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COLANTUONO HIGHSMITH WHATLEY, PC

Newsletter | Fall 2025

Update on Public Law

No Class Certification for Solid Waste Fee Refunds

By Holly O. Whatley, Esq.

In *Leeds v. City of Los Angeles*, the Los Angeles Court of Appeal affirmed a trial court order denying class certification in a challenge to Los Angeles' solid-waste-hauling franchise fee. The City provides solid waste services directly to single-family residences and multi-family buildings with four or fewer units. The City franchises seven haulers to serve commercial and larger multi-family properties. The contracts require haulers to pay a franchise fee based on gross receipts. Commercial and multi-unit property owners and tenants alleged haulers passed the fees through to customers, making the fees non-voter-approved "taxes" violating Proposition 218.

The trial court found individual issues on refund claims predominated over common ones, preventing class certification. Evidence established not all proposed class members suffered economic loss because some landlords and property owners did not pass the fees through to their tenants, bearing the cost themselves. Entitlement to refunds, therefore, could not be resolved through common proof, defeating the "community of interest" class certification requires. The trial court also concluded class action treatment was not superior to other forms of litigation given the risk of unjust enrichment of property owners and landlords who do not bear the ultimate cost of the fees.

The Court of Appeal affirmed. It first agreed the trial court properly considered whether costs were passed on to tenants despite precedent barring "pass-on" defenses in antitrust and unfair competition cases. The Court of Appeal noted the issue here was not liability, but whether class members were entitled to refunds — a question complicated by the varied relationships among property owners, landlords, and tenants. The Court of Appeal also upheld the trial court's conclusion that Plaintiffs' "real claim is for refunds and that requires a class of persons who both made payments and suffered an economic loss because they did not pass through the payments to others. That core issue is not susceptible to common proof."

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Welcome David Nagele!

CHW's newly arrived telecom team includes Senior Counsel David K. Nagele in our San Diego office. David assists local governments with a broad range of transactional and regulatory telecommunications matters and other real estate and land use matters, too.

David has deep experience in lease and license agreements for cell facilities. He handles lease compliance, enforcement, and cost recovery to protect lessors. David helps cities and counties develop policies and ordinances to regulate and manage wireless and wireline cell sites and telecommunications facilities on private property and in rights-of-way. He also advises on wireless location, siting, development, and design issues as to permit applications.

David received his J.D. and Environmental, Land Use, and Real Estate Law Certificate from Chapman University School of Law, and his bachelor's degree in History from Santa Clara University. In law school, David interned with two City Attorneys' Offices and received a "Commitment to Service" Pro Bono Award for Government Service.

Welcome, David!

What To Do About Water Rates?

By Michael G. Colantuono, Esq.

Challenges to water rates under Propositions 218 (for retail rates) and 26 (for wholesale rates) proliferate. And outcomes are inconsistent. Some courts understand that ratemaking is extraordinarily complex and that there is more than one right way to do it. Others are comfortable imposing their own views of a "fair or reasonable" cost allocation.

Worst of all, some judges have allowed challengers' attorneys to draft statements of decision and accepted them uncritically, concluding such outlandish things as:

- The volume of water available in each use tier for tiered rates must be reasonable. But no law or practice requires this – does Coke have to justify choosing to sell sodas in 12-ounce cans and 1-liter bottles? Cost justification follows volume determinations, it does not control them. Tell me what volume you want and I can calculate the cost.
- Peaking factors have been used for a century to allocate costs to water users based on their contributions to peak water use (as on the afternoon of a hot summer day) because peaking drives system size and, therefore, construction and maintenance costs. One case held peaking factors may not be used to allocate costs to customers without time-of-use data. Such data, of course, are a feature of "big data" technology and only recently available to the most well-resourced utilities. But there is no evidence the voters who approved Proposition 218 in 1996 intended to outlaw a longstanding ratemaking practice used around the world.

Given this uncertainty, the risk of litigation is high. So, how can a water provider manage litigation risk? First, avoid controversy if possible. Plaintiffs' lawyers find clients on the internet. Regular and consistent communications with customers about what things cost and how the agency manages rates may help. Second, do a thorough cost study before making rates and have an experienced lawyer review it. Third, rely on these procedural defenses which have recently succeeded in court:

- short statutes of limitations and duties to sue in validation rather than ordinary civil cases (i.e., don't change rates more often than necessary);
- the new statute (SB 1072, Padilla, D-Chula Vista) forbidding refunds in Prop. 218 cases;
- attack class allegations, as Los Angeles successfully did in *Leeds v. City of Los Angeles*, a sewer fee case discussed on page 1 above;
- invoke the procedural protections of AB 2257 (Wilson, D-Suisun City) which require challengers to inform an agency of their legal theories before the end of a ratemaking hearing (by adopting a local ordinance or resolution to implement this statute).

None of these is a solution — some problems can be managed, but not solved. The California Supreme Court has denied review of cases involving San Diego, the Otay Water District, and the Coachella Water District which sought to bring some predictability to the law. And there are limits on what the Legislature can do given that Proposition 218 requires independent judicial review of rates. But the strategies noted here can contain risk while we await further developments.

Stay tuned!

For more information on this subject, please contact Michael at MColantuono@chwlaw.us or 530.432.7357.

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(continued from page 1)

The Plaintiffs sought to capitalize on Oakland's loss in the *Zolly* case by arguing they had standing to challenge fees haulers agreed to pay because Plaintiffs bore the burden of those fees. This made the case vulnerable to our defense requiring them to prove landlords and tenants alike bore that burden. This greatly reduces the risk of the case to Los Angeles, precluding hundreds of millions of dollars in refunds Plaintiffs had sought.

The published decision provides welcome authority for public agencies, increasingly confronted with class action tax refund claims. When facing such claims, agencies should consult experienced counsel.

For more information on this topic, please contact Holly at HWhatley@chwlaw.us or 213.542.5700.

Legislature Requires Disclosure of AI Use in Police Reports

By Mihir A. Karode, Esq.

Effective January 1, 2026, SB 524 (Arreguín, D-Berkeley) requires law enforcement agencies to maintain a policy governing the use of artificial intelligence ("AI") to prepare police reports. A policy must require a report prepared using AI to state prominently on each page or within the body, "This report was written either fully or in part using artificial intelligence." Reports must identify the AI programs used and include the signature of the officer who prepared the report affirming he or she verified its accuracy.

Agencies must retain the first draft of the report (the version created using AI) for as long as the official report is retained and an audit trail, including a record of who used AI to generate the report, and any video and audio footage used to do so.

SB 524 prohibits an AI vendor from using the law enforcement data, except for the law enforcement agency's purposes, pursuant to court order, or for troubleshooting, bias mitigation, accuracy improvement, or system refinement.

Lexipol provides policy manuals, training, and risk management tools for many agencies. It has prepared an AI policy to implement SB 524. Its client agencies should review that policy with their legal counsel to ensure the bill's requirements and the agency's needs are met. Records-retention policies may need updates, too.

Existing law also requires law enforcement agencies to post on their websites all current policies and procedures available to the public under the Public Records Act. This will include this newly required AI policy.

For more information on this subject, please contact Mihir at MKarode@chwlaw.us or 916.898.9256.

New Labor Notice Requirements

By Diego Lucich, Esq.

SB 294 (Reyes, D-San Bernardino) updates California's long-standing requirements that employers — including public agencies — inform employees of their workplace rights to address current immigration enforcement efforts.

Starting February 1, 2026, agencies must provide notices annually and upon hire to each employee and his or her bargaining unit describing certain workers' rights. It is best to use the Labor Commissioner's model notice, which will be available in January. The notice must cover the rights to: worker's compensation benefits; notice of inspection by immigration agencies and "protection against unfair immigration-related practices against a person exercising protected rights"; to unionize; constitutional rights when interacting with law enforcement in the workplace; new developments about laws enforced by the Labor and Workforce Development Agency; and a list, developed by the Labor Commissioner, of the enforcement agencies that may enforce these rights.

Agencies must maintain records of compliance for three years. It may be best to obtain written acknowledgment that an employee received the required notice upon hire, and maintain copies of annual transmittals to all employees and bargaining units.

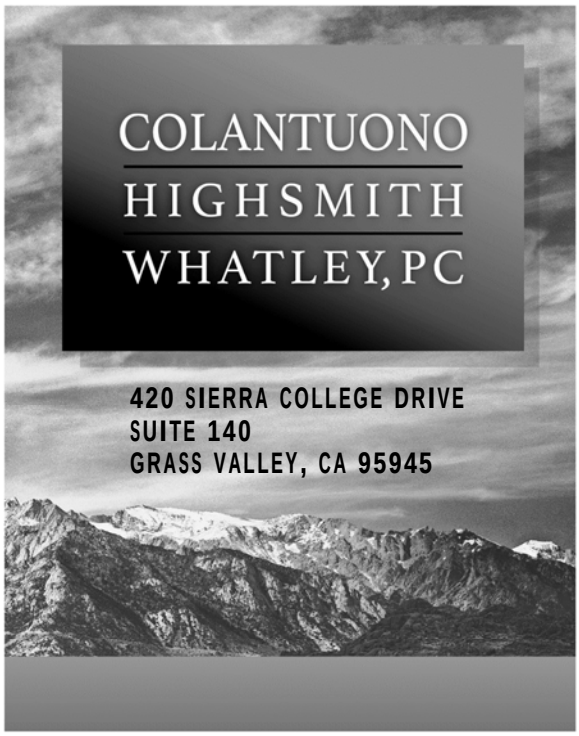
By March 30, 2026, agencies must allow employees an opportunity to provide an emergency contact to be notified if they are detained while at work. We recommend agencies update existing emergency contact forms and provide them to new employees upon hire and to current employees before March 30, 2026.

For more information on this topic, please contact Diego at DLucich@chwlaw.us or 213.542.5729.

We've Got Webinars!

CHW offers webinars on a variety of public law topics including redistricting, the welter of new housing laws; personnel, public works, police personnel records, and cutting-edge CPRA issues involving video and other police technologies.

Our webinars provide advice and Q&A for public agency counsel and staff in an attorney-client-privileged setting for $2,000 per agency. To schedule a webinar, contact Bill Weech at BWeech@chwlaw.us or (213) 542-5700.



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