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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNADINO
10

11 BEN KIMBLE, RONALD HANSEN, RON)
12 KLIEWER, ERIC RASBOLD, TERRY)
STAPP, DELORES STAPP, GARY)
13 GOLDBERG, GERALD HOBBS, PUBLIC)
LANDS FOR THE PEOPLE, INC. a 501 C-3)
14 non-profit corporation, PATRICK KEENE,)
KEENE ENGINEERING COMPANY, INC.,)
15 a California corporation, and WALT)
WEGNER.

16 Plaintiffs,

17 v.

18 KAMALA HARRIS, Attorney General of the)
19 State of California; CHARLTON H.)
20 BONHAM, Director of the California)
Department of Fish and Game; CALIFORNIA)
21 DEPARTMENT OF FISH & GAME, and)
DOES 1-20, inclusive.

22 Defendants

) CASE NO. CIVDS1012922

) **PLAINTIFFS' FIRST AMENDED**
) **COMPLAINT FOR FEDERAL PRE-**
) **EMPTION; VIOLATION OF: CAL.**
) **CONST. ARTICLE X, § 2; 16 U.S.C. § 481;**
) **43 U.S.C. § 661; CALIFORNIA**
) **STATEHOOD ACT; DUE PROCESS;**
) **EQUAL PROTECTION;**
) **ENVIRONMENTAL JUSTICE; [GOV.**
) **CODE §6540.12] [PUB. RESOURCE CODE**
) **§71110-§71115]; INJUNCTIVE AND**
) **DECLARATORY RELIEF; DAMAGES.**

) **Unlimited Civil Case**

) **DEMAND FOR JURY TRIAL**

) Judge: Hon. Donald Alvarez
) Department: S32

1 Plaintiffs Ben Kimble, Ronald Hansen, Ron Kliewer, Eric Rasbold, Terry Stapp, Delores
2 Stapp, Gary Goldberg, Gerald Hobbs, Public Lands for the People, Inc., Patrick Keene, Keene
3 Engineering Company, Inc., and Walt Wegner allege as follows:

4 **INTRODUCTION**

5 1. On or about August 6, 2009, the California State Senate passed and Governor
6 Arnold Schwarzenegger signed Senate Bill 670 into law. (California Fish and Game Code
7 §5653.1)

8 2. SB 670 prohibits vacuum and suction dredge mining, in the rivers, streams, and
9 waterways of California, including waterways located on federal land. Pursuant to SB 670, the
10 California Department of Fish and Game (the “DF&G”) is prohibited from issuing suction
11 dredge permits to miners until the Director of the DF&G certifies to the Secretary of State that:
12 1) The DF&G has completed the environmental review of its existing vacuum or suction
13 dredging regulations as ordered by the Court in *Karuk Tribe of California et al. v. California*
14 *Department of Fish and Game et al.*, Alameda County Superior Court Case No. RG 05211597
15 (The Court in the *Karuk Tribe* Case [Judge Bonnie Sabraw] did not close vacuum and suction
16 dredge mining, or permitting pending the environmental review.); 2) DF&G has transmitted for
17 filing with the Secretary of State, a certified copy of new regulations as necessary; and 3) the
18 new regulations are operative.

19 3. On July 26, 2011 Governor Edmund G. Brown signed into effect AB 120, which
20 amended newly enacted Fish and Game Code § 5653.1, imposing further stringent limitations on
21 suction dredge mining in the waterways of the state of California. AB 120 extends the
22 prohibition on suction dredge mining until June 30, 2016. In addition, AB 120 requires that “any
23 new regulations fully mitigate all identified significant environmental impacts,” which the
24 DF&G has stated is impossible for the Department to comply with; and further requires that “a
25 fee structure is in place that will fully recover all costs to the Department related to the
26 administration of the program.” This will require further legislative approval and enactment of
27 the new fee structure, since DF&G cannot set or enact fees. The Governor will also have to
28 approve the new fee structure, which is subject to his veto. The Department has further stated

1 that due to the enactment of AB 120, it will not be able to have either an EIR or propose final
2 regulations prepared in 2011. SB 670, as amended by AB 120, is now set forth in the newly
3 enacted California Fish and Game Code (“CF&GC”) § 5653.1.

4 4. AB 120 is a special attack on mining rights rather than any legislative regulation of
5 the environment. §5653.1(c) specifically states:

6 “The Legislature finds and declares that this section, as added
7 during the 2009-10 Regular Session, applies solely to vacuum and
8 suction dredging activities conducted for instream mining
9 purposes. This section does not expand or provide new authority
10 for the department to close or regulate suction dredging conducted
11 for regular maintenance of energy or water supply management
12 infrastructure, flood control, or navigational purposes governed by
13 other state or federal law.”

14 AB 120 amended seven (7) different codes within California state law, including the Fish and
15 Game Code. Two (2) paragraphs in AB 120 referred to suction dredge mining and have
16 substantial impacts on the process of the California DF&G (“Department”) to conduct
17 environmental review and adopt amended regulations guiding suction dredge mining.

18 5. SB 670 and AB 120 affects primarily lower income citizens, the unemployed, and
19 retirees who have to supplement their income by suction dredge mining. SB 670 and AB 120
20 stand in direct contradiction to California’s public policy of environmental justice as set forth in
21 Government Code §65040.12(e), which states that: “For the purposes of this section,
22 ‘environmental justice’ means the fair treatment of people of all races, cultures, and incomes
23 with respect to the development, adoption, implementation, and enforcement of environmental
24 laws, regulations, and policies.”

25 6. SB 670 and AB 120 have also set forth its public policy of environmental justice in
26 Pub.Res.Code § 71110(a) and (b) which mandates that the California Environmental Protection
27 Agency shall:
28

1 (a) Conduct its programs, policies, and activities that
2 substantially affect human health or the environment in a
3 manner that ensures the fair treatment of people of all
4 races, cultures, and income levels, including minority
5 populations and low-income populations of the state.

6 (b) Promote enforcement of all health and environmental
7 statutes within its jurisdiction in a manner that ensures the
8 fair treatment of people of all races, cultures, and income
9 levels, including minority populations and low-income
10 populations in the state.

11 7. DF&G had projected it would be adopting new regulations and certifying the
12 Final Supplemental Environmental Impact Report by the end of summer 2011. DF&G claimed
13 this would have permitted the sale of suction dredge permits under newly adopted regulations.

14 8. DF&G had publicly stated that AB 120 affects this effort in several important ways:

15 a. First, AB 120 establishes an end date for the current prohibition on suction dredge
16 mining of June 30, 2016. The current prohibition on suction dredge mining was
17 established by SB 670, and took effect on August 9, 2009 without any specific
18 end date.

19 b. Second, AB 120 requires that any “new regulations fully mitigate all identified
20 significant environmental impacts.” In the Draft Subsequent Environmental
21 Impact Report (“SEIR”), the only significant environmental impacts are listed as
22 significant but unavoidable. Unavoidable environmental impacts can never be
23 fully mitigated. This is why DF&G has stated that it cannot comply with AB 120,
24 because it is impossible for DF&G to comply with AB 120, since AB 120
25 requires the impossible. AB 120’s impossibility standard negates both SB 670
26 and the injunction issued by the Alameda County Superior Court.

27 c. As directed by the Alameda County Superior Court and SB 670, DF&G stated
28 that it prepared the Draft SEIR to meet requirements of the California

1 Environmental Quality Act (“CEQA”), Pub. Res. Code 21000, et seq., which has
2 no “fully mitigate” requirement or standard. “Fully mitigate” is not defined in
3 any statute or regulation. Previously, the term has only been used in Fish and
4 Game Code §2081, subdivision (b), the California Endangered Species Act. In
5 addition to CEQA, AB 120 now requires DF&G to meet a “fully mitigate”
6 standard in order that the prohibition on suction dredge mining end any earlier
7 than June 30, 2016. However, since the “fully mitigate” standard cannot be
8 enforced or implemented, though still in effect, DF&G will be unable to issue any
9 regulations which would allow suction dredge mining to proceed, whether in 2016
10 or to the end of time.

11 d. Officials of DF&G have stated the statutory requirements of AB 120 that any
12 “new regulations fully mitigate identified significant environmental impacts,” is
13 impossible for the DF&G to comply with, and is therefore infeasible. For
14 example, DF&G can never “fully mitigate” through regulations the listed
15 significant and unavoidable environmental effects set forth in the Draft SEIR. *See*
16 *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita*
17 *(Henry Mayo Newhall Memorial Hospital)* 197 Cal. App. 4th 1042, (2nd App. Dist.,
18 Div. 2, 2011); See Also 2011 DJDAR 11239. Certified for publication. In
19 addition, AB 120 is in conflict with CEQA, California Public Resources §21000.1
20 and 21002.1, allowing for the approval of projects with infeasible significant and
21 unavoidable effects that are incapable of full mitigation.

22 e. Third, a new condition required by AB 120 is that a “fee structure is in place that
23 will fully recover all costs to the department related to the administration of the
24 program.” Under current law, however, the fee structure for DFG’s permitting
25 program is prescribed by statute. Any change to that structure is beyond the
26 authority of DFG and such change will require actions by the California
27 Legislature and related approval by the Governor.
28

1 f. The Department has stated that because of the requirement of a legislatively
2 inactive new fees structure, the new regulations and the resumption of suction
3 dredge mining cannot take place. The department stated:

4
5 “Finally, the previous moratorium established by SB 670
6 was clear that DFG needed to take several actions (i.e.
7 comply with CEQA and adopt amended regulations) which
8 would then allow suction dredge mining to resume, under
9 the new regulations. Said any other way, DFG had the
10 final State approval to complete the process, subject only to
11 the Alameda County Superior Court’s concurrence. AB
12 120 adds a legislative step, described in the previous
13 paragraph. Simply put, the legislature will need to
14 affirmatively approve a new fee structure, before suction
15 dredge mining can resume under new regulations. The
16 perspectives of legislators about sufficiency of a fee
17 structure and suction dredge mining generally will affect
18 the probability of such legislation being approved.”

19 This places the Department in violation of the Court Order of the
20 Alameda County Superior Court, Case No RG 05211597, issued
21 by Judge Sabraw.

22 9. Prohibiting suction dredge mining has devastated the miners, miner’s families,
23 and communities that depended on such mining as an important source of income and economic
24 security. The enactment of SB 670 and AB 120 violates rights granted to Plaintiffs under
25 Federal mining law and the United States Constitution, and under California law and the
26 California Constitution. In addition, SB 670 and AB 120 are pre-empted by federal mining law
27 encouraging and authorizing mining on federal land. Among other matters, Plaintiffs seek
28 injunctive and declaratory relief, including the invalidation of SB 670 and AB 120.

10. DF&G claims the right to regulate and require permits for suction dredge mining
in all rivers, streams, and waterways in California, including those rivers, streams, and
waterways on Federal lands. Such regulation must be reasonable and cannot prohibit what
Federal Law grants.

1 **PARTIES**

2 11. Plaintiff Ben Kimble has engaged in vacuum and suction dredge mining for over
3 twenty years. Mr. Kimble has a Federal mining claim on Federal land along the North Yuba
4 River in California. Mr. Kimble had permits from DF&G which enabled him to engage in
5 vacuum and suction dredge mining in California. Mr. Kimble has paid DF&G for these permits.
6 These permits have been cancelled by DF&G pursuant to SB 670, as amended by AB 120. Mr.
7 Kimble has spent substantial sums in order to engage in suction dredge mining. Mr. Kimble is
8 directly and substantially harmed by the passage of SB 670 and AB 120 because he can no
9 longer engage in suction dredge mining on his Federal mining claims on Federal land in
10 California. Mr. Kimble is a resident of Riverside County, California.

11 12. Plaintiff Ronald Hansen has engaged in vacuum and suction dredge mining since
12 1980. Mr. Hansen has had permits from DF&G which enabled him to engage in vacuum and
13 suction dredge mining on Federal mining claims on Federal land in California. Mr. Hansen had
14 paid DF&G for these permits. Mr. Hansen has previously earned money because of his
15 involvement with suction dredge mining operations in California. He wishes to engage in
16 suction dredge mining on Federal lands in the immediate future as a means of supplementing his
17 income in these hard and difficult economic times. Mr. Hansen is directly and substantially
18 harmed by the passage of SB 670 and AB 120 because he can no longer engage in suction dredge
19 mining on Federal land in California. Mr. Hansen is a resident of San Bernardino County,
20 California.

21 13. Plaintiff Ron Kliever has engaged in vacuum and suction dredge mining for
22 approximately twenty years. Mr. Kliever has engaged in vacuum and suction dredge mining in
23 order to supplement his income. Mr. Kliever had permits from DF&G to engage in vacuum and
24 suction dredge mining in California. Mr. Kliever has paid DF&G for these permits. These
25 permits have been cancelled by DF&G pursuant to SB 670, as amended by AB 120. Mr.
26 Kliever has spent substantial sums in order to engage in suction dredge mining. Mr. Kliever is
27 directly and substantially harmed by the passage of SB 670 and AB 120 because he can no
28 longer engage in suction dredge mining on his Federal mining claims on Federal land in

1 California. Mr. Kliever was laid off from his job on July 23, 2010, and can no longer engage in
2 suction dredge mining to supplement his income. Mr. Kliever is a resident of San Bernardino
3 County, California.

4 14. Plaintiff Eric Rasbold owns approximately 180 acres of Federal mining claims,
5 located on Federal land along the Steeley Fork of the Cosumnes River in El Dorado County,
6 California. He has engaged in suction dredge mining for over six years, and also operated a land
7 lease for suction dredge miners who would come and work the land for a fee. He has spent
8 approximately \$10,000 on machinery directly related to suction dredge mining operations. Mr.
9 Rasbold is directly and substantially harmed by the passage of SB 670 and AB 120 because he
10 can no longer engage in suction dredge mining on his Federal mining claims on Federal land.
11 Mr. Rasbold is a resident of El Dorado County, California.

12 15. Plaintiff Gerald Hobbs owns Federal mining claims on Federal land in California.
13 Mr. Hobbs has mining claims and mineral estates in three (3) National Forests, all of which are
14 in California. They are the Angeles National Forest, Tahoe National Forest, and Six Rivers
15 National Forest. Mr. Hobbs has been a miner and prospector for over thirty years. Mr. Hobbs
16 has permits from DF&G to engage in vacuum and suction dredge mining on his Federal mining
17 claims on Federal land in California. Mr. Hobbs has paid DF&G for these permits. These
18 permits have been cancelled by DF&G pursuant to SB 670, as amended by AB 120. Mr. Hobbs
19 has spent substantial sums in order to engage in suction dredge mining on his Federal mining
20 claims on Federal land in California. Mr. Hobbs earned income from suction dredge mining in
21 California which was necessary to maintain his economic viability. Mr. Hobbs is directly and
22 substantially harmed by the passage of SB 670 and AB 120 because he can no longer engage in
23 suction dredge mining on his Federal mining claims on Federal land in California. Mr. Hobbs is
24 also the President and founder of Public Lands for the People, Inc., a California 501 c-3 non-
25 profit corporation that advocates for miners and prospectors. Mr. Hobbs is a resident of San
26 Bernadino, California.

27 16. Mr. Hobbs also runs a gold prospecting store in San Bernardino, California, which
28 has been in existence since August 1, 1978. The store sold suction dredges and dredge

1 accessories to miners which represented about 60% of the store's income. The passage of SB
2 670 was a devastating economic blow to the store's business income. The prior owners went out
3 of business because of the passage of SB 670, and Mr. Hobbs took over the store in March, 2010,
4 with the expectation of suction dredging again being permitted by the end of 2011. SB 670 and
5 AB 120 have placed in question the economic viability of the store's business, and the ability of
6 the store to remain open under Mr. Hobbs.

7 17. Plaintiff Public Lands for the People, Inc. is a California 501 c-3 non-profit
8 corporation ("PLP"). PLP is a nationwide organization of miners, who are mineral estate
9 grantees, Federal mining claim owners, and prospectors. With its constituent members, PLP
10 constitutes approximately 40,000 small to medium sized miners and prospectors. Its founder and
11 President is Gerald Hobbs of San Bernardino County, San Bernadino, California, from where he
12 leads PLP. PLP, has among its membership, miners and prospectors with Federal mining claims
13 and estates in National Forests in California, Federal lands administered by the Bureau of Land
14 Management in California, National Parks in California, and other Federal lands in California,
15 and throughout the United States. Large numbers of the membership of PLP received yearly
16 permits from DF&G to engage in vacuum or suction dredge mining on Federal lands in
17 California, and did so engage in such mining in California. These PLP members are directly
18 affected in their mining, prospecting and associated operations by the passage of SB 670 that
19 prohibits the issuance of permits for vacuum and suction dredge mining, the passage of AB 120,
20 and the cancellation by DF&G of permits already issued, for vacuum and suction dredge mining
21 in California. These PLP members are directly and substantially financially harmed by the
22 passage of SB 670 and AB 120.

23 18. Gary Goldberg is a miner and prospector, with mining claims on Federal lands in
24 California, who resides in San Bernardino County. Mr. Goldberg is a disabled military veteran.
25 He has engaged in suction dredge mining in order to supplement his V.A. disability pension,
26 small retirement benefit from private industry, and support his family. Mr. Goldberg is currently
27 self-employed, but in the current economic situation, he earns only about \$12,000.00 per year.
28

1 Because of the passage of SB 670 and AB 120, and the prohibition on suction dredge mining, he
2 is suffering severe economic harm.

3 19. Terry Stapp, a resident of San Bernardino County, is a 60% disabled Vietnam
4 veteran who retired in 1991 after 25 years in the United States Air Force. Mr. Stapp is a suction
5 dredge miner and has so mined on Federal land in the Downieville area in Sierra County,
6 California for over 30 years. His mining claims and estates in Sierra Country are worthless
7 without the ability to engage in suction dredge mining. The economic loss to Mr. Stapp and his
8 wife, Delores (Dee), is devastating. Mr. Stapp supplemented his income by suction dredge
9 mining while he was on active duty in the United States Air Force. Since Mr. Stapp retired from
10 the Air Force, suction dredge mining in California is his sole source of income, other than his
11 military retirement pension. Mr. Stapp is directly and substantially financially harmed by the
12 passage of SB 670 and AB 120.

13 20. Delores (Dee) Stapp, a resident of San Bernardino County, is the wife of Terry
14 Stapp. Mrs. Stapp has mining claims and estates on Federal land in California. Mrs. Stapp
15 engages in suction dredge mining on her claims in California, and has permits from DF&G to
16 engage in such mining. Mrs. Stapp has paid DF&G for these permits. Mrs. Stapp has spent
17 substantial sums in order to engage in suction dredge mining. Mrs. Stapp supplements her and
18 her husband's income through suction dredge mining in California. Mrs. Stapp is directly and
19 substantially financially harmed by the passage of SB 670 and AB 120.

20 21. Mrs. Stapp started a gold prospecting store in San Bernardino, California and ran it
21 since August 1, 1978, until March 2010. Mrs. Stapp sold suction dredges and dredge accessories
22 to miners which represented about 60% of the store's income. The passage of SB 670 was a
23 devastating economic blow to Mrs. Stapp's business income. SB 670 placed in question the
24 economic viability of Mrs. Stapp's business, and the ability of her store to remain open. Because
25 of the passage of SB 670 and the precipitance drop in business resulting from its passage, Mrs.
26 Stapp was forced to sell her store to Mr. Hobbs in March, 2010. Mr. Hobbs bought the store in
27 anticipation of suction dredge mining being allowed by the end of 2011. Because of the passage
28 of SB 670 and the passage of AB 120, Mr. Hobbs is seriously contemplating closing the doors of

1 his business, since suction dredge mining constitutes such a huge part of the business, and an
2 extensive and continuing loss by the business.

3 22. Mrs. Stapp sells the gold she and her husband obtain from suction dredge mining
4 through the Internet throughout the United States and in foreign commerce. The inability to
5 suction dredge mine has substantially impacted the Stapps' financial and economic well-being,
6 since the Internet sales of suction dredge mined gold amounts to many thousands of dollars per
7 year, and is a necessity for the Stapps to financially survive.

8 23. Patrick Keene is part of a third generation family-owned business that has been
9 serving the mining community in California, the United States, and throughout the world for the
10 past 60 years. Mr. Keene is Secretary/Treasurer of Keene Engineering Co., Inc. ("Keene
11 Engineering") of Chatsworth, California in Los Angeles County. Keene Engineering is the
12 largest supplier of small scale dredging and mining equipment in the world. The Company, as
13 well as many other manufacturers, sells to small businesses and dealers who provide equipment
14 to prospectors and miners throughout California and the United States. Many of the people who
15 operate suction dredges come to visit California to dredge for gold and work their mining claims.
16 While doing so, they support local businesses in the process of filling their other needs. Mr.
17 Keene has been working for Keene Engineering for over 30 years. Mr. Keene and Keene
18 Engineering are directly and substantially financially harmed by the passage of SB 670 and AB
19 120.

20 24. The economic impact of the prohibition of suction dredge mining in California is
21 devastating to Keene Engineering. Since the majority of Keene Engineering's business is in
22 California, it seriously calls into question whether Keene Engineering, and many other small
23 businesses who also sell prospecting and mining equipment or supplies, can economically
24 survive. Much of Keene Engineering's business relied on California suction dredge miners. The
25 losses involved with Keene Engineering's business is in the many millions of dollars.

26 25. Since the introduction of SB 670, suction dredge sales by Keene Engineering and
27 its California dealers have stopped. The fear of this activity becoming illegal, and it being a
28 misdemeanor, carrying up to \$1,000.00 in fines, and/or six months in jail, has been devastating to

1 Keene Engineering's business, as well as its dealers. The passage of AB 120 only exacerbates
2 the harms caused by SB 670.

3 26. Forty percent of Keene Engineering's business was based on equipment sold to
4 small and medium scale suction dredge miners in California, and the people who travel from
5 other states to suction dredge mine in the rivers and streams in California. Thousands of those
6 people also enjoy associated tourism in California and supported local seasonal businesses. To
7 date, Keene Engineering's sales to its dealers has dropped by over 70%, and many of its dealers
8 have gone out of business.

9 27. Most of Keene Engineering's suppliers, who provided it with components to build
10 suction dredges are profoundly impacted as well. These suppliers also have had a substantial
11 drop in their business, and some have gone out of business. The passage of SB 670 has created a
12 ripple effect on many other industries both in and out of the State of California adversely
13 affecting interstate commerce. SB 670's prohibition on vacuum and suction dredge mining has
14 cost, or will cost, California economic damage in an amount of approximately 60-65 million
15 dollars a year, and possibly much more. The passage of AB 120 only exacerbates the harms
16 caused by SB 670.

17 28. SB 670 and the passage of AB 120 may well put Keene Engineering out of
18 business. Keene Engineering's primary function is manufacturing suction dredges. The sales of
19 suction dredges have been drastically reduced. Since the passage of SB 670, so many California
20 suction dredge miners have put their equipment on the market for sale, causing a glut of used
21 suction dredge equipment, that the market for new suction dredges has been nearly destroyed.
22 This includes the sale of new suction dredges and suction dredge mining equipment in states
23 other than California. A number of Keene Engineering's dealers have contacted the Company,
24 and told Keene Engineering that they are closing their doors, since they cannot economically
25 survive selling just non-motorized equipment such as sluice boxes and gold pans. Pioneer
26 Mining Supplies, of Auburn California, Keene Engineering's largest California dealer, has
27 notified Keene Engineering that because of the vast loss of business engendered by SB 670,
28

1 Pioneer Mining was going out of business. The passage of AB 120 only exacerbates the harms
2 caused by SB 670.

3 29. Mr. Keene is also a small scale independent miner who owns mining claims and
4 estates throughout California. Mr. Keene's mining claims are on Federal land in National
5 Forests in California and on Bureau of Land Management land in California. Mr. Keene engages
6 in vacuum and suction dredge mining in California, and had permits from DF&G allowing him
7 to engage in such mining. Mr. Keene has paid DF&G for these permits. Mr. Keene has spent
8 substantial sums in order to engage in suction dredge mining. By not being able to engage in
9 suction dredge mining on Federal land in California, Mr. Keene, in his individual capacity, is
10 directly and substantially financially harmed by the passage of SB 670 and AB 120, since his
11 economic investments in his mining claims and in suction dredge mining equipment are now
12 near worthless. Mr. Keene is a resident of Los Angeles County.

13 30. Plaintiff Walt Wegner owns approximately 60 acres of Federal mining claims,
14 located on Federal land in California. He has engaged in suction dredge mining for twelve years.
15 He has spent approximately \$10,000 on equipment directly related to suction dredge mining
16 operations. Mr. Wegner has supplemented his and his family's income by being able to engage
17 in suction dredge mining. After the passage of SB 670, Mr. Wegner sent a letter to the DF&G
18 requesting return of the money he spent on his 2009 suction dredge mining permit from the
19 California DF&G. The DF&G denied his request. In order to retrieve the money he spent for a
20 suction dredge mining permit that was now useless, he sued for, won, and received a refund. Mr.
21 Wegner is directly and substantially harmed by the passage of SB 670 and the passage of AB
22 120 because he can no longer engage in suction dredge mining on his Federal mining claims on
23 Federal land. Mr. Wegner is a resident of Los Angeles County, California.

24 31. The suction dredge mining community supports many other businesses in gold
25 bearing areas which are in danger of economic failure. Many jobs are being lost due to the loss
26 of tourism that the passage of SB 670 has engendered. Many campgrounds are empty along
27 rivers and mining areas across California. Many businesses are seasonal, including
28 campgrounds, hotels, restaurants, service stations, and grocery stores. Many of these businesses

1 are located in severely, economically depressed areas. These business owners rely on small scale
2 suction dredge miners, prospectors, and tourism in order to survive economically. Many of the
3 suction dredge miners are from states other than California, requiring lodging at hotels, motels,
4 campgrounds, and RV parks. Many of the counties in Northern California, in the gold bearing
5 area, are economically depressed and having very hard economic times. SB 670 is adding to this
6 economic suffering, eliminating jobs, and creating a loss of tax base for these areas and for the
7 State of California. The passage of AB 120 only exacerbates the harms caused by SB 670.

8 32. A 1993 survey indicated that the average investment in suction dredge equipment
9 was approximately \$6,000.00; that suction dredgers spent about \$6,250.00 on expenses per year,
10 including groceries, restaurants, motels, camp fees and other living expenses. It is further
11 calculated that an average of 35 days per year was spent on dredging, equaling about \$179.00
12 expenditure per day per miner. In addition, suction dredgers spend about \$3,000.00 on gas, oil,
13 maintenance and repair. In 2011, the amount spent would be substantially higher. Californians,
14 and people from other states, purchase special vehicles such as trucks, campers, trailers, quads,
15 and recreational vehicles to prospect and mine for gold in California. The 1994 EIR indicated a
16 total statewide economic impact of \$200 million for each year that dredgers did not mine.

17 33. Since the passage of SB 670, and the passage of AB 120, many mining claims and
18 mineral estates will lose considerable value because their claim owners cannot mine them
19 effectively, and the counties where they are situated will be compelled to reassess the value of
20 their claims. This will create a large loss to County and State tax basis, and will ultimately
21 curtail governmental services.

22 34. Arnold Schwarzenegger, as governor of the State of California, signed SB 670 into
23 law on August 6, 2009. He was the Chief Executive of the State of California, charged with
24 enforcing the laws in this State, including SB 670. Edmund G. Brown signed AB 120 into law
25 on July 26, 2011. He is the Chief Executive of the State of California, charged with enforcing
26 the laws in this state, including SB 670 and AB 120. Neither Governor Schwarzenegger nor
27 Governor Brown are being sued as parties to this litigation at this time.
28

1 35. Edmund G Brown was Attorney General of California when AB 670 was enacted.
2 Defendant Kamala Harris, is the Attorney General for the state of California, and was Attorney
3 General when AB 120 was enacted. This defendant is sued in her official capacity. The Office
4 of Attorney General is established, organized, and authorized under and pursuant to the laws of
5 California with the authority to sue and be sued in its own name. Defendant Kamala Harris, as
6 Attorney General, is responsible to prosecute and enforce the laws of California, including the
7 Senate Bill 670 and AB 120, and their prohibitions against vacuum and suction dredge mining.

8 36. Defendant Charlton H. Bonham is sued in his official capacity as the Director of the
9 California DF&G. Defendant Bonham has supervisory powers over the California DF&G and its
10 implementation and enforcement of SB 670 and AB 120.

11 37. The California DF&G is a department of the Executive Branch of the State of
12 California, and among its other duties, is responsible for the issuing of permits for vacuum and
13 suction dredge mining in the rivers, streams, lakes, and waterways within California, and has
14 supervision over, and enforcement powers for, SB 670 and AB 120.

15 38. DOE Defendants 1 through 20 are unknown to Plaintiffs at this time, but each is to
16 be identified in this case as a resident of the State of California and acting in all particulars
17 material to this case in his or her official capacity and under color of state law. At All times
18 herein, all named Defendants and Defendants Does 1 through 20, inclusive, and each of them,
19 were the agents and employees of each of the remaining Defendants and were at all times acting
20 within the purpose and scope of said agency and employment, and each Defendant ratified and
21 approved the acts of its agent and of the other Defendants. Plaintiffs are informed and believe,
22 and thereon allege, that each and every Defendant, including Does 1-20, conspired with each
23 other to commit the wrongful acts set forth in this Complaint to the harm and detriment of
24 Plaintiffs.

25 **JURISDICTION AND VENUE**

26 39. This Court has jurisdiction over this action pursuant to the California Constitution,
27 Article VI, Section 10; and CCP §410.10.
28

1 40. Venue is proper in this Court because certain of the Plaintiffs and Defendants reside
2 in or are situated in San Bernadino County.

3 **FACTUAL ALLEGATIONS**

4 41. This case presents a classic conflict between prospectors, miners who hold
5 unpatented or patented mining claims and mineral estates on Federal lands pursuant to the
6 mining laws of the United States, and the State of California. Until recently, under longstanding
7 state and federal mining law, vacuum and suction dredge prospecting and mining was permitted
8 on rivers, streams, and waterways in the State of California running through such Federal mining
9 claims and estates, and unclaimed Federal lands open to prospecting and mining.

10 42. Prospecting, placer mining, suction dredge mining, and the mining of unpatented
11 and patented mining claims, all of which are mining operations pursuant to the mining laws and
12 the *Code of Federal Regulations* (“CFR”), and all of which have valid pre-existing rights
13 pursuant to the mining laws and *CFRs*, are common in the State of California, and done in
14 accordance with the rules and customs of miners. Suction dredge mining is the only reasonable,
15 economical, and environmentally sound method of prospecting for and extracting precious
16 metals from the rivers, streams, lakes, and waterways in California. SB 670 and AB 120 prevent
17 not only the extracting of precious metals on a mining claim, but because of the prohibition on
18 prospecting for precious metals with suction dredges in the waterways of California, from
19 locating a mining claim containing precious metals.

20 43. The California DF&G issued permits for vacuum and suction dredge mining in the
21 State of California, even when such mining occurs on Federal lands and is pursuant to the mining
22 laws of the United States. California Fish and Game Code § 5653 *et seq.*; California Code of
23 Regulations 14 CCR § 228. Waters within the boundaries of Federal lands, including National
24 Forests, National Parks, and lands within the jurisdiction of the Bureau of Land Management
25 (BLM), can be used for mining. 16 *U.S.C.* § 481.

26 44. In 2006, members of the Karuk Tribe and their legislative allies initiated AB 1032
27 (Wolk), which supposedly was meant to protect trout by prohibiting suction dredge gold mining
28 in approximately sixty-eight rivers throughout California, including the Klamath, Scott, and

1 Salmon Rivers. The heart of AB 1032 was to prohibit suction dredge gold mining in sixty-eight
2 rivers throughout California, including the Klamath, Scott, and Salmon Rivers, and their
3 tributaries, until a CEQA environmental review was completed. AB 1032 was eventually passed
4 and went to Governor Schwarzenegger for his signature. Governor Schwarzenegger vetoed AB
5 1032.

6 45. In his veto message, Governor Schwarzenegger stated:

7 “I am returning Assembly Bill 1032 without my signature.
8 The purpose of this bill is to protect fish and wildlife from
9 the potential deleterious effects of suction dredge mining.
10 Although I appreciate the author’s intent and the need to
11 protect our fish, wildlife, and water resources, this bill is
12 unnecessary. Current law gives the Department of Fish and
13 Game (Department) the necessary authority to protect fish
14 and wildlife resources from suction dredge mining. It has
15 promulgated regulations and issues permits for this activity.
16 Permits for suction dredge mining must ensure that these
17 operations are not deleterious to fish and allow the
18 Department to specify the type and size of equipment to be
19 used. In its regulations, the Department may also designate
20 specific waters or areas that are closed to dredging. It is
21 unclear why this bill specifically targets a number of
22 specific waterways for closure or further restrictions. The
23 listed waterways represent only a small fraction of the
24 waters in our State where suction dredging is occurring.
25 The benefit or protection from such a minor closure is
26 negligible and supports the notion that scientific
27 environmental review should precede such decisions.”

28 46. After Governor Schwarzenegger vetoed AB 1032, legislative allies of the Karuk
Tribe then attempted to stop suction dredge mining in California by attaching a prohibition of
such mining to the California state budget bill. Governor Schwarzenegger line-item vetoed that
attempt.

47. After the attack on suction dredge mining via the state budget failed, the Karuk
Tribe then petitioned the Department of Fish & Game to have suction dredge mining prohibited
throughout California. DF&G rejected the Karuk Tribe’s petition.

48. On February 27, 2009, allies of the Karuk Tribe introduced SB 670 in the State
Senate again seeking to prohibit all suction dredge mining in every river, stream, lake, and

1 waterway in California until a CEQA (Cal. Environmental Quality Act, *Public Resources Code*
2 §21000 *et seq.*) review had been completed and new regulations were operative. The prohibition
3 would take place whether or not there were Coho salmon, trout, minnows, or any fish whatsoever
4 in any of the State’s waters. SB 670 was, in many respects, a replay of AB 1032.

5 49. SB 670 was aimed at suction dredge mining, and prohibited the issuance by DF&G
6 of any new permits for suction dredge mining in California. In addition, SB 670 invalidated any
7 prior permits issued by DF&G for suction dredge mining. SB 670 prohibited suction dredge
8 mining in every river, stream, lake, and waterway throughout the State of California. SB 670
9 passed the legislature and was sent to Governor Schwarzenegger for his signature. Reversing his
10 position where he vetoed AB 1032, and the attempt to prohibit suction dredge mining through a
11 rider to the state budget, Governor Schwarzenegger signed SB 670 into law.

12 50. DF&G then sent letters to holders of permits validly issued prior to the passage of
13 SB 670 telling them to cease and desist all suction dredge mining in California. DF&G then
14 canceled valid previously issued permits, and will no longer issue permits for suction dredge
15 mining. DF&G will not issue refunds for those who have purchased permits prior to the passage
16 of SB 670, since SB 670 does not provide for any such refunds. DF&G in its aforesaid letters
17 warned that “A violation of the ban on instream suction dredge mining is a misdemeanor,
18 punishable by up to \$1,000 in fines and six months in jail.” Miners are reluctant to engage in
19 suction dredge mining fearful of having to pay fines and face a jail sentence.

20 51. SB 670 adds to the CF&GC §5653 a newly enacted Section 5653.1. Present law
21 prohibits the use of any vacuum or suction dredge equipment by any person in any river, stream,
22 or lake in California without a permit issued by DF&G. California Fish and Game Code § 5653.
23 On average, DF&G has issued approximately 3,200 suction dredge mining permits to California
24 residents every year for the last fifteen (15) years. It is estimated that suction dredge miners,
25 resident and non-resident, spend approximately \$60-65 million in the rural, poorer counties of
26 California, on supplies, fuel, food, camping, equipment, hardware, lodging, goods and services.
27 Any person required to possess a permit pursuant to Section 5653, shall present his or her
28 dredging equipment for inspection upon request of a State or County Fish and Game Warden.

1 CF&GC § 5653.3. Under existing law, it is unlawful to possess a vacuum or suction dredge in
2 areas, or in or within a hundred yards of waters that are closed to the use of vacuum or suction
3 dredges. A violation of the permit requirement is a misdemeanor punishable by a fine of up to
4 \$1,000.00 and/or six months in jail. CF&GC § 5653 *et seq.*; 14 CCR § 228 *et seq.*

5 52. Existing law states that DF&G is to adopt regulations to implement certain of the
6 vacuum and suction dredge equipment requirements, and authorizes the DF&G to issue
7 regulations with respect to other requirements. Existing law states that the regulations are to be
8 adopted in accordance with the requirements of CEQA. CF&GC § 5653.9.

9 53. CEQA requires a lead agency, as defined, to prepare, or cause to be prepared by
10 contract, and certify the completion of, an environmental impact report on a “project”, as
11 defined, that it proposes to carry out or approve, that may have a significant effect on the
12 environment, or to adopt a negative declaration if it finds that the project will not have that
13 effect. SB 670 newly declares that the issuance of permits to operate vacuum or suction dredge
14 equipment is a “project” pursuant to CEQA. CF&GC § 5653.1(a).

15 54. The SB 670 exempts from its provisions, among other things, certain types of
16 ministerial projects proposed to be carried out or approved by public agencies, and emergency
17 repairs to public service facilities necessary to maintain service. CF&GC § 21080(b)(1); 14
18 CCR § 15060(c)(1).

19 55. After SB 670 designated the issuance of permits to operate vacuum or suction
20 dredge equipment to be a “project” under CEQA, DF&G suspended the issuance of permits,
21 including permits issued prior to the passage of SB 670, and any mining pursuant to such permit,
22 until the DF&G has completed an environmental impact report for the “project” as ordered by
23 the Court in *Karuk Tribe et al. v. California Department of Fish and Game, et al.*, Alameda
24 County Superior Court, Case No. RG 05211597. DF&G, again delaying the promulgation of
25 regulations, had stated that it will not complete the Court ordered environmental review of its
26 permitting program until, at the earliest, in November 2011. The practical effect was that no
27 suction dredge mining could possibly occur until 2012, since the greater part of the suction
28 dredge mining season, for the most part, would end in September 2011. There has already

1 occurred three postponements in completing the environmental review, and the promulgation of
2 final regulations, and there is every likelihood that there will be further postponements. The
3 passage of AB 120 only exacerbates the harm caused by SB 670.

4 56. SB 670 prohibits the use of any vacuum or suction dredge equipment in any river,
5 stream, or lake, for in-stream mining purposes, until the director of DF&G certifies to the
6 Secretary of State that: 1) The DF&G has completed the environmental review of its existing
7 vacuum or suction dredging regulations as ordered by the Court; 2) DF&G has transmitted for
8 filing with the Secretary of State, a certified copy of new regulations as necessary; and 3) the
9 new regulations are operative. There is no time frame set for this cascade of contingencies, and
10 there is no realistic expectation that they will ever be completed within the next decade, if then.

11 57. In trying to explain why the completion of the environmental impact report will
12 take so long, DF&G has stated that:

13 **“Q: When will the EIR be completed?** DFG is preparing
14 a Subsequent Environmental Impact Report (EIR) to
15 conduct the court-ordered review. DFG estimates at this
16 point that it will complete and certify the Subsequent EIR
17 (and updates to the existing regulations, if necessary) after
18 a series of public meetings and other opportunities for
19 public comment and review by late summer 2011. The
20 environmental review and regulation processes are
21 governed by the California Environmental Quality Act and
22 the Administrative Procedures Act, respectively. The time
23 line is driven by the requirements of these laws.”

24 **“Q: Why is this process going to take so long?** DFG has
25 already begun the environmental review necessary to
26 analyze the current regulations; this was last done in 1994.
27 The review process will be complex and lengthy given the
28 statewide scope of the analysis and the time that has passed
since the last review. In addition to the detailed written
analysis prepared by DFG in coordination with the State
Water Board, the review process will also include several
opportunities for public involvement, both via public
meetings and through solicitation of written comments and
suggestions.”

58. Although the court-ordered review for the EIR is only for the Klamath, Scott, and
Salmon Rivers, DF&G will conduct a statewide review for the EIR. DF&G has stated that:

1 “Based on the information DFG collected from interested
2 parties, DFG informed the Alameda County Superior Court
3 in early 2008 that DFG could not proceed with the court-
4 ordered environmental review in reliance on an addendum
5 to the 1994 EIR. DFG informed the court at the same time
6 that more than minor additions or changes to the 1994 EIR
7 would be necessary and that statewide issues would need to
8 be addressed in a subsequent environmental document in
9 order to fulfill DFG’s obligations under CEQA. As a
10 result, DFG informed the Alameda County Superior Court
11 that it intended to prepare a subsequent or supplemental
12 environmental impact report that would be statewide in
13 scope to comply with the December 2006 Court Order.”

14 59. On June 7, 2010, the DF&G announced that completion of the statewide review was
15 delayed to at least July 31, 2011. This delay was then extended until November 2011, which had
16 the practical effect of delaying most suction dredge mining until 2012, since the suction dredge
17 mining season for the most part ends in September 2011. The delay is now open-end and there is
18 no set date for when regulations will be promulgated, if ever.

19 60. SB 670 is declared to be an “urgency statute,” and without support of any credible
20 evidence whatsoever, and without the completion of any environmental impact report, the
21 legislature:

22 “. . . finds that suction or vacuum dredge mining results in
23 various adverse environmental impacts to protected fish
24 species, the water quality of this state, and the health of the
25 people of this state, and, in order to protect the environment
26 and the people of California pending the completion of a
27 court-ordered environmental review by the Department of
28 Fish and Game and the operation of new regulations, as
necessary, it is necessary that this act take effect
immediately.”

This is contrary to the findings of Judge Bonnie Sabraw in *Karuk Tribe of California et al. v. California Department of Fish and Game et al.*, Alameda County Superior Court Case No. RG 05211597.

61. DF&G has stated that vacuum or suction dredge equipment lawfully placed in the waters of California prior to the passage of SB 670 must be immediately removed pursuant to CF&GC § 5563. No compensation is to be provided by the DF&G, SB 670, or AB 120, to any

1 mining claim owner, miner or prospector for the expense of purchasing such equipment, lawfully
2 placing such equipment in the State's waters, or having to remove such equipment from the
3 waters. The passage of AB 120 only exacerbates the harm caused by SB 670.

4 62. For Plaintiffs, suction dredge prospecting and mining in the rivers, streams, and
5 waterways of California is not recreational. It is an important economic endeavor that has a
6 direct economic impact on family finances, business finances, and in these hard economic times,
7 often is the difference between having to choose whether to put gas in the car, or buy food or
8 medicine for the family. Suction dredge prospecting and mining is not merely a question of
9 having "fun". Prohibiting suction dredge mining to prospectors and miners, who are Federal
10 mineral estate grantees, forces them to face serious economic hardship. With a perilous
11 economy, being able to sell even an ounce of gold for over \$1,800.00 makes a substantial
12 difference as to the economic choices a family has regarding basic necessities.

13 63. Several counties in California, such as Siskiyou, Sierra and El Dorado, which
14 depend on the income derived from suction dredge miners in their counties, have been
15 economically hard hit by the total loss of such income. These counties have passed resolutions
16 in opposition to, and/or protested the passage of, SB 670 and AB 120. The passage of AB 120
17 only exacerbates the harm caused by SB 670.

18 **FIRST CAUSE OF ACTION**
19 **AGAINST ALL DEFENDANTS**
20 **(Federal Pre-Emption)**

21 64. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through
22 63.

23 65. The heaviest concentrations of placer gold and other valuable minerals on
24 unpatented mining claims held under Federal law, and on unclaimed Federal lands open to
25 mining, are in waterways where a natural concentration of gold and other valuable minerals are
26 in the gravels and on or near the bedrock of the riverbed or streambed. The only viable,
27 economic and environmentally sound manner to recover the placer gold under these conditions is
28 through use of a suction dredge. Suction dredge mining is the highest and best use of these placer

1 mining claims. Miners and prospectors have a federally granted right to use such waters in order
2 to develop their mining claims and mineral estates. 16 *U.S.C.* § 481 (Use of Waters). All state
3 laws, or regulations, in conflict with this right, are void and of no effect. 43 *CFR* § 3809.3.

4 66. Miners and prospectors have a statutory right, not a mere privilege, to go upon open
5 Federal public domain lands for mineral prospecting, exploration, and development.
6 Administrators may not unreasonably restrict or prohibit, temporarily or permanently, the
7 exercise of that right. The Federal Mining Law of 1872, as amended (30 *U.S.C.* § 22 *et seq.*),
8 provides that all valuable mineral deposits in lands belonging to the United States shall be free
9 and open to exploration and development. The Supremacy Clause of the *United States*
10 *Constitution*, Article VI, Clause 2, further provides that “the laws of the United States . . . shall
11 be the supreme law of the land . . . with anything in the laws of any state to the contrary
12 notwithstanding”. Article IV, § 3, of the *United States Constitution*, provides that “Congress
13 shall have the power to dispose of and make all needful rules and regulations respecting the
14 territory or other property belonging to the United States.” The absolute prohibition of SB 670
15 and AB 120 of vacuum or suction dredge mining in the rivers, streams, lakes, and waterways for
16 Federal mining claims within Federal lands in the State of California, directly conflicts with
17 those Federal mining laws, and violates the Supremacy Clause and Article IV, § 3, of the *United*
18 *States Constitution*.

19 67. Without limitation, such preemption is manifested in whole or in part by the
20 following laws of the United States:

- 21 (a) The Mining Acts of 1866 (14 Stat. 251).
- 22 (b) The Federal Mining Law of 1872, as amended (30 *U.S.C.* § 22 *et seq.*);
- 23 (c) The Mining and Minerals Policy Act of 1970, 30 *U.S.C.* § 21a.;
- 24 (d) 16 *U.S.C.* § 481 (Use of Waters) ; 43 *U.S.C.* § 661 (Appropriation of waters on public
25 lands)
- 26 (e) The Federal Land Policy and Management Act of 1976 (“FLPMA”) 43 *U.S.C.* § 1701
27 *et seq.*, including without limitation §§ 1732(b);
- 28 (f) Multiple Surface Use Act, 30 *U.S.C.* §§ 612(b), 613, 615; and

1 (g) Numerous sections of the *Code of Regulations* (“CFR”), including without limitation,
2 36 CFR 228 *et seq.*; 43 CFR § 3800; 43 CFR § 3809.1 *et seq.*

3 68. Miners and prospectors have a federally granted right to use such waters in order to
4 develop their Federal mining claims and mineral estates, as well as a right to use such waters
5 pursuant to the California Constitution. 16 U.S.C. § 481 (Use of Waters). Miners and
6 prospectors have a statutory right to go upon open Federal public domain lands for mineral
7 prospecting, exploration, and development. The issuance of a permit for vacuum or suction
8 dredge mining to a mining claim owner, miner and/or prospector on Federal lands by DF&G is a
9 non-discretionary act, and not a discretionary act.

10 69. The mining laws, as set forth above, give to the miner and/or prospector an absolute
11 and exclusive right to enter and use the Federal public lands, and the rivers, streams, lakes and
12 waterways running therein, for the purpose of mining and developing his or her mineral estate.

13 The Mining Act of 1866 states:

14 “That the mineral lands of the public domain, both
15 surveyed and unsurveyed, are hereby declared to be free
16 and open to exploration and occupation by all citizens of
17 the United States, and those who have declared their
18 intention to become citizens, subject to such regulations as
19 may be prescribed by law, and subject also to the local
20 custom or rules of miners in the several mining districts, so
21 far as the same may not be in conflict with the laws of the
22 United States.” (14 Stat 251)

20 70. The Federal Mining Law of 1872 states:

21 “Except as otherwise provided, all valuable mineral
22 deposits in lands belonging to the United States, both
23 surveyed and unsurveyed, shall be free and open to
24 exploration and purchase, and the lands in which they are
25 found to occupation and purchase, by citizens of the United
26 States and those who have declared their intention to
27 become such, under regulations prescribed by law, and
28 according to the local customs or rules of miners in the
several mining districts, so far as the same are applicable
and not inconsistent with the laws of the United States.”
(30 U.S.C. §22)

71. The Mining and Minerals Policy Act of 1970 states:

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“The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.” (30 U.S.C. §21a)

72. The owner of Federal mineral rights is entitled to take from the land and use that amount of water which is reasonably necessary for the exploitation of the mineral rights. *Russell v. Texas Co.*, 238 F. 2d 3.3 (9th Cir. 1956), cert. denied, 354 U.S. 938 (1957). In addition, “. . . so long as they comply with laws of the United States . . . [miners] shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations”. 30 U.S.C. § 26. The waters included within the boundaries of a Federal mining claim constitute part of the surface of that claim.

73. SB 670 and AB 120 are prohibitory, not regulatory, in their fundamental character. It strikes at the central purpose and objectives of the applicable Federal laws regarding mining. Through SB 670 and AB 120, the State of California attempts to substitute its political judgment for that of Congress. The Federal government has authorized a specific use of Federal lands for mining, and California cannot prohibit that use either temporarily or permanently. *Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080, 1084 (9th Circ. 1979). A state cannot prohibit on Federal land those activities specifically permitted by the United States. *Brubaker v. El Paso County*, 652 P.2d 1050 (Colo. 1982). SB 670 and AB 120 are a de facto prohibition on all such suction dredge mining. Suction dredge mining is the only practical, economic, and environmentally sound method of extracting the gold from the waterways on Federal mining

1 claims. It makes mining Plaintiffs' Federal mining claims commercially impracticable and
2 worthless, and therefore is preempted by Federal Mining Law. *California Coastal Commission*
3 *v. Granite Rock Co.*, (1987) 480 U.S. 572, 587. *South Dakota Mining Association v. Lawrence*
4 *County*, 155 F.3d 1005, 1011 (8th Cir.1998).

5 74. The United States Supreme Court has held that:

6 "States statutes in reference to mining rights upon the public
7 domain must, therefore, be construed in subordination to the
8 laws of Congress, as they are more in the nature of
9 regulations under these laws than independent legislation.

10 State and territorial legislation, therefore, must be entirely
11 consistent with the Federal laws, otherwise it is of no effect.
12 The right to supplement Federal legislation, conceded to the
13 state, may not be arbitrarily exercised; nor has the state the
14 privilege of imposing conditions so onerous as to be
15 repugnant to the liberal spirit of the congressional laws."
16 *Butte County Water Co. v. Baker*, 196 U.S. 119, 125, 49
17 L.Ed. 412, 25 S.Ct. 211 (1905)

18 75. To the extent DF&G may issue permits, plaintiffs are entitled to secure the
19 necessary permits to conduct vacuum and suction dredge mining operations on Federal and non-
20 Federal lands within the State of California pursuant to, and including without limitation, the
21 above-stated statutes and regulations.

22 76. SB 670 and AB 120 interfere with the operation of a pervasive scheme of Federal
23 laws and regulations, which are intended to, and does, preempt the operation, control, and
24 regulation of mining on Federal lands by any State law or regulation. Any State law or
25 regulation, which prohibits or interferes with, either permanently or temporarily, such mining on
26 Federal lands is prohibited.

27 77. All matters dealt with by SB 670 and AB 120 are preempted and fully occupied by
28 the laws of the United States, including without limitation, its mining laws, its environmental
laws, its laws relating to clean water, 33 U.S.C. § 1151, *et seq.* (2004), and its laws relating to
endangered species, 16 U.S.C. §§ 1531, *et seq.* (2004). SB 670 and AB 120 cannot prohibit,
temporarily or permanently, what Federal mining law allows.

1 78. SB 670 and AB 120 stand as obstacles to the accomplishment of the full purposes
2 and objectives of Congress in enacting not only the Federal mining laws but all other laws stated
3 above. Plaintiffs are entitled under Federal law to secure the necessary permits to conduct
4 vacuum and suction dredge mining operations on Federal lands within the State of California
5 pursuant to, and including without limitation, the above-stated statutes and regulations, or for a
6 declaration that such permits are not required from Federal mining claims on Federal lands.

7 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

8 **SECOND CAUSE OF ACTION**

9 **AGAINST ALL DEFENDANTS**

10 **(Violation of Cal. Const. Article X, § 2)**

11 79. Plaintiffs incorporate by reference the allegations set forth in the previous
12 paragraphs 1 through 78.

13 80. The California State Constitution, Article X, § 2 guarantees that “the water
14 resources of the State be put to beneficial use to the fullest extent of which they are capable, and
15 that the conservation of such waters is to be exercised with a view to the reasonable and
16 beneficial use thereof in the interest of the people and for the public welfare.” Use of water for
17 mining is a beneficial use protected under the California State Constitution. 23 Cal.Code of Reg.
18 §§ 659, 664.

19 81. The California Constitution Article X, § 2 further states that:

20 “[T]he right to water or the use or flow of water in and
21 from any natural stream or watercourse in this State is and
22 shall be limited to such water as shall be reasonably
23 required for the beneficial use to be served . . . Riparian
24 rights in a stream or watercourse attach to . . . for the
25 purposes for which such lands are, or may be made
26 adaptable in view of such reasonable and beneficial uses;
27 provided, however, that nothing herein contained shall be
28 construed as depriving any riparian owner of the reasonable
use of water of the stream to which the owner’s land is
riparian - - - or as depriving any appropriator of water to
which the appropriator is lawfully entitled.”

1 82. Defendants, through the passage of SB 670 and AB 120, have deprived Plaintiffs of
2 their rights under the California State Constitution to the beneficial and riparian use of
3 California's water resources. Plaintiffs are entitled to the reasonable and beneficial use of water
4 for mining purposes. Accordingly, SB 670 and AB 120 are void and in violation of the
5 California State Constitution.

6 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

7 **THIRD CAUSE OF ACTION**
8 **AGAINST ALL DEFENDANTS**
9 **(Violation of 16 U.S.C. § 481; 43 U.S.C. § 661)**

10 83. Plaintiff incorporate by reference all of the previous allegations set forth in the
11 previous allegations set forth in paragraphs 1 through 82.

12 84. A Federal mining claim on Federal land gives to the holder of such claim a
13 proprietary and possessory interest in the mineral estate associated with such claim. The claim
14 holder, as the owner of the mineral estate has traditionally been held to have dominance over the
15 surface estate. Waters in and upon the Federal mining claim constitute part of the surface estate.
16 *American Law of Mining*, 2d Ed. § 200.02 [1][b][i].

17 85. The owner of the mineral estate and mineral rights is entitled to take and use from
18 the land constituting his Federal mining claim that amount of water which is reasonably
19 necessary for the exploitation of the mineral rights upon the aforesaid claim. *Russell v. Texas*
20 *Co.*, 238 F.2d 636 (9th Cir. 1956), *cert. denied*, 354 U.S. 938 (1957); *Maley, Mineral Law*, 6th
21 Ed., p. 266.

22 86. 30 U.S.C § 26 states:

23 “The locators of all mining locations made on any mineral
24 vein, lode, or ledge, situated on the public domain, . . . shall
25 have the exclusive right of possession and enjoyment of all
the surface included within the lines of their locations . . .”

26 All waters within the boundaries of a mining claim constitute part of the surface of which a
27 mineral estate holder has the exclusive right of appropriation and enjoyment.
28

1 87. 16 U.S.C. § 481 and 43 U.S.C. § 661 gives to the owners of Federal mining claims
2 on Federal land the exclusive use, possession, and appropriation of the waters on their Federal
3 mining claims in order to develop and utilize the full potential of their mineral estates.

4 88. Defendants, through the passage of SB 670 and AB 120, have deprived Plaintiffs of
5 their rights to the use of water on their Federal mining claims pursuant to 16 U.S.C. § 481 and 43
6 U.S.C. § 661 in order to develop and utilize the full potential of their mineral estates. Plaintiffs
7 are entitled to the reasonable and beneficial use of these waters for mining purposes pursuant to
8 Federal law and statutes as set forth above. SB 670 and AB 120 are in conflict with and
9 preempted by the aforesaid Federal laws and statutes. Accordingly, SB 670 and AB 120 are void
10 and of no effect, and in violation of the aforesaid Federal laws and statutes.

11 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

12 **FOURTH CAUSE OF ACTION**

13 **AGAINST ALL DEFENDANTS**

14 **(Violation of California Statehood Act)**

15 89. Plaintiffs incorporate by reference the allegations set forth in the previous
16 paragraphs 1 through 88.

17 90. Pursuant to § 3 of the Act for the Admission of California Into the Union, 31 Cong.
18 Ch. 50, September 9, 1850, 9 Stat. 452, California is prohibited from interfering with the primary
19 disposal of federal lands within its limits.

20 “Sec. 3. And be it further enacted, That the said State of
21 California is admitted into the Union upon the express
22 condition that the people of said State, through their
23 legislature or otherwise, shall never interfere with the
24 primary disposal of the public lands within its limits, and
25 shall pass no law and do no act whereby the title of the
26 United States to, and right to dispose of, the same shall be
27 impaired or questioned...”

28 91. SB 670 and AB 120 directly violate Section 3 of the California Statehood Act, by
prohibiting vacuum and suction dredge mining on Federal public lands. Federal lands are
subject to the “sovereignty and jurisdiction” of the federal government. *Donnelly v. United*
States (1913) 228 U.S. 243, 259. SB 670 and AB 120 directly interferes with and impairs the

1 disposal of Federal property, i.e. Federal mining claims. In *Judson v. Herrington* (1945), 71
2 Cal.App.2d 565, 569, the court recognized that “[i]t seems clear that an attempt by the California
3 legislature to limit the right of a citizen, given by federal law to locate mineral claims on
4 property which is part of the public domain of the United States cannot be upheld.” SB 670 and
5 AB 120 inhibit, and in effect prohibit, the development and utilization of mineral claims on
6 property which is part of the public domain of the United States. This affects and interferes with
7 “the primary disposal of the public lands” within California, in that it makes the Federal grant of
8 mining claims on Federal land worthless, making it impossible to mine the valuable minerals on
9 those lands, the primary purpose for which the Federal Government disposed of the lands. Many
10 of the mining claims disposed of by the Federal Government only have valuable minerals in the
11 waterways. These minerals can only be mined economically and in an environmentally sound
12 manner by suction dredge mining.

13 92. SB 670 and AB 120 bring into issue who has the final authority over the right to
14 mine on Federal land, the United States or California. SB 670 and AB 120 make the granting of
15 a Federal mining claim a hollow promise, interfering with the “primary disposal of the public
16 lands” within California. It is an attempt by the legislature not to regulate within the boundaries
17 of what the Congress condones, but to prohibit, temporarily or permanently, a form of mining
18 authorized and regulated by the United States. As such, it infringes on the primary disposal of
19 public lands, and violates the very act authorizing California’s entry into the Union.

20 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

21 **FIFTH CAUSE OF ACTION**
22 **AGAINST ALL DEFENDANTS**

23 **(Denial of Due Process; U.S. Const. Amend 5 and 14 and Cal. Const. Article I, § 7(a))**

24 93. Plaintiffs incorporate by reference the allegations set forth in the previous
25 paragraphs 1 through 92.

26 94. Prior to the passage of SB 670 and AB 120, Plaintiffs invested many thousands of
27 dollars in order to be able to engage in vacuum and suction dredge mining. Plaintiffs obtained
28 Federal mining claims, invested substantial sums in those claims, kept those claims current, paid

1 taxes on those claims, bought and sold equipment, paid permit fees to DF&G, and otherwise
2 spent substantial sums of money for the purpose of conducting mineral exploration and
3 development pursuant to the laws of the United States and the State of California.

4 95. The due process clauses of the 5th and 14th Amendments to the *United States*
5 *Constitution*, and Article I § 7(a) of the *Constitution of California*, prohibit the deprivation of
6 property without due process of law. The Plaintiffs have constitutionally protected property
7 rights and mineral estates that they own or lease in California. The passage of SB 670 and AB
8 120 make such property and mineral estates commercially worthless. The State of California,
9 through and by the passage of SB 670 and AB 120, has wrongfully taken Plaintiffs' property
10 without compensation in violation of the Fifth and Fourteenth Amendments of the Constitution
11 of the United States and Article I §§ 7(a) and 19 of the *Constitution of California*.

12 96. Defendants, through the passage of SB 670 and AB 120, have deprived the
13 Plaintiffs of substantive due process under the 5th and 14th Amendments of the *Constitution of*
14 *the United States* and Article I §§ 7(a) and 19 of the *Constitution of California* in at least the
15 following ways:

- 16 a. Defendants' deprivations of Plaintiffs' property rights are arbitrary and
17 capricious;
- 18 b. SB 670 and AB 120 have no rational relationship to any legitimate public
19 purpose; rather it was motivated solely by the improper political purpose of
20 totally prohibiting vacuum or suction dredge mining in the rivers, streams,
21 lakes, and waterways of California;
- 22 c. SB 670 and AB 120 single out Plaintiffs for extraordinary treatment different
23 from that accorded to all other potential mineral developers that utilize
24 different methods of mining, or use suction dredge equipment for extensive
25 non-mining purposes. These extensive non-mining purposes have the same
26 effect as suction dredge mining for minerals, and in many cases, far exceed
27 any disturbance to the rivers, streams, lakes, and waterways of California, and
28 the biota therein, allegedly caused by suction dredge mining;

- 1 d. SB 670 and AB 120 are in direct conflict with the laws of the United States,
2 which state that the mining of minerals on and within Federal lands is
3 necessary for the economic development and security of the United States.
- 4 e. SB 670 and AB 120 are in direct conflict with the laws of the State of
5 California, which assert that mining of minerals within the State is necessary
6 for the economic development of the State and Nation;
- 7 f. SB 670 and AB 120 contain no standards to apply in that it affects every river,
8 stream, lake, and waterway in California whether or not there are any fish,
9 aquatic life, or biota therein, or any living organism that could possibly be
10 affected in any way whatsoever by vacuum or suction dredge mining; and
- 11 g. SB 670 and AB 120 are in direct conflict with the encouragement of mining,
12 including vacuum or suction dredge mining by and in the State of California,
13 as being essential to the economic well-being of California, its people, and the
14 needs of society. Thus, Defendants deprivation of Plaintiffs' property is
15 manifestly unfair, given that the Plaintiffs, with the State of California's
16 encouragement, have made a substantial investment for the exploration and
17 development of minerals through vacuum and suction dredge mining.

18 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

19 **SIXTH CAUSE OF ACTION**

20 **AGAINST ALL DEFENDANTS**

21 **(Denial of Equal Protection; U.S. Const. Amend 14; Cal. Const.**

22 **Article I, § 7(a))**

23 97. Plaintiffs incorporate by reference the allegations set forth in the previous
24 paragraphs 1 through 96.

25 98. The Plaintiffs are entitled to equal protection under the laws of California pursuant
26 to the Fourteenth Amendment to the *Constitution of the United States*, and Article I § 7(a) of the
27 *Constitution of the State of California*.

1 99. Defendants, through the passage of SB 670 and AB 120, specifically intended to
2 deny, and have denied, Plaintiffs the same treatment, privileges, and immunities received by all
3 other mine owners and operators, or potential mine owners or operators, that utilize methods
4 other than vacuum or suction dredge mining; or users of vacuum and suction dredge equipment
5 for purposes other than mining. This includes, without limitation, reclamation within the rivers,
6 streams, lakes, and waterways of California by vacuum or suction dredges, which have the same
7 effect on the rivers, streams, and waterways of California as suction dredge mining; said
8 reclamation being just another form of mining.

9 100. There is no rational basis for this difference and treatment which has denied
10 Plaintiffs' equal protection under the laws and *Constitutions of the United States and State of*
11 *California* as set forth above.

12 101. SB 670 and AB 120 affects primarily lower income citizens, the unemployed, and
13 retirees who have to supplement their income by suction dredge mining. Without any rational
14 basis, this discriminates on an economic ground against the most vulnerable and least able
15 politically and economically to oppose such economic discrimination. It is a blatant violation of
16 the Constitutions of the United States and the State of California, as set forth above, and denies
17 them equal protection under the law.

18 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

19 **SEVENTH CAUSE OF ACTION**
20 **AGAINST ALL DEFENDANTS**
21 **(Environmental Justice)**

22 102. Plaintiffs incorporate by reference the allegations set forth in the previous
23 paragraphs 1 through 101.

24 103. Suction dredge miners are primarily lower income citizens, the unemployed, and
25 retirees who have to supplement their income through suction dredge mining. Many are
26 economically among the most vulnerable and least able to defend themselves against economic
27 discrimination. Government Code §65040.12(e) states that "for the purposes of this section,
28 'environmental justice' means the fair treatment of people of all races, cultures, and incomes

1 with respect to the development, adoption, implementation, and enforcement of environmental
2 laws, regulations, and policies.”

3 104. Public Resources Code §71111 states that:

4 “On or before January 1, 2001, the California
5 Environmental Protection Agency shall develop a model
6 environmental justice mission statement for boards,
7 departments, and offices within the agency. For purposes
8 of this section, environmental justice has the same meaning
9 as defined in subdivision (e) of Section 65040.12 of the
10 Governmental Code.”

11 105. Pub. Res. Code §§71110(a) and (b) mandate that all environmental programs,
12 policies, and standards be conducted in a manner that ensures the fair treatment of all people
13 “and income levels... and low-income populations of the state.” These mandates are
14 constitutionally based in both the Fourteenth Amendment to the *Constitution of the United States*
15 and Article 1§ 7(a) of the *Constitution of the State of California*, guaranteeing equal protection
16 under the laws.

17 106. SB 670 and AB 120 affects primarily lower income citizens, the unemployed, and
18 retirees who have to supplement their income by suction dredge mining. Without any rational
19 basis, this discriminates on an economic ground against the most vulnerable and least able
20 politically and economically to oppose such economic discrimination. It is a blatant violation of
21 the obligation of environmental justice, as set forth in Pub. Res. Code §§71110(a) and (b) and
22 §71111, Government Code §65040.12(e), the Fourteenth Amendment to the *Constitution of the*
23 *United State*, and Article 1 § 7(a) of the *Constitution of the State of California*, guaranteeing
24 equal protection under the laws.

25 107. SB 670 and AB 120 are in direct conflict with, and contrary to, the intent of
26 Government Code §65040.12(e); Pub. Res. Code §§71110(a) and (b); the Fourteenth
27 Amendment to the *Constitution of the United States*, and Article 1§ 7(a) of the *Constitution of*
28 *the State of California*. SB 670 and AB 120 are therefore void, unenforceable, and

1 unconstitutional, in that they deny environmental justice to Plaintiffs and all suction dredge
2 miners.

3 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

4 **EIGHTH CAUSE OF ACTION**
5 **AGAINST ALL DEFENDANTS**
6 **(Injunctive Relief)**

7 108. Plaintiffs incorporate by reference the allegations set forth in the previous
8 paragraphs 1 through 107.

9 109. Plaintiffs request injunctive relief, since the harm to them from the actions of the
10 Defendants in enacting and implementing SB 670 and AB 120 prohibit them from prospecting
11 and accessing their mining claims and mineral estates in the rivers, streams, lakes, and
12 waterways in California within Federal lands. This causes damage to Plaintiffs which is
13 immediate and irreparable, because they must be able to use vacuum and suction dredge methods
14 of mining and prospecting in order to feasibly and economically prospect and mine on their
15 mining claims and mineral estates. In addition, SB 670 and AB 120 cause Plaintiffs, as well as
16 other California and non-California citizens, harm in in-state, interstate, and foreign commerce,
17 as set forth above.

18 110. The actions of the Defendants as set forth above in closing and prohibiting vacuum
19 and suction dredge mining, and prospecting and developing their mining claims and mineral
20 estates, causes Plaintiffs irreparable harm and entitles them to immediate injunctive relief.

21 111. The Defendants' actions in preparing, adopting and implementing the closure,
22 prohibition, and other rules and policies that interfere with the Plaintiffs' rights to prospect, and
23 to mine and develop their mining claims and mineral estates as set forth above, are in derogation
24 of Plaintiffs' rights. Such actions by Defendants have caused, and will continue to cause,
25 immediate, direct, adverse and irreversible harm to Plaintiffs and other miners and prospectors.

26 112. Plaintiffs are entitled to an immediate injunction, including, without limitation, a
27 temporary restraining order, preliminary injunction, and permanent injunction, enjoining and
28 restraining Defendants from the implementation and enforcement of SB 670 and AB 120, and

1 enjoining and restraining Defendants from interfering with Plaintiffs' rights to prospect, to mine
2 and develop their mining claims and mineral estates, as set forth above, through all lawful
3 means, including, without limitation, motorized mining methods such as vacuum and suction
4 dredging, or by other lawful means.

5 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

6 **NINTH CAUSE OF ACTION**
7 **AGAINST ALL DEFENDANTS**
8 **(Declaratory Relief)**

9 113. Plaintiffs incorporate by reference the allegations set forth in the previous
10 paragraphs 1 through 112.

11 114. An actual controversy has arisen and now exists between Plaintiffs and Defendants
12 regarding their respective rights and duties in that Plaintiff contends that SB 670 and AB 120
13 violate Plaintiff's State and Federal rights under Federal and State law, including, without
14 limitation, the California State and United States Constitutions, and is, including and without
15 limitation, pre-empted by Federal law. Defendants dispute these contentions and contend that
16 SB 670 and AB 120 are lawful and constitutional.

17 115. Plaintiffs desire a declaration as to the validity of SB 670 and AB 120 as described
18 in this Complaint, both on their face and as applied to Plaintiffs' prospecting and mining
19 activities, whether prohibiting Plaintiffs' prospecting and mining activities temporarily or
20 permanently. Plaintiffs desire a declaration that SB 670 and AB 120, for the reasons set forth in
21 this Complaint, are illegal, void, and of no effect. Unless the court issues an appropriate
22 declaration of rights, the parties will not know whether SB 670 and AB 120 comply with Federal
23 and State statutory and constitutional law, and there will continue to be disputes and controversy
24 surrounding SB 670 and AB 120.

25 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

26 **TENTH CAUSE OF ACTION**
27 **AGAINST ALL DEFENDANTS**
28 **(Damages)**

1 116. Plaintiffs incorporate by reference the allegations set forth in the previous
2 paragraphs 1 through 115.

3 117. As a direct and proximate result of the aforesaid violations by Defendants as set
4 forth in Causes of Action I – VIII of this Complaint, Plaintiffs have suffered present and future
5 damages in an amount not presently ascertainable, the exact amount to be proven at trial.

6 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

7 **DEMAND FOR JURY TRIAL**

8 1. Plaintiffs hereby demand a trial by jury.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs respectfully pray that this Court:

11 1. Adjudge and declare that the challenged prohibition and closure of the rivers,
12 streams, lakes, and waterways in California as set forth in SB 670 and AB 120 (both now
13 combined in CF&GC §5653.1) are unlawful pursuant to all the acts, laws, constitutions, and
14 regulations stated in Causes of Action I –X of this Complaint. Further adjudge and declare that
15 Defendants have acted beyond the scope of their legal authority in adopting those aforesaid
16 actions, and that such actions, among other matters, violate the *Constitution of the United States,*
17 *and the State of California* as set forth above, including without limitation, pre-emption pursuant
18 to the laws of the United States, its mining laws, and all other laws and regulations as set forth
19 above;

20 2. Enjoin and restrain Defendants, their agents, employees, successors, and all
21 persons acting in concert or participating with them, from enforcing or implementing SB 670 and
22 AB 120, CF&GC § 5653.1, and requiring others to enforce or implement SB 670 and AB 120,
23 the aforesaid prohibition and closure and related rules, regulations, and polices; and issue a
24 temporary, preliminary and/or permanent injunction against Defendants, and others, from
25 enforcing or implementing SB 670 and AB 120, CF&GC § 5653.1.

26 3. Issue an order that Plaintiffs, and all other miners holding mining claims and
27 mineral estates, have the right to use vacuum and suction dredge mining in order to prospect and
28 mine on Federal lands and otherwise develop their Federal mining claims and mineral estates

1 4. Grant such damages as are proven at trial, with interest on the damages at the
2 maximum annual rate as allowed by law, from such earliest date as allowed by law;

3 5. Award the Plaintiffs their reasonable attorneys fees and costs, including expert
4 costs, and expenses of litigation as allowed by law, including, without limitation, and as
5 applicable, California *Code of Civil Procedure* § 1021.5, the common fund doctrine, the Equal
6 Access to Justice Act, 28 U.S.C. § 241 *et. seq.*, 42 U.S.C. § 1988, and other applicable laws,
7 concepts or doctrines, whether legal or equitable, rules of court, or other rules and regulations;
8 and

9 6. Grant such other and further relief as the Court deems just and proper, including
10 an award of attorney's fees, costs, and expenses.

11
12 DATED: October 21, 2011

Respectfully Submitted,

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16 _____
David Young
Attorney for Plaintiffs
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1 **PROOF OF SERVICE**

2
3 I, the undersigned, declare that I am, and was at the time of service of the papers herein
4 referred to, over the age of 18 years and not a party to the action. I am employed in the County
5 of Los Angeles, State of California, in which county the within-mentioned mailing occurred.
6 My business address is Law Offices of David Young, 11845 W. Olympic Boulevard, Suite
7 1110, Los Angeles, California 90064. I am familiar with the regular mail collection and
8 processing practices of David Young for correspondence deposited for mailing with the United
9 States Postal Service. I served the following document:

10 **PLAINTIFFS' FIRST AMENDED COMPLAINT**

11 By placing a copy of the document in a separate envelope for the addressee named hereafter,
12 addressed to such addressee as follows:

13 Marc N. Melnick, Esq.
14 Deputy Attorney General
15 1515 Clay Street, 20th Floor
16 P.O. Box 70550
17 Oakland, CA 94612-0550

18 I then sealed the envelope and mailed the foregoing to the addressee on October 24,
19 2011.

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

22 Executed on October 24, 2011, at Los Angeles, California.

23 _____
24 David Young