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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

SAN DIEGO COUNTY WATER AUTHORITY,

Petitioner and Plaintiff,

v.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA; ALL PERSONS INTERESTED IN THE VALIDITY OF THE RATES ADOPTED BY THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ON APRIL 13, 2010 TO BE EFFECTIVE JANUARY 1, 2011; and DOES 1-10,

Respondents and Defendants.

UTILITY CONSUMERS' ACTION NETWORK,

Respondent.

CASE NO. CPF-10-510830

ASSIGNED FOR ALL PURPOSES TO JUDGE RICHARD A. KRAMER DEPARTMENT 304 (COMPLEX CASE)

Trial Date: August 30, 2011
Time: 1:30 p.m.

REPLY TRIAL BRIEF BY UTILITY CONSUMERS' ACTION NETWORK FOR THE BIFURCATED AUGUST 30, 2011 BENCH TRIAL

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1 Respondent and Defendant Utility Consumers' Action Network ("UCAN") respectfully
2 submits this brief in reply to the Opening Trial Brief filed jointly by the Metropolitan Water District
3 of Southern California ("Metropolitan," "Met") and Met's member agencies in advance of the
4 August 30, 2011 bifurcated trial on the issue of UCAN's and the Imperial Irrigation District's
5 ("IID's") standing to participate in this litigation.

6 **I. INTRODUCTION**

7 UCAN has standing. To have standing in a validation action, an individual or organization
8 must qualify as an "interested person." Cd. Civ. Proc. § 863. Interested person standing requires a
9 direct, and not merely consequential interest in the litigation. *Associated Boat Industries v. Marshall*
10 (1951) 104 Cal.App.2d 21, 22. A "direct interest" is one that may be impaired or defeated as a result
11 of the validation action. *Id.* at pp. 22-23.

12 An organization can qualify as an "interested person" in two ways. First, an organization
13 formed for a specific purpose has a "direct organizational interest," and thus qualifies as an
14 "interested person," in matters that fall within the scope of its purpose. *Citizens Against Forced*
15 *Annexation v. County of Santa Clara* (1984) 153 Cal.App.3d 89, 98. Second, an organization can
16 qualify for interested person standing through the direct interests of the members it represents.
17 *Regus v. City of Baldwin Park* (1977) 70 Cal.App.3d 968, 971-972. As discussed below, these
18 requirements are not co-requisite, and either is sufficient to vest an organization with "interested
19 person" standing.

20 UCAN qualifies as an "interested person" in both ways. UCAN has a direct organizational
21 interest in this proceeding because Metropolitan's rates, which are passed through the San Diego
22 County Water Authority ("SDCWA") and its member utilities and ultimately borne by individual
23 ratepayers, fall well within the scope of UCAN's purpose – protecting San Diego area utility
24 customers. UCAN also has interested person standing through the members it represents, as these
25 members stand to gain or lose financially as a result of this proceeding.

26 **II. ARGUMENT**

27 **A. Interested Person Standing Does Not Require Both a "Direct" and "Indirect"**
28 **Interest**

1 Interested person standing in validation actions involving capacity charges does not require
2 both a “direct interest” and an “indirect interest.” Such a “composite interest” is only required for
3 standing in validation actions involving annexations. Metropolitan’s assertions otherwise, (Opening
4 Brief pp. 17-18), are incorrect.

5 Met’s argument is based on the Court of Appeal’s decision in *Citizens*, (1984) 153
6 Cal.App.3d 89. The *Citizens* Court considered a validation action brought by an unincorporated
7 association (“CAFA”) and “numerous individual plaintiffs” challenging a number of territorial
8 annexations to City of San Jose. *Id.* at 90. The Court found that CAFA had both a direct interest in
9 the annexations through its organizational purpose and an indirect interest in the particular territories
10 being annexed through its members’ direct interest in them. *Id.* at 98. The court concluded that
11 “CAFA’s composite interest makes it an „interested person’ under section 863 of the Code of Civil
12 Procedure.” *Id.*

13 The “composite interest” requirement from *Citizens* applies only to validation challenges
14 involving annexations. Early in the opinion, the *Citizens* Court notes the uniqueness of the question
15 before it, stating that since the enactment of the (since repealed) Municipal Organization Act of 1977
16 (MORGA), “no court has determined who is an „interested person’ under section 863 *in the context*
17 *of a challenge to the validity of territorial annexations.*” *Id.* at 94, *emphasis added.* The Court
18 recognized this as a unique question of law because it involved the simultaneous application of two
19 distinct standing requirements: (1) the “interested person” requirement imposed by § 863 of the
20 Code of Civil Procedure; and (2) the annexation-specific “interested relationship” requirement
21 imposed by “a line of pre-MORGA cases,” under which standing to challenge an annexation
22 requires “the showing of a close connection between the annexed territory and the petitioner seeking
23 relief” through “land ownership, residency, or voter registration” within the specific territory. *Id.* at
24 95.

25 The *Citizens* Court applied both standards. The Court found that CAFA satisfied the general
26 “interested person” standing requirement through its direct “interest in the annexation procedures,
27 and as a result, the validity of particular annexations.” *Id.* at 98. The Court also held that CAFA
28 satisfied the annexation-specific “interested relationship” standard because “CAFA has an indirect

1 interest in the annexed territories through its members' direct interest in them.” *Id.* Thus, the Court
2 concluded, CAFA had a “composite interest” sufficient to qualify the organization as an interested
3 person. *Id.*

4 Neither the “interested relationship” standard, which requires an organization to have an
5 indirect interest with particular territories through its members, nor the “composite standing”
6 requirement, which requires both an “interested relationship” and a “direct organizational interest,”
7 is relevant to the question of UCAN’s standing. The present case involves capacity charges, not
8 annexations, and both the “interested relationship” requirement and the “composite standing”
9 requirement are annexation-specific.

10 This reading of *Citizens* is consistent with sound policy. California does not require that
11 nonprofit public benefit corporations admit members. (Cal. Corp. Code § 5310). If *Citizens*
12 required both a direct organizational interest and an indirect interest through the organization’s
13 members as Met suggests, this would effectively exclude all non-membership organizations from
14 participation in validation actions, no matter how relevant said actions were to their organizational
15 purpose. Under Met’s reading, a non-membership public interest organization formed solely for the
16 purpose of challenging unlawful capacity charges could be excluded from participation in a
17 validation action because it lacked interested members.

18 This reading is also consistent with prior practice. In *Metropolitan Water District of*
19 *Southern California v. Imperial Irrigation District* (2000) 80 Cal.App.4th 1403, the Court of Appeal,
20 without discussing standing, allowed the Center for Public Interest Law, a non-membership project
21 of the University of San Diego School of Law, to participate. Metropolitan’s reading of *Citizens* is
22 incompatible with this result. Under Met’s reading, the Center would have lacked the requisite
23 “indirect interest” through the interests of its members, and thus would have lacked standing.

24 **B. UCAN Has A Direct Organizational Interest Through Its Purpose**

25 An “interested person” is defined as an individual (or organization) with a direct, and not
26 merely a consequential, interest in the subject of the validation proceeding. *Associated Boat*
27 *Industries v. Marshall* (1951) 104 Cal.App.2d 21, 22. An organization formed for a specific purpose
28 has a “direct organizational interest” in matters that fall within the scope of that purpose. *Citizens*

1 (1984) 153 Cal.App.3d 89, 98. In *Citizens*, the Court of Appeal held that CAFA, an organization
2 formed for the purpose of challenging annexations, “has a *direct organizational interest* in the
3 annexation procedures, and as a result, the validity of particular annexations.” *Id.* at 98, *emphasis*
4 *added*.

5 UCAN is like CAFA. Both organizations have narrow and well-defined organizational
6 purposes. The *Citizens* Court noted that “CAFA is composed of people who, in general, oppose
7 annexations. Apparently its sole purpose for existence is to watch for and follow annexation
8 proceedings and to test the validity of annexations when they occur. It has a broad interest in all
9 annexations.” *Id.* at 97. Like CAFA, UCAN’s members are people who, in general, oppose unfair
10 utility rates. Like CAFA, UCAN’s primary purpose is to “watch for and follow” unlawful, abusive,
11 and wasteful practices by the energy, telecom, and water utilities that serve San Diego area
12 consumers. UCAN has operated a dedicated water utility project (the “Water Project”) since May 1,
13 2010. UCAN Tr. Ex. 1 at 1 (Summer/Fall 2010 UCAN Watchdog Newsletter). Participating in the
14 present litigation is a primary focus of the Water Project. The Summer/Fall edition of the “UCAN
15 Watchdog” newsletter includes an article listing the Water Project’s eight main activities. The first
16 activity listed is “Fighting overcharges at the Metropolitan Water District.” *Id.* at 3. Because one of
17 UCAN’s primary purposes is challenging unfair rate setting by water utilities when it occurs, and
18 one of the main ways UCAN is achieving this purpose is by participating in this validation
19 challenge, UCAN is an appropriate organization to participate in this litigation.

20 Met argues that UCAN lacks a direct interest in the case because, based on its survey of
21 UCAN’s website, Met has concluded that “UCAN is a broad consumer advocacy organization,
22 mostly focused on telecommunications, energy, and other issues unrelated to wholesale water rates.”
23 UCAN Tr. Ex. 2 at 19 (MWD Opening Brief). As evidence, Met provides printouts of UCAN’s
24 website, along with observations such as “[t]he article for this lawsuit is buried among several pages
25 about other water issues.” *Id.* Met concludes that “[b]ased on UCAN’s own marketing and its
26 description of itself, it seems highly unlikely that more than a negligible number of its members
27 joined out of concern for wholesale water rates.” *Id.* at 20.

28 In basing its argument on UCAN’s website, Met makes the mistake of conflating publicity

1 with purpose, and while it may indeed be “unlikely that more than a negligible number of [UCAN’s]
2 members joined out of concern for *wholesale* water rates;” UCAN Tr. Ex. 2 at 19 (MWD Opening
3 Brief), *emphasis added*; UCAN has disclosed that at least 4,664 of its members joined out of a
4 concern for high or unfair water rates. UCAN Tr. Ex. 3 at 1 (UCAN Initial Disclosures). Due to
5 pass-throughs, Met’s wholesale rates constitute a major component of these rates, bringing them
6 well within the scope of UCAN’s purpose.

7 C. UCAN Has a Direct Interest Through Its Members

8 An organization is an “interested person” in a validation proceeding if it represents members
9 who themselves have a direct interest in the proceeding’s outcome. *Regus v. City of Baldwin Park*
10 (1977) 70 Cal.App.3d 968, 971-972. In *Regus*, the Court of Appeal considered the standing of
11 several resident taxpayers of the City of Baldwin Park and an unincorporated association composed
12 of City residents in a validation action challenging the City’s approval of a redevelopment project.
13 *Id.* at 971. Standing was at issue because “[n]o individual plaintiff or member of the [unincorporated
14 association] resides within or owns or pays taxes on property within the Project boundaries.” *Id.*
15 The Court concluded that “[a]s taxpayers of the City of Baldwin Park and of the County of Los
16 Angeles, plaintiffs have a financial interest in the outcome of this proceeding, in that the tax
17 increment financing of the Project will divert tax revenues from the taxing agencies to which
18 plaintiffs pay taxes to the treasury of the Redevelopment Agency.” *Id.* at 972.

19 In finding standing, the *Regus* Court relied, in part, on the California Supreme Court’s
20 decision in *Sweetwater Valley Civic Assoc. v. City of National City* (1976) 18 Cal.3d 270. In
21 *Sweetwater*, a civic association composed of 600 taxpayers, residents, and property owners brought a
22 validation challenge against a redevelopment project proposed by the City of National City. *Id.* at
23 272. The association alleged standing based on the fact that its members were taxpayers, residents,
24 and property owners of the City in which the redevelopment project was located. The Court allowed
25 the challenge to proceed without commenting on standing. The *Regus* Court interpreted this as an
26 implicit endorsement of the association’s “interested person” standing based on the substance of its
27 allegation. 70 Cal.App.3d 968, 971-972.

28 Both *Regus* and *Sweetwater* (as interpreted by *Regus*) are supported by *Citizens*. After

1 finding that CAFA had “composite standing,” the *Citizens* Court continued its analysis, stating:
2 “...we would be departing from a perceptible trend towards permitting associations to challenged
3 [sic.] governmental actions if, in this case, we found that only individuals with standing and not their
4 association could challenge the validity of territorial annexation. In other contexts involving the
5 rights of specific individuals to see that government agencies comply with the law, courts have
6 liberally entertained suits brought by organizations composed of individuals with standing.” 153
7 Cal.App.3d 89, 98.

8 UCAN’s members are interested persons in the instant action. A party has a direct interest in
9 a matter if he or she stands to gain or lose financially as a result of the validation proceeding. *Regus*
10 *v. City of Baldwin Park* (1977) 70 Cal.App.3d 968, 972. “[A] financial interest is likely to motivate
11 plaintiffs to prosecute the action vigorously and provides sufficient basis to give them standing.” *Id.*
12 A large number of UCAN members stand to gain or lose financially as a result of the present action.
13 UCAN has disclosed that 4,664 of its members joined by responding to UCAN membership
14 solicitations included in their City of San Diego Water and Wastewater bills. UCAN Tr. Ex. 3 at 1
15 (UCAN Initial Disclosures). All of these members are San Diego water customers. *Id.* A
16 significant portion of these members’ water bills recover the cost of purchasing water from
17 SDCWA. A significant share of SDCWA’s rates, in turn, reflect the cost of purchasing water from
18 Metropolitan. Metropolitan’s rates are effectively “passed through” to SDCWA and its member
19 agencies. While this relationship may appear attenuated, its effects are direct – the financial burden
20 of any unlawful rate allocation by MWD will be borne by ratepayers. Like the Plaintiff
21 organizations in *Regus* and *Sweetwater*, UCAN represents the interests of these members, and as
22 such has “interested person” standing.

23 **D. Torres Does Not Limit the Standing of UCAN’s Members**

24 Met attacks UCAN’s standing on the grounds that “even if UCAN satisfied the standards for
25 organizational standing on behalf of its members, its members are themselves not „interested
26 persons’ under the validation statute.” UCAN Tr. Ex. 2 at 17-18 (MWD Opening Brief). This
27 argument relies exclusively on Met’s misreading of *Torres v. City of Yorba Linda* (1993) 13
28 Cal.App.4th 1035.

1 In *Torres*, two residents of the City of Anaheim sought to challenge the validity of a
2 redevelopment plan proposed by the neighboring City of Yorba Linda. 13 Cal.App.4th 1035, 1038-
3 1039. The Plaintiffs asserted standing despite their nonresidence on three separate grounds. First,
4 they claimed standing as potential residents, based on the assertion that they were interested in
5 moving to Yorba Linda if they could find decent, safe, sanitary, and affordable housing. *Id.* at 1039.
6 Second, the Plaintiffs claimed standing as taxpayers, as each Plaintiff had paid sales tax to the City
7 of Yorba Linda within one year before filing the action. *Id.* Third, they claimed standing as county
8 residents based on the assertion that the redevelopment project would divert tax revenue which
9 would otherwise be paid to the County of Orange, decreasing the funds available for social services
10 utilized or likely to be utilized by the Plaintiffs. *Id.*

11 The Court of Appeal rejected all three standing arguments, holding that the Plaintiffs lacked
12 standing as potential residents because “[w]hile each alleges an ‘interest’ in moving to Yorba Linda,
13 they apparently have filed similar validation proceedings challenging redevelopment projects in
14 several other communities. There is no allegation either has attempted but failed to find affordable
15 housing in Yorba Linda.” *Id.* at 1043. The Court found that both Plaintiffs lacked standing as
16 taxpayers because “[n]either one pays property taxes in [Yorba Linda] or is otherwise beneficially
17 interested in the area covered by the amended redevelopment plan.” *Id.* The Court rejected the
18 plaintiffs’ claim to standing as current or potential users of County social services on factual
19 grounds, holding that “[t]he assertion that this redevelopment project will ‘divert’ revenue from local
20 taxing entities is questionable... the redevelopment project pays for itself by taking advantage of
21 increased property tax revenues generated by the project area’s renovation.” *Id.* at 1044.

22 Met’s attack on UCAN’s standing relies heavily on a misstatement of the *Torres* holding.
23 According to Met, the *Torres* Court held that the plaintiffs lacked standing because “these assertions
24 render them indistinguishable from other county residents.” UCAN Tr. Ex. 2 at 18 (MWD Opening
25 Brief). From this purported holding, Met derives the general principal that, “under *Torres*, an
26 alleged financial injury to a public entity does not confer ‘interested person’ status on the millions of
27 residents who make use of the entity’s services,” and notes that “[s]imilar skepticism about a direct
28 connection between injury to a public entity and an effect on any particular end user of the entity’s

1 services led the court in *Torres* to find against end user standing.” *Id.*

2 Read in full context, Met’s error is clear. The *Torres* Court did not hold against standing on
3 the grounds that the Plaintiffs assertions render them indistinguishable from other county residents.

4 The Court stated:

5 One plaintiff alleges she owns real property and pays taxes to the county, and the
6 other claims she and her family use or are eligible for several social services partially
7 funded by the county with property taxes. These assertions render them
8 indistinguishable from other county residents.... The assertion that this
9 redevelopment project will „divert’ revenue from local taxing entities is
10 questionable... the redevelopment project pays for itself by taking advantage of
11 increased property tax revenues generated by the project area’s renovation. (13
12 Cal.App.4th 1035, 1044).

13 As the full passage makes clear, the Court’s statement that “these assertions render them
14 indistinguishable from other county residents” merely establishes the fact that, as consumers or
15 potential consumers of County social services, the Plaintiffs had no claim to standing over and above
16 that of any other County resident. This statement does not speak to the standing of county residents
17 as a group – a question addressed a few lines down, at p. 1044, in the Court’s rejection of the
18 assertion that the redevelopment project will divert revenue from local taxing entities.

19 Met’s claim that “under *Torres*, an alleged financial injury to a public entity does not
20 confer „interested person’ status on the millions of residents who make use of the entity’s services;”
21 UCAN Tr. Ex. 2 at 18 (MWD Opening Brief); is unsupported by the text of the opinion.

22 **E. UCAN’s Allegations Are Not Insufficiently Specific**

23 Met argues that UCAN’s standing is limited by the *Citizens* Court’s holding that “[s]uch a
24 right may not be asserted by any organization based merely on general allegations that its members
25 are interested individuals.” UCAN Tr. Ex. 2 at 18 (MWD Opening Brief). In making this argument,
26 Met again indulges in cherry picking, as, read in full context, it is clear that the cited language
27 applies only to validation challenges regarding annexations, relating to the annexation-specific
28 “interested relationship” and “composite standing” requirements discussed above. The quoted

1 passage in full states:

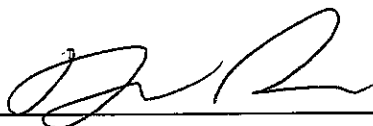
2 Here, CAFA is not suing for damages, but rather is asserting a public right, namely,
3 the right to have public agencies comply with the annexation provisions of MORGA
4 and, more specifically, the right to see that those provisions are constitutional and
5 were properly followed with respect to particular annexations... Such a right may not
6 be asserted by any organization based merely on general allegations that its members
7 are interested individuals. (*Torres v. City of Yorba Linda* (1993) 153 Cal.App.3d 89,
8 98).

9 **III. CONCLUSION**

10 UCAN is an "interested person" in the present litigation through both its "direct
11 organizational interest" stemming from UCAN's purpose, and through the interested person status of
12 the members UCAN represents. As such, UCAN respectfully requests that the Court enter judgment
13 for UCAN.

14
15 Dated: August 5, 2011

16 UTILITY CONSUMERS' ACTION NETWORK

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20 David A. Pepper, Esq.
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22 Utility Consumers' Action Network
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PROOF OF SERVICE

I am over age 18, not a party to this action, and am employed in San Diego County at 3100 Fifth Avenue, San Diego, California 92103. I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service.

On June 10, 2011, I served the attached:

**REPLY TRIAL BRIEF BY UTILITY CONSUMERS' ACTION NETWORK
FOR THE BIFURCATED AUGUST 30, 2011 BENCH TRIAL**

Service was performed as follows:

BY MAIL by causing a true and correct copy of the document(s) listed above to be delivered by the United States Postal Service via priority mail with all fees prepaid at the address(es) set forth below.

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

Executed on August 5, 2011, at San Diego, California.

Laura Impastato

(Print Name)

Laura Impastato

(Signature of Declarant)