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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SACRAMENTO

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11 HOWARD JARVIS TAXPAYERS ASSN.;)
STEVEN BUETTNER; ROY PIERCE;)
12 DOUGLAS RISCHBIETER; JOHN FELL;)
STANLEY LESTER; ARTHUR VAN)
13 RHYN; CHARLES WALTERS; CALVIN)
HARWOOD; SEFERINO HERNANDEZ;)
14 LAYTONVILLE FIRE DEPARTMENT;)
SPANTON FAMILY 2000 TRUST; AND)
15 ALL OTHERS SIMILARLY SITUATED,)

16 Plaintiffs,

17 v.

18 CALIFORNIA DEPT. OF FORESTRY)
AND FIRE PROTECTION; CALIFORNIA)
19 BOARD OF EQUALIZATION,)

20 Defendants.

No.

CLASS ACTION

COMPLAINT FOR DECLARATORY
RELIEF, REFUNDS, AND MANDAMUS

21 INTRODUCTION

22
23 1. Plaintiffs bring this action to challenge the validity of a new state tax being collected
24 from the owners of more than 825,000 parcels of rural property. The tax, which the Legislature
25 calls a "fire prevention fee," is \$150 per habitable structure on parcels located within the "State
26 Responsibility Area." There is a \$35 credit for parcels that already pay a special tax or
27 assessment to a local fire protection agency. The new "fee" was proposed by Assembly Bill
28 29 in the First Extraordinary Session of 2011 (hereafter "AB 29").

1 County, at 8252 Hedgepeth Road, Valley Springs, CA. Plaintiff Buettner maintains a 100-foot
2 defensible buffer surrounding his structures, clear of combustible brush, as required by law.
3 His parcel is typical of all other property in the State Responsibility Area. Plaintiff Buettner has
4 paid the fire prevention fee and filed a Petition for Redetermination.

5 7. Plaintiff Douglas Rischbieter owns property in the State Responsibility Area of
6 Calaveras County, at 1480 Anna Lee Way, Arnold, CA. Plaintiff Rischbieter maintains a 100-
7 foot defensible buffer surrounding his structures, clear of combustible brush, as required by
8 law. He pays special assessments of \$118 per year to the Ebbetts Pass Fire District for
9 structural and wild land fire protection. He also pays an assessment of \$405 per year to the
10 Blue Lake Springs Homeowners Association which, among other things, performs the
11 defensible space inspections and fire prevention education services for which the State has
12 imposed its new fire prevention fee. His parcel is typical of all other property in the State
13 Responsibility Area that pays a special tax or assessment to a local fire department for
14 structural and/or wild land fire protection, and is typical of all other property in the State
15 Responsibility Area that receives fire prevention services from a homeowners association or
16 other non-governmental entity. Plaintiff Rischbieter has paid the fire prevention fee and filed
17 a Petition for Redetermination.

18 8. Plaintiff John Fell works as a firefighter for the U.S. Forest Service. He owns
19 property in an area of mostly barren rock in Butte County, located at 99 Sycamore Valley Road,
20 Chico, CA. His parcel is typical of rocky property in the State Responsibility Area. Plaintiff Fell
21 has paid the fire prevention fee and filed a Petition for Redetermination.

22 9. Plaintiff Roy Pierce is a 74-year old retiree on a fixed income. He lives in a small
23 mobile home, surrounded by asphalt in the sparsely vegetated Mojave Desert in San
24 Bernardino County, located at 10200 Johnson Road, Space 27, Phelan, CA. His parcel is
25 typical of desert property in the State Responsibility Area. Plaintiff Pierce will pay the fire
26 prevention fee and file a Petition for Redetermination once he is billed.

27 10. Plaintiff Stanley Lester owns irrigated farm land, surrounded by other irrigated farm
28 land in Solano County, located at 4317 Margaret Lane, Winters, CA. His parcel contains his

1 residence and ten farm labor housing structures, each of which is subject to the fire prevention
2 fee. His parcel is typical of irrigated farm property in the State Responsibility Area. Plaintiff
3 Lester will pay the fire prevention fee and file a Petition for Redetermination once he is billed.

4 11. Plaintiff Arthur Van Rhyn owns property on a sandy ocean beach in San Luis
5 Obispo County, located at 6576 Moonstone Beach Drive, Cambria, CA. His parcel is typical
6 of sandy beach property in the State Responsibility Area. Plaintiff Van Rhyn will pay the fire
7 prevention fee and file a Petition for Redetermination once he is billed.

8 12. Plaintiff Seferino Hernandez owns a single family home located at 5740 Gold Leaf
9 Lane in Placerville, which is in El Dorado County, CA. His property, which is subject to the new
10 fire prevention fee, is less than a mile from Red Hawk Casino at 1 Red Hawk Parkway in
11 Placerville. The Casino, which holds over 10,000 people, is an exempt island surrounded by
12 State Responsibility Area. Plaintiff Hernandez's parcel is typical of property that must pay the
13 fire prevention fee because it is in the State Responsibility Area, even though it benefits no
14 more from fire prevention activities than parcels nearby which do not pay. Plaintiff Hernandez
15 has paid the fire prevention fee and filed a Petition for Redetermination.

16 13. Plaintiff Charles Walters owns a single family home in a suburban Kern County
17 neighborhood of watered lawns and few trees, located at 28140 Seabiscuit Way, Tehachapi,
18 CA. His property is less than a tenth of a mile from Woodward West Retreat Center at 28400
19 Stallion Springs Drive, Tehachapi, CA, less than a third of a mile from Horse Thief Country Club
20 at 28950 Horse Thief Drive, Tehachapi, CA, and less than two-thirds of a mile from Stallion
21 Springs Timeshare Resort at 28681 Stallion Springs Drive, Tehachapi, CA. The Retreat
22 Center, Country Club, and Timeshare Resort, despite each being many more acres in size, with
23 many more buildings, and a capacity of many more people, all pay the same fire prevention fee
24 amount that plaintiff Walters pays for his small house which has only two people. Plaintiff
25 Walters' parcel is typical of property that must pay the same fire prevention fee as properties
26 of much greater size, value, capacity or risk. Plaintiff Walters has paid the fire prevention fee
27 and filed a Petition for Redetermination.

28 14. Plaintiff Calvin Harwood owns a single family home in Mendocino County located

1 at 12000 Branscomb Road, Branscomb, CA. His property, which is subject to the new fire
2 prevention fee, abuts Admiral Standley State Recreation Area and is less than a half mile from
3 a tract of commercial timber owned by Hawthorne Timber Company. Hawthorne Timber
4 Company owns approximately 194,000 acres of commercial timber in the vicinity of plaintiff
5 Harwood's home, but pays nothing because there is no habitable structure on its property.
6 Because there is no habitable structure in the Admiral Standley State Recreation Area, it too
7 pays nothing. Plaintiff Harwood's parcel is typical of property that must pay the fire prevention
8 fee because it contains a habitable structure, while nearby property of much greater value and
9 risk pays nothing. Plaintiff Harwood will pay the fire prevention fee and file a Petition for
10 Redetermination once he is billed.

11 15. Plaintiff Laytonville Fire Department is a local fire protection agency in Mendocino
12 County, located at 44950 Willis Ave, Laytonville, CA. Because it is a habitable structure in the
13 State Responsibility Area, plaintiff Laytonville Fire Department must pay a fire prevention fee
14 on its fire station. Plaintiff Laytonville Fire Department is typical of local fire protection agencies
15 in the State Responsibility Area. Plaintiff will pay the fire prevention fee and file a Petition for
16 Redetermination once it is billed.

17 16. Plaintiff Thomas Spanton, as trustor/trustee of the Spanton Family 2000 Trust,
18 owns property in the State Responsibility Area of Lassen County, located at 506-930 Saradon
19 Lane, Susanville, CA. Plaintiff Spanton maintains a 100-foot defensible buffer surrounding his
20 structures, clear of combustible brush, as required by law. Mr. Spanton has paid the fire
21 prevention fee, but did not file a Petition for Redetermination with the Department of Forestry
22 and Fire Protection (CDF) as provided in AB 29. Believing that AB 29—including its unique
23 appeal procedure—never became law for having failed to receive the two-thirds legislative vote
24 required by the state constitution, Mr. Spanton filed a Claim for Refund with the Board of
25 Equalization (BOE) under Revenue and Taxation Code sections 55221 *et seq.* Mr. Spanton
26 is typical of all owners of property subject to the fire prevention fee who did not petition CDF
27 for a redetermination within 30 days of the date of their bill, but who filed or will file a Claim for
28 Refund with BOE within the three years allowed for such claims under Revenue and Taxation

1 Code section 55222.

2 17. Defendant California Department of Forestry and Fire Protection (CDF) is the state
3 agency charged with identifying the owners of parcels subject to the fire prevention fee, and
4 determining the amount to be assessed. Pub. Res. Code § 4213(c). Under AB 29, all
5 challenges to the fire prevention fee must be submitted to CDF in the form of a Petition for
6 Redetermination, and CDF is responsible for granting or denying Petitions for Redetermination.
7 Pub. Res. Code §§ 4220 *et seq.*

8 18. Defendant California Board of Equalization (BOE) is the state agency required to
9 collect the fire prevention fee from the property owners identified by CDF. Pub. Res. Code §
10 4213(a)(1). BOE is also the agency responsible for refunding the fee to property owners from
11 whom it was wrongfully collected if a court rules that the fee is invalid. Pub. Res. Code §
12 4213(a)(3)(B); Rev. & Tax. Code § 55246.

13 CLASS ACTION ALLEGATIONS

14 19. Plaintiffs bring this action on their own behalf and on behalf of all persons similarly
15 situated. The class that plaintiffs represent is composed of owners of property with habitable
16 structures thereon, whose property has been designated part of the State Responsibility Area,
17 and who have paid the fire prevention fee imposed by AB 29.

18 20. The members in the class are so numerous that their joinder is impractical. The
19 disposition of their claims in a class action rather than in individual actions will benefit the
20 parties and the Court.

21 21. There is a well-defined community of interest in the questions of fact and law
22 affecting the plaintiff class. As to community of interest, all members of the class own property
23 that has been designated by CDF as part of the State Responsibility Area, all members of the
24 class are subject to the new State fire prevention fee, and all members of the class have paid
25 the fee. As to those members of the class for whom refunds are sought, every member has
26 contested the fee at the administrative level and has been denied an administrative remedy.
27 There is a common question of fact in that the grants to be made to various counties, special
28 districts and nonprofit organizations, and the public programs and services to be funded from

1 the revenue generated by the fire prevention fee, for the most part, are not provided directly to
2 any member of the class, but are provided generally to the public at large. There is a common
3 question of law, therefore, whether the levy imposed by AB 29 qualifies for any of the limited
4 exceptions to the state constitution's broad definition of a "tax" for which a two-thirds legislative
5 vote is required. The diversity of the class in terms of land type, land use, fire risk, location,
6 occupancy, cost of local fire prevention, and amount of service received, compared to the
7 uniformity of the fee, helps to demonstrate that the fee is neither service-based nor proportional
8 as required for a levy to be deemed an exempt "fee" rather than a "tax." These questions of
9 law and fact predominate over questions that affect only individual class members.

10 22. Plaintiffs' claims are typical of those of the class and plaintiffs will fairly and
11 adequately represent the interests of the class.

12 23. There is no plain, speedy, or adequate remedy other than by this class action since
13 the damage suffered by the vast majority of class members is relatively small, making it
14 economically infeasible to pursue remedies other than by class action. Moreover, plaintiffs are
15 informed and believe that the State agency defendants would deny individual claims for refund
16 as the State contends it has not violated the law. Even were it economically feasible for
17 individual members of the class to each pursue his own remedy, the courts of California would
18 be overwhelmed with a multiplicity of suits, potentially establishing inconsistent results and
19 inconsistent standards of conduct for the defendants. Consequently, there would be a failure
20 of justice but for this class action.

21 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

22 24. On or about January 20, 2011, Governor Brown issued a proclamation calling the
23 Legislature into Special Session for the purpose of enacting legislation relating to the Budget
24 Act of 2011. One of the bills introduced during that Special Session was AB 29. On or about
25 June 15, 2011, AB 29 was taken up for a vote on the Senate Floor where it received "aye" votes
26 from 23 of the 40 State Senators, four shy of two-thirds approval. That same day, the bill was
27 forwarded to the Assembly Floor where it received "aye" votes from 52 of the 80 Assembly
28 Members, two shy of two-thirds approval. The bill was nonetheless enrolled and forwarded to

1 Governor Brown.

2 25. On or about July 7, 2011, Governor Brown signed AB 29, but took the relatively
3 unusual step of attaching a “signing message” to the Legislature, in which he expressed doubt
4 regarding the constitutionality of the bill. His message stated, “A fee consistent with the
5 ‘beneficiary pays principle,’ such as the one intended in this bill, can achieve significant General
6 Fund savings. However, as currently drafted, the revenues may not materialize. I am directing
7 the Department of Finance and CAL FIRE to work with the Legislature during the remaining
8 legislative session to identify necessary clean-up language to realize these revenues.” No
9 clean-up language has since been passed.

10 26. AB 29 purported to add sections 4210 through 4228 to the Public Resources Code.¹
11 Disputed section 4212 levies an annual “fire prevention fee,” in an amount to be established
12 by the CDF Board not to exceed \$150 in the first year, for each habitable structure on any
13 parcel located within the State Responsibility Area. Each subsequent year the fee must be
14 adjusted to keep pace with an index that tracks the cost of government goods and services,
15 published by the United States Department of Commerce.

16 27. The State Responsibility Area (SRA) consists of public and private land that has
17 been designated by CDF as an area where it claims primary responsibility for fighting wildfires.
18 It often overlaps jurisdictions where structural fire protection is provided by a local fire protection
19 agency. It does not include land within city boundaries or under federal jurisdiction. An
20 interactive SRA map can be viewed online at <http://www.firepreventionfee.org/srviewer.php>.

21 28. On or about January 11, 2012, the CDF Board passed regulations setting the fee
22 at \$150 per habitable structure for the 2011-12 fiscal year, with a \$35 credit for habitable
23 structures within the jurisdiction of a local fire protection agency.

24 29. Disputed section 4213(a)(1) assigns to the State Board of Equalization (BOE) the
25 task of annually collecting the fire prevention fee. On or about August 13, 2012, BOE began
26 mailing bills for the fiscal year 2011-12 fee to affected property owners.

27 _____

28 ¹ Unless noted otherwise, all statutory references are to the Public Resources Code.

1 “that the amount is no more than necessary to cover the reasonable costs of the governmental
2 activity, and that the manner in which those costs are allocated to a payor bear a fair or
3 reasonable relationship to the payor's burdens on, or benefits received from, the governmental
4 activity.” Given the uniform amount of the fire prevention fee and the vast diversity within the
5 class in terms of land type, land use, fire risk, location, occupancy, cost of local fire prevention,
6 and service received, the State cannot prove that “the manner in which ... costs are allocated
7 to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received
8 from, the governmental activity.”

9 34. The act (AB 29) imposing the fire prevention fee therefore needed, but did not
10 receive, the requisite two-thirds vote in each house of the Legislature to become law. Because
11 it was not passed by the required number of legislators, AB 29 did not become law.

12 35. Disputed section 4214(d)(1) and (e) require CDF to use fire prevention fee revenue
13 to make local assistance grants to counties and special districts to fund local fire prevention
14 activities. Yet article 13, section 24 of the California Constitution provides: “The Legislature
15 may not impose taxes for local purposes but may authorize local governments to impose
16 them.” Had the Legislature authorized local governments to impose a fire prevention tax, as
17 contemplated by article 13, section 24, local voters would have had the right to approve or
18 reject the tax under Proposition 218 (Cal. Const., art's XIII C and XIII D). AB 29 is thus an
19 unconstitutional attempt by the Legislature to impose taxes for local purposes in order to deny
20 local voters their constitutional right to vote on taxes. For this additional reason, the fire
21 prevention fee is invalid.

22 36. An actual controversy exists between the parties in that plaintiffs believe that AB
23 29 did not become law and that the fire prevention fee is invalid; whereas defendants believe
24 AB 29 became law and the fire prevention fee is valid in all respects.

25 37. Plaintiffs desire a judicial determination of the rights and duties of the parties,
26 including a declaration as to whether the fire prevention fee is valid and whether the other
27 provisions of AB 29 (particularly its onerous refund conditions) are enforceable.

28 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

1 SECOND CAUSE OF ACTION

2 (REFUND - MEMBERS WHO FILED AN APPEAL UNDER AB 29)

3 38. Plaintiffs repeat the allegations contained in Paragraphs 1 through 37 above as
4 though fully set forth herein.

5 39. All members of the class have paid the fire prevention fee imposed by AB 29.

6 40. The class contains members who also completed and submitted the special
7 "Petition for Redetermination" form to the three required addresses by the irregular deadline
8 as set forth in disputed AB 29. Plaintiffs are informed and believe that the number of such
9 members will, by the time all of the bills are mailed, exceed 10,000.

10 41. Members of the class who paid the fee and timely submitted a Petition for
11 Redetermination are entitled to the return of their money if this Court declares the fire
12 prevention fee invalid.

13 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

14 THIRD CAUSE OF ACTION

15 (REFUND - MEMBERS WHO FILED A CLAIM WITH BOE)

16 42. Plaintiffs repeat the allegations contained in Paragraphs 1 through 41 above as
17 though fully set forth herein.

18 43. The class also contains members who have filed timely Claims for Refund with BOE
19 under the Fee Collection Procedures Law (Rev. & Tax. Code §§ 55001 *et seq.*), which is a
20 proper way to claim a refund of money erroneously paid to the State if this Court declares that
21 AB 29 (including its onerous refund conditions) did not become law.

22 44. Members of the class who paid the fee and submitted a Claim for Refund under the
23 Fee Collection Procedures Law are entitled to the return of their money if this Court declares
24 the entirety of AB 29 (including its onerous refund conditions) unenforceable.

25 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

26 FOURTH CAUSE OF ACTION

27 MANDAMUS - ESTABLISHMENT AND PUBLICATION OF COMMON FUND

28 45. Plaintiffs repeat the allegations contained in Paragraphs 1 through 44 above as

1 though fully set forth herein.

2 46. If this Court grants declaratory relief in the manner prayed by plaintiffs, then
3 members of the class who have not yet done so will be entitled to seek a refund of the fire
4 prevention fees they have paid, subject of course to the applicable limitations period.

5 47. To prevent unjust enrichment, defendants should be directed to set aside funds to
6 pay said refund claims, and be ordered to publicize the availability of refunds; otherwise the
7 State will profit from its unlawful conduct by reaping a windfall of illegitimate revenue; an
8 irreparable harm for which plaintiffs have no adequate remedy at law.

9 WHEREFORE, plaintiffs pray for judgment as set forth below:

10 PRAYER

11 Based on the foregoing allegations, plaintiffs pray for judgment against defendants CDF
12 and BOE as follows:

- 13 1. For a declaration that the fire prevention fee is invalid;
- 14 2. For a declaration that AB 29 did not become law;
- 15 3. For a refund to every member of the class who timely filed a Petition for
16 Redetermination under AB 29;
- 17 4. For a refund to every member of the class who has or will have filed a Claim for
18 refund with BOE within the statute of limitations;
- 19 5. For a peremptory writ of mandate directing defendants to preserve the revenue
20 derived from the fire prevention fee in order to establish a fund from which to pay refunds
21 claimed by members of the class, and directing defendants to publicize on their websites and
22 in other ways and for such time as the Court deems reasonable, the availability of refunds and
23 easy-to-follow instructions for claiming refunds;
- 24 6. For costs of suit including reasonable attorney fees; and

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7. For such other or further relief as the Court deems just and proper.

DATED: October 3, 2012.

Respectfully submitted,

TREVOR A. GRIMM
JONATHAN M. COUPAL
TIMOTHY A. BITTLE

TIMOTHY A. BITTLE
Attorneys for Plaintiffs

VERIFICATION

I, Timothy A. Bittle, declare:

I am one of the attorneys of record for the plaintiffs in this action. I am authorized to verify this complaint on behalf of Howard Jarvis Taxpayers Association. The other plaintiffs are absent from the County of Sacramento where I have my office, and I make this verification for that reason as well.

I have read the attached complaint. Except as to matters stated on information and belief, the allegations contained therein are true of my own knowledge and, with regard to those matters stated on information and belief, I believe them to be true.

I certify, upon penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this verification was executed on the date shown below in the City of Sacramento, California.

DATED: October 3, 2012.

TIMOTHY A. BITTLE

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