SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 10/24/2025 TIME: 8:00 AM DEPT: C-65

JUDICIAL OFFICER: MARK T. CUMBA
CLERK: Morgan Acosta
REPORTER/ERM:
BAILIFF/COURT ATTENDANT:B. Vermillion
CASE NO: **37-2021-00030939-CU-WM-CTL** CASE INIT.DATE: 07/20/2021
CASE TITLE: **Allred VS City of San Diego [E-FILE]**
CASE CATEGORY: Civil CASE TYPE: (U)Writ of Mandate: Writ of Mandamus - Prohibit

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HEARING TYPE:
MOVING PARTY:

APPEARANCES

The Court, having taken the above - entitled matter under submission on 9/25/2025 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Defendant's Motion for Summary Judgment, or in the Alternative, Summary Adjudication (ROA 112) is GRANTED IN PART and DENIED IN PART.

Summary Judgment – Failure to Comply with Statutory Payment Under Protest Requirement

Defendant first asserts summary judgment should be granted because the class failed to exhaust its administrative remedies before this lawsuit was filed. As Plaintiffs point out in their opposition, Defendant fails to identify any specific administrative review procedure that ought to have been followed prior to filing suit in its moving papers. Defendant does cite Health and Safety Code section 5472, which contains a "payment under protest" requirement prior to filing suit to challenge certain charges.

"Payment under protest means giving written notice to the entity imposing the charges, at the time payment is made, indicating the payor believes the charge is invalid and intends to seek a refund." (Padilla v. City of San Jose (2022) 78 Cal.App.5th 1073, 1077.) The requirement "puts the entity on notice that a refund may eventually be required." (Ibid.) "Payment under protest as described by section 5472 has been found to be a prerequisite to bringing an action for a refund of sewer charges." (Id. at p. 1078; Los Gatos Golf & Country Club v. County of Santa Clara (2008) 165 Cal.App.4th 198, 207.)

Defendant asserts Plaintiffs Allred and Penley did not pay the challenged sewer charges under protest before the filing of this action, and also that no other member of the class did so. (Def. Sep. Stmt. at ¶¶ 11-12, 15.) Plaintiffs raise several arguments in opposition.

First, Plaintiffs assert they did comply with section 5472's payment under protest requirement by virtue of submitting their claims to Defendant in compliance with the Government Claims Act. Plaintiff Allred submitted his claim to the City on June 3, 2021, describing the claim as encompassing, "[f]or the proposed class of residential and commercial customers, all fees improperly collected by [the San Diego Public Utilities Department] to compensate for chronic undercharges and under-collection of sewer and wastewater fees from industrial discharge customers, from 2010 to the present and continuing." (Def. NOL, Exh. 16.) Similarly, Plaintiff Penley submitted his claim to the City on June 15, 2022, describing the claim as encompassing, "[f]or Claimant and a proposed Class of Residential and Commercial customers, excess wastewater fees improperly collected by SD PUD to fund the IWCP which chronically undercharges industrial dischargers for IWCP services." (Id. at Exh. 17.) Plaintiffs contend every payment made after their claims were submitted was a payment made under protest.

On reply, Defendant asserts the claims do not comply with section 5472's requirement of payment under protest because the claims "did not accompany payment of sewer charges." (Reply at 7:28-28:1.) However, the statutory requirement is that written notice of the protest be made "at the time payment is made," not that payment must accompany the written notice. (Health & Saf. Code § 5472.) There is no evidence before the court as to when any payments were made. Accordingly, the court concludes Defendant did not meet its initial burden of production. Defendant further asserts the claims are not sufficiently specific to satisfy section 5472 because they do not identify the "legal basis" for the claims. However, Defendant cites no authority for the proposition that Plaintiffs were required to cite the legal basis for their claims or expressly refer to Proposition 218. The court concludes this argument does not have merit.

Defendant also asserts on reply that Plaintiffs' claims do not comply several provisions of the Revenue and Taxation Code. Specifically, Defendant asserts Plaintiffs' claims do not comply with section 5097, which requires that a claim for refund must be verified "by the person who paid the tax, their guardian, executor, trustee, or administrator." (Rev. & Tax. Code § 5097(a)(1).) Both claims were signed by Plaintiffs' counsel. (Def. NOL, Exh. 16-17.) Defendant also asserts the claims do not comply with section 5097.02, which requires that the claim shall adequately specify "[t]he grounds on which the claim is founded." (Rev. & Tax. Code § 5097.02(b).) The court concludes these arguments are untimely and cannot form the basis for summary judgment or summary adjudication, as they were not raised in the moving papers.

Further, Plaintiffs assert that as to their constitutional claims they were not required to comply with section 5472's payment under protest requirement, citing Carachure v. City of Azusa (2025) 110 Cal.App.5th 776. Like Plaintiffs in the instant action, the Carachures brought an action for a writ of mandate asserting the city had violated Proposition 218. (Carachure at p. 780.) "Proposition 218 added article XIII D to the California Constitution, which limits the authority of local governments to assess taxes and other charges on real property." (Id. at p. 782, quotation marks omitted.) "The Carachures paid the sewer and trash fees, but they did not protest." (Id. at p. 785.) Section 5472 "requires a taxpayer to pay

under protest and file a refund claim before filing a superior court action for a refund and spending such fees." (Id. at p. 789.) However, "[i]t does not require the same of a plaintiff challenging the constitutionality of a city's general practices for setting and spending such fees." (Ibid.)

On reply, Defendant inaccurately asserts the court in Carachure "refused to allow the monetary relief claims to proceed because the plaintiffs failed to meet Section 5472's payment under protest requirement." (Reply at 6:27-28.) To the contrary, the Carachures did not seek a refund; no monetary relief claim was at issue. (See, e.g., Carachure at p. 782 (trial court noted the Carachures did "not expressly seek a refund of franchise fees") and at p. 785 (noting the Carachures conceded their failure to pay under protest precluded them from obtaining a refund).)

Accordingly, summary judgment is denied.

Plaintiffs' Third Cause of Action for Money Had and Received

Defendant asserts that even if summary judgment is not granted, it is nevertheless entitled to summary adjudication of Plaintiffs' third cause of action for money had and received. In this cause of action, Plaintiffs assert "Defendant received excess monies… as a result of improper fees and unlawful taxes assessed for property-related wastewater services," which Defendant benefited from and has not returned. (FAP at ¶¶ 148, 151-152.) Plaintiffs further allege "Defendant should not be permitted to retain this money" and that Plaintiffs and the class are entitled to recover the funds. (Id. at ¶¶ 154-155.)

Defendant reiterates its argument that Plaintiffs failed to comply with section 5472's requirement of payment under protest. For the same reasons as set forth in the court's ruling denying summary judgment on these grounds, other than the rationale in Carachure which does not apply to claims for monetary relief, summary adjudication of the third cause of action is also denied on these grounds. After hearing oral argument, the court remains persuaded summary adjudication is properly denied.

Defendant also asserts monetary relief is barred by Government Code section 53758.5. This statute requires that "[i]f a court determines that a fee or charge for a property-related service, including… sewer… violates Section 6 of Article XIII D of the California Constitution, then the local agency shall, in the next procedure to impose or increase the fee or charge, credit the amount of the fee or charge attributable to the violation against the amount of the revenues required to provide the property-related service unless a refund is explicitly provided for by statute." (Gov. Code § 53758.5(a).) "[T]he statute does not allow agencies in Proposition 218 cases to pay a refund award as a money judgment, unless a statute explicitly allows the agency to do so." (Patz v. City of San Diego (2025) 113 Cal.App.5th 225, 306.)

In opposition, Plaintiffs do not contend any statute allows the City to pay a refund award as a money judgment here. Instead, Plaintiffs assert Government Code section 53758.5 became effective on January 1, 2025, long after this lawsuit was filed, and cannot be applied retroactively.

Although Defendant cites Patz as conclusively answering whether section 53758.5 may be applied here, Patz did not contain any discussion of whether or why the statute may be applied retroactively. However, Defendant also cites Brento v. Metabolife International, Inc. (2004) 116 Cal.App.4th 679, wherein the

appellate court explains that "[i]n contrast to changed substantive statutes, applying changed procedural statutes to the conduct of existing litigation, even though the litigation involves an underlying dispute that arose from conduct occurring before the effective date of the new statute, involves no improper retrospective application because the statute addresses conduct in the future." (Brenton at p. 689, emphasis added.) "It is the effect of the law, not its form or label, that is important for purposes of this analysis." (Ibid.) "Where… the Legislature has conferred a remedy and withdraws it by amendment or repeal of the remedial statute, the new statutory scheme may be applied to pending actions without triggering retrospectivity concerns…." (Id. at p. 690.) Section 53758.5 limits the remedies available where a violation of Proposition 218 is alleged, as it is here. Thus, there is no retrospectivity concern.

Accordingly, the court concludes Government Code section 53758.5 precludes Plaintiffs from obtaining a money judgment, and grants summary adjudication of Plaintiffs' third cause of action.

Class Claims for Monetary Relief for Alleged Overpayments Before June 3, 2020

Finally, the City asserts it is entitled to summary adjudication of "[a]ll Class claims for monetary relief for alleged overpayments before June 3, 2020 – more than one year before Allred's June 3, 2021 government claim." (ROA 112, Ntc. Mtn. at 2:23-24.)

"A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc. § 437c(f)(1).) A party may only move for adjudication of "a legal issue or a claim for damages other than punitive damages that does not completely dispose of a cause of action, affirmative defense, or issue of duty" by stipulation of the parties and leave of court. (Code Civ. Proc. § 437c(t).) Here, no joint stipulation was filed, nor was leave of court obtained.

Defendant contends summary adjudication of this matter is proper because under the continuing accrual doctrine, "each of the Class's three causes of action actually aggregates thousands of separate money claims that individually accrued each time a class member paid a sewer bill." (Memo. P&A at 19:19-21.) The court is not persuaded, not least because there is no clarity in the papers as to how adjudication of "all class claims for monetary relief" would impact Plaintiff's remaining causes of action – seeking in the first cause of action a writ of mandate compelling Defendant to comply with its mandatory duties, but also requesting reimbursement, and in the second cause of action seeking declaratory and injunctive relief, but also alleging damages based on Defendant's alleged constitutional violations. (FAP at ¶¶ 131, 140-146.) Accordingly, the court declines to consider this request for adjudication. (Code Civ. Proc. § 437c(f)(1).)

Requests for Judicial Notice

Defendant's requests for judicial notice (ROA 115) are granted.

Unauthorized Briefing

Defendant's unauthorized "reply separate statement" (ROA 155) purporting to reply to each of Plaintiffs' responses to Defendant's material facts is improper and should not have been filed. (Nazir v. United Airlines, Inc. (2009) 178 Cal.App.4th 243, 249.) The Code does not permit the filing of a reply separate

statement. (Code Civ. Proc. § 437c; see also Nazir at 252, "[t]here is no provision in the statute for this.") The court did not consider it.

Once confirmed, this ruling shall be the final ruling of the court and no further written order is required.

The Court sends notice.

Mark T. Cumba

Judge Mark T. Cumba