

IN THE CIRCUIT COURT FOR ST. LOUIS COUNTY
STATE OF MISSOURI

FILED

SEP 11 2009

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

PAUL MARQUIS and
CATHY ARMBRUSTER,

Plaintiffs,

vs.

ST. LOUIS COUNTY,
Serve at:
Charles Dooley, St. Louis County Executive
St. Louis County Government Center
41 South Central Avenue
Clayton, MO 63105

IESI MO CORPORATION,
Serve at:
Registered Agent
CT Corporation System
120 South Central Avenue, Ste. 400
Clayton, MO 63105

VEOLIA ES SOLID WASTE MIDWEST, LLC,
Serve at:
Registered Agent
CT Corporation System
120 South Central Avenue, Ste. 400
Clayton, MO 63105

and

ALLIED SERVICES, LLC,
Serve at:
Registered Agent
The Corporation Company
120 South Central Avenue
Clayton, MO 63105

Defendants.

Case No. 09SL-CC03980

Division _____

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Courthouse News Service

CLASS ACTION PETITION

Plaintiffs Paul Marquis and Cathy Armbruster bring this action on behalf of themselves and those others similarly situated against Defendants St. Louis County, IESI MO Corporation, Veolia ES Solid Waste Midwest, LLC, and Allied Services, LLC, and state as follows:

1. This action is brought on behalf of Plaintiffs and the proposed Class who were illegally and misleadingly required to pay trash fees to Defendants. This action seeks to have all fees paid to Defendants for trash removal returned to the residents and citizens who were illegally required to pay them pursuant to St. Louis County's illegal and void trash district ordinances. These charges are illegal as the St. Louis County trash district ordinances are illegal and void ab initio.
2. Plaintiff Paul Marquis is a citizen of the United States and of the State of Missouri who lives and for many years has lived at 792 Krueger Lane, St. Louis County, Missouri 63026.
3. Plaintiff Cathy Armbruster is a citizen of the United States and of the State of Missouri who lives and for many years has lived at 214 West Holden, St. Louis County, Missouri 63125.
4. Defendant St. Louis County is a county of the State of Missouri.
5. Defendant IESI MO Corporation ("IESI") is, on information and belief, a Missouri corporation, engaged in the business of trash removal, with its registered agent, CT Corporation System located at 120 South Central Avenue, Ste. 400, Clayton, MO 63105,
6. Defendant Veolia ES Solid Waste Midwest, LLC ("Veolia") is, on information and belief, a Missouri limited liability corporation, engaged in the business of trash removal, with its registered agent, CT Corporation System located at 120 South Central Avenue, Ste. 400, Clayton, MO 63105,

7. Defendant Allied Services, LLC ("Allied Services") is, on information and belief, a Missouri limited liability corporation, engaged in the business of trash removal, with its registered agent, The Corporation Company located at 120 South Central Avenue, Clayton, MO 63105,
8. St. Louis County is a Missouri county with a charter pursuant to Article VI Section 8 of the Missouri Constitution.
9. Article II Section 24 of St. Louis County's charter requires an election to be held before any trash district can be established or set up in St. Louis County.
10. Article II Section 24 of the St. Louis County Charter reads as follows:

Provide for the creation of districts in the unincorporated areas of the county within which may be provided police protection, fire protection, public water supply, streets, sidewalks, street lighting, sewers, sewage disposal facilities, garbage and refuse collection and disposal, and such kindred facilities as the voters therein by a majority of those voting thereon may approve, the same to be paid for from funds raised by special assessment, general taxation or service charge, or any combination thereof within such districts; and , when authorized by law, provide for the consolidation of such functions with those now performed in existing districts.
11. Section 260.247 R.S.Mo. requires St. Louis County to give two years certified mail notice to private companies providing trash collection services before St. Louis County enters into the trash collection business.
12. Section 260.247 R.S.Mo. reads as follows:

**Annexation or expansion of solid waste services by city,
notice to certain private entities, when -- city to contract
with private entity, duration, terms.**

1. Any city which annexes an area or enters into or expands solid waste collection services into an area where the collection of solid waste is presently being provided by one or more private entities shall notify the private entity or entities of its intent to provide solid waste collection services in the area by certified mail.

2. A city shall not commence solid waste collection in such area for at least two years from the effective date of the annexation or at least two years from the effective date of the notice that the city intends to enter into the business of solid waste collection or to expand existing solid waste collection services into the area, unless the city contracts with the private entity or entities to continue such services for that period.

3. If the services to be provided under a contract with the city pursuant to subsection 2 of this section are substantially the same as the services rendered in the area prior to the decision of the city to annex the area or to enter into or expand its solid waste collection services into the area, the amount paid by the city shall be at least equal to the amount the private entity or entities would have received for providing such services during that period.

4. Any private entity or entities which provide collection service in the area which the city has decided to annex or enter into or expand its solid waste collection services into shall make available upon written request by the city not later than thirty days following such request, all information in its possession or control which pertains to its activity in the area necessary for the city to determine the nature and scope of the potential contract.

13. On or about December 12, 2006, St. Louis County purported to enact ordinance 23,023, with new §607.1300 and §607.1310, by which St. Louis County would enter into the trash collection business in unincorporated St. Louis County, and St. Louis County would establish trash districts in unincorporated St. Louis County. A true and accurate copy of St. Louis County Ordinance 23,023 is denoted "Exhibit #1" and is attached to this petition.
14. On or about May 29, 2007, St. Louis County purported to enact ordinance 23,221, with new §607.1300 and §607.1310, by which St. Louis County would enter into the trash collection business in unincorporated St. Louis County, and St. Louis County would establish trash districts in unincorporated St. Louis County. A true and accurate copy of St. Louis County Ordinance 23,221 is denoted "Exhibit #2" and is attached to this petition.
15. On or about November 24, 2008, St. Louis County purported to enact ordinance 23,795, with new §607.1300 and §607.1310, by which St. Louis County would enter into the trash

collection business in unincorporated St. Louis County, and St. Louis County would establish trash districts in unincorporated St. Louis County, St. Louis County would select monopoly providers for each trash district, St. Louis County would exclude others from providing trash service in each district, St. Louis County requires almost every person to make pay each monopoly service provider, and St. Louis County made a crime with a sentence of up to one year in jail and a fine of up to \$1000.00 to any person who did not pay the required trash service fee or to anyone who provided trash collection services in a district other than the selected monopoly provider. A true and accurate copy of St. Louis County Ordinance 23,795 is denoted "Exhibit #3" and is attached to this petition.

16. St. Louis County established trash districts in unincorporated St. Louis County and designated the trash districts 1-8.
17. St. Louis County published the "Waste Collection Districts" Map which is denoted "Exhibit 4" and attached to this petition.
18. St. Louis County has repeatedly admitted and stated that it has established trash districts. A true and accurate copy of the St. Louis County publication on Frequently Asked Questions is denoted "Exhibit 5" and is attached to this petition.
19. St. Louis County has forced Plaintiffs and those similarly situated to pay Defendants monthly amounts with the threat of criminal fines and imprisonment.
20. Plaintiff Cathy Armbruster lives within trash district #6 and has for many months paid and been forced to pay Defendant Allied Services monthly amounts for unwanted services.
21. Plaintiff Paul Marquis lives within trash district #5 and has for many months paid and been forced to pay Defendant Allied Services monthly amounts for unwanted services.

22. St. Louis County entered into the solid waste collection service into unincorporated St. Louis County where the collection of waste was previously being handled by one or more private entities.
23. Section 260.247 R.S.Mo. requires two years certified mail notice to current trash haulers before St. Louis County can replace the trash haulers.
24. St. Louis County did not give the required certified mail notice to the preexisting solid waste collection businesses as required by §260.247 R.S.Mo.
25. On October 21, 2008, the Missouri Court of Appeals for the Eastern District of Missouri ruled that St. Louis County was required to give the notice required by §260.247 R.S.Mo. in the case of State ex rel. American Eagle Waste Industries v. St. Louis County, 272 S.W.3d 336 (Mo. App. 2008).
26. St. Louis County has ignored the Missouri Court of Appeal's ruling and has continued to carry out, contract, enforce, prosecute, and convict persons under its invalid trash district ordinances.
27. Because the required two years certified notice was not given, St. Louis County's trash district ordinances Nos. 23,023, 23,221, and 23,795 including §607.1300 and §607.1310 of the St. Louis County Code are each void ab initio as they violate §260.247 R.S.Mo.
28. Article II Section 24 of the St. Louis County Charter requires an election be held in the effected districts approving the establishment of trash districts before St. Louis County could establish trash district.
29. No election on the issue of trash districts has been held in St. Louis County.

30. Because no election was held, St. Louis County's trash district ordinances Nos. 23,023, 23,221, and 23,795, including §607.1300 and §607.1310, are each void ab initio as they violate Article II Section 24 of the St. Louis County Charter.
31. Pursuant to its void trash ordinances, St. Louis County has purported to select and contract with trash companies for each of the 8 trash districts illegally established by St. Louis County
32. Pursuant to its void trash ordinances, St. Louis County requires the residents within each trash district to use and pay the single monopoly trash hauler selected by St. Louis County.
33. Pursuant to its void trash ordinances, St. Louis County forces through the threat of criminal prosecution the residents within each trash district to use and pay the trash hauler selected by St. Louis County.
34. Pursuant to its void trash ordinances, St. Louis County has prosecuted residents for not using the trash hauler selected by St. Louis County for each district.
35. Defendant IESI MO Corporation ("IESI") is a Missouri corporation selected by St. Louis County to provide trash hauling services for St. Louis County Trash District 1. A true and accurate photocopy of the contract (without attachments and exhibits) between IESI and St. Louis County for Trash District 1 is denoted "Exhibit #6", is attached to this petition, and is incorporated by reference.
36. Defendant IESI MO Corporation ("IESI") is a Missouri corporation selected by St. Louis County to provide trash hauling services for St. Louis County Trash District 2. A true and accurate photocopy of the contract (without attachments and exhibits) between IESI and St. Louis County for Trash District 2 is denoted "Exhibit #7", is attached to this petition, and is incorporated by reference.

37. Defendant Veolia ES Solid Waste Midwest, LLC ("Veolia") is a Missouri limited liability corporation selected by St. Louis County to provide trash hauling services for St. Louis County Trash District 3. A true and accurate photocopy of the contract (without attachments and exhibits) between Veolia and St. Louis County for Trash District 3 is denoted "Exhibit #8", is attached to this petition, and is incorporated by reference.
38. Defendant Veolia ES Solid Waste Midwest, LLC ("Veolia") is a Missouri limited liability corporation selected by St. Louis County to provide trash hauling services for St. Louis County Trash District 4. A true and accurate photocopy of the contract (without attachments and exhibits) between Veolia and St. Louis County for Trash District 4 is denoted "Exhibit #9", is attached to this petition, and is incorporated by reference.
39. Defendant Allied Services, LLC ("Allied") is a Missouri limited liability corporation selected by St. Louis County to provide trash hauling services for St. Louis County Trash District 5. A true and accurate photocopy of the contract (without attachments and exhibits) between Allied and St. Louis County for Trash District 5 is denoted "Exhibit #10", is attached to this petition, and is incorporated by reference.
40. Defendant Allied Services, LLC ("Allied") is a Missouri limited liability corporation selected by St. Louis County to provide trash hauling services for St. Louis County Trash District 6. A true and accurate photocopy of the contract (without attachments and exhibits) between Allied and St. Louis County for Trash District 6 is denoted "Exhibit #11", is attached to this petition, and is incorporated by reference.
41. Defendant Veolia ES Solid Waste Midwest, LLC ("Veolia") is a Missouri limited liability corporation selected by St. Louis County to provide trash hauling services for St. Louis County Trash District 7. A true and accurate photocopy of the contract (without

attachments and exhibits) between Veolia and St. Louis County for Trash District 7 is denoted "Exhibit #12", is attached to this petition, and is incorporated by reference.

42. Defendant IESI MO Corporation ("IESI") is a Missouri corporation selected by St. Louis County to provide trash hauling services for St. Louis County Trash District 8. A true and accurate photocopy of the contract (without attachments and exhibits) between IESI and St. Louis County for Trash District 8 is denoted "Exhibit #13", is attached to this petition, and is incorporated by reference.
43. Residents in the eight trash districts have been illegally required under the threat of criminal prosecution and imprisonment to pay sums to Defendants monthly.
44. Residents of the eight trash districts have paid Defendants according to the illegal and void ab initio trash ordinances.
45. Defendants conspired and agreed among themselves, with knowledge of the illegality of the trash ordinances, to have Defendant St. Louis County continue to enact, enforce and require obedience to the illegal and void ab initio trash ordinances because the trash ordinances result in millions of dollars per month being paid to Defendants Veolia, IESI, and Allied.
46. The Plaintiff Class is defined as all persons who lived, or owned property, or owned a business within trash districts 1-8, as defined by St. Louis County, who paid money, pursuant to the void ab initio trash ordinances to Defendants Veolia, IESI, or Allied
47. Excluded from the Plaintiff Class are: (1) Defendants St. Louis County, Veolia, Allied, and IESI, their employees, and all persons who own or owned an equity stake in Defendants; (2) Defendants' legal representatives, predecessors, successors, and assigns; (3) the Judge assigned to this case and his immediate family; (4) Plaintiffs' attorneys and their

employees; (5) all persons who have previously filed a lawsuit contesting St. Louis County's "trash district ordinances", and (6) all persons who properly execute and file a timely request for exclusion from the class.

48. Plaintiffs' proposed class is comprised of thousands of Defendants' customers, the joinder of which is impracticable, and the members of the class are so numerous that it is impracticable to bring all of them before the court in this action. Moreover, the amount of damages suffered individually by each member of the class is so small as to make a suit for its recovery by each individual member of the class economically unfeasible.
49. Class treatment of the claims asserted herein will provide substantial benefit to both the parties and the court system. A well defined commonality of interests in the questions of law and fact involved affects all Plaintiffs and proposed members of the class.
50. There are common questions of law and fact applicable to the claims asserted on behalf of the Class. The common questions include:
 - a. Whether St. Louis County obeyed §260.247 R.S.Mo. when it enacted the trash ordinances;
 - b. Whether St. Louis County created, as it said in Exhibits 4 & 5, trash districts pursuant to the trash ordinances;
 - c. Whether St. Louis County obeyed St. Louis County Charter Article II Section 24 when it created the trash districts;
 - d. Whether the members of the class have the right to the return of their money paid pursuant to the trash ordinances.
50. The aforementioned questions of law and fact predominate over any questions affecting only individual members of Plaintiff's class.

51. The named plaintiffs' claims are typical of the claims of the proposed class, and Plaintiffs will fairly and adequately represent and protect the interests of the proposed class. Plaintiffs do not have any interest antagonistic to those of the class. Plaintiffs have retained competent and experienced counsel in the prosecution of this type of litigation. The questions of law and fact common to the members of the class, some of which are set out above, predominate over any questions affecting only individual members of the class.
52. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because members of the class number in the tens of thousands and individual joinder is impracticable. The expense and burden of individual litigation would make it impracticable or impossible for proposed members of the class to prosecute their claims individually. Trial of Plaintiffs' claims are manageable.
53. Unless a class is certified, Defendants will retain monies rightfully belonging to the class members, Defendants will retain monies received as a direct result of the void ab initio trash ordinances, Defendants will retain monies received as a result of their scheme to collect money pursuant to a known illegal and void ab initio ordinance, and Defendants will continue to threaten and prosecute those who fail to pay. Unless a class wide injunction is issued, Defendants will continue to collect illegal sums, extort illegal sums from, and continue to commit violations against the plaintiff class.
54. This action is properly maintainable as a class action pursuant to Supreme Court Rule 52.08 and §407.025.3 R.S.Mo.

**COUNT 1
DECLARATORY JUDGMENT**

55. Plaintiffs restate and incorporate by reference the allegations of paragraphs 1-54.

56. The St. Louis County Ordinances 23,023, 23,221, and 23,795 establish trash districts, no election was held on these ordinances and trash districts, St. Louis County and these ordinances violate Article II Section 24 of the St. Louis County Charter, and these ordinances are void ab initio.
57. Through Ordinances 23,023, 23,221, and 23,795, St. Louis County entered into the solid waste collection service into unincorporated St. Louis County where the collection of waste was being previously handled by one or more private entities.
58. Section 260.247 R.S.Mo. requires two years certified mail notice to current trash haulers before St. Louis County can replace the trash haulers.
59. St. Louis County did not give the required certified mail notice to the preexisting solid waste collection businesses as required by §260.247 R.S.Mo.
60. On October 21, 2008, the Missouri Court of Appeals for the Eastern District of Missouri ruled that St. Louis County was required to give the notice required by §260.247 R.S.Mo. in the case of State ex rel. American Eagle Waste Industries v. St. Louis County, 272 S.W.3d 336 (Mo. App. 2008).
61. St. Louis County has ignored the Missouri Court of Appeal's ruling and has continued to carry out, contract, enforce, prosecute, and convict persons under its invalid trash district ordinances.
62. Because the required two years certified notice was not given, St. Louis County's trash district ordinances Nos. 23,023, 23,221, and 23,795 are each void ab initio as they violate §260.247 R.S.Mo.
63. St. Louis County has illegally enacted Ordinances 23,023, 23,221, and 23,795 and these ordinances are void ab initio.

70. Plaintiffs and the members of the Plaintiff class paid the money to Defendants Veolia, IESI, and Allied under involuntary compulsion and under the threat of criminal charges, criminal conviction, criminal fines, and criminal imprisonment.

Wherefore Plaintiffs, both for themselves and on behalf of the class of similarly situated Plaintiffs, respectfully ask this Court to enter judgment for Plaintiffs and for members of the Plaintiff Class and against Defendants Veolia, IESI, and Allied, in the amount of all sums paid to Defendants Veolia, IESI, and Allied by Plaintiffs and by the members of the Plaintiff class for trash removal services, pray this court for declaratory judgment declaring illegal and void ab initio the trash district ordinances of St. Louis County (Nos. 23,023, 23,221, and 23,795) including §607.1300 and §607.1310 of the St. Louis County Code, and and the trash district contracts (exhibits 6 - 13) and any obligation the Plaintiffs had or have to pay defendants for trash services, and for the award of taxable court costs, prejudgment interest on amount repaid at the statutory rate of 9%, and for any other relief deemed just.

COUNT 3
MISSOURI MERCHANDISING PRACTICES ACT

71. Plaintiffs restate and incorporate by reference the allegations of paragraphs 1-70.
72. Trash removal is within the definition of "merchandise" set forth in §407.010(4).
73. Defendants continue to state that Plaintiffs and the members of the Plaintiff class must obtain and pay for trash services from Defendants Veolia, IESI, and Allied or face criminal charges and possible imprisonment.
74. Defendants have continued to state that the St. Louis County Trash Ordinances are legal, valid, enforceable, and applicable.

75. Defendants continue to state that no election, required by Article II Section 24 of the St. Louis County Charter, needs to have been held before the application or enforcement of the St. Louis County Trash Ordinances.
76. All of these aforementioned statements are false and misleading.
77. Defendants have continued to make false statements concerning the legality, applicability, and enforceability of the St. Louis County Trash Ordinances.
78. The aforementioned false statements and the threat and actual enforcement of an invalid trash ordinance knowing the ordinance is invalid is a deceptive and unfair trade practice as prohibited by §407.020 R.S.Mo.
79. Defendants' false statements Defendants' using an invalid and void ab initio trash ordinance to induce and require Plaintiffs and members of the Plaintiff class to contract with and pay Defendants are all deceptive and unfair trade practices as prohibited by §407.020 R.S.Mo.
80. Defendants' unfair and deceptive trade practices have each proximately caused Plaintiffs and the members of the Plaintiff Class damages including contracting with and paying Defendants monthly charges.
81. Defendants' aforementioned unfair and deceptive trade practices were done maliciously, corruptly, and/or intentionally or recklessly.

WHEREFORE, Plaintiffs and each member of the proposed Plaintiff class pray for a judgment against all Defendants, jointly and severally, awarding Plaintiffs and each member of the proposed Plaintiff class the amount each has paid Defendants Veolia, Allied, and IESI, treble damages in the amount of triple the amount Plaintiffs and each member of the Plaintiff class paid Defendants Veolia, Allied, and IESI, punitive damages in an amount which is fair and

reasonable. prejudgment interest on amounts due at the statutory rate of 9% per annum, taxable court costs, awarding the reasonable attorney fees and legal expenses incurred in prosecuting this action, and any other relief deemed just.

**COUNT 4
UNJUST ENRICHMENT**

82. Plaintiffs restate and incorporate by reference the allegations of paragraphs 1-81.

83. Defendants IESI, Allied, and Veolia each has received payments from Plaintiffs and from the members of the Plaintiff class which in equity and good conscience should be returned and paid to Plaintiffs and to the members of the Plaintiff class.

WHEREFORE, Plaintiffs and each member of the proposed Plaintiff class pray for a judgment against all Defendants, jointly and severally, awarding Plaintiffs and each member of the proposed Plaintiff class the amount each has paid Defendants Veolia, Allied, and IESI, prejudgment interest on amounts due at the statutory rate of 9% per annum, taxable court costs, and any other relief deemed just.

Respectfully submitted,

SCHULTZ & ASSOCIATES LLP

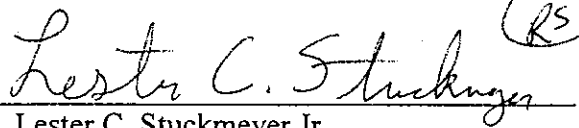
By



Robert Schultz, #35329
640 Cepi Drive, Suite A
Chesterfield, MO 63005
636-537-4645 telephone
636-537-2599 facsimile
rschultz@sl-lawyers.com

and

By



Lester C. Stuckmeyer Jr.
105 Concord Plaza, Suite 209
St. Louis, MO 63128
314-729-0272
314-729-7474 facsimile
lester@stuckmeyer.com

*Attorneys for Plaintiffs Paul Marquis and
Cathy Armbruster*