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6 IN THE SUPERIOR COURT OF CALIFORNIA
7
8 IN THE COUNTY SISKIYOU

9
10 Case No.

11 **COMPLAINT**

(Government Code § 11350; Code of Civil
Procedure § 526a.)

12 THE NEW 49'ERS, INC., a California
corporation, JAMES D. FOLEY, MARK
13 CRAWFORD, JADE SPRINGS
DEVELOPMENT LLC, ROBERTA L.
COLLUM, doing business as Elk Creek
14 Campground and RV Park, Connor Cardlock,
Inc., a California corporation, RICHARD E.
15 JONES, doing business as Seiad Valley Store &
Café, LESLIE HUSTOR, doing business as
16 Rick's Auto Supply, BRUCE G. JOHNSON,
doing business as Mid River RV Park,
17 RICHARD MCLEARN, doing business as Seiad
Mini Storage, ARTHUR K. CROCKER, doing
18 business as Double J Sports & Spirits, LISA A.
WEST, doing business as Big Foot Outlet Store,
19 DANIEL E. FALKENSTEIN, doing business as
Happy Camp Septic Service, ALAN EUGENE
20 DECOUX, doing business as Al's Garage,
ROBERT A. PERRY, doing business as Perry's
21 Market, HEATHER J. RIDER, doing business as
Quigley General Store and Deli, CYNTHIA L.
22 BIGELOW, doing business as Poor George's
Restaurant, BRIAN L. YOUNG, doing business
23 as B.S. Fab, WILLIAM F. KUHN, doing
business as Frontier Lodge,

24 Plaintiffs,

25 v.
26

27 COMPLAINT
28 Case No.

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1 CALIFORNIA DEPARTMENT OF FISH AND
2 WILDLIFE and CHARLTON H. BONHAM,
3 Director of the California Department of Fish and
4 WILDLIFE,

5 Defendants.

6 Plaintiffs, by their attorneys, bring this action on their own behalf and behalf of the general
7 public on information and belief, except those allegations which pertain to the named parties, and
8 hereby allege as follows:

9 **INTRODUCTION AND PARTIES**

10 1. Defendant California Department of Fish and Wildlife is an agency of the State of
11 California charged by the Legislature with the regulation of suction dredge mining pursuant to
12 §§ 5653 *et seq.* of the Fish and Game Code. Charlton H. Bonham is the Director of the California
13 Department of Fish and Wildlife, and is sued in his official capacity.

14 2. Plaintiff The New 49'ers, Inc. is a California corporation with its principal place of
15 business in Siskiyou County, which owns and controls mining claims located in Siskiyou County
16 and elsewhere, and licenses individuals to exploit the mining deposits it controls. The New 49'ers,
17 Inc. faces business losses by reason of defendant's conduct that are irreparable as described herein.

18 3. Plaintiff James D. Foley is a resident of Klamath River, a small-scale gold miner,
19 and the owner and operator of an underwater gravel transport system (GTS) which the Department
20 has by emergency regulation made illegal. He is threatened with irreparable injury in the nature of
21 criminal prosecution for the continued operation of his GTS, as well as suffering economic losses
22 which are irreparable as described herein.

23 4. Plaintiff Mark Crawford is President of Seiad Cardlock, Inc. and Yreka Cardlock,
24 Inc., businesses which supply fuel to residents and visitors along the Klamath River and in Yreka.

1 the Department itself had approved regulations allowing up to 1,500 suction dredges to operate
2 statewide, finding no significant and adverse effect on the fish and wildlife resources within the
3 jurisdiction of the Department.

4 38. On June 28, 2013, the Office of Administrative Law approved those regulations and
5 they went into effect. The regulations threaten to create a real economic emergency within
6 substantial portions of Siskiyou County.

7 **FIRST CAUSE OF ACTION: DECLARATORY RELIEF PURSUANT TO § 11350 OF THE**
8 **GOVERNMENT CODE (ALL PLAINTIFFS)**

9 39. Plaintiffs re-allege paragraphs 1-38 as if set forth herein.

10 40. Pursuant to § 11346.1(b)(2),

11 “Any finding of an emergency shall include a written statement that contains the
12 information required by paragraphs (2) to (6), inclusive, of subdivision (a) of Section
13 11346.5 and a description of the specific facts demonstrating the existence of an
14 emergency and the need for immediate action, and demonstrating, by substantial
15 evidence, the need for the proposed regulation to effectuate the statute being
16 implemented, interpreted, or made specific and to address only the demonstrated
17 emergency. The finding of emergency shall also identify each technical, theoretical,
18 and empirical study, report, or similar document, if any, upon which the agency
19 relies. The enactment of an urgency statute shall not, in and of itself, constitute a
20 need for immediate action.

17 “A finding of emergency based only upon expediency, convenience, best interest,
18 general public need, or speculation, shall not be adequate to demonstrate the
19 existence of an emergency. If the situation identified in the finding of emergency
20 existed and was known by the agency adopting the emergency regulation in
21 sufficient time to have been addressed through nonemergency regulations adopted in
22 accordance with the provisions of Article 5 (commencing with Section 11346), the
23 finding of emergency shall include facts explaining the failure to address the
24 situation through nonemergency regulations.”

21 The Department failed to comply with these and other requirements of the Government Code, and
22 has amended 14 Cal. Code Regs. § 228 illegally. The Director threatens to enforce the new, illegal
23 regulation.

24 41. As a result, plaintiffs have been damaged insofar as those engaged in using GTSs are
25 now subject to criminal prosecution, and all plaintiffs will lose substantial monies as a result.

1 effective remedy against defendants for damages by reason of the enactment of the emergency
2 regulation.

3 47. Plaintiffs are entitled to equitable relief under §§ 526a and 527 of the Code of Civil
4 Procedure. Unless enjoined, the Department will expend public funds to support game wardens
5 illegally enforcing the emergency regulation.

6 WHEREFORE, plaintiffs pray for judgment against defendants as follows:

7 1. For a judgment declaring that the emergency regulation is unlawful;

8 2. For an order enjoining defendants from enforcing the regulation and expending any
9 funds to do so; and

10 3. For costs of suit incurred, including reasonable attorneys' fees, pursuant to Code of
11 Civil Procedure §§ 1021.5 and 1036 and otherwise.

12 4. For such other and further relief as the Court may deem proper.

13 Dated: July 1, 2013.

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15 MURPHY & BUCHAL LLP

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Attorney for Plaintiffs