Plaintiffs' success in this action will enforce important rights in the
6 public interest. Plaintiffs sue on behalf of the public as well as on behalf of
7 themselves. Plaintiffs seek and are entitled to reimbursement of paid OVSD bills,
8 declaratory relief, injunctive relief, and any other appropriate remedies.

9 66. California Code of Civil Procedure § 1021.5 provides that a court
10 may award attorney's fees to a successful party against one or more opposing
11 parties in any action, resulting in the enforcement of an important right affecting
12 the public interest. Plaintiffs' lawsuit enforces important rights affecting the
13 public interest. Plaintiff is therefore entitled to attorney's fees under this section.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
17 situated, request the Court enter the following relief against Defendant OVSD:

18 1. Issue a declaratory judgment that Defendant OVSD violates
19 Government Code § 65852.2(f) by billing for the following:

- 20 a. "Capacity charges" or "plant fees" for ADUs, as alleged.
21 b. Sewer "service fees" for ADUs, as alleged.
22 c. Any interest or other charges related to relevant ADUs.

23 2. Issue an injunction prohibiting Defendant OVSD from preparing,
24 sending, or collecting bills relating to any fee or charge relating to any relevant
25 ADU, including but not limited to connection, capacity, plant, sewer service,
26 impact, administrative, inspection, late payment, penalty and interest charges.

27 3. Award Plaintiffs:

- 28 a. Restitution and compensation to each class member according to
proof;

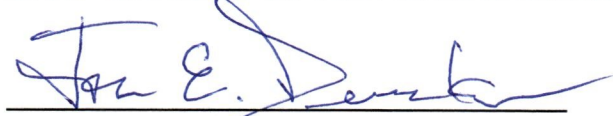
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- b. Interest at the 10% legal rate on any amounts owing;
- c. Penalties according to proof;
- d. Attorney's fees; and
- e. Costs of this suit including expert witness fees;
- f. Bonuses to Plaintiffs for leading the Class; and
- g. Any other relief that is just and proper.

Respectfully Submitted,

DATED: July 18, 2023

LAW OFFICES OF JON E. DRUCKER



Jon E. Drucker
Attorney for Plaintiffs