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11 STEVEN SAXON, and PATRICK SAXON

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 DANELL WILSON-PERLMAN, RON PERLMAN,)
STEVEN SAXON, and PATRICK SAXON,)

No. _____

15 Plaintiffs,)
16)

COMPLAINT

17 vs.)

18 ANDREW J. MACKAY, Chairman of the Nevada)
Transportation Authority, GEORGE ASSAD,)
Commissioner of the Nevada Transportation Authority,)
19 KEITH SAKELHIDE, Commissioner of the Nevada)
Transportation Authority; MARILYN SKIBINSKI,)
20 Deputy Commissioner of the Nevada Transportation)
Authority; LIZ BABCOCK, Applications Manager of)
21 the Nevada Transportation Authority; JAMES DAY,)
Administrative Attorney of the Nevada Transportation)
22 Authority; DAVID NEWTON, Senior Deputy Attorney)
General; YVONNE SHELTON, Financial Analyst of)
23 the Nevada Transportation Authority; LIDIA)
ARONOVA, Financial Analyst of the Nevada)
24 Transportation Authority, all in their official capacities,)

25 Defendants.)
26 _____)

1 **INTRODUCTION**

2 1. This lawsuit seeks to vindicate the constitutionally protected right of Danell
3 Wilson-Perlman, Ron Perlman, Steven Saxon, and Patrick Saxon to earn a living at a common
4 occupation without unreasonable governmental interference. That right is guaranteed to them by
5 the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth
6 Amendment.

7 2. Plaintiffs Danell and Ron Perlman are the owner-operators of Reno Tahoe
8 Limousine, a sole-proprietorship based in Reno, Nevada. They have operated their business safely
9 and successfully for more than eight years under a restricted Certificate of Public Convenience and
10 Necessity (CPCN or Certificate), which limits them to using seven limousines for intrastate
11 transportation services. Due to the success of their business, the Perlmans wish to add more
12 limousines to their fleet. But state law forbids them from doing so without essentially getting
13 permission from their own competition.

14 3. Plaintiff Steven Saxon is the owner of Affordable Moving and Storage, a small
15 moving company and sole-proprietorship headquartered in Sacramento, California. Steven and his
16 son Patrick would like to open a location and perform full-service moves in Nevada, but the same
17 CPCN law forbids them from operating a moving company in Nevada if they would compete
18 against existing moving companies.

19 4. The CPCN laws challenged here—specifically Sections 706.391 and 706.151 of the
20 Nevada Statutes, and Section 706.1375 of the Nevada Administrative Code—create an arbitrary
21 and irrational “Competitor’s Veto” procedure that deprives the Perlmans and the Saxons of their
22 constitutionally protected liberty without bearing any rational connection to the protection of the
23 public health, safety, or welfare. Specifically, these laws provide that a Certificate may not be
24 granted or modified unless applicants attend an expensive and time-consuming administrative
25 hearing where they must prove that their services will not compete against existing transportation
26 firms. In short, the challenged laws create a Competitor’s Veto that prohibits Plaintiffs from

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1 earning a living in the occupation of their choice, for the sole and explicit purpose of protecting a
2 discrete economic group—established transportation companies—against legitimate economic
3 competition.

4 5. Plaintiffs seek to exercise their constitutionally protected right to earn a living
5 without being first subject to this arbitrary and discriminatory Competitor’s Veto procedure
6 established by state law. Plaintiffs request a declaratory judgment that the challenged laws and
7 policies are invalid, unenforceable, and void; permanent injunctions against any further
8 enforcement of the challenged laws, or implementation of any similar policy by the Defendants;
9 and reasonable attorney fees, pursuant to 42 U.S.C. § 1988.

10 JURISDICTION AND VENUE

11 6. Plaintiffs allege, pursuant to 42 U.S.C. § 1983, the deprivation of rights secured by
12 the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth
13 Amendment. Jurisdiction over their claims for declaratory and injunctive relief is vested in this
14 Court by 28 U.S.C. §§ 1331, 2201, 2202.

15 7. Venue is proper in this District under 28 U.S.C. § 1391(b) on the grounds that some
16 or all of the conduct at issue took place in, and some or all of the Defendants reside in, the District
17 of Nevada.

18 PARTIES

19 Plaintiffs

20 8. Plaintiffs Ron Perlman and Danell Wilson-Perlman are United States citizens and
21 residents of Reno, Nevada. Ron Perlman founded Reno Tahoe Limousine as a sole-proprietorship
22 in 2006. Danell Wilson-Perlman joined the company after moving to the United States from South
23 Africa, where she was born. Together they are the owner-operators of Reno Tahoe limousine,
24 which is fully compliant with all Nevada laws, including the requirement that they obtain a CPCN
25 and maintain a minimum level of insurance. Their company has elicited positive reviews and
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1 comments from patrons on websites like Yelp because of the high quality of the services they
2 provide.

3 9. Plaintiff Steven Saxon is a United States citizen and a resident of Sacramento,
4 California. He is the owner-operator of Affordable Moving and Storage, which he founded in
5 2002. Affordable Moving and Storage complies with all applicable California laws, and is A+
6 rated by the Better Business Bureau. Neither he nor Affordable Moving and Storage have held a
7 CPCN from the state of Nevada.

8 10. Plaintiff Patrick Saxon is Steven Saxon's son, and Operations Manager of
9 Affordable Moving and Storage. If allowed to operate in Nevada, Plaintiff Patrick Saxon would
10 manage the Nevada branch of the company.

11 **Defendants**

12 11. Defendant Andrew J. Mackay is the Chairman of the Nevada Transportation
13 Authority (NTA). Plaintiffs are informed and believe, and on that basis allege, that Mr. Mackay,
14 in his official capacity, implements and enforces, and is authorized to adopt any rules and establish
15 any policy to implement and enforce, the hearing procedure and the Certificate requirement set
16 forth in Nev. Rev. Stat. § 706.391, Nev. Rev. Stat. § 706.151, and Nev. Admin. Code § 706.1375.
17 In all of his actions and omissions alleged herein, Mr. Mackay was acting under color of state law
18 and is being sued in this action in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123
19 (1908).

20 12. Defendant George Assad is a Commissioner of the NTA. Plaintiffs are informed
21 and believe, and on that basis allege, that Mr. Assad, in his official capacity, implements and
22 enforces, and is authorized to adopt any rules and establish any policy to implement and enforce,
23 the hearing procedure and the Certificate requirement set forth in Nev. Rev. Stat. § 706.391, Nev.
24 Rev. Stat. § 706.151, and Nev. Admin. Code § 706.1375. In all of his actions and omissions
25 alleged herein, Mr. Assad was acting under color of state law and is being sued in this action in his
26 official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

1 13. Defendant Keith Sakelhide is a Commissioner of the NTA. Plaintiffs are informed
2 and believe, and on that basis allege, that Mr. Sakelhide, in his official capacity, implements and
3 enforces, and is authorized to adopt any rules and establish any policy to implement and enforce,
4 the hearing procedure and the Certificate requirement set forth in Nev. Rev. Stat. § 706.391, Nev.
5 Rev. Stat. § 706.151, and Nev. Admin. Code § 706.1375. In all of his actions and omissions
6 alleged herein, Mr. Sakelhide was acting under color of state law and is being sued in this action
7 in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

8 14. Defendant Marilyn Skibinski is a Deputy Commissioner of the NTA. Plaintiffs are
9 informed and believe, and on that basis allege, that Ms. Skibinski, in her official capacity,
10 implements and enforces, and is authorized to adopt any rules and establish any policy to
11 implement and enforce, the hearing procedure and the Certificate requirement set forth in Nev.
12 Rev. Stat. § 706.391, Nev. Rev. Stat. § 706.151, and Nev. Admin. Code § 706.1375. In all of her
13 actions and omissions alleged herein, Ms. Skibinski was acting under color of state law and is
14 being sued in this action in her official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

15 15. Defendant Liz Babcock is Applications Manager for the NTA. Plaintiffs are
16 informed and believe, and on that basis allege, that Ms. Babcock, in her official capacity,
17 implements and enforces, and is authorized to adopt any rules and establish any policy to
18 implement and enforce, the hearing procedure and the Certificate requirement set forth in Nev.
19 Rev. Stat. § 706.391, Nev. Rev. Stat. § 706.151, and Nev. Admin. Code § 706.1375. In all of her
20 actions and omissions alleged herein, Ms. Babcock was acting under color of state law and is being
21 sued in this action in her official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

22 16. Defendant James Day is Administrative Attorney of the NTA. Plaintiffs are
23 informed and believe, and on that basis allege, that Mr. Day, in his official capacity, implements
24 and enforces, and is authorized to adopt any rules and establish any policy to implement and
25 enforce, the hearing procedure and the Certificate requirement set forth in Nev. Rev. Stat.
26 § 706.391, Nev. Rev. Stat. § 706.151, and Nev. Admin. Code § 706.1375. In all of his actions and

1 omissions alleged herein, Mr. Day was acting under color of state law and is being sued in this
2 action in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

3 17. Defendant David Newton is a Nevada Senior Deputy Attorney General. Plaintiffs
4 are informed and believe, and on that basis allege, that Mr. Newton, in his official capacity,
5 participates in NTA's evaluation, deliberation, and determination of Certificate applications as
6 alleged herein, and that he implements and enforces, and is authorized to adopt any rules and
7 establish any policy to implement and enforce, the hearing procedure and the Certificate of
8 Necessity requirement set forth in Nev. Rev. Stat. § 706.391, Nev. Rev. Stat. § 706.151, and Nev.
9 Admin. Code § 706.1375. In all of his actions and omissions alleged herein, Mr. Newton was
10 acting under color of state law and is being sued in this action in his official capacity pursuant to
11 *Ex parte Young*, 209 U.S. 123 (1908).

12 18. Defendants Yvonne Shelton and Lidia Aronova are financial analysts for the NTA.
13 Plaintiffs are informed and believe, and on that basis allege, that Ms. Shelton and Ms. Aronova,
14 in their official capacities, participate in the evaluation and determination of Certificate applications
15 as alleged herein, and implement and enforce, and are authorized to adopt rules and establish
16 policies to implement and enforce, the hearing procedure and the Certificate of Necessity
17 requirement set forth in Nev. Rev. Stat. § 706.391, Nev. Rev. Stat. § 706.151, and Nev. Admin.
18 Code § 706.1375. In all of their actions and omissions alleged herein, Ms. Shelton and
19 Ms. Aronova were acting under color of state law and are being sued in this action in their official
20 capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

21 GENERAL ALLEGATIONS

22 I

23 PLAINTIFFS RON AND DANELL PERLMAN WISH 24 TO EXPAND THEIR LIMOUSINE BUSINESS IN NEVADA

25 19. In 2006, the Perlman's obtained permission to operate Reno Tahoe Limousine on a
26 "restricted Certificate," which permits the company to use seven limousines for transportation

1 services within Nevada. *See* Nev. Rev. Stat. § 706.391(7), (8) (permitting NTA to restrict
2 Certificates to certain terms or conditions).

3 20. Reno Tahoe Limousine is the only company in the Reno Tahoe area that is limited
4 to operating on a restricted Certificate. All other limousine companies in that area can grow their
5 businesses without first having to apply for a modification to their Certificates and submitting
6 themselves to the Competitor’s Veto procedure.

7 21. Because of the Perlman’s business success and their perceived increase in demand,
8 they now wish to add to their limousine fleet. The Perlman’s regularly receive requests for
9 limousine services which they cannot fulfill, because they are legally forbidden from exceeding the
10 seven limousine limit imposed by their restricted Certificate.

11 22. The Perlman’s already own several additional limousines which they legally use for
12 interstate limousine service and which they keep on their property along with their other vehicles.
13 They would like to use eight of these other limousines to transport customers within Nevada, but
14 are prohibited from doing so under the terms of their Certificate.

15 23. The Perlman’s are competent and qualified to provide additional limousine services
16 in Nevada, and are ready, willing, and able to do so. They hold all the required insurance policies,
17 comply with all applicable safety laws, and already own the eight additional limousines they seek
18 to add to their Nevada fleet. The only obstacle that prevents them from expanding their operations
19 is the legal requirement of Nev. Rev. Stat. §§ 706.391, 706.151, and Nev. Admin. Code § 706.1375
20 that they obtain a modification to their Certificate.

21 24. In order to obtain a modification to their Certificate under Nev. Rev. Stat.
22 §§ 706.391, 706.151, and Nev. Admin. Code § 706.1375, the Perlman’s must—as explained
23 below—demonstrate to NTA that they will not compete with existing limousine companies.

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II

**PLAINTIFFS STEVEN AND PATRICK SAXON
SEEK TO PROVIDE MOVING SERVICES IN NEVADA**

25. Plaintiff Steven Saxon is the owner-operator of Affordable Moving and Storage, which is headquartered and provides moving services in the Sacramento, California area. He started the company as a sole-proprietorship in 2002. Plaintiff Patrick Saxon is Steven Saxon's son, and works as the company's Operations Manager.

26. Although Steven Saxon has obtained a license for Affordable Moving and Storage to perform moves in California, he does not have a Certificate to provide moves in Nevada under Nev. Rev. Stat. § 706.391. Pursuant to Nev. Rev. Stat. §§ 706.391, 706.151, and Nev. Admin. Code § 706.1375, the Saxons may not legally offer moving services in Nevada unless they submit an application for a Certificate and demonstrate to NTA that they will not compete with existing movers.

27. The Saxons are competent to provide moves in Nevada, and are ready, willing, and able to do so. They comply with all California laws governing moving businesses, and are prepared to do the same in Nevada.

28. Nev. Rev. Stat. §§ 706.391, 706.151, and Nev. Admin. Code § 706.1375 prohibit a person from operating a limousine or a household goods moving company unless that person obtains a CPCN according to established procedure. That procedure imposes a significant financial cost and delay on the lawful exercise of the right to pursue an ordinary occupation, and conditions that right on vague, undefined, incomprehensible, arbitrary, and irrational legal standards. As a result, the Competitor's Veto procedure deprives Plaintiffs of their constitutional right to engage in an occupation of their choice.

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III

HOW THE “COMPETITOR’S VETO” WORKS

29. To operate a limousine company or a household goods moving company in Nevada, a person must first hold a Certificate of Public Convenience and Necessity. When a person applies for a Certificate, or for modification of a Certificate, NTA must convene an administrative hearing to determine whether to grant or deny the application. Nev. Rev. Stat. § 706.391(1). A corporation must be represented by a licenced attorney at such a hearing. *See In re Discipline of Schaefer*, 117 Nev. 496, 509 (2001). NTA may dispense of the hearing if no existing competitors intervene. Nev. Rev. Stat. § 706.391(9).

30. Sections 706.391 and 706.151 of the Nevada Statutes and Section 706.1375 of the Nevada Administrative Code set forth the standards that an applicant must prove at the hearing in order to obtain or modify a Certificate. Under Nev. Rev. Stat. § 706.391, the applicant bears the burden of proof. That person must prove, among other things, that: (1) “the applicant as a common motor carrier will foster sound economic conditions within the applicable industry”; (2) “The granting of the certificate or modification will not unreasonably and adversely affect other carriers operating in the territory for which the certificate or modification is sought”; (3) “The proposed operation . . . will benefit and protect . . . the motor carrier business in this State”; and (4) “The proposed operation or the proposed modification will be consistent with the legislative policies set forth in Nev. Rev. Stat. [§] 706.151.”

31. Section 706.151(1)(e) provides that one of these legislative policies is to “discourage any practices which would tend to increase or create competition that may be detrimental to . . . the motor carrier business within this State.”

32. Neither the Nevada Statutes nor the Nevada Administrative Code give guidance to the meaning of these vague and undefined terms, leaving persons of ordinary intelligence left to guess as to the meanings of these terms and permitting arbitrary and discriminatory government enforcement of these standards.

1 33. Plaintiffs are informed and believe, and on that basis allege, that the standards listed
2 in Nev. Rev. Stat. § 706.391, Nev. Rev. Stat. § 706.151, and Nev. Admin. Code § 706.1375, and
3 the hearing and protest procedure established by these provisions, allow existing limousine and
4 moving companies to prevent applicants from entering into the common motor carrier industry, or
5 expanding their existing businesses, by imposing on applicants a burdensome, expensive,
6 time-consuming, and irrational hearing requirement.

7 34. These statutes provide a special privilege for established companies by allowing
8 them to prohibit or impose burdens on their own potential competition, without regard for the
9 applicant’s fitness or capacity to practice the trade, or any other legitimate government interest.
10 Specifically, Nev. Rev. Stat. § 706.391, Nev. Rev. Stat. § 706.151, and Nev. Admin. Code
11 § 706.1375 allow existing limousine and moving companies to file protests against Certificate
12 applications, but do not require such protests to specify any facts or allegations relating to the
13 effects of the applicant’s business on the public health, safety, or welfare.

14 35. In addition, Nev. Rev. Stat. § 706.391, Nev. Rev. Stat. § 706.151, and Nev. Admin.
15 Code § 706.1375 allow, if they do not require, the Defendants to deny a Certificate or modification
16 of a Certificate for reasons totally unrelated to the public health, safety, and welfare.

17 36. By requiring an applicant to prove that the requested Certificate will: (a) not
18 adversely affect other moving companies, (b) will benefit existing moving companies, and (c) will
19 not increase or create competition, the challenged laws favor certain economically established
20 companies at the expense of others similarly situated.

21 37. For example, in August of 2012, the Perlman applied for a modification to their
22 Certificate, and requested that NTA expand their authority to operate from seven vehicles to no
23 more than twenty vehicles. The Perlman would later reduce that request to fourteen. The
24 following month, one of the existing limousine companies that operates in the same region as Reno
25 Tahoe Limousine intervened in the application process.

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1 38. Nearly two years later, on July 7, 2014, NTA held a hearing regarding Reno Tahoe
2 Limousine’s application to modify its certificate. In a written decision, NTA denied the application
3 on the basis that granting the application would not foster “healthy competition.”

4 39. Plaintiffs are informed and believe, and on that basis allege, that the standards listed
5 in Nev. Rev. Stat. § 706.391, Nev. Rev. Stat. § 706.151, and Nev. Admin. Code § 706.1375 and
6 the hearing and protest procedure described therein have no rational connection to the public
7 health, safety, or welfare, or any other legitimate government interest, and instead allow existing
8 limousine and moving companies to prohibit legitimate economic competition, create an artificial
9 scarcity of limousine and moving services, and keep prices for their services artificially high, to the
10 detriment of consumers and the general public.

11 **IV**

12 **INJUNCTIVE RELIEF ALLEGATIONS**

13 40. Plaintiffs incorporate and re-allege each and every allegation contained in the
14 preceding paragraphs of this Complaint.

15 41. Plaintiffs Ron Perlman and Danell Wilson-Perlman are informed and believe, and
16 on that basis allege, that they are subject to future fines and penalties if they operate more than
17 seven limousines in Nevada without obtaining a modification to their Certificate. *See Nev. Rev.*
18 *Stat. § 706.476.*

19 42. Plaintiffs Steven and Patrick Saxon are informed and believe, and on that basis
20 allege, that they are subject to future fines and penalties if they operate a moving service in Nevada
21 without a Certificate. *See Nev. Rev. Stat. § 706.476.*

22 43. Due to Defendants’ enforcement of the challenged laws, Plaintiffs, and others
23 similarly situated, are now and will continue to be denied the right to pursue their chosen
24 occupation free from arbitrary, irrational, and discriminatory restrictions imposed by the statutory
25 procedure challenged herein.

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1 44. If not enjoined by this Court, Defendants and their agents, representatives, and
2 employees will continue to implement the licensing and hearing procedure established in Nev. Rev.
3 Stat. § 706.391, Nev. Rev. Stat. § 706.151, and Nev. Admin. Code § 706.1375, which deprive
4 Plaintiffs of liberty without due process of law, deny them the equal protection of the laws, and
5 abridge their privileges or immunities of citizenship.

6 45. The licensing procedure described herein arbitrarily, irrationally, and
7 discriminatorily deprives Plaintiffs of the opportunity to pursue their chosen occupation throughout
8 the state of Nevada. Thus the licensing and hearing procedures established in Nev. Rev. Stat.
9 § 706.391, Nev. Rev. Stat. § 706.151, and Nev. Admin. Code § 706.1375 are now causing, and will
10 continue to cause, Plaintiffs to suffer irreparable injury, including but not limited to, loss of
11 business opportunities and the deprivation of their livelihoods. Plaintiffs have no plain, speedy,
12 and adequate remedy at law for such an injury.

13 46. Plaintiffs are informed and believe, and on that basis allege, that Defendants contend
14 that their actions comply with all applicable laws.

15 47. Accordingly, injunctive relief is appropriate.

16 **V**

17 **DECLARATORY RELIEF ALLEGATIONS**

18 48. Plaintiffs incorporate and re-allege each and every allegation contained in the
19 preceding paragraphs of this Complaint.

20 49. An actual and substantial controversy exists between Plaintiffs and Defendants as
21 to their respective legal rights and duties. Plaintiffs contend, pursuant to 42 U.S.C. § 1983, that
22 both on their face and as applied to Plaintiffs, the challenged laws violate the Due Process, Equal
23 Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment. Plaintiffs are
24 informed and believe, and on that basis allege, that Defendants contend otherwise on all counts.

25 50. Accordingly, declaratory relief is appropriate.

26 ///

1 by Nev. Rev. Stat. § 706.391, Nev. Rev. Stat. § 706.151, and Nev. Admin. Code § 706.1375 are
2 declared unlawful and enjoined by this Court.

3 **SECOND CLAIM FOR DECLARATORY AND**
4 **INJUNCTIVE RELIEF—EQUAL PROTECTION:**
5 **ARBITRARY AND IRRATIONAL DISCRIMINATION**
6 **(U.S. Const. amend. XIV & 42 U.S.C. § 1983)**

7 57. Plaintiffs incorporate and re-allege each and every allegation contained in the
8 preceding paragraphs of this Complaint.

9 58. Section 706.391 of the Nevada Statutes requires an applicant for a Certificate or for
10 a modification to a Certificate to prove that “granting . . . the certificate . . . will not unreasonably
11 and adversely affect other transportation companies,” that granting the application “will benefit and
12 protect . . . the [existing] motor carrier business,” and that granting the application “will be
13 consistent with the legislative policies set forth in Nev. Rev. Stat. [§] 706.151,” which include
14 “discourag[ing] . . . competition that may be detrimental to . . . the [existing] motor carrier business
15 within this State” (Nev. Rev. Stat. § 706.151). These standards give preferential treatment to
16 existing, licensed firms by restricting the ability of prospective or growing companies like the
17 companies owned by Plaintiffs from competing against them. This difference in treatment between
18 them and the existing, operating companies does not rationally relate to their skills, qualifications,
19 fitness, or capacity to practice the trade, but exists solely to favor existing businesses at the expense
20 of Plaintiffs and other similarly situated.

21 59. By enforcing these rules, Defendants, acting under color of state law, are irrationally
22 and arbitrarily discriminating against Plaintiffs in favor of existing businesses in violation of
23 Plaintiffs’ right to equal protection of the laws.

24 60. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe
25 their actions comply with all applicable laws.

26 ///

1 61. An actual controversy exists between the parties, in that Plaintiffs are suffering an
2 ongoing and irreparable harm by Defendants’ discriminatory treatment, and the harm will continue
3 unless the hearing procedure provided for in Nev. Rev. Stat. § 706.391, Nev. Rev. Stat. § 706.151,
4 and Nev. Admin. Code § 706.1375 is declared unlawful and enjoined by this Court.

5 **THIRD CLAIM FOR DECLARATORY AND**
6 **INJUNCTIVE RELIEF—EQUAL PROTECTION**
7 **AND DUE PROCESS OF LAW: VAGUENESS AND**
8 **UNBRIDLED DISCRETION OF PUBLIC OFFICIALS**
9 **(U.S. Const. amend. XIV & 42 U.S.C. § 1983)**

10 62. Plaintiffs incorporate and re-allege each and every allegation contained in the
11 preceding paragraphs of this Complaint.

12 63. Sections 706.391 and 706.151 of the Nevada Statutes and Nev. Admin. Code
13 § 706.1375 are vague and undefined and give no guidance to the meaning of terms including, but
14 not limited to, “sound economic conditions,” “unreasonably and adversely affect other carriers
15 operating in the territory” (Nev. Rev. Stat. § 706.391(2)(a) and (c)), and “competition that may be
16 detrimental to . . . the motor carrier business” (Nev. Rev. Stat. § 706.151(1)(e)).

17 64. Plaintiffs are informed and believe that no other statute, regulation, legal precedent,
18 handbook, or other document exists that defines these terms or explains what a Certificate applicant
19 must prove in order to satisfy these standards. As a result, persons of ordinary intelligence are left
20 to guess as to the meanings of these terms.

21 65. Thus, Nev. Rev. Stat. § 706.391, Nev. Rev. Stat. § 706.151, Nev. Admin. Code
22 § 706.1375, and the rules, regulations, policies, and procedures by which these provisions are
23 implemented provide Plaintiffs no reasonable opportunity to understand what conduct they
24 authorize or prohibit, and allow or encourage arbitrary and discriminatory enforcement. These
25 rules, regulations, policies, and procedures submit Plaintiffs’ exercise of their constitutional rights
26 to the unlimited and unguided discretion of NTA officials.

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1 under Nev. Rev. Stat. § 706.391, and (b) seeking or imposing fines or penalties against Plaintiffs,
2 or otherwise subjecting Plaintiffs to harassment;

- 3 5. For costs of suit;
4 6. For reasonable attorney's fees, pursuant to 42 U.S.C. § 1988(b); and
5 7. Any such further legal and equitable relief as the Court may deem just and proper.

6 DATED: February 18, 2015.

7 Respectfully submitted,

8 TIMOTHY SANDEFUR

9 ANASTASIA P. BODEN

10 Pacific Legal Foundation

11 PATRICK McDONNELL

12 Rainey Legal Group PLLC

13
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15 By s/ Patrick McDonnell
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16 Attorneys for Plaintiffs

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18 STEVEN SAXON, and PATRICK SAXON
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