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4	Facsimile: (503) 573-1939 Attorney for Plaintiffs				
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7	IN THE SUPERIOR COURT OF CALIFORNIA				
8	IN THE COUNTY SISKIYOU				
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10		Case No.			
11	THE NEW 49'ERS, INC., a California	COMPLAINT			
12	corporation, JAMES D. FOLEY, MARK CRAWFORD, JADE SPRINGS				
13	DEVELOPMENT LLC, ROBERTA L. COLLUM, doing business as Elk Creek	(Government Code § 11350; Code of Civil Procedure § 526a.)			
14	Campground and RV Park, Connor Cardlock, Inc., a California corporation, RICHARD E.	1 Toccure § 320a.)			
	JONES, doing business as Seiad Valley Store &				
15	Café, LESLIE HUSTOR, doing business as Rick's Auto Supply, BRUCE G. JOHNSON,				
16	doing business as Mid River RV Park, RICHARD MCLEARN, doing business as Seiad				
17	Mini Storage, ARTHUR K. CROCKER, doing business as Double J Sports & Spirits, LISA A.				
18	WEST, doing business as Big Foot Outlet Store, DANIEL E. FALKENSTEIN, doing business as				
19	Happy Camp Septic Service, ALAN EUGENE DECOUX, doing business as Al's Garage,				
20	ROBERT A. PERRY, doing business as Perry's Market, HEATHER J. RIDER, doing business as				
21	Quigley General Store and Deli, CYNTHIA L. BIGELOW, doing business as Poor George's				
22	Restaurant, BRIAN L. YOUNG, doing business as B.S. Fab, WILLIAM F. KUHN, doing				
23	business as Frontier Lodge,				
24	Plaintiffs,				
25	v.				
26					
27	COMPLAINT	James L. Ruchal (SRN 2581			

Case No.

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MURPHY & BUCHAL LLP

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

Defendants.

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

INTRODUCTION AND PARTIES

- 1. Defendant California Department of Fish and Wildlife is an agency of the State of California charged by the Legislature with the regulation of suction dredge mining pursuant to §§ 5653 *et seq.* of the Fish and Game Code. Charlton H. Bonham is the Director of the California Department of Fish and Wildlife, and is sued in his official capacity.
- 2. Plaintiff The New 49'ers, Inc. is a California corporation with its principal place of business in Siskiyou County, which owns and controls mining claims located in Siskiyou County and elsewhere, and licenses individuals to exploit the mining deposits it controls. The New 49'ers, Inc. faces business losses by reason of defendant's conduct that are irreparable as described herein.
- 3. Plaintiff James D. Foley is a resident of Klamath River, a small-scale gold miner, and the owner and operator of an underwater gravel transport system (GTS) which the Department has by emergency regulation made illegal. He is threatened with irreparable injury in the nature of criminal prosecution for the continued operation of his GTS, as well as suffering economic losses which are irreparable as described herein.
- 4. Plaintiff Mark Crawford is President of Seiad Cardlock, Inc. and Yreka Cardlock, Inc., businesses which supply fuel to residents and visitors along the Klamath River and in Yreka.

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- 5. Plaintiff Jade Springs Development L.L.C. is a California limited liability company doing business in Siskiyou County, including the renting of RV spaces and other rental units to Happy Camp visitors.
- 6. Plaintiff Roberta M. Collum owns Elk Creek Campground and RV Park, an RV park in Happy Camp, California, renting RV spaces and other rental units to Happy Camp visitors.
- 7. Plaintiff Connor Cardlock, Inc. is a California corporation and business in Happy Camp, California, selling fuel to Happy Camp visitors, largely associated with the small-scale mining industry in Siskiyou County.
- 8. Plaintiff Richard E. Jones owns Seiad Valley Store & Café, selling food and supplies to Klamath River visitors.
- 9. Plaintiff Leslie Hustor owns Rick's Auto Supply, a business in Happy Camp selling auto parts and other supplies to Klamath River visitors.
- 10. Plaintiff Bruce G. Johnson owns Mid River RV Park, a business in Seiad Valley renting RV spaces and other rental units to Klamath River visitors.
- 11. Plaintiff Richard McLearn owns Seiad Mini Storage in Seiad Valley, renting storage units to people who have business along the Klamath River.
- 12. Plaintiff Arthur K. Crocker owns Double J Sports & Spirits, a business in Happy Camp selling food and other supplies to Klamath River visitors.
- 13. Plaintiff Lisa A. West owns Big Foot Outlet Store, a business in Happy Camp selling food and other supplies to Klamath River visitors.
- 14. Plaintiff Daniel E. Falkenstein owns Happy Camp Septic Service, renting and servicing chemical toilets to Klamath River visitors.
- 15. Plaintiff Alan Eugene DeCoux owns Al's Garage, providing automotive repair services to Klamath River visitors, largely associated with the small-scale mining industry in Siskiyou County.

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- 16. Plaintiff Robert A. Perry owns Perry's Market selling food and other supplies to Klamath River visitors.
- 17. Plaintiff Heather J. Rider owns Quigley General Store and Deli, selling food and other supplies to Klamath River visitors.
- 18. Plaintiff Cynthia L. Bigelow owns Poor George's Restaurant in Yreka, providing meals to residents of and visitors to selling food and other supplies to Siskiyou County.
- 19. Plaintiff Brian L. Young owns B.S. Fab in Yreka, providing metal fabrication services to Siskiyou County residents & visitors.
- 20. Plaintiff William F. Kuhn owns Frontier Lodge in Happy Camp, providing meals and refreshments to residents and visitors.
- 21. All of the foregoing plaintiffs in paragraphs 2 through 20 depend heavily upon small-scale gold mining in Siskiyou County, which provides a material proportion of their business, and all stand to suffer irreparable injury in the nature of business losses by reason of defendant's conduct for which no remedy exists at law.
- 22. All of the foregoing are taxpayers of the State of California, and entitled to insist that defendants not spend public funds to support activities, such as the enforcement of illegal regulations, which violate the law.

JURISDICTION AND VENUE

23. This Court has jurisdiction over this action pursuant to § 11350 of the Government Code, and venue is appropriate pursuant to § 393 of the Code of Civil Procedure, insofar as the effects of the Director's unlawful action is primarily felt within Siskiyou County.

BACKGROUND ALLEGATIONS

24. California contains rich gold deposits, which have been the subject of extraordinarily-extensive historical mining efforts. There are two basic forms of gold deposit: lode, being the original seams or veins of gold bearing minerals, and placer, representing the destination, typically in alluvial gravels, of lode deposits that have weathered away.

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- 25. Many rivers and streams in California contain underwater placer gold deposits which were not mined in historical times. Unless they could dry out the river channel by a diversion, historical miners typically focused on placer deposits on the banks of these rivers and streams, or lode deposits. Where historical miners did mine within the water, hydrological and weathering processes have often replenished gold-bearing materials in commercially-significant quantities, a process that has not occurred with similar rapidity outside the water bodies.
- 26. This is particularly true within the Klamath River and its tributaries in Siskiyou County, where a very substantial small-scale mining industry has existed since 1849, and is an important part of the county's heritage and economic base. Most placer mining within Siskiyou County for the past 30 years has been with the use of small motorized devices that allow access to underwater gold deposits.
- 27. It is impracticable to recover commercially-significant quantities of gold from such deposits without the use of a motorized device to assist the miner. Most of the mining occurs on federally-registered mining claims located on land whose title is held by the United States in trust for the mining claim owners.
- 28. For many years, the Department, on authority set forth in § 5653 *et seq.* of the California Fish and Game Code, issued permits for suction dredging. In this technique of mining, miners vacuumed up gold deposits underwater and continuously passed them over a sluice box, where the gold was hopefully deposited and the balance of the materials returned to the river.
- 29. Because suction dredge divers dig by hand, and in flowing waters, all traces of their activities are typically obliterated during the high-flow winter months when it is not practical to engage in suction dredging.
- 30. While there are no significant and adverse effects of suction dredge mining whatsoever, environmentalists have pursued litigation in other forums pursuant to which the Department performed an updated CEQA analysis concerning statewide suction dredging.

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- 31. On or about March 20, 2012, the Department released its Final Statement of Reasons and CEQA Findings of Fact, and Final Supplemental Environmental Impact Review (FSEIR).
- 32. Shortly thereafter, on or about March 16, 2012, the Department also posted "Final Adopted Regulations" on its website. Under these regulations, up to 1,500 suction dredges could operate statewide, and the Department determined that such operations would not significantly and adversely affect the environment.
- 33. The environmentalists had in the meantime procured with the Department a series of bills in the Legislature forbidding the Department from issuing suction dredging permits, a prohibition currently codified at § 5653.1 of the Fish and Game Code.
- 34. Other lawsuits are pending challenging the lawfulness of the Department's CEQA analysis, its 2012 regulations, and the statutory moratorium.
- 35. Following the adoption of the 2012 regulations, gold prospectors within Siskiyou County developed an underwater suction mining concept which did not fall within the regulatory definition of the activities for which a permit was required under those regulations (14 Cal. Code Regs. §§ 228 *et seq.*), but would allow them more limited access to underwater gold deposits. The Department provided repeated advice, in writing, that the new concept was not affected by the prohibition on issuing permits for suction dredging.
- 36. After receiving the "okay" from the Department, the small-scale miners in Siskiyou County invested substantial resources into developing underwater gravel transfer systems (GTS) which would allow them to resume mining. Even though only little more than a dozen portable GTS units are on the Klamath River, a substantial amount of excitement has been generated, and there has been a much-needed spike in economic activity in the small communities along the Klamath River.
- 37. On June 18, 2013, the Department filed papers to amend the 2012 regulations in order to prohibit the operation of underwater gravel transport systems. The amendment was based on an alleged "emergency" created by the miners' innovations. There is no such emergency, and

I	III		
1	1 the Department itself had approved regulation	s allowing up to 1,500 suction dredges to operate	
2	2 statewide, finding no significant and adverse e	effect on the fish and wildlife resources within the	
3	3 jurisdiction of the Department.		
4	4 38. On June 28, 2013, the Office of	Administrative Law approved those regulations and	
5	5 they went into effect. The regulations threater	n to create a real economic emergency within	
6	substantial portions of Siskiyou County.		
7	FIRST CAUSE OF ACTION: DECLARATORY RELIEF PURSUANT TO § 11350 OF THI		
8	8 GOVERNMENT CO	ODE (ALL PLAINTIFFS)	
9	9 39. Plaintiffs re-allege paragraphs 1	-38 as if set forth herein.	
10	0 40. Pursuant to § 11346.1(b)(2),		
11		hall include a written statement that contains the	
12	2 11346.5 and a description of the	ohs (2) to (6), inclusive, of subdivision (a) of Section specific facts demonstrating the existence of an neediate action, and demonstrating, by substantial	
13	3 evidence, the need for the propo	sed regulation to effectuate the statute being de specific and to address only the demonstrated	
14 15	emergency. The finding of emergand empirical study, report, or si	gency shall also identify each technical, theoretical, milar document, if any, upon which the agency ncy statute shall not, in and of itself, constitute a	
16	need for immediate action.	3. 3. 3. 3. 3. 3. 3. 3. 3. 3. 3. 3. 3. 3	
17	"A finding of emergency based general public need, or speculati	only upon expediency, convenience, best interest, on, shall not be adequate to demonstrate the situation identified in the finding of emergency	
18	8 existed and was known by the ag	gency adopting the emergency regulation in ressed through nonemergency regulations adopted in	
19	9 accordance with the provisions of	of Article 5 (commencing with Section 11346), the de facts explaining the failure to address the	
20			
21	1 The Department failed to comply with these a	nd other requirements of the Government Code, and	
22	2 has amended 14 Cal. Code Regs. § 228 illegal	ly. The Director threatens to enforce the new, illega	
23	3 regulation.		
24	4 41. As a result, plaintiffs have been	damaged insofar as those engaged in using GTSs are	
25	5 now subject to criminal prosecution, and all p	aintiffs will lose substantial monies as a result.	
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- Plaintiffs have no remedy at law to recover damages by reason of the Department's unlawful rulemaking.
- Insofar as the Department was not excused from utilizing normal rulemaking procedures, its emergency regulation is also invalid insofar as
 - (a) The Regulations exceed the scope of Defendants' statutory authority under Fish and Game Code § 5653.
 - The Regulations were and are not reasonably necessary to effectuate the (b) purpose of the statute and address the alleged problem for which they were proposed.
 - (c) The Defendant's determinations, including that the regulation was reasonably necessary, are not supported by substantial evidence.
 - (d) Defendants failed adequately to provide an adequate rationale and explanation for their determination that adoption of the Regulations was necessary to carry out the purpose and address the alleged problem for which the Regulations were adopted in violation of Government Code § 11346.2(b)(1).
 - Defendants failed to provide an adequate analysis of reasonable alternatives (e) in violation of Government Code § 11346.2(b)(5)
 - (f) Defendants failed to provide an adequate economic analysis of the Regulations in violation of Government Code § 11346.3.
- Plaintiffs are entitled, pursuant to Government Code § 11350 and otherwise, to a declaration that the emergency regulation is void and of no force and effect.

SECOND CAUSE OF ACTION: INJUNCTION (BY ALL PLAINTIFFS)

- Plaintiffs re-allege paragraphs 1-44 as if set forth herein.
- Unless operation of the emergency regulation is enjoined, plaintiffs will suffer irreparable injury. Plaintiff Foley faces criminal prosecution for operation of his GTS, and all plaintiffs will suffer severe economic injury. That injury is irreparable because there is no

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1	effective remedy against defendants for damages by reason of the enactment of the emergency			
2	regulation.			
3	47.	47. Plaintiffs are entitled to equitable relief under §§ 526a and 527 of the Code of Civil		
4	Procedure.	ocedure. 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.	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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17		James I. Ruchal SRN 258128		
18	James L. Buchal, SBN 258128 Attorney for Plaintiffs			
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2728	COMPLAINT Case No.	9 James L. Buchal (SBN 258128 MURPHY & BUCHAL LLP		

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