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16 *Attorney for Plaintiffs The New 49'ers Inc. et al.*

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF SAN BERNARDINO

<p>19 Coordination Proceeding 20 Special Title (Rule 1550(b))</p> <p>21 SUCTION DREDGE MINING CASES</p>	<p>Judicial Council Proceeding No. JCPDS 4720</p> <p>MINERS' JOINT NOTICE OF MOTION AND MOTION FOR INJUNCTION AGAINST DEFENDANTS</p> <p>Judge: Hon. Gilbert G. Ochoa Dept.: S36 Date: June 23, 2015 Time: 8:30 a.m.</p>
<p>22 Related Actions:</p> <p>23 <i>Karuk Tribe of California, et al. v. California</i> 24 <i>Department of Fish and Game</i></p> <p>25 <i>Hillman, et al. v. California Department of</i> 26 <i>Fish and Game</i></p>	<p>27 RG 05211597 – Alameda County</p> <p>28 RG 09434444 – Alameda County</p>

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Karuk Tribe of California, et al. v. California Department of Fish and Game

RG 1263796 – Alameda County

Kimble, et al. v. Kamala Harris, Attorney General of California, et al.

CIVDS 1012922 – San Bernardino County

Public Lands for the People, et al. v. California Department of Fish & Game, et al.

CIVDS 1203849 – San Bernardino County

The New 49er's, et al. v. State of California; California Department of Fish and Game, et al.

SCCV 120048 – Siskiyou County

Foley, et al. v. State of California; California Department of Fish and Wildlife, et al.

SCSCCV 13-00804 – Siskiyou County

Walker v. Harris, et al.

34-2013-80001439 – Sacramento County

1 **TO DEFENDANTS KAMALA D. HARRIS, IN HER OFFICIAL CAPACITY AS**
2 **ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, CALIFORNIA**
3 **DEPARTMENT OF FISH & WILDLIFE, CHARLTON H. BONHAM, IN HIS**
4 **OFFICIAL CAPACITY AS DIRECTOR OF THE CALIFORNIA DEPARTMENT OF**
5 **FISH AND WILDLIFE, AND TO THEIR ATTORNEYS OF RECORD:**

6 1. **PLEASE TAKE NOTICE** that at 8:30 a.m., on June 23, 2015, or as soon
7 thereafter as counsel may be heard, in the courtroom of the Honorable Gilbert G. Ochoa,
8 Department S36, located at 247 West Third Street, San Bernardino, CA 92415-0210, the
9 Plaintiffs/Petitioners in *Kimble et al. v. Harris et al.* (San Bernardino County Case No.
10 CIVDS1012922); *Public Lands for the People, et al. v. California Department of Fish & Game,*
11 *et al.* (San Bernardino County Case No. 1203849); and *The New 49er's, et al. v. State of*
12 *California; California Department of Fish and Game, et al.* (Siskiyou County Case No.
13 120048) will move for an order for of injunction restraining and enjoining you, your agents,
14 servants, employees and attorneys, and all those in active concert or participation with you or
15 them from:

16 1. Enforcing the provisions of the Fish and Wildlife Code prohibiting suction
17 dredge mining in the rivers, streams, and waterways of California without a permit, and
18 possessing a suction dredge near closed waterways;

19 2. Enjoining the enforcement of the 2012 Suction Dredge Mining Regulations
20 promulgated pursuant to § 5653.1 of the Fish and Wildlife Code; and

21 3. Mandating the development of a permit program and regulations that do not
22 stand as an obstacle to the full purposes and objectives of federal mining law.

23 Plaintiffs/Petitioners do not seek to restrain defendants from any enforcement activities:

24 1. On nonfederal land; and

25 2. Against any suction dredger operating out of compliance with the regulations
26 prevailing in 2009 at the time § 5653.1 of the Fish and Wildlife Code was enacted.

1 Plaintiffs/Petitioners seek an injunction that shall continue until defendants secure, by
2 noticed motion, relief from the injunction by reason of a constitutionally-permissible permitting
3 scheme and regulations.

4 This motion is being brought because this Court has struck down Fish and Wildlife Code
5 § 5653.1, and the 2012 Suction Dredge Mining Regulations promulgated thereunder, as
6 unconstitutional, being preempted by the Federal mining laws, the Supremacy Clause and
7 Property Clause of the Constitution of the United States, and in conflict with and preempted by
8 the constitutional right of the United States to control its property; and among other matters,
9 this constitutes a prohibition of a miner to mine his Federal mining claim, mineral estate, and
10 private property on Federal land in accordance with the mining laws of the United States.

11 This motion is made on the ground that immediate and irreparable injury has already
12 occurred, is occurring, and will continue to occur to Plaintiffs/Petitioners, and others, who are
13 prospectors, miners, and owners of Federal mining claims and mineral estates, merchants
14 involved in the manufacturing and selling of suction dredge mining equipment, communities,
15 and businesses, especially small businesses, who depend upon suction dredge mining, and the
16 miners who engage in suction dredge mining for their economic viability and livelihood.
17 Defendants are seizing the business property of Plaintiffs/Petitioners and their members,
18 threatening them with arrest, arresting them, and generally interfering with their lawful right,
19 guaranteed under federal law, to pursue their livelihoods. These activities are also tending to
20 render this Court's ruling ineffective and leading to a multiplicity of actions in the California
21 courts. Unless the activities described above are enjoined pending trial of these actions, the
22 aforesaid harms will continue from Defendants' enforcement of their unconstitutional scheme
23 of requiring a permit and refusing to issue it.

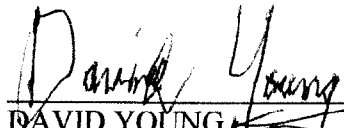
24 The motion will be based on this Notice of Motion and Motion Against Defendants, the
25 accompanying Memorandum of Points and Authorities, the Request for Judicial Notice and the
26 Exhibits and Declarations attached thereto and/or on file with this Court.

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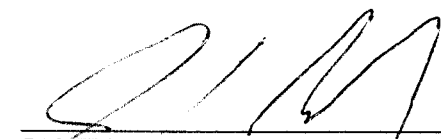
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DATED: May 18, 2015



DAVID YOUNG
Attorney for Plaintiffs/Petitioners
Kimble *et al.* and PLP *et al.*

DATED: May ____, 2015



JAMES BUCHAL
Attorney for Plaintiff/Petitioners
The New 49er's Inc. *et al.*

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PROOF OF SERVICE

I, Carole Caldwell, hereby declare under penalty of perjury under the laws of the State of California that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I am an employee of Murphy & Buchal, LLP and my business address is 3425 SE Yamhill Street, Suite 100, Portland, Oregon 97214.

On May 18, 2015, I caused the following document to be served:

MINERS' JOINT NOTICE OF MOTION AND MOTION FOR INJUNCTION AGAINST DEFENDANTS

by transmitting a true copy in the following manner on the parties listed below:

Honorable Gilbert Ochoa
Superior Court of California
County of San Bernardino
San Bernardino Justice Center
247 West 3rd Street
San Bernardino, CA 92415-0210
Via U.S. Mail

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Court Programs and Services Division
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102
Via U.S. Mail

Bradley Solomon
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
E-mail: Bradley.Solomon@doj.ca.gov
Via E-mail

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Office of the Attorney General
1515 Clay Street, Suite 2000
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E-mail: Marc.Melnick@doj.ca.gov
Via E-mail

John Mattox
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Via E-mail

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Via U.S. Mail



Carole Caldwell
Declarant