1 JAMES L. BUCHAL (SBN 258128) MURPHY & BUCHAL LLP 2 3425 S.E Yamhill, Suite 100 Portland, OR 97214 3 Telephone: (503) 227-1011 Facsimile: (503) 573-1939 4 Attorney for Plaintiffs 5 6 7 IN THE SUPERIOR COURT OF CALIFORNIA 8 FOR THE COUNTY OF SAN BERNARDINO 9 10 THE NEW 49'ERS, INC., a California Case No. 11 corporation, DEREK D. EIMER: STEPHEN JONES; DÁVID GUIDERO; MARVIN GARRY 12 LAMPSHIRE II; and DYTON W. GILLILAND. **DECLARATION OF DEREK EIMER IN** SUPPORT OF MOTION FOR A 13 Plaintiffs and Petitioners, TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION 14 15 CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE and CHARLTON H. BONHAM, in 16 his capacity as Director of the California Department of Fish and Wildlife, 17 Defendants and Respondents. 18 19 20 Derek Eimer declares: 21 1. I am a member of The New 49'ers and engaged in the business of mining claims 22 owned or controlled by The New 49'ers. I have been making my living mining gold for 11 years. 23 2. When the dredging moratorium was imposed in California, I moved my dredging 24 program up into Oregon where the activity is still allowed. However, in my experience, I can 25 recover more gold for my effort along the Klamath River in northern California. 26 27 DECLARATION OF DEREK EIMER IN SUPPORT OF MOTION FOR A James L. Buchal (SBN 258128) TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY MURPHY & BUCHAL LLP 28 INJUNCTION 3425 S.E. Yamhill, Suite 100 Case No. Portland, OR 97214 Tel: 503-227-1011

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- 3. Several years ago, The New 49'ers secured a Temporary Restraining Order (TRO) to prevent The California Department of Fish & Wildlife (DFW) from interfering with a new method of underwater mining called "underwater gravel transfer." Using one of these new systems during that time, I was able to discover the richest gold deposit I have ever seen. The deposit is located on a New 49'er property about 7 miles downstream of Happy Camp.
- 4. Because the TRO was valid for only a short period of time, I was only able to partially develop the gold deposit. Most of it remains in place.
- 5. Once again, this is a very rich gold deposit! I have images and video material which substantiates the discovery.
- 6. Because this deposit is located under several feet or more of streambed material on the bottom of the river, suction mining is the only practical and viable method of extracting the gold.
- 7. Encouraged by legal developments earlier this year, followed by this court's Ruling, and the Order which came later, I was completely satisfied that California's dredge moratorium is unconstitutional and unenforceable by state authorities.
- 8. Therefore, this spring, I launched my suction dredge and began the work of uncovering my gold discovery. By this, I mean that winter storm flows filled in my earlier excavation and erased any sign of it.
- 9. Two days after getting started with my dredge, two DFW wardens arrived and told me I was breaking the law. I politely disagreed and presented the wardens with this court's Ruling. The wardens told me they were aware of the Ruling, but they were still enforcing the moratorium.
- 10. Because I need to make an income and cannot afford to wait weeks or months for permission to operate my dredge, I asked the wardens to immediately bring me in front of a local judge so that the matter could be resolved. The wardens refused to arrest me or issue a citation. Rather, they instructed me that my dredging equipment was seized in place, and I was not to touch it.

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- 11. Several days later, my dredging equipment was gone. I assume it was taken by the DFW wardens.
- 12. This event prompted me to retain James Buchal to file a civil case on my behalf in Siskiyou County, requesting a TRO and return of my equipment. The TRO was to stop the wardens from enforcing the unconstitutional moratorium upon me.
- 13. My understanding is that this Court then ordered James Buchal to not represent me in Siskiyou County, and that this Court should decide my motion. Because of scheduling conflicts, that hearing was postponed until June 23 in San Bernardino.
- 14. To my surprise, my own motion for narrow relief evolved into a motion for a state-wide injunction which was denied by this Court.
 - 15. Therefore, until now, my motion to obtain much narrower relief has not been heard.
- 16. James Buchal informed me that this Court also ruled on June 23rd that I can now move for relief in Siskiyou County, but that he is not allowed to represent me there.
- 17. The problem is that mining law is a very specialized field, and I have not been able to locate a qualified attorney in Yreka, or even as far away as Redding, California. So I am basically without qualified representation in Siskiyou County, and do not feel confident to represent myself.
- 18. Since James Buchal is the only attorney I trust to represent me on mining issues, it would seem that we must bring my motion in front of this Court for a return of my mining gear and an order to allow my dredging operation to continue
- 19. While I am reluctant to complain, it was only because I relied upon this court's order in the first place that I chose to operate my dredge in California this season. Because of that, DFW has taken away my dredging equipment, thereby eliminating my option to mine in Oregon. Said another way, I have lost my opportunity to earn a living.
- 20. What is causing me extreme internal frustration and emotional pain is the fact that I have located likely the richest deposit of my career, and the California judicial system is allowing

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state law enforcement officers to enforce an unconstitutional moratorium which is preventing me from recovering the gold. I just cannot come to terms with that.

21. Therefore, once again, I am praying that this court will grant some limited relief for suction dredgers along the Klamath River, and order DFW to return the equipment they have taken from us.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Happy Camp, California on July 3, 2015.

Derek Eimer

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