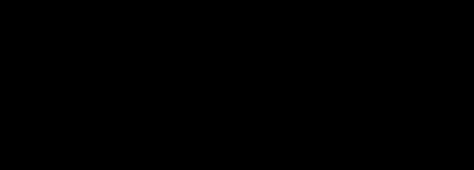


1 SEAN K. WADE, Bar No. 317431



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3  
4 Attorney for The Red Brennan Group, Lucerne Valley  
5 Economic Development Association, Johnson Valley  
6 Improvement Association, Homestead Valley Community  
7 Council, Mentone Chamber of Commerce, Henry E.  
8 Hallmark, Kristine E. Hallmark and Eric H. Steinmann

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO – SAN BERNARDINO DISTRICT

10 THE RED BRENNAN GROUP;  
11 LUCERNE VALLEY ECONOMIC  
12 DEVELOPMENT ASSOCIATION;  
13 JOHNSON VALLEY IMPROVEMENT  
14 ASSOCIATION; HOMESTEAD  
15 VALLEY COMMUNITY COUNCIL;  
16 MENTONE CHAMBER OF  
17 COMMERCE; HENRY E. HALLMARK;  
18 KRISTINE E. HALLMARK; ERIC H.  
19 STEINMANN;

20 Plaintiffs,

21 vs.

22 THE BOARD OF SUPERVISORS OF  
23 SAN BERNARDINO COUNTY; THE  
24 BOARD OF SUPERVISORS OF SAN  
25 BERNARDINO COUNTY FIRE  
26 PROTECTION DISTRICT; and DOES 1-  
27 10;

28 Defendants.

Case No. CIV DS 1826559

**NOTICE OF MOTION AND MOTION FOR  
PRELIMINARY INJUNCTION**

Dept.: S30

Judge: Hon. Brian S. McCarville

Hearing Date: December 20, 2018

Time: 8:30 AM

Action Filed: October 11, 2018

Trial Date: Not Yet Set

**ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

NOTICE IS HEREBY GIVEN that on December 20, 2018 at 8:30 AM, or as soon thereafter as the matter may be heard, in Department S30 of this court, located at 247 West

1 Third Street, San Bernardino CA 92415-0210, Plaintiffs The Red Brennan Group, Lucerne  
2 Valley Economic Development Association, Johnson Valley Improvement Association,  
3 Homestead Valley Community Council, Mentone Chamber of Commerce, Henry E. Hallmark,  
4 Kristine E. Hallmark and Eric H. Steinmann will, and hereby do, move for the issuance of a  
5 preliminary injunction enjoining Defendants from implementing an unconstitutional special tax  
6 without a two-thirds vote of the electorate and enjoining Defendants from violating Plaintiffs  
7 right to equal protection under the law.

8 This motion is made pursuant to Code of Civ. Proc. § 526(a)(2) and California Rules of  
9 Court, rule 3.1150 on the grounds that Plaintiffs are entitled to relief from the commission of  
10 acts by Defendants that would produce great or irreparable injury to Plaintiffs.

11 The motion is based on the attached memorandum of points and authorities, the attached  
12 declaration of Tom Murphy, the attached declaration of Sean Wade, and the papers and  
13 pleadings on file here in this action.

14 Defendants THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY and  
15 THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY FIRE PROTECTION  
16 DISTRICT are represented by:

17  
18 Laura L. Crane  
19 County Counsel for the County of San Bernardino  
20 385 North Arrowhead Ave., Fourth Floor  
21 San Bernardino, CA 92415  
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Dated: November 14, 2018

The Red Brennan Group



By: \_\_\_\_\_  
Sean K. Wade  
Attorney for Plaintiffs

The Red Brennan Group, Lucerne Valley  
Economic Development Association,  
Johnson Valley Improvement Association,  
Homestead Valley Community Council,  
Mentone Chamber of Commerce, Henry E.  
Hallmark, Kristine E. Hallmark and Eric H.  
Steinmann



1 SEAN K. WADE, Bar No. 317431



2  
3  
4 Attorney for The Red Brennan Group, Lucerne Valley  
5 Economic Development Association, Johnson Valley  
6 Improvement Association, Homestead Valley Community  
7 Council, Mentone Chamber of Commerce, Henry E.  
8 Hallmark, Kristine E. Hallmark and Eric H. Steinmann

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN BERNARDINO – SAN BERNARDINO DISTRICT

11 THE RED BRENNAN GROUP;  
12 LUCERNE VALLEY ECONOMIC  
13 DEVELOPMENT ASSOCIATION;  
14 JOHNSON VALLEY IMPROVEMENT  
15 ASSOCIATION; HOMESTEAD  
16 VALLEY COMMUNITY COUNCIL;  
17 MENTONE CHAMBER OF  
18 COMMERCE; HENRY E. HALLMARK;  
19 KRISTINE E. HALLMARK; ERIC H.  
20 STEINMANN;

21 Plaintiffs,

22 vs.

23 THE BOARD OF SUPERVISORS OF  
24 SAN BERNARDINO COUNTY; THE  
25 BOARD OF SUPERVISORS OF SAN  
26 BERNARDINO COUNTY FIRE  
27 PROTECTION DISTRICT; and DOES 1-  
28 10;

Defendants.

Case No. CIV DS 1826559

**PLAINTIFFS MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF  
MOTION FOR PRELIMINARY  
INJUNCTION; DECLARATION OF SEAN K.  
WADE; SUPPORTING EXHIBITS; AND  
DECLARATION OF TOM MURPHY**

Dept.: S30

Judge: Hon. Brian S. McCarville

Hearing Date: December 20, 2018

Time: 8:30 AM

Action Filed: October 11, 2018

Trial Date: Not Yet Set

Plaintiffs The Red Brennan Group, Lucerne Valley Economic Development Association,  
Johnson Valley Improvement Association, Homestead Valley Community Council, Mentone  
Chamber of Commerce, Henry E. Hallmark, Kristine E. Hallmark and Eric H. Steinmann  
respectfully submit this memorandum of points and authorities in support of its motion for a  
preliminary injunction.

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1 I. INTRODUCTION

2 In 1978, California voters passed Proposition 13, which afforded taxpayers protections  
3 from the rising imposition of assessments and curbed the taxing powers of state and local  
4 governments. The goal of this legislation was to allow the people of California to have a voice  
5 on the issue of taxation. After a 1982 Supreme Court decision diluted the rights established by  
6 Proposition 13, the voters, through their initiative power, passed Proposition 62 to protect the  
7 public's right to vote on any tax increases proposed by local governments. *See City and County*  
8 *of San Francisco v. Farrell*, 32 Cal. 3d 47 (1982).

9 After the passage of Prop 62 which implemented a two-thirds vote requirement for any  
10 new special taxes, many local governments began searching for ways to circumvent this newly  
11 established voting process by imposing taxes which were cleverly labeled "fees, charges and  
12 assessments." The voters of California again attempted to plug loopholes that local governments  
13 had punched in Proposition 62 and passed Proposition 218. Proposition 218 reiterated the  
14 requirement that special taxes must receive a two-thirds vote of the electorate by adding such  
15 language to the California Constitution. Proposition 218 also requires any qualifying fee, charge  
16 or assessment to be submitted to property owners for approval.

17 Local governments again sought out more loopholes by, among other things, trying to  
18 impose hidden taxes on products by calling them fees. Voters again wanted to curb these  
19 circumventions by local governments and passed Proposition 26 as legislation to amend the  
20 California Constitution to state that before "any levy, charge or exaction of any kind" can be  
21 imposed by a local government, it must be approved by the voters. Cal. Const. Art. 13C, § 1(e)  
22 & 2(b). Proposition 26 was intended to close any and all loopholes left open by Proposition 218.  
23 *Schmeer v. Cty. of Los Angeles*, 213 Cal. App. 4th 1310, 1322 (2013), as modified (Mar. 11,  
24 2013). In the case at hand, Defendants are once again trying to find a loophole to impose  
25 taxation on citizens without a vote.

26 Defendants are trying to take a tax approved by voters in the Helendale area on April 18,  
27 2006 and impose it on potentially hundreds of thousands of property owners without a vote.  
28 This tax was approved by a mere 1,022 voters in the unincorporated community of Helendale in



1 the High Desert, an area spanning only 5.17 square miles. However, Defendants now seek to  
2 impose this tax on an area spanning 19,073 square miles. Defendants argue that this is  
3 acceptable because the unincorporated and otherwise affected landowners of San Bernardino  
4 County are being annexed into the San Bernardino County Fire Protection District's Service  
5 Zone FP-5, and the special tax previously approved by only 1,022 voters is now being imposed  
6 on every affected landowner drawn into the annexation.

7 The purpose of this motion for preliminary injunction is twofold: (1) prevent  
8 Defendants' attempt to deprive Plaintiffs and the general electorate of their constitutional right  
9 to vote on a special tax; and (2) prevent Defendants' attempt to deprive Plaintiffs and other  
10 affected landowners of their fundamental right to vote as guaranteed by the Equal Protection  
11 Clause of the Fourteenth Amendment by placing invidious restrictions on affected landowners  
12 ability to protest the special tax

13 For these reasons, and those explained below, if preliminary review is not granted,  
14 Plaintiffs and the electorate will suffer irreparable harm. Accordingly, Plaintiffs respectfully  
15 request that the Court issue an order maintaining the status quo until this case is adjudicated on  
16 the merits.

## 17 II. STANDARD FOR RELIEF

18 The injunctive relief sought by Plaintiffs is appropriate at this time to prevent "great or  
19 irreparable injury." Code of Civ. Proc. § 526(a)(2). The purpose of a preliminary injunction, is  
20 "to preserve the status quo pending the evidentiary hearing to determine whether to issue a  
21 permanent injunction." *Scripps Health v. Marin*, 72 Cal. App. 4th 324, 334 (1999). To obtain a  
22 preliminary injunction, Plaintiffs must show (i) that there is a reasonable likelihood of  
23 prevailing on the merits and (ii) that the harm they will suffer if there is no preliminary  
24 injunction is greater than the harm that the County, the Board of Supervisors and the Fire  
25 Protection District will experience if the Court issues the injunction; the Court must weigh these  
26 two considerations against one another – the greater the showing on one, the lesser the required  
27 showing on the other. *Butt v. State of Calif.*, 4 Cal. 4th 668, 677-678 (1992).  
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III. ARGUMENT

A. **Plaintiffs Are Likely to Prevail on the Merits of their Special Tax Claim**

1. **Special Taxes Require a Two-Thirds Vote of the Electorate**

By imposing this special tax, the Fire District has disregarded the mandate added to the California Constitution by Proposition 218 that all special taxes must be submitted to the electorate. At all times relevant to this action, Section 2(d) of Article XIIC of the California Constitution has unequivocally provided as follows (with emphasis): “No local government may impose, extend, or increase any special tax unless and until that tax is *submitted to the electorate and approved by a two-thirds vote.*” “A tax constitutes a special tax whenever the expenditure of its revenue is limited to specific purposes.” *Howard Jarvis Taxpayers Association v. City of Roseville*, 106 Cal.App.4th 1178. “Because any revenue collected here would be specifically to fund the expansion of service zone FP-5 and maintaining services within that zone, this new proposed levy meets the definition of a special tax. Therefore, it cannot be enacted without a two-thirds vote of the electorate.

Further, the language added to the California Constitution by Proposition 26 has been disregarded by the Fire District by imposing this special tax without a vote of the electorate. Proposition 26 amended the California Constitution to state that before “any levy, charge or exaction of any kind” can be imposed by a local government, it must be approved by the voters. Cal. Const. Art. 13C, § 1(e) & 2(b). Proposition 26 was intended to close any and all loopholes left open by Proposition 218. *Schmeer*, 213 Cal. App. 4th 1310, 1322, 153 Cal. Rptr. 3d 352, 361 (2013), as modified (Mar. 11, 2013). Proposition 26 further amended the California Constitution to read: “Cities, Counties and special districts, **by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district**, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.” Cal. Const. art. 13A, § 4 (emphasis added).

This new property tax has been labeled a special tax by County Counsel according to an official letter sent in response to an inquiry about the tax. Declaration of Sean Wade (“Wade Decl.”), ¶ 2. As such, the Constitutional provisions setting implementation limitations for



1 special taxes apply here. Therefore, because this is a special tax, as admitted by the County, it is  
2 clear that all special taxes must be approved by a two-thirds vote of the electorate. Therefore,  
3 this special tax is unconstitutional under the language added by both Proposition 218 and 26  
4 because it was not approved by a two-thirds vote of the electorate.

5           **2. Defendants are Expanding a Special Tax Beyond Its Original**  
6           **Intended Purpose Without a Vote**

7           There is a distinct difference between the original purpose of service zone FP-5 special  
8 tax as it appears on the April 18, 2006 Helendale ballot and the Notice of Hearing sent by the  
9 County in regard to the expansion of service zone FP-5. According to the official ballot, under  
10 the "Purpose of Special Tax" section, the ballot states: "The purpose for the Special Tax is to  
11 convert the CSA 38 Fire Station #4 from a paid-call fire station operation to a 24-hour per day  
12 full-time firefighter and firefighter/paramedic-staffed fire station within the improvement zone."  
13 First Amended Complaint ("FAC") Ex. A, pp. 4. This is in contrast to the Notice of Hearing  
14 which states that: "the District Board is acting in the public's interest by proposing the  
15 expanding of Service Zone FP-5 to raise additional revenue to maintain existing services." FAC,  
16 Ex. E.

17           The official ballot also states: "Special taxes are only permitted if ballots are mailed to  
18 the registered voters in CSA 70 FP-5 and at least 2/3 of the ballots returned by the election date  
19 of June 30, 2006 are in favor of the proposed special taxes." FAC, Ex. E, pp. 4. Further, the  
20 original ballot for the service zone tax also states: "The Board of Supervisors retains the  
21 authority otherwise conferred by law to make changes in the boundaries of the proposed Special  
22 Tax area, the extent of the services to be provided and the amount of the Special Tax (including  
23 the amounts of any individual taxed); provided, however, **the Special Tax area shall not be**  
24 **expanded nor any tax increased beyond that specified by this notice without additional**  
25 **proceedings in compliance with all laws"** (emphasis added). *Id.*

26           It is clear that the Fire District is expanding a special tax originally approved by the  
27 electorate for the specific purpose of converting a single fire station in the Helendale area and  
28 repurposing it to widely tax thousands of other citizens without an election. It is also clear that  
the stated intent of both special taxes is wildly different; one is for converting a specified fire



1 station and the other is to “maintain services”. As such, these are two clearly different special  
2 taxes, and not the same special tax as Defendants claim. While the Fire District may have the  
3 authority to expand a fire service zone under the Fire Protection District Law of 1987, in order  
4 to remain in compliance with all laws and constitutional provisions, any new special tax must be  
5 approved by the voters because these special taxes are for distinct and separate purposes.

6 Just as it was done with the Helendale area special tax, the Fire District should hold an  
7 election to have this new special tax approved by a two-thirds vote of the electorate. Clearly, the  
8 Fire District could leave the expansion of the special tax pending an election, and if  
9 unsuccessful, they have the authority to simply dissolve the service zone. However, the Fire  
10 District is instead choosing to impose a new special tax on thousands of citizens who did not  
11 vote for it in an effort to avoid these establish constitutional protections for the sake of  
12 administrative convenience. The Fire District knows has chosen to borrow a LAFCO process  
13 under the guise that this unconstitutional special tax has somehow been approved by the  
14 affected landowners as opposed to requiring it to be approved by two-thirds of the electorate, as  
15 mandated by the California Constitution. Thus, this new special tax requires approval by two-  
16 thirds of the electorate to pass constitutional muster, which it has not received.

### 16 3. The Case of Sunset Beach Is Distinguishable

17 In their opposition to Plaintiff’s *Ex Parte* application for a temporary restraining order,  
18 Defendants cite *Sunset Beach* to justify the idea that property owners added to a recently  
19 annexed area must pay the same taxes that already exist in the zone. Wade Decl. ¶ 4, pp. 11-12.  
20 Defendants further claim in their opposition papers that “a service zone expansion is akin to an  
21 annexation.” *Id.* However, the facts of *Sunset Beach* are distinguishable from the case at hand in  
22 several important ways. First, *Sunset Beach* dealt with the island-annexation statute, which  
23 authorizes the annexation of island territory not exceeding 150 acres in area. Cal. Gov’t Code §  
24 56375.3(b)(1). By contrast, the unincorporated areas being pulled into service zone FP-5 alone  
25 cover an area of approximately 19,073 square miles. Murphy Declaration ¶ 5. This is equivalent  
26 to roughly 1,2206,720 acres. Further, the Island Annexation statute requires the annexed  
27 territory to be entirely unincorporated. *See* Cal. Gov’t Code § 56375.3(b)(2). However, the  
28 annexed territories bring drawn into FP-5 includes both incorporated and unincorporated land.

1 FAC Ex. C, pp. 3. The purpose of the island annexation statute is to aid “disadvantaged  
2 unincorporated communities”, making it clearly distinguishable and not applicable here. *See*  
3 Cal. Gov’t Code § 56375.3(d). Clearly, *Sunset Beach* is inapplicable here.

4 Secondly, the facts of *Sunset Beach* are distinguishable from the case at hand because  
5 the number of affected individuals is not comparable. At the time the Orange County LAFCO  
6 recommended approval of Sunset Beach’s annexation by Huntington Beach in 2010, the 2010  
7 census showed the population of Huntington Beach at 189,992 and the population of Sunset  
8 Beach at 971. Wade Decl. ¶ 5, pp. 1 and ¶ 6, pp. 1. This means that the population of to-be-  
9 annexed Sunset Beach made up approximately 0.5% of the population of the annexing City.  
10 *Sunset Beach* even discussed that the Government Code applied in this situation because the  
11 facts before the court fit the particular situation in that case:

12 Involuntary annexations of *relatively small parcels of territory* have been a part of our  
13 state’s statutory framework since 1939. (See *Weber v. City Council of Thousand Oaks*  
14 (1973) 9 Cal.3d 950, 962, 109 Cal.Rptr. 553, 513 P.2d 601 (*Weber* ).) Before 1939,  
15 annexations were only for uninhabited contiguous territory. (*Ibid.*, citing Stats. 1899, ch.  
16 41, p. 37; see Stats.1939, ch. 297, § 1, pp. 1567–1568.) But beginning in 1939, the  
17 Legislature began amending annexation statutes to include territory with voters, first  
18 only three acres, then 12 acres, and in 1977 providing for involuntary annexations of  
19 territory not exceeding 100 acres.

20 *Sunset Beach, supra*, 209 Cal. App 4<sup>th</sup> at 1192-1193 (emphasis added).

21 With the FP-5 expansion, this is not a case of a bigger city annexing a smaller island into  
22 its territory, but rather a small service zone spanning just above 5,100 square miles annexing  
23 over 19,000 square miles of incorporated and unincorporated land. The special tax at issue here  
24 was approved in 2006 by 2/3 of the voters of the unincorporated area of Helendale; a mere  
25 1,022 voters approved the special tax over 502 opponents. FAC, Ex. A, pp. 2. This means  
26 Defendants are attempting to impose a tax approved by 1,022 people on potentially hundreds of  
27 thousands of individuals spanning over 19,000 square miles. *Sunset Beach* simply cannot stand  
28 for the principle that a local agency is able to impose taxation upon large swathes of land  
owners without a vote of the electorate merely due to a different special tax being approved by a  
different and much smaller electorate.



1 The facts of *Sunset Beach* are simply not applicable to the case at hand, and California  
2 courts do not blindly apply the facts of one case to that of another when it is not relevant.  
3 “Language used in any opinion is of course to be understood in the light of the facts and the  
4 issue then before the court, and an opinion is not authority for a proposition not therein  
5 considered.” *Stand Up for California! v. State of California*, 6 Cal. App. 5th 686, 703 (Ct. App.  
6 2016) quoting *Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2. Accordingly, because the facts  
7 of *Sunset Beach* are not applicable here, *Sunset Beach* is distinguishable and does not control  
8 the result here.

9 Third, *Sunset Beach* is distinguishable from the case at hand because it was decided  
10 without any mention of Section 4 of Article 13A of the California Constitution, or of the  
11 amendment to Article 13C under Proposition 26.<sup>1</sup> Under Section 4: “Cities, Counties and special  
12 district, by a two-thirds vote of the qualified electors of such district, may impose special taxes  
13 on such district...” Cal. Const., Art. 13A, § 4. If *Sunset Beach* were applied as suggested by  
14 Defendants, it would mean that 1,022 voters could cause the imposition of a special tax on  
15 potentially hundreds of thousands of landowners in an approximately 19,000 square mile area.  
16 There is nothing in *Sunset Beach* to suggest that this is the logical conclusion or precedential  
17 value drawn from that case.

18 Because Proposition 26 was put forth to close the taxation loopholes left open by  
19 Proposition 218, this changes the precedential value of *Sunset Beach*. Proposition 26 closed all  
20 loopholes on special taxes and amended the California Constitution to state, plainly and simply,  
21 “[a]s used in this article, ‘tax’ means any levy charge, or exaction of any kind imposed by a  
22 local government except [inapplicable exceptions not invoked here by Defendants.]” Cal.  
23 Const., Art. 13C, § 1(e) (emphasis added). The broad sweeping language of Proposition 26  
24 covers the special tax Defendants seek to impose. Additionally, the Court in *Sunset Beach*  
25 granted a preliminary injunction because Petitioners had “shown a likelihood of success and  
26 would be entitled to [an]... election ‘on the annexation or taxation’ issue.” *Sunset Beach*, 209  
27 Cal App. 4<sup>th</sup> at 1188. The Court reached this conclusion despite the fact that Huntington Beach

28 <sup>1</sup> *Sunset Beach* was filed in the trial court on December 9, 2010. *Sunset Beach, supra*, 209 Cal. App. 4<sup>th</sup> at 1187.  
Proposition 26 was approved by the voters on November 2, 2010, but it is never mentioned in the opinion.



1 had the island-annexation statute and an actual island under 150 acres being annexed as part of  
2 the facts of that case. The Court in *Sunset Beach* also found a preliminary injunction was proper  
3 even though the strict requirements of Proposition 26 had not yet been approved by California  
4 voters. Plaintiffs have a much stronger case than the petitioner in *Sunset Beach*, rendering the  
5 issuance of a preliminary injunction appropriate in the case at hand. Accordingly, because  
6 *Sunset Beach* was decided without consideration of the constitutional provisions implemented  
7 by the passage of Proposition 26, *Sunset Beach* does not control the result here.

8 **B. Plaintiffs are Likely to Prevail on the Merits of their Equal Protection Claim**

9 **1. The Restrictions Placed Upon the Right to Vote by Defendants are**  
10 **Invidious Because They are Unrelated to Voter Qualifications and**  
11 **Thus are Unconstitutional**

12 The right to vote is a fundamental right under the equal protection clause, thereby  
13 deserving of special judicial scrutiny. *See Sanchez v. City of Modesto*, 145 Cal. App. 4th 660  
14 (5th Dist. 2006). Once the franchise has been granted to the electorate, lines may not be drawn  
15 which are inconsistent with the equal protection clause. *See County of Riverside v. Whitlock*, 22  
16 Cal. App. 3d 863 (4th Dist. 1972). Under the equal protection clause, a state-imposed limitation  
17 on the right to vote is constitutionally permissible only if it is necessary to promote a compelling  
18 state interest. In order to be necessary, it must constitute the least burdensome alternative  
19 possible. *See Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972); *See also*  
20 *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621, 89 S. Ct. 1886, 23 L. Ed. 2d 583  
21 (1969); *Castro v. State of California*, 2 Cal. 3d 223 (1970). The consistent theme of United  
22 States Supreme Court "one-person, one-vote" decisions is that the right to vote in an election is  
23 protected by the United States Constitution against dilution or debasement because the elective  
24 franchise constitutes the foundation of our representative society and is a preservative of other  
25 basic civil and political rights. *See Whitlock*, Cal. App. 3d 863, 99 Cal. Rptr. 710 (4th Dist.  
26 1972). Under the equal protection standard, even rational restrictions on the right to vote are  
27 invidious if they are unrelated to voter qualifications. *Crawford v. Marion Cty. Election Bd.*, 553  
28 U.S. 181, 189, 128 S. Ct. 1610, 1616, 170 L. Ed. 2d 574 (2008). However, evenhanded

1 restrictions that protect the integrity and reliability of the electoral process itself are not  
2 invidious and satisfy the equal protection standard. *Id.* The restrictions in this case do not satisfy  
3 the equal protection standard.

4 Here, the restrictions placed on the right to vote by the Fire District are not related to  
5 voter qualifications, and thus are invidious, making them unconstitutional. Because this is a  
6 special tax, all registered voters, or members of the electorate in the affected area, are entitled to  
7 vote according to the California Constitution. Specifically, the special tax imposed by  
8 Defendants violates the provisions set forth in the language added to the California Constitution  
9 by Propositions 13, 26 and 218 respectively, which provide that **“No local government may**  
10 **impose, extend, or increase any special tax unless and until that tax is submitted to the**  
11 **electorate and approved by a two-thirds vote.”** Cal. Const., Art. XIII C, § 2(d) (emphasis  
12 added). By adopting an unnecessary and irrelevant LAFCO protest process, Defendants have  
13 conditioned the ability to vote on being an affected landowner. However, this is contrary to the  
14 language in the California Constitution, which provides no such qualifier. All members of the  
15 electorate in an affected area are entitled to vote on a special tax in that area, regardless of  
16 whether they own property. It is contrary to these constitutional provisions to place restrictions  
17 not related to voter qualifications on the right to vote on this special tax.

18 Defendants have shrouded their efforts to obstruct this right to vote on a special tax with  
19 an irrelevant LAFCO process. Defendants perpetuate the idea that by borrowing a LAFCO  
20 process, rather than holding a constitutionally mandated vote as required by California law, that  
21 they have followed the appropriate procedure. However, this is not the case, and Defendants  
22 have failed to conform this special tax process to the mandates provided by the California  
23 Constitution. Accordingly, because these restrictions are not related to voter qualifications, they  
24 are invidious, and a violation of equal protection under the law. Thus, Plaintiffs and other  
25 affected landowners fundamental right to vote has been violated.



1                   **2. The Fire District's Process for Obtaining and Submitting Protest**  
2                   **Forms Burdens Affected Landowners Right to Vote**

3                   The right to vote is fundamental. *Board of Supervisors v. Local Agency Formation Com.*  
4 (1992) 3 Cal.4th 903, 913 ; *Peterson v. City of San Diego* (1983) 34 Cal.3d 225, 229. The  
5 protest process utilized by the Fire District is unconstitutional because it does not afford equal  
6 protection under the law to the affected landowners being drawn into Service Zone FP-5. The  
7 Notice of Hearing states that all affected landowners had to submit their protest forms by the  
8 public hearing on October 16, 2018. FAC, Ex. E. However, the Notice of Hearing that was  
9 mailed to affected landowners was not accompanied by a copy of the protest forms to protest the  
10 special tax the notice informs affected landowners about. Murphy Decl., ¶ 18. As such,  
11 landowners were not able to immediately protest the special tax, even though the County was  
12 already sending notice through postal mail to some or all individuals entitled to protest it.

13                   In order to obtain a protest form, a landowner must have either downloaded it from the  
14 internet or contacted "211". To have obtained a form online, a landowner needed a computer,  
15 internet access, the proper internet browser, the appropriate computer programs to view the  
16 protest form file, and a printer with paper to make a copy of the protest form. The second  
17 method, which is listed only as "Contact 211" on the notice of hearing provided no further  
18 details as to what this means and actually refers to dialing the number "211" on a telephone.  
19 Affected landowners then had to wait for the protest form to arrive before it could even be  
20 submitted to the Fire District in protest. Depending on turn around time, this could be too late.

21                   Unless an affected landowner was able to meet all of these cumbersome requirements,  
22 they could not file a written protest with the Fire District before the October 16, 2018 hearing  
23 deadline. In its declaration of Deputy Chief John Chamberlain ("Chamberlain Decl."),  
24 Defendants state that: "The Fire District and its contracted vendor are accepting all forms of  
25 written protest to the expansion of FP-5, regardless of whether they are provided on the formal  
26 protest form." Wade Decl. ¶ 3, pp. 2. However, such information is not included anywhere on  
27 the notice of hearing.  
28



1 The procedure for obtaining protest forms was invalid in its execution and created  
2 disparate treatment between affected landowners, all of whom had the same right to protest this  
3 new proposed special tax. This disparate treatment violates the Equal Protection Clause of the  
4 Fourteenth Amendment of the United States Constitution by depriving Plaintiffs of their  
5 fundamental right to vote on this issue. Plaintiffs have no plain, adequate, or complete remedy at  
6 law other than the injunctive relief requested in this application. A monetary award would not  
7 offer relief in this instance. Unless the Defendants' proposed conduct is enjoined by this Court,  
8 Plaintiffs and other similarly affected landowner voters will be irreparably harmed.

9 For each of the foregoing reasons, supported by the evidence attached to this motion,  
10 Plaintiffs' success in this case is more than reasonably possible.

11 **C. Plaintiffs Are Likely to Prevail on the Merits of their CEQA Claim**

12 **1. Defendants Are Required to Prepare an Environmental Impact**  
13 **Report When There is a Chance of Significant Environmental Impact**

14 By expanding service zone FP-5, Defendants have failed to consider the potential  
15 environmental impacts within the service zone expansion area. CEQA Guidelines section  
16 15064(a) states that determining whether a project may have a significant effect plays a critical  
17 role in the CEQA process. CEQA requires public agencies to consider and document the  
18 environmental implications of their actions in order to "[e]nsure that long term protection of the  
19 environment . . . shall be the guiding criterion in public decisions." Pub. Res. Code § 21001(d).  
20 In enacting CEQA, the Legislature declared it to be the policy of California to "take all action  
21 necessary to provide the people of this state with clean air and water." Pub. Res. Code §  
22 21001(b); *See Sierra Club v. State Bd. of Forestry* (1994) 7 Cal. 4th 1215.

23 CEQA requires all agencies to give major consideration to preventing environmental  
24 damage while providing a decent home and satisfying living environment for every Californian.  
25 Pub. Res. Code § 21000 (g). The environmental review process created by CEQA carries out  
26 this mandate by bringing citizens' environmental concerns about a proposed project to the  
27 attention of public agencies. CEQA requires public agencies to determine whether a project may  
28 have a significant impact on the environment. Pub. Res. Code § 21151. The environmental

1 review must be completed prior to approval of a permit, so that environmental damage can be  
2 minimized. Pub. Res. Code § 21002.1.

3 Courts have consistently held that the foremost principle under CEQA is that it is to be  
4 “interpreted in such a manner as to afford the fullest possible protection to the environment  
5 within the reasonable scope of the statutory language.” *Citizens of Goleta Valley v. Board of*  
6 *Supervisors* (1990) 52 Cal.3d 553, 563–564 quoting, *Friends of Mammoth v. Bd. of Supervisors*  
7 (1972) 8 Cal.3d 247, 259. An agency’s action violates CEQA if it “thwarts the statutory goals”  
8 of “informed decision making” and “informed public participation.” *Kings Cnty. Farm Bureau*  
9 *v. City of Hanford* (1990) 221 Cal.App.3d 692, 712. The primary goal of CEQA is to “[e]nsure  
10 that the long-term protection of the environment shall be the guiding criterion in public  
11 decisions.” Pub. Res. Code § 21001(d). Defendants failure to conduct any CEQA review before  
12 approving the expansion of service zone FP-5 constitutes a prejudicial abuse of discretion for  
13 failure to proceed in a manner required by law. Cal. Pub. Res. Code §21168.5.

14 Defendants claim that they are exempt from CEQA. Section Cal. Code Regs., tit. 14, §  
15 15061(b)(3) states that a project is exempt from CEQA if: “...Where it can be seen with  
16 certainty that there is no possibility that the activity in question may have a significant effect on  
17 the environment, the activity is not subject to CEQA.” However, there is a possibility of  
18 significant environmental impact here with the expansion of service zone FP-5.

19 Employees of Defendants have made statements that indicate that the relocation of a fire  
20 station or fire stations is currently being considered as a possibility under the expansion of FP-5  
21 as a project. In a newspaper article published by the Hi-Desert Star, dated October 17, 2018,  
22 Fire Chief Mark Hartwig is attributed as saying at a Yucca Valley meeting in August that the  
23 “fire department might use some of its new revenue to move the fire station on Aberdeen Drive  
24 in Yucca Mesa closer to Twentynine Palms Highway in Yucca Valley”. Wade Decl. ¶ 7, pp. 1.  
25 In this same article, Fire Department spokeswoman Tracey Martinez (“Martinez”) is also quoted  
26 as saying “We will be looking at the computer model to make sure our response times are  
27 meeting the needs of the community and if it’s necessary to move that station to better serve our  
28 community” *Id.* pp. 1. Martinez is also quoted as saying: “We do things like that all the time.



1 Communities grow, so it's necessary to continually make sure that our stations are placed in the  
2 right location" *Id.* pp. 1.

3 If there is a possibility of relocating a fire station, the environmental impact of such  
4 actions must be studied before the expansion of service zone FP-5 can proceed. Significant  
5 environmental impact under the CEQA guidelines can either be defined as a direct physical  
6 change or an indirect physical change.

7 The possible relocation of a fire station satisfies the definition of a direct physical  
8 change under Cal. Code Regs., tit. 14, § 15064(d)(1) because it might include such side effects  
9 as dust, noise and traffic of heavy equipment that would result from the construction related to  
10 relocating a fire station. These side effects are a physical change in the environment which is  
11 caused by and are immediately related to the project. The possible relocation of a fire station  
12 satisfies the definition of an indirect physical change in the environment because it is a physical  
13 change in the environment which is not immediately related to the project, but which is caused  
14 indirectly by the project. The possible relocation of a fire station may lead to increased  
15 population growth in the newly relocated area, which could increase air pollution. Accordingly,  
16 the possible relocation of a fire station meets the definition of an indirect physical change under  
17 Cal. Code Regs., tit. 14, § 15064(d)(2).

18 Even though there appears to be substantial evidence before the Fire District that the  
19 expansion of FP-5 as a project may have a significant impact on the environment, there has been  
20 no attempt by Defendants to prepare an EIR. Because there is substantial evidence, in light of  
21 the whole record before the Fire District, that the expansion of FP-5 may have a significant  
22 effect on the environment, Defendants must prepare an Environmental Impact Report under Cal.  
23 Code Regs., tit. 14, § 15064(a)(1).

24 **D. Plaintiffs Meet the Standards for a Preliminary Injunction**

25 **1. Plaintiffs are Likely to Prevail on the Merits of their Claims**

26 Plaintiffs are entitled to a preliminary injunction because both considerations – the  
27 likelihood of success on the merits and the relative burdens on the parties – weigh heavily in  
28 their favor. *See Butt, supra*, 4 Cal. 4th at 677-678 (setting forth two considerations to be



1 balanced for preliminary injunction). In order to obtain a preliminary injunction, Plaintiffs need  
2 not show that they will necessarily prevail on the merits; all that is required is a showing of a  
3 reasonable probability of success. *See, Baypoint Mortgage Corp v. Credit Premium Real Estate*  
4 *Investments Retirement Trust*, 168 Cal. App. 3d 818, 824 (1985) (specifying standard for  
5 preliminary injunction). Plaintiffs' success here is not only reasonably probable, it is all but  
6 certain.

7                   **2. Plaintiffs and the Public Will Suffer More Harm from Denial of**  
8                   **Injunctive Relief than Defendants Will Suffer from Granting Such**  
9                   **Relief**

10           The harm suffered by Plaintiffs if preliminary relief is not granted is that an  
11 unconstitutional special tax will be imposed upon the electorate without approval by a two-  
12 thirds majority as required by the California Constitution. Furthermore, because the protest  
13 process provided by the County is invalid in its execution and creates disparate treatment  
14 between affected landowners, those who would have a fundamental right to vote in any election  
15 where a special tax was presented to the electorate will not have the same opportunity to do so  
16 here. If Plaintiffs prevail without a preliminary injunction in place, any money collected through  
17 the assessment of this new special tax is likely to be spent on vague aggregate indicators such as  
18 "staffing expenses" and "other operating expenses" according to the Fire District. Murphy  
19 Decl., ¶ 13. Once this proposed tax is collected and the funds spent, it is unclear that taxpayers  
20 such as Plaintiffs who may become wrongly assessed for unconstitutional taxes would ever be  
21 able to recover even through a refund mechanism. The potential for great harm absent a  
22 preliminary injunction is undeniable.

23           Conversely, if preliminary relief does issue here, the status quo will simply be  
24 maintained. The affected landowners will not be deprived of an election to which they are  
25 entitled under the Constitution. The Fire District would continue providing services to those  
26 areas currently paying taxes for fire service. According to the information given in presentations  
27 by Fire Chief Mark Hartwig, the Fire District is not dependent on service zone FP-5 being  
28 expanded to continue operation. In fact, the Fire Chief stated in a recorded video presentation

1 that if the FP-5 expansion is not approved, the Fire District has other avenues to pursue to meet  
2 its revenue needs such as general taxes and sales taxes. Murphy Decl., ¶ 11. Clearly, the Fire  
3 District will not be harmed if this unconstitutional process is halted by this Court.

4 In light of the foregoing, there can be no question that the harm to Plaintiffs absent a  
5 preliminary injunction is far greater than the harm to Defendants if such relief is granted.

6 **3. Plaintiffs are Entitled to a Preliminary Injunction because of the**  
7 **Imminent Threat of Great or Irreparable Harm**

8 An injunction is rightly denied when damages would be an adequate remedy. *See, e.g.,*  
9 *Pellisier v. Whittier Water Co.*, 59 Cal. App. 1, 7 (1922). Conversely, an injunction is  
10 appropriate when injury is *irreparable and damages are of such a character that they cannot*  
11 *be ascertained*. *See, e.g., Zierath v. McCann*, 20 Cal. App. 561, 563 (1912) (upholding trial  
12 court's issuance of injunction) (emphasis added). This is not a lawsuit for damages. For the  
13 reasons described above, Plaintiffs submit that the deprivation of an election, and the disparate  
14 treatment of affected landowners giving rise to an unequal burden on Plaintiffs' fundamental  
15 right to vote, constitutes the type of irreparable injury that qualifies for the provisional relief  
16 requested here.

17 **IV. CONCLUSION**

18 For all the foregoing reasons, the Court should grant the requested injunctive relief in its  
19 entirety.

20 Date: November 14, 2018

21 Respectfully submitted,  
22 The Red Brennan Group

23 By: 

24 Sean K. Wade

25 Attorney for Plaintiffs:

26 The Red Brennan Group, Lucerne Valley Economic Development Association, Johnson Valley  
27 Improvement Association, Homestead Valley Community Council, Mentone Chamber of  
28 Commerce, Henry E. Hallmark, Kristine E. Hallmark and Eric H. Steinmann.



1 SEAN K. WADE, Bar No. 317431



2  
3  
4 Attorney for The Red Brennan Group, Lucerne Valley  
5 Economic Development Association, Johnson Valley  
6 Improvement Association, Homestead Valley Community  
7 Council, Mentone Chamber of Commerce, Henry E.  
8 Hallmark, Kristine E. Hallmark and Eric H. Steinmann

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN BERNARDINO - SAN BERNARDINO DISTRICT

11 THE RED BRENNAN GROUP;  
12 LUCERNE VALLEY ECONOMIC  
13 DEVELOPMENT ASSOCIATION;  
14 JOHNSON VALLEY IMPROVEMENT  
15 ASSOCIATION; HOMESTEAD  
16 VALLEY COMMUNITY COUNCIL;  
17 MENTONE CHAMBER OF  
18 COMMERCE; HENRY E. HALLMARK;  
19 KRISTINE E. HALLMARK; ERIC H.  
20 STEINMANN;

21 Plaintiffs,

22 vs.

23 THE BOARD OF SUPERVISORS OF  
24 SAN BERNARDINO COUNTY; THE  
25 BOARD OF SUPERVISORS OF SAN  
26 BERNARDINO COUNTY FIRE  
27 PROTECTION DISTRICT; and DOES 1-  
28 10;

Defendants.

Case No. CIV DS 1826559

**DECLARATION OF SEAN K. WADE IN  
SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**

Dept.: S30

Judge: Hon. Brian S. McCarville

Hearing Date: December 20, 2018

Time: 8:30 AM

Action Filed: October 11, 2018

Trial Date: Not Yet Set

**DECLARATION OF SEAN K. WADE**

I, SEAN K. WADE, declare the following:

1. I, SEAN K. WADE, am an attorney duly licensed to practice law before all courts of the State of California. My organization, THE RED BRENNAN GROUP, is

1 counsel for Plaintiffs in the above titled action. The following facts are within my personal  
2 knowledge and, if called as a witness herein, I can and will competently testify thereto.

3 2. Attached as Exhibit 1 is a true and correct copy of Defendants' Declaration of  
4 Deputy Chief John Chamberlain in Opposition to Plaintiff's Ex Parte Application for a  
5 Temporary Restraining Order and Order to Show Cause for Preliminary Injunction that  
6 was filed with this Court on October 12, 2018.

7 3. Attached as Exhibit 2 is a true and correct copy of Defendants' Opposition to  
8 Plaintiff's Ex Parte Application For a Temporary Restraining Order and Order to Show  
9 Cause RE Preliminary Injunction that was filed with this Court on October 12, 2018.

10 4. Attached as Exhibit 3 is a true and correct copy of census information regarding  
11 Huntington Beach's population in 2010, which I obtained from the U.S. Census Bureau's  
12 official website. The Census Bureau is a part of the U.S. Department of Commerce.

13 5. Attached as Exhibit 4 is a true and correct copy of census information regarding  
14 Sunset Beach's population in 2010, which I obtained from the U.S. Census Bureau's  
15 official website. The Census Bureau is a part of the U.S. Department of Commerce.

16 6. Attached as Exhibit 5 is a true and correct copy of the article "Fire fee passes;  
17 new charge to go on property tax bills" published on October 17, 2018, by the Hi-Desert  
18 Star. In this article, Fire Chief Mark Hartwig ("Hartwig") is attributed as saying at a Yucca  
19 Valley meeting in August that the "fire department might use some of its new revenue to  
20 move the fire station on Aberdeen Drive in Yucca Mesa closer to Twentynine Palms  
21 Highway in Yucca Valley" pp. 1. In this same article, Fire Department spokeswoman  
22 Tracey Martinez ("Martinez") is also quoted as saying "We will be looking at the computer  
23 model to make sure our response times are meeting the needs of the community and if it's  
24 necessary to move that station to better serve our community" pp. 1. Martinez is also  
25 quoted as saying: "We do things like that all the time. Communities grow, so it's necessary  
26 to continually make sure that our stations are placed in the right location" pp. 1.

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

DATE

Sean K. Wade

11/14/2018

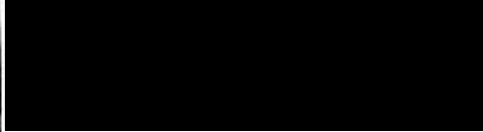


# **EXHIBIT 1**



ORIGINAL

1 LAURA L. CRANE, Bar No. 238246  
Deputy County Counsel  
2 MICHELLE D. BLAKEMORE, Bar No. 110474  
County Counsel  
3 385 North Arrowhead Avenue, Fourth Floor  
4 San Bernardino, California 92415



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
OCT 12 2018  
BY \_\_\_\_\_

Exempt per Government Code § 6103

7 Attorneys for Defendants County of San Bernardino and San Bernardino County Fire Protection  
District (*specially appearing*)

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO, CENTRAL DIVISION  
10

11 THE RED BRENNAN GROUP; LUCERNE  
12 VALLEY DEVELOPMENT  
13 ASSOCIATION; HENRY E. HALLMARK;  
14 KRISTINE E. HALLMARK AND ERIC H.  
15 STEINMANN; HENRY E. HALLMARK,  
KRISTINE E. HALLMARK; and ERIC H.  
STEINMANN,

16 Plaintiffs,

17 v.

18 THE BOARD OF SUPERVISORS OF SAN  
19 BERNARDINO COUNTY; THE BOARD  
20 OF SUPERVISORS OF SAN  
21 BERNARDINO COUNTY FIRE  
PROTECTION DISTRICT; and DOES 1-10,

22 Defendants.  
23  
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Case No. CIVDS 1826559

DECLARATION OF DEPUTY CHIEF JOHN  
CHAMBERLIN IN OPPOSITION TO  
PLAINTIFFS' *EX PARTE* APPLICATION FOR A  
TEMPORARY RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE RE PRELIMINARY  
INJUNCTION

Ex Parte Hearing

Date: October 12, 2018  
Time: 8:30 a.m.  
Location: S30

1 **DECLARATION OF DEPUTY CHIEF JOHN CHAMBERLIN**

2 I, John Chamberlin, declare as follows:

3 1. I have personal knowledge of the matters set forth in this declaration and, if called to  
4 testify to these matters, I could and would do so competently.

5 2. I am a Deputy Chief with the San Bernardino County Fire Protection District ("Fire  
6 District"). I have been employed by the Fire District at all times mentioned in this declaration. In my  
7 capacity as a Deputy Chief, I provide administrative direction and oversight to the Fire District. Most  
8 recently, I have been assigned to oversee the potential expansion of the boundaries of San Bernardino  
9 County Fire Protection District Service Zone FP-5 ("FP-5").

10 3. In June 2018, I was present when the Fire District's Board of Directors adopted a  
11 resolution to initiate proceedings for the expansion of FP-5. As part of that resolution, the Fire District  
12 established a procedure whereby property owners in the expansion area could protest the expansion.  
13 The procedure permitted property owners to present the Fire District with a written notice of their  
14 protest at any time between September 14, 2018 and October 15, 2018, if provided by mail, or October  
15 16, 2018, if provided in-person prior to the close of the public hearing.

16 4. The resolution discussed above also set a hearing for the Fire District's Board of  
17 Directors to consider whether to expand the boundaries of FP-5. The hearing is set for October 16,  
18 2018. The hearing will be held in San Bernardino and broadcast to specific locations in Hesperia and  
19 Joshua Tree. The Fire District's Board of Directors will be able to hear public comment from each of  
20 these three locations. Property owners will also be able to provide their written protests at each of these  
21 locations.

22 5. In my assignment of overseeing the potential expansion of FP-5, I oversaw the process  
23 of providing notice to all property owners in the area of the potential expansion. Shortly after the Board  
24 adopted the resolution in June 2018, the Fire District began holding community meetings in the area  
25 anticipated to be included in the expansion. As part of these meetings, Fire Chief/Fire Warden Mark  
26 Hartwig invited community members to join him in an informational meeting where he discussed the  
27 reason for the expansion, the procedure for the expansion, and answered questions. Approximately 19  
28 meetings were held throughout the expansion area, in addition to a number of council meetings. I



1 attended at least half of these meetings.

2 6. I worked with the Fire District Board of Director's Secretary to cause notice of the  
3 October 16, 2018 hearing to be published in one or more newspapers of general circulation in the Fire  
4 District. I received notice from the newspaper that the publication has been completed.

5 7. I caused more than 360,000 notices of the proposed expansion, hearing, and protest  
6 procedure to be mailed to all property owners within the proposed expanded boundaries of FP-5. The  
7 actual number of property owners is less than the notices sent out. However, the Fire District sought to  
8 be over-inclusive in the mailing to ensure all property owners received notice.


9 8. I caused written notice of the public hearing to be posted in at least three public places  
10 within the territory of the expanded FP-5 area, including all District Fire Stations. I required my office  
11 staff to confirm these postings by requiring each station provide photographic evidence. I am informed  
12 and believe the evidence was provided. I also received notification of each person that posted each  
13 notice.

14 9. Since September 14, 2018, the Fire District has begun receiving written protests to the  
15 expansion of FP-5. As a custodian of records for the Fire District, I know the protests were received  
16 both through the mail and by in-person deliveries. I have also received notice from people stating they  
17 are property owners in the expansion area and they intend on personally attending the October 16, 2018  
18 hearing to express their support or opposition to the expansion.

19 10. I worked with other Fire District employees to engage an independent vendor to tabulate  
20 the protests received from property owners regarding the expansion of FP-5. That vendor is expected to  
21 send two of its employees to each of three October 16, 2018 hearing locations.

22 11. The Fire District and its contracted vendor are accepting all forms of written protest to  
23 the expansion of FP-5, regardless of whether they are provided on the formal protest form.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
25 true and correct. Signed this 11<sup>th</sup> day of October, 2018 in San Bernardino, California.

26  
27  
28  
  
JOHN CHAMBERLIN

# **EXHIBIT 2**



1 LAURA L. CRANE, Bar No. 238246  
Deputy County Counsel  
2 MICHELLE D. BLAKEMORE, Bar No. 110474  
County Counsel  
3 385 North Arrowhead Avenue, Fourth Floor  
4 San Bernardino, California 92415

5 [REDACTED] Exempt per Government Code § 6103

6  
7 Attorneys for Defendants County of San Bernardino and San Bernardino County Fire Protection  
District (*specialy appearing*)  
8

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SAN BERNARDINO, CENTRAL DIVISION  
11

12 THE RED BRENNAN GROUP; LUCERNE  
VALLEY DEVELOPMENT  
13 ASSOCIATION; HENRY E. HALLMARK;  
14 KRISTINE E. HALLMARK AND ERIC H.  
STEINMANN; HENRY E. HALLMARK,  
15 KRISTINE E. HALLMARK; and ERIC H.  
STEINMANN,

16  
17 Plaintiffs,

18 v.

19 THE BOARD OF SUPERVISORS OF SAN  
BERNARDINO COUNTY; THE BOARD  
20 OF SUPERVISORS OF SAN  
BERNARDINO COUNTY FIRE  
21 PROTECTION DISTRICT; and DOES 1-10,  
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23 Defendants.  
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Case No. CIVDS 1826559

OPPOSITION TO PLAINTIFFS' *EX PARTE*  
APPLICATION FOR A TEMPORARY  
RESTRAINING ORDER AND ORDER TO SHOW  
CAUSE RE PRELIMINARY INJUNCTION

Ex Parte Hearing

Date: October 12, 2018

Time: 8:30 a.m.

Location: S30

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1 **I. INTRODUCTION**

2 Plaintiffs request this Court order the San Bernardino County Fire Protection District ("Fire  
3 District"), a legislative body, not to contemplate or decide whether to expand a service zone. Plaintiffs  
4 have chosen to raise this issue two business days before the public hearing for this action, and four  
5 months after it was announced. Plaintiffs have not offered any explanation for their delay. Plaintiffs  
6 also fail to provide competent evidence supporting any irreparable harm they will suffer by simply  
7 waiting to see if the Fire District's Board of Directors decides to move forward with the expansion.

8 Plaintiffs cannot establish a likelihood of prevailing on the merits of their claims. Plaintiffs  
9 contend they will suffer a violation of their Equal Protection rights if the Fire District's public hearing  
10 is permitted to go forward in the currently planned manner. Plaintiffs do not identify the protected class  
11 that is impacted by the hearing procedure. Plaintiffs also do not offer any evidence that they are in that  
12 protected class. Plaintiffs claim the violation occurs because forms made available for the public to  
13 protest the service zone expansion are only available on the internet and by phone. Yet, Plaintiffs fail to  
14 provide any evidence that they attempted to but were unable to obtain the forms or to provide their  
15 protest in another manner. As established in the concurrently filed declaration of Deputy Chief John  
16 Chamberlin, the Fire District is accepting written protests from property owners regardless of whether  
17 they are made on the forms provided. Plaintiffs have therefore failed to show any likelihood of  
18 prevailing on their Equal Protection claim.

19 Plaintiffs also argue their right to vote on an existing tax that is associated with the service zone  
20 expansion will be infringed if the zone is permitted to be expanded in the manner contemplated by the  
21 Fire District. Plaintiffs ignore the specific statutes that set forth the manner for expanding the service  
22 zone, which do not require a vote. Plaintiffs also ignore case law holding that individuals included in a  
23 public entity's expanded area are subject to pre-existing taxes, without a vote.

24 Plaintiffs' *ex parte* application also fails to provide substantial evidence that the Plaintiffs will  
25 suffer substantial irreparable harm without an injunction that outweighs the harm caused to others by  
26 the injunction's issuance. The Fire District has invested a substantial amount of resources in ensuring  
27 every property owner in the expanded area has notice of the proposed expansion, and an opportunity to  
28 ask the Fire Chief questions. Property owners have spent the last month mailing in protest forms, and

1 taking the time to present them in person. These property owners are counting on their protests being  
2 considered. Other property owners have expressed their intention to personally attend the public  
3 hearing to state their support or opposition to the proposed expansion. An injunction will undo all of the  
4 work done by the Fire District and the affected property owners. It risks confusion. The Fire District  
5 could not possibly provide notice to all affected property owners that the long awaited hearing will not  
6 be going forward. All of this work would be undone without even knowing whether the Board of  
7 Directors would be voting to support the expanded zone.

8 To offset this harm, Plaintiffs offer two potential claimed injuries. First, they state that without  
9 an injunction they might pay a tax. Plaintiffs do not offer any evidence that any of them are included in  
10 the expanded FP-5. Plaintiffs also do not offer any evidence refuting the fact if they are in the impacted  
11 area, they can obtain a refund of any taxes improperly paid.

12 Second, Plaintiffs argue that without an injunction they will lose their right to vote. This  
13 argument assumes Plaintiffs had a right to vote on the zone expansion or associated tax. This argument  
14 also disregards that Plaintiffs will maintain that right, if it existed, without an injunction. Should the  
15 Court find in Plaintiffs' favor, the potential to vote on the matter will remain. These claimed injuries  
16 fall far short of the substantial evidence required to justify injunctive relief against a public entity.

17 Plaintiffs have failed at every level to meet their burden to justify *ex parte* injunctive relief. The  
18 requested relief should therefore be denied.

## 19 **II. FACTUAL BACKGROUND<sup>1</sup>**

20 San Bernardino County Fire Protection District Service Zone FP-5 ("FP-5) exists pursuant to the  
21 Fire Protection District Law of 1987. *See* Health & Saf. Code §§ 13800, *et seq.* That law permits fire  
22 districts to create service zones when the fire district determines it is necessary for specified purposes.  
23 *Id.* at § 13950. It also permits the Fire District to exercise all of its fiscal powers within that zone,  
24 including the imposition of a tax. *Id.* at §§ 13954 & 13955. Property owners currently within FP-5 pay a  
25

26 \_\_\_\_\_  
27 <sup>1</sup> Plaintiffs' service of the *ex parte* papers did not include a copy of their complaint. This opposition  
28 relies solely on the facts and argument presented in the *ex parte* papers. These responding parties do not  
know what claims are raised in the complaint, or what factual allegations are included.



1 special tax in an annual amount of \$157.26. See Concurrently Filed Request for Judicial Notice ("RJN")  
2 Exh. A, p. 1.

3 When necessary, Fire Districts are permitted to expand the boundaries of a service zone by  
4 following a specified procedure. Health & Saf. Code §§ 13953 & 13954. On June 12, 2018, the Fire  
5 District resolved to initiate proceedings to expand the boundaries of FP-5. RJN Exh. A. The resolution  
6 set an October 16, 2018 hearing for the Fire District's Board of Directors to consider the proposed  
7 expansion. *Id.*

8 At the same time, the Fire District also adopted a procedure that allowed property owners in the  
9 expanded area to file written protests against the expansion. RJN Exh. B. The Fire District committed to  
10 a procedure that put the issue of the service zone expansion to the voters if "at least 25% of the number  
11 of landowners within the affected territory who own at least 25% of the assessed value of land within  
12 the territory affected submit" a written protest. *Id.* at p. 2. The Fire District would withdraw the  
13 proposed expansion if it received written protests from 50% of the assessed value of the land within the  
14 territory affected. *Id.* this procedure was not required by the Fire Protection District Law. See Health &  
15 Saf. Code §§ 13953 & 13954.

16 Promptly after the June 12, 2018 resolutions, the Fire District began extensive efforts to notify  
17 property owners in the proposed expansion area of the proposed expansion and protest procedure. Fire  
18 Chief/Fire Warden Mark Hartwig invited community members to join him in informational meetings  
19 throughout the area. Declaration of John Chamberlin, concurrently filed herewith ("Chamberlin Decl."),  
20 ¶ 5. During the 19 community meetings and additional city council meetings, Chief Hartwig informed  
21 the public of the procedure to challenge the expansion and answered questions. *Id.*

22 The Fire District mailed more than 360,000 notices of the October 16, 2018 hearing to all of the  
23 property owners in the expansion area. Chamberlin Decl. ¶ 7. The Fire District also caused notice of the  
24 hearing to be published in the newspaper and posted at every fire station in the expansion area. *Id.* at ¶¶  
25 6 & 8.

26 The Fire District's protest procedure permitted property owners to begin providing their written  
27 protests on September 14, 2018. Since September 14, 2018, the Fire District has been receiving written  
28

1 protests in the mail and through in-person deliveries. Chamberlin Decl. ¶ 9. The Fire District has also  
2 received communications from people expressing their interest in appearing at the public hearing. *Id.*

3 The First District has been actively working to prepare for the upcoming public hearing.  
4 Chamberlin Decl. ¶ 10. The Fire District engaged an independent vendor to tabulate the protests  
5 received at each of the three hearing locations and to promptly provide the results to the Fire District  
6 Board. *Id.*

7 **III. ARGUMENT**

8 **A. Plaintiffs Fail To Include Competent Testimony Supporting a Basis For *Ex Parte***  
9 **Relief.**

10 An *ex parte* application must be supported by a declaration containing an “affirmative factual  
11 showing” consisting of “competent testimony based on personal knowledge of irreparable harm,  
12 immediate danger or any other statutory basis for granting relief *ex parte*.” Cal. R. Ct., R. 3.1202(c).  
13 Plaintiffs have failed to provide this mandated declaration.

14 Plaintiffs offer two declarations in support of their application. The Declaration of Sean Wade  
15 discusses Plaintiffs’ *ex parte* notice. The Declaration of Tom Murphy consists of primarily hearsay  
16 evidence concerning the following: two potential landowners in the County of San Bernardino  
17 contacted Mr. Murphy by social media (*id.* at ¶¶ 3 & 4); a Fire District budget presentation Mr. Murphy  
18 apparently did not attend (*id.* at ¶¶ 5 & 6); Mr. Murphy’s thoughts on an unauthenticated or attached  
19 video Mr. Murphy states reflects Chief Hartwig’s presentaton regarding the FP-5 expansion (*id.* at ¶¶ 7-  
20 11); Mr. Murphy’s opinions on information the Fire District provided to property owners (*id.* at ¶¶ 12-  
21 15); and Mr. Murphy’s lay opinions regarding the legality of the process being used to expand FP-5 (*id.*  
22 at ¶¶ 16-17, 19-20).

23 The only potential evidence concerning the need for emergency relief is found in paragraph 18  
24 of Mr. Murphy’s declaration where he testifies property owners did not receive protest forms with their  
25 notice of the October 16 hearing. This statement is not supported by any personal knowledge. Mr.  
26 Murphy does not state whether he owns property in the proposed expanded area. Mr. Murphy does not  
27 state whether he received a notice of the public hearing. Mr. Murphy does not even state whether he  
28



1 personally attempted to obtain a protest form. Mr. Murphy's declaration also fails to explain why the  
2 within application was not brought at any other time since the June 2018 initiation of this process.

3 Plaintiffs' *ex parte* application does not include any "competent testimony based on personal  
4 knowledge" of the claimed irreparable harms. There is no testimony that any of the Plaintiffs wanted to  
5 present the Fire District with a protest but were not able to access the form or to present a protest in  
6 some other fashion. There is no testimony that any of the Plaintiffs will lose their right to vote on the  
7 FP-5 expansion if the injunction does not issue. There is also no competent testimony that any of the  
8 Plaintiffs will be included in the expanded FP-5. Thus, Plaintiffs' *ex parte* application is procedurally  
9 and substantively defective.

10 **B. The Issues Raised in this Ex Parte Are Not Ripe Because It is Not Known Yet**  
11 **Whether The Boundary Expansion Will Occur.**

12 Plaintiffs seek to prevent the imposition of a tax that is associated with the expansion of FP-5.  
13 Plaintiffs contend that the imposition of this tax will result in constitutional violations. This request is  
14 unripe because it is not yet known whether the Fire District's Board of Directors will permit the  
15 expansion of FP-5, regardless of the procedure used.

16 The Fire District's Board of Directors are expected to decide whether to expand FP-5 on  
17 Tuesday, October 16. The hearing is subject to many variables. If the number of protests submitted by  
18 property owners meets or exceeds 25% of the assessed value of land, then the issue will be submitted  
19 for approval by the voters. If the number of protests exceeds 50%, then the proposed change will be  
20 withdrawn by the Board. If these thresholds are not met, the Board may still decide not to approve the  
21 expansion, rendering this entire action moot. This issue is not ripe until and unless the Board approves the  
22 expansion of FP-5.

23 **C. This Ex Parte Improperly Seeks to Interfere With a Lawful Legislative Action.**

24 Plaintiffs ask this Court to interfere with the Fire District's legislative process of considering  
25 and deciding whether to expand FP-5. Thus, Plaintiffs are asking the judiciary branch to stop the  
26 actions taken by the legislative branch. This request compromises separation of powers principles.

27 "There is a general rule against enjoining public officers or agencies from performing their  
28 duties." *Tahoe Keys Prop. Owners' Assn. v. State Water Res. Control Bd.*, 23 Cal. App. 4th 1459, 1471

1 (1994). "[P]rinciples of comity and separation of powers place significant restraints on courts' authority  
2 to order or ratify acts normally committed to the discretion of other branches or officials. [Citations.] In  
3 particular, the separation of powers doctrine (Cal. Const. art. III, § 3) obligates the judiciary to respect  
4 the separate constitutional roles of the Executive and the Legislature." *Butt, supra*, 4 Cal.4th at p. 695.  
5 Thus, the general rule prohibiting an injunction against public agencies can be overcome only with a  
6 "significant" showing of irreparable injury. *Tahoe Keys Property Owners' Assn.*, 23 Cal. App. 4th at  
7 1471.

8 *Tahoe Keys Property Owners' Assn.*, 23 Cal. App. 4th 1459, involved a property owners'  
9 association's request for an injunction preventing the imposition of fees created through a series of  
10 resolutions by a regional planning agency. *Id.* at 1466–1470. The property owners argued the fees  
11 constituted an unconstitutional taking. *Id.* at 1474–75. Before reaching a decision on the plaintiff's  
12 likelihood to prevail on the merits, the court determined the plaintiff's requested relief would have a  
13 significant impact on a matter of public concern. The fees were collected to assist in mitigating harm  
14 done by development near Lake Tahoe. Stopping the fee collection, even if temporarily, impacted public  
15 officials' abilities to perform their duties of mitigating the impact of this development. Thus, the harm to  
16 the public's interest outweighed the property owners' monetary damage of having to pay the fee. *Id.* at  
17 1473.

18 Fire protection districts are formed pursuant to the Fire Protection District Law of 1987. *See*  
19 Health & Saf. Code, § 13800, et seq. They are statutorily created legislative bodies. Health & Saf. Code,  
20 § 13869. They may adopt a fire prevention code and ordinances, and establish and enforce rules and  
21 regulations. Health & Saf. Code, § 13869, & 13861(h) & (i).

22 The injunction requested here asks for the court to intervene in the Fire District's ongoing  
23 legislative action of considering the expansion of FP-5. This request requires the court to disregard the  
24 Fire District's pending action, prevent the Board from independently deciding how best to finance the  
25 Fire District's operations, and potentially impact the Fire District's ability to fulfill its duty to provide  
26 lifesaving services. Thus, this request compromises the separation of powers doctrine by requesting  
27 public officials not perform their duties.

28



1           **D. Plaintiffs Are Not Entitled to *Ex Parte* Relief Because They Have Failed to**  
2           **Demonstrate Irreparable Harm or a Likelihood of Success.**

3           A court weighs two interrelated factors when deciding whether to issue injunctive relief: (1) the  
4 moving party's likelihood of succeeding on the merits; and (2) the comparative harm an injunction  
5 would cause the parties. *Butt v. State of California*, 4 Cal. 4th 668, 677-78 (1992). An injunction cannot  
6 issue if the moving party fails to establish a likelihood of prevailing on the merits. *Id.* An injunction  
7 also cannot issue based solely on the moving party establishing a likelihood of succeeding on the  
8 merits. To minimize the harm caused by an erroneously issued injunction, the court must consider the  
9 relative harm the parties will suffer under the different alternatives. Thus, an injunction should not issue  
10 even if the Plaintiffs establish a likelihood of prevailing on the merits, if the resulting harm from an  
11 injunction outweighs the harm the Plaintiffs would suffer without an injunction. *See O'Connell v.*  
12 *Superior Court*, 141 Cal. App. 4th 1452 (2006) (overturning the trial court's order granting plaintiff's  
13 motion for preliminary injunction despite plaintiff's likelihood of prevailing on the merits because of  
14 the significant amount of harm to the non-moving party).

15           **1. Plaintiffs Cannot Demonstrate a Significant Showing of Irreparable Harm**  
16           **to Justify An Injunction Against A Public Entity.**

17           Plaintiffs fail to carry their burden of establishing irreparable harm. Instead, the evidence  
18 establishes the harm others will suffer outweighs issuing an injunction against a public entity.

19           "The ultimate goal of any test to be used in deciding whether a preliminary injunction should  
20 issue is to minimize the harm which an erroneous interim decision may cause." *White v. Davis*, 30 Cal.  
21 4th 528, 554 (2003). When an injunction is sought against a public agency, however, a "significant"  
22 showing of irreparable injury is required to outweigh the general rule against enjoining public officers  
23 or agencies, or imposing the courts' authority to order acts normally committed to the discretion of  
24 other branches or officials. *See Tahoe Keys Property Owners' Assn.*, 23 Cal. App. 4th at 1471, and  
25 *O'Connell*, 141 Cal. App. 4th at 1464.

26           Plaintiffs fall far short of showing "significant" harm would result if the Court does not order  
27 the requested relief on an *ex parte* basis.

28

1                   a. Plaintiffs' Payment of a Tax is Compensable and Therefore Not an  
2                   Irreparable Harm.

3                   Plaintiffs claim that without an injunction, they might pay the tax and it will "likely ...be spent  
4 on vague aggregate indicators such as 'staffing expenses' and 'other operating expenses'..." P&A p.  
5 7:28-8:4. Plaintiffs then argue that this somehow makes their claim compensable and therefore  
6 appropriate for injunctive relief. This logic requires an extreme stretch.

7                   Code of Civil Procedure section 526(a) identifies the permissible grounds for injunctive relief.  
8 Items 4 and 5 state "[w]hen pecuniary compensation would not afford adequate relief" and "where it  
9 would be extremely difficult to ascertain the amount of compensation which would afford adequate  
10 relief..." By implication, injunctive relief is not available where pecuniary compensation would afford  
11 adequate relief and that compensation is ascertainable. *See also Pac. Decision Scis. Corp. v. Superior*  
12 *Court*, 121 Cal. App. 4th 1100, 1110 (2004) ("before a court may issue a nonstatutory injunction as a  
13 provisional remedy for breach of contract, it must appear that monetary relief would not afford  
14 adequate relief or that it would be extremely difficult to ascertain the amount of damages" [emphasis  
15 added]).

16                   Plaintiffs' claimed injury is compensable by a refund of the easily identifiable taxes paid.  
17 California's Revenue and Tax Code provides a procedure by which to obtain a refund of taxes. *See Rev.*  
18 *& Tax Code § 5096 et seq.* Thus, Plaintiffs' claim of injury occasioned by the payment of a tax does not  
19 support injunctive relief.

20                   b. Plaintiffs' Claimed Harm of Not Being Able to Vote Pre-Supposes A  
21                   Right to Vote and Ignores That the Right Remains Without An  
22                   Injunction.

23                   Plaintiffs also assert that they will be irreparably harmed if the Fire District's Board of Directors  
24 are permitted to consider whether to expand FP-5 because Plaintiffs will not have been able to vote on  
25 the issue. This argument assumes Plaintiffs had a right to vote on the matter. It also ignores that the  
26 right will remain, if it had ever existed, after this case is litigated.

27                   If Plaintiffs prevail in this litigation, this Court will have found the FP-5 expansion  
28 unconstitutional. The Fire District will then be left to follow the court's guidance on how to properly



1 expand FP-5 or to consider other alternatives. If the ultimate decision is that the only way to perform  
2 these acts is to put the issue to a vote, then the Plaintiffs will still have that right, regardless of whether  
3 an injunction is issued. Thus, in contrast to the irreparable situation of a structure being demolished,  
4 Plaintiffs have not put forth an irreparable harm.

5 c. **The Harm Of An Injunction On Others Outweighs the Plaintiffs' Need**  
6 **For An Injunction.**

7 The San Bernardino County Fire Protection District will suffer irreparable harm if the requested  
8 injunction is issued. The Fire District has invested a significant amount of resources into the pending  
9 process. For example, the Fire District mailed more than 360,000 notices to property owners advising  
10 them of the October 16 hearing date and protest procedure. Chamberlin Decl. ¶ 7. The District held 19  
11 community meetings and attended multiple city council meetings to answer property owner questions  
12 and further advise them of the process. *Id.* at ¶ 5. Notice of the October 16 hearing was published in the  
13 newspaper and posted at every fire station in the expanded area. *Id.* at ¶¶ 6 & 8. The Fire District has  
14 also engaged an independent vendor to come to the three hearing locations, collect protests, tally the  
15 protests received, and inform the Board of the results. *Id.* at ¶ 10. If the injunction issues and the Fire  
16 District ultimately prevails in the litigation, it would have to re-invest all of the resources required to  
17 perform these tasks to re-start this multi-month process.

18 The involved property owners have also expended resources in reliance of the promised October  
19 16 hearing and Board decision. The Fire District has already received protests from property owners.  
20 Chamberlin Decl. ¶ 9. These were delivered in person and by mail. *Id.* The Fire District has also  
21 received notice from property owners of their intention to appear at the hearing to voice their support or  
22 opposition. *Id.* The Fire District expects those planning to attend the hearing have made arrangements  
23 to take time away from their jobs or families to participate in this process. Plaintiffs' unexplained delay  
24 in bringing this request prevents these individuals from learning of the injunction, should it issue, until  
25 it is too late. Moreover, if the Fire District is forced to re-do this entire procedure after this litigation,  
26 property owners may be confused as to whether they need to re-present a protest or attend the hearing.

27 With just two working days remaining before the hearing, Plaintiffs ask this court to order the  
28 Fire District and property owners to set aside these investments while the issues raised are litigated. As

1 discussed above, Plaintiffs have failed to identify an uncompensable, irreparable harm that they will  
2 suffer without an injunction. This case can be litigated without halting the on-going process. Injunctive  
3 relief is therefore not proper.

4           **2. Plaintiffs Have Failed To Establish a Likelihood of Prevailing.**

5           **a. Plaintiffs Have Not Identified A Protected Class For Their Equal**  
6           **Protection Claim, Evidence That Any Plaintiff Is a Member of That**  
7           **Class, or Evidence That the Class Members Were Prevented From**  
8           **Presenting a Protest.**

9           Plaintiffs have failed to show a likelihood of prevailing on their Equal Protection claim.  
10 Plaintiffs' *ex parte* application does not identify the protected class for which they claim to be members  
11 or any competent evidence that they are a member of that class. Plaintiffs have also failed to present  
12 competent evidence establishing how the unidentified class has been negatively impacted by the protest  
13 procedure. Plaintiffs argue the Fire District only made the protest forms available to property owners  
14 through a website and phone number. Plaintiffs, however, do not offer any evidence of these claimed  
15 facts. Plaintiffs also do not present any evidence that they attempted to present a protest in a different  
16 form but were unable.

17           In his concurrently filed declaration, Deputy Chief John Chamberlin testifies that the Fire  
18 District is accepting written protests in all forms. Chamberlin Decl. ¶ 11. The protest form is not  
19 required. *Id.* Consequently, even if Plaintiffs had provided this Court with competent testimony  
20 supporting their Equal Protection Claim, they cannot establish a likelihood of prevailing because they  
21 have failed to provide evidence of their membership in a protected class or that the class was negatively  
22 impacted by the protest procedure.

23           **b. The Expansion of FP-5 Is Not Subject to California's Voting**  
24           **Requirements.**

25           Plaintiffs will also not prevail in their argument that the expansion of FP-5 is subject to  
26 California's voting requirements. The Fire Protection Law of 1987 identifies the procedure for  
27 expanding a service zone. *See* Health & Saf. Code §§ 13953 & 13954. There is no requirement for a  
28 vote.



1 A service zone expansion is akin to an annexation. The newly acquired area receives the  
2 services provided within the service zone. The property owners within the newly acquired area are also  
3 responsible for the taxes that existed before the expansion.

4 The impact of existing taxes on property owners of a newly acquired area was addressed by  
5 California's Fourth Appellate District in *Citizens Assn. of Sunset Beach v. Orange Cty. Local Agency*  
6 *Formation Com.*, 209 Cal. App. 4th 1182 (2012), as modified on denial of reh'g (Oct. 31, 2012)  
7 ("*Sunset Beach*"). *Sunset Beach* involved the annexation of an unincorporated area of Orange County  
8 into the City of Huntington Beach. *Id.* at 1185. A taxpayers' group brought the action alleging they  
9 should not become subject to the City's two pre-existing taxes without a vote. *Id.* The Court of Appeal  
10 rejected the taxpayer group's arguments holding the protest procedure available to the property owners  
11 fully protected their rights.

12 The protest procedure used in the *Sunset Beach* case was identical to the procedure adopted by  
13 the Fire District here. "If a majority of the voters residing within the territory to be annexed file written  
14 protests [citation] the annexation automatically terminates. If less than 25 percent of the voters file  
15 written protests, the annexation automatically goes through. But if at least 25 percent but not more than  
16 50 percent file written protests, there must be an election,..." *Id.* at 1193-94. Thus, *Sunset Beach*  
17 supports the procedure adopted by the Fire District.

18 The reasoning of the *Sunset Beach* also applies to the service zone expansion here. The Court of  
19 Appeal observed that the annexation statutes at issue in *Sunset Beach* were in place before Proposition  
20 218's constitutional amendment. *Sunset Beach*, 209 Cal. App. 4th at 1192. The two must necessarily be  
21 harmonized, if possible. *Id.* Similarly here, the Fire Protection Law of 1987 predates Proposition 218's  
22 1996 passage. Harmonization of the statutes prevents a voting requirement because it would eliminate  
23 the entire expansion procedure established by the Fire Protection Law.

24 The *Sunset Beach* court also noted absurd results would occur if a vote were required to approve  
25 the pre-existing taxes of the acquiring agency. *Sunset Beach*, 209 Cal. App. 4th at 1191. Different votes  
26 would need to be held for each different tax. *Id.* Each tax could be subject to a different standard -- a  
27 simple majority for a general tax, and a super-majority for a special tax. *Id.* This requirement could  
28 result in the newly acquired area receiving the benefits of the acquiring agency, but not the burdens.

1 The court also found *Metro. Water Dist. v. Dorff*, 98 Cal. App. 3d 109 (1979) extremely  
2 persuasive. "*Dorff* directly held that Proposition 13 did not preclude the application of a preexisting  
3 property tax to land previously not part of an annexing water district to pay for that water district's  
4 outstanding obligations." *Sunset Beach*, 209 Cal. App. 4th at 1197. The *Sunset Beach* court observed  
5 that as of the decision of *Dorff* in 1979, it was known that the acquisition of new territory by a public  
6 agency could have possible adverse tax effects on the acquired area. Thus, "[h]ad Proposition 218 been  
7 intended to satisfy or avoid the effect of *Dorff*, we would have expected *some* attempt somewhere in  
8 Proposition 218 to address the issue." *Id.* at 1197-98. The court found none and therefore concluded  
9 Proposition 218 was not intended to change the rule.

10 Plaintiffs' reliance on the constitutional provisions created by Proposition 218 do not establish a  
11 likelihood of prevailing in this action. The Fire Protection District Law of 1987 does not require a vote  
12 to expand the boundaries of a service zone resulting in the annexation of a new area. *Sunset Beach*  
13 conclusively establishes that an area acquired by a public agency expansion becomes subject to all of  
14 the benefits and burdens of the acquiring agency. A vote is not required. Plaintiffs therefore cannot  
15 prevail in this action.

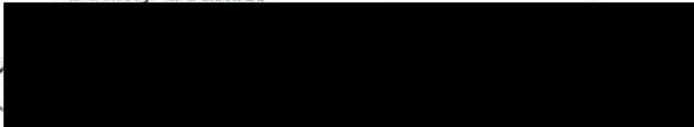
16 **IV. CONCLUSION**

17 Plaintiffs' request for an injunction asks this court to order the Fire District to undo months of  
18 work and stop an on-going legislative process. Plaintiffs' loss without an injunction is \$157 a year — a  
19 purely monetary loss that can be recouped should Plaintiffs prevail. The equities clearly favor denying  
20 the requested relief. The County of San Bernardino and the County of San Bernardino Fire Protection  
21 District respectfully request the court deny Plaintiffs' *ex parte* application.

22 DATED: October 12, 2018

Respectfully submitted,

23 MICHELLE D. BLAKEMORE  
24 County Counsel

25   
26 LAURA L. CRANE  
27 Deputy County Counsel  
28 Attorneys for Defendants County of San Bernardino and  
San Bernardino County Fire Protection District



# **EXHIBIT 3**



DP-1

Profile of General Population and Housing Characteristics: 2010

2010 Demographic Profile Data

NOTE: For more information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/dpsf.pdf>.

Geography: Huntington Beach city, California

Subject	Number	Percent
<b>SEX AND AGE</b>		
Total population	189,992	100.0
Under 5 years	9,665	5.1
5 to 9 years	10,466	5.5
10 to 14 years	11,505	6.1
15 to 19 years	12,044	6.3
20 to 24 years	11,354	6.0
25 to 29 years	13,627	7.2
30 to 34 years	12,517	6.6
35 to 39 years	13,216	7.0
40 to 44 years	14,662	7.7
45 to 49 years	15,588	8.2
50 to 54 years	14,543	7.7
55 to 59 years	12,299	6.5
60 to 64 years	11,546	6.1
65 to 69 years	8,789	4.6
70 to 74 years	6,511	3.4
75 to 79 years	4,839	2.5
80 to 84 years	3,537	1.9
85 years and over	3,280	1.7
Median age (years)	40.2	( X )
16 years and over	155,897	82.1
18 years and over	150,894	79.4
21 years and over	144,206	75.9
62 years and over	33,732	17.8
65 years and over	26,956	14.2
<b>Male population</b>		
Under 5 years	4,917	2.6
5 to 9 years	5,398	2.8
10 to 14 years	5,976	3.1
15 to 19 years	6,184	3.3
20 to 24 years	5,781	3.0
25 to 29 years	7,019	3.7
30 to 34 years	6,417	3.4
35 to 39 years	6,608	3.5
40 to 44 years	7,296	3.8
45 to 49 years	7,829	4.1
50 to 54 years	7,314	3.8
55 to 59 years	6,003	3.2
60 to 64 years	5,533	2.9



Subject	Number	Percent
65 to 69 years	4,045	2.1
70 to 74 years	3,045	1.6
75 to 79 years	2,248	1.2
80 to 84 years	1,483	0.8
85 years and over	1,164	0.6
Median age (years)	39.2	( X )
16 years and over	76,646	40.3
18 years and over	74,139	39.0
21 years and over	70,694	37.2
62 years and over	15,173	8.0
65 years and over	11,985	6.3
Female population	95,732	50.4
Under 5 years	4,748	2.5
5 to 9 years	5,068	2.7
10 to 14 years	5,529	2.9
15 to 19 years	5,860	3.1
20 to 24 years	5,573	2.9
25 to 29 years	6,608	3.5
30 to 34 years	6,100	3.2
35 to 39 years	6,610	3.5
40 to 44 years	7,366	3.9
45 to 49 years	7,759	4.1
50 to 54 years	7,229	3.8
55 to 59 years	6,296	3.3
60 to 64 years	6,015	3.2
65 to 69 years	4,744	2.5
70 to 74 years	3,466	1.8
75 to 79 years	2,591	1.4
80 to 84 years	2,054	1.1
85 years and over	2,116	1.1
Median age (years)	41.2	( X )
16 years and over	79,251	41.7
18 years and over	76,726	40.4
21 years and over	73,512	38.7
62 years and over	18,559	9.8
65 years and over	14,971	7.9
<b>RACE</b>		
Total population	189,992	100.0
One Race	181,364	95.5
White	145,661	76.7
Black or African American	1,813	1.0
American Indian and Alaska Native	992	0.5
Asian	21,070	11.1
Asian Indian	967	0.5
Chinese	3,718	2.0
Filipino	2,474	1.3
Japanese	2,953	1.6
Korean	1,610	0.8
Vietnamese	7,585	4.0
Other Asian [1]	1,763	0.9
Native Hawaiian and Other Pacific Islander	635	0.3
Native Hawaiian	183	0.1
Guamanian or Chamorro	105	0.1
Samoan	195	0.1

Subject	Number	Percent
Other Pacific Islander [2]	152	0.1
Some Other Race	11,193	5.9
Two or More Races	8,628	4.5
White; American Indian and Alaska Native [3]	1,350	0.7
White; Asian [3]	3,495	1.8
White; Black or African American [3]	561	0.3
White; Some Other Race [3]	1,458	0.8
Race alone or in combination with one or more other races: [4]		
White	153,515	80.8
Black or African American	2,774	1.5
American Indian and Alaska Native	2,759	1.5
Asian	25,619	13.5
Native Hawaiian and Other Pacific Islander	1,578	0.8
Some Other Race	13,128	6.9
HISPANIC OR LATINO		
Total population	189,992	100.0
Hispanic or Latino (of any race)	32,411	17.1
Mexican	25,139	13.2
Puerto Rican	844	0.4
Cuban	633	0.3
Other Hispanic or Latino [5]	5,795	3.1
Not Hispanic or Latino	157,581	82.9
HISPANIC OR LATINO AND RACE		
Total population	189,992	100.0
Hispanic or Latino	32,411	17.1
White alone	18,021	9.5
Black or African American alone	178	0.1
American Indian and Alaska Native alone	460	0.2
Asian alone	278	0.1
Native Hawaiian and Other Pacific Islander alone	40	0.0
Some Other Race alone	10,798	5.7
Two or More Races	2,636	1.4
Not Hispanic or Latino	157,581	82.9
White alone	127,640	67.2
Black or African American alone	1,635	0.9
American Indian and Alaska Native alone	532	0.3
Asian alone	20,792	10.9
Native Hawaiian and Other Pacific Islander alone	595	0.3
Some Other Race alone	395	0.2
Two or More Races	5,992	3.2
RELATIONSHIP		
Total population	189,992	100.0
In households	189,102	99.5
Householder	74,285	39.1
Spouse [6]	36,729	19.3
Child	51,921	27.3
Own child under 18 years	35,157	18.5
Other relatives	10,969	5.8
Under 18 years	3,188	1.7
65 years and over	1,953	1.0
Nonrelatives	15,198	8.0
Under 18 years	737	0.4
65 years and over	624	0.3
Unmarried partner	4,890	2.6
In group quarters	890	0.5



Subject	Number	Percent
Institutionalized population	403	0.2
Male	145	0.1
Female	258	0.1
Noninstitutionalized population	487	0.3
Male	204	0.1
Female	283	0.1
<b>HOUSEHOLDS BY TYPE</b>		
Total households	74,285	100.0
Family households (families) [7]	48,218	64.9
With own children under 18 years	20,004	26.9
Husband-wife family	36,729	49.4
With own children under 18 years	14,951	20.1
Male householder, no wife present	3,804	5.1
With own children under 18 years	1,589	2.1
Female householder, no husband present	7,685	10.3
With own children under 18 years	3,454	4.6
Nonfamily households [7]	26,067	35.1
Householder living alone	18,489	24.9
Male	8,298	11.2
65 years and over	1,856	2.5
Female	10,191	13.7
65 years and over	4,671	6.3
Households with individuals under 18 years	21,922	29.5
Households with individuals 65 years and over	19,451	26.2
Average household size	2.55	(X)
Average family size [7]	3.07	(X)
<b>HOUSING OCCUPANCY</b>		
Total housing units	78,003	100.0
Occupied housing units	74,285	95.2
Vacant housing units	3,718	4.8
For rent	1,694	2.2
Rented, not occupied	94	0.1
For sale only	522	0.7
Sold, not occupied	142	0.2
For seasonal, recreational, or occasional use	884	1.1
All other vacants	382	0.5
Homeowner vacancy rate (percent) [8]	1.1	(X)
Rental vacancy rate (percent) [9]	5.4	(X)
<b>HOUSING TENURE</b>		
Occupied housing units	74,285	100.0
Owner-occupied housing units	44,914	60.5
Population in owner-occupied housing units	115,470	(X)
Average household size of owner-occupied units	2.57	(X)
Renter-occupied housing units	29,371	39.5
Population in renter-occupied housing units	73,632	(X)
Average household size of renter-occupied units	2.51	(X)

X Not applicable.

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

[3] One of the four most commonly reported multiple-race combinations nationwide in Census 2000.

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six

percentages may add to more than 100 percent because individuals may report more than one race.

[5] This category is composed of people whose origins are from the Dominican Republic, Spain, and Spanish-speaking Central or South American countries. It also includes general origin responses such as "Latino" or "Hispanic."

[6] "Spouse" represents spouse of the householder. It does not reflect all spouses in a household. Responses of "same-sex spouse" were edited during processing to "unmarried partner."

[7] "Family households" consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.

[8] The homeowner vacancy rate is the proportion of the homeowner inventory that is vacant "for sale." It is computed by dividing the total number of vacant units "for sale only" by the sum of owner-occupied units, vacant units that are "for sale only," and vacant units that have been sold but not yet occupied; and then multiplying by 100.

[9] The rental vacancy rate is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units "for rent" by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied; and then multiplying by 100.

Source: U.S. Census Bureau, 2010 Census.



# **EXHIBIT 4**



DP-1

Profile of General Population and Housing Characteristics: 2010  
2010 Demographic Profile Data

NOTE: For more information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/dpsf.pdf>.

Geography: Sunset Beach CDP, California

Subject	Number	Percent
<b>SEX AND AGE</b>		
Total population	971	100.0
Under 5 years	25	2.6
5 to 9 years	29	3.0
10 to 14 years	25	2.6
15 to 19 years	47	4.8
20 to 24 years	52	5.4
25 to 29 years	68	7.0
30 to 34 years	54	5.6
35 to 39 years	62	6.4
40 to 44 years	76	7.8
45 to 49 years	67	9.0
50 to 54 years	90	9.3
55 to 59 years	87	9.0
60 to 64 years	101	10.4
65 to 69 years	54	5.6
70 to 74 years	30	3.1
75 to 79 years	32	3.3
80 to 84 years	15	1.5
85 years and over	17	1.8
Median age (years)	46.9	( X )
16 years and over		
18 years and over	885	91.1
21 years and over	865	89.1
62 years and over	533	55.8
65 years and over	208	21.4
	148	15.2
<b>Male population</b>		
Under 5 years	530	54.6
5 to 9 years	17	1.8
10 to 14 years	20	2.1
15 to 19 years	11	1.1
20 to 24 years	28	2.9
25 to 29 years	27	2.8
30 to 34 years	40	4.1
35 to 39 years	33	3.4
40 to 44 years	43	4.4
45 to 49 years	40	4.1
50 to 54 years	49	5.0
55 to 59 years	52	5.4
60 to 64 years	41	4.2
	50	5.1



Subject	Number	Percent
65 to 69 years	32	3.3
70 to 74 years	17	1.8
75 to 79 years	19	2.0
80 to 84 years	5	0.5
85 years and over	6	0.6
Median age (years)	45.6	( X )
16 years and over	478	49.2
18 years and over	487	48.1
21 years and over	446	45.9
62 years and over	110	11.3
65 years and over	79	8.1
Female population	441	45.4
Under 5 years	8	0.8
5 to 9 years	9	0.9
10 to 14 years	14	1.4
15 to 19 years	19	2.0
20 to 24 years	25	2.6
25 to 29 years	28	2.9
30 to 34 years	21	2.2
35 to 39 years	39	4.0
40 to 44 years	36	3.7
45 to 49 years	38	3.9
50 to 54 years	38	3.9
55 to 59 years	46	4.7
60 to 64 years	51	5.3
65 to 69 years	22	2.3
70 to 74 years	13	1.3
75 to 79 years	13	1.3
80 to 84 years	10	1.0
85 years and over	11	1.1
Median age (years)	48.8	( X )
16 years and over	407	41.9
18 years and over	398	41.0
21 years and over	387	39.9
62 years and over	98	10.1
65 years and over	69	7.1
<b>RACE</b>		
Total population	971	100.0
One Race	935	96.3
White	863	88.9
Black or African American	4	0.4
American Indian and Alaska Native	6	0.6
Asian	42	4.3
Asian Indian	7	0.7
Chinese	1	0.1
Filipino	7	0.7
Japanese	8	0.8
Korean	6	0.6
Vietnamese	6	0.6
Other Asian [1]	7	0.7
Native Hawaiian and Other Pacific Islander	2	0.2
Native Hawaiian	0	0.0
Guamanian or Chamorro	2	0.2
Samoaan	0	0.0

Subject	Number	Percent
Other Pacific Islander [2]	0	0.0
Some Other Race	18	1.9
Two or More Races	36	3.7
White; American Indian and Alaska Native [3]	14	1.4
White; Asian [3]	14	1.4
White; Black or African American [3]	0	0.0
White; Some Other Race [3]	3	0.3
Race alone or in combination with one or more other races: [4]		
White	897	92.4
Black or African American	6	0.6
American Indian and Alaska Native	22	2.3
Asian	59	6.1
Native Hawaiian and Other Pacific Islander	5	0.5
Some Other Race	21	2.2
HISPANIC OR LATINO		
Total population	971	100.0
Hispanic or Latino (of any race)	79	8.1
Mexican	64	6.6
Puerto Rican	0	0.0
Cuban	3	0.3
Other Hispanic or Latino [5]	12	1.2
Not Hispanic or Latino	892	91.9
HISPANIC OR LATINO AND RACE		
Total population	971	100.0
Hispanic or Latino	79	8.1
White alone	50	5.1
Black or African American alone	0	0.0
American Indian and Alaska Native alone	0	0.0
Asian alone	2	0.2
Native Hawaiian and Other Pacific Islander alone	0	0.0
Some Other Race alone	14	1.4
Two or More Races	13	1.3
Not Hispanic or Latino	892	91.9
White alone	813	83.7
Black or African American alone	4	0.4
American Indian and Alaska Native alone	6	0.6
Asian alone	40	4.1
Native Hawaiian and Other Pacific Islander alone	2	0.2
Some Other Race alone	4	0.4
Two or More Races	23	2.4
RELATIONSHIP		
Total population	971	100.0
In households	971	100.0
Householder	515	53.0
Spouse [6]	179	18.4
Child	146	15.0
Own child under 18 years	93	9.6
Other relatives	38	3.9
Under 18 years	12	1.2
65 years and over	5	0.5
Nonrelatives	93	9.6
Under 18 years	1	0.1
65 years and over	2	0.2
Unmarried partner	34	3.5
In group quarters	0	0.0



Subject	Number	Percent
Institutionalized population	0	0.0
Male	0	0.0
Female	0	0.0
Noninstitutionalized population	0	0.0
Male	0	0.0
Female	0	0.0
<b>HOUSEHOLDS BY TYPE</b>		
Total households	515	100.0
Family households (families) [7]	221	42.9
With own children under 18 years	60	11.7
Husband-wife family	179	34.8
With own children under 18 years	45	8.7
Male householder, no wife present	23	4.5
With own children under 18 years	7	1.4
Female householder, no husband present	19	3.7
With own children under 18 years	8	1.6
Nonfamily households [7]	294	57.1
Householder living alone	224	43.5
Male	131	25.4
65 years and over	21	4.1
Female	93	18.1
65 years and over	27	5.2
Households with individuals under 18 years	69	13.4
Households with individuals 65 years and over	114	22.1
Average household size	1.89	( X )
Average family size [7]	2.64	( X )
<b>HOUSING OCCUPANCY</b>		
Total housing units	641	100.0
Occupied housing units	515	80.3
Vacant housing units	126	19.7
For rent	30	4.7
Rented, not occupied	4	0.6
For sale only	10	1.6
Sold, not occupied	4	0.6
For seasonal, recreational, or occasional use	64	10.0
All other vacants	14	2.2
Homeowner vacancy rate (percent) [8]	4.4	( X )
Rental vacancy rate (percent) [9]	8.9	( X )
<b>HOUSING TENURE</b>		
Occupied housing units	515	100.0
Owner-occupied housing units	211	41.0
Population in owner-occupied housing units	455	( X )
Average household size of owner-occupied units	2.16	( X )
Renter-occupied housing units	304	59.0
Population in renter-occupied housing units	516	( X )
Average household size of renter-occupied units	1.70	( X )

X Not applicable.

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

[3] One of the four most commonly reported multiple-race combinations nationwide in Census 2000.

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six

percentages may add to more than 100 percent because individuals may report more than one race.

[5] This category is composed of people whose origins are from the Dominican Republic, Spain, and Spanish-speaking Central or South American countries. It also includes general origin responses such as "Latino" or "Hispanic."

[6] "Spouse" represents spouse of the householder. It does not reflect all spouses in a household. Responses of "same-sex spouse" were edited during processing to "unmarried partner."

[7] "Family households" consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.

[8] The homeowner vacancy rate is the proportion of the homeowner inventory that is vacant "for sale." It is computed by dividing the total number of vacant units "for sale only" by the sum of owner-occupied units, vacant units that are "for sale only," and vacant units that have been sold but not yet occupied; and then multiplying by 100.

[9] The rental vacancy rate is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units "for rent" by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied; and then multiplying by 100.

Source: U.S. Census Bureau, 2010 Census.



# **EXHIBIT 5**

[http://www.hidesertstar.com/news/article\\_daf9a1bc-d283-11e8-a0ca-4f3100ba516c.html](http://www.hidesertstar.com/news/article_daf9a1bc-d283-11e8-a0ca-4f3100ba516c.html)

## Fire fee passes; new charge to go on property tax bills

By Stacy Moore, Hi-Desert Star Oct 17, 2018

MORONGO BASIN — Property owners everywhere in the Morongo Basin except Morongo Valley will be charged \$157.26 per year for fire services under a plan approved 3-2 by the county board of supervisors at the end of a public hearing Tuesday.

The county fire department will expand one of its zones, FP-5, across most of San Bernardino County, bringing with it the annual \$157.26 fee, which can be raised up to 3 percent each year.

"It's bittersweet," Fire Chief Mark Hartwig said after the expansion was approved.

"I don't think you could listen to four hours of testimony and conversations with community members in the halls who clearly have a hardship and not be concerned for them," the chief said.

Hartwig acknowledged the fee is a bitter pill. "Nobody has an extra \$157.26 lying around that they want someone to come in and take."

In a Yucca Valley meeting in August, Hartwig told members of the public that the fire department might use some of its new revenue to move the fire station on Aberdeen Drive in Yucca Mesa closer to Twentynine Palms Highway in Yucca Valley.

Fire department spokeswoman Tracey Martinez said Wednesday no firm plans have been made.

"We will be looking at the computer model to make sure our response times are meeting the needs of the community and if it's necessary to move that station to better serve our community," Martinez said.

"We do things like that all the time. Communities grow, so it's necessary to continually make sure that our stations are placed in the right location."

No decision has been made yet, she said. "That station may not move, but it is important to note that at this time, the chief is not planning on closing that station."



### **3 percent protest new fee**

The fire district used a protest process to take a vote of property owners who would be affected. Property owners could download protest forms from the Internet and then mail them into the county. If a quarter of affected property owners who owned a quarter of the value of the affected land sent in protests, the FP-5 expansion would have to be approved by a public election. If half protested, it would be canceled outright.

Instead, just 3.2 percent of landowners sent in protest ballots, according to the company hired to count ballots.

The county sent more than 368,000 notices instructing landowners on how to protest. The county received 15,130 protest forms by the Tuesday deadline and 11,472 of those were verified.

That's about 3.2 percent of affected property owners, representing less than 2 percent of the assessed land value — far too little to trigger a public vote.

### **That doesn't seem fair**

Despite the low rate of return of ballots, the public hearing Tuesday was packed with citizens decrying the new fee and saying the voting process was rigged.

"You have selected the most unfair way to assess this tax," Celeste Doyle, of Joshua Tree, said. "A flat tax per parcel, regardless of value or proximity of services, is just bogus.

"You have also selected the most difficult way for the property owners to resist this imposed tax," she said.

"The protest form was not included in the notices; you need a printer, a computer and internet access to get it and there's a time limitation here."

"They made the assumption that everybody could get the form off the internet and that was really unreasonable," agreed Claudia Sall, of Pioneertown. "It should have been provided with the mailing."

Other speakers said they own several pieces of undeveloped land and the cost of the annual fee on each parcel outweighs the value of the property.

"You're asking me to pay \$157 per parcel on pieces of ground that have no value," said Ron Clark.

"The guy with the million-dollar home is going to be paying a much smaller percentage than the guy with the \$15,000 piece of property. That doesn't seem fair."

### **Chief told he can't rely on general fund**

Hartwig said the new fee is needed because the fire department runs over budget every year and has relied on the county board of supervisors to fill the gap using money from the general fund. Last year, the deficit was \$11.9 million.

Hartwig said the fire department with its many zones and fees was created by the Local Agency Formation Commission in 2003. Commission leaders acknowledge they knew it would never take in enough money to survive unless the county board of supervisors filled in shortfalls from the general fund — or if citizens approved a new property tax.

But when he was appointed fire chief, he said, he was told to come up with a way to stop relying on money from the general fund each year.

"The CEO, as I sat with him when I was appointed and we discussed goals ... the biggest priority was to find a way to live with the revenue the fire district produces — in other words, to find a way off the general fund," Hartwig said in a phone interview Wednesday.

Josie Gonzales, supervisor for the 5th District, made her position clear on the general fund spending during Tuesday's hearing.

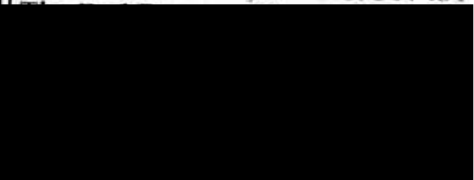
"I need to make it perfectly clear that as far as I am concerned, I will no longer support San Bernardino County fire receiving financial assistance from the general fund," she said.

If the fire department had to operate on the revenue it gets today, Hartwig told the board he would have to close more stations, which would add anything from minutes to hours to response times.

The projected revenue from this charge is about \$27 million per year. The fee could be increased by as much as 3 percent each year by a vote of the board of supervisors.



1 SEAN K. WADE, Bar No. 317431



2  
3  
4 Attorney for The Red Brennan Group, Lucerne Valley  
5 Economic Development Association, Johnson Valley  
6 Improvement Association, Homestead Valley Community  
7 Council, Mentone Chamber of Commerce, Henry E.  
8 Hallmark, Kristine E. Hallmark and Eric H. Steinmann

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO - SAN BERNARDINO DISTRICT

10  
11 THE RED BRENNAN GROUP;  
12 LUCERNE VALLEY ECONOMIC  
13 DEVELOPMENT ASSOCIATION;  
14 JOHNSON VALLEY IMPROVEMENT  
15 ASSOCIATION; HOMESTEAD  
16 VALLEY COMMUNITY COUNCIL;  
17 MENTONE CHAMBER OF  
18 COMMERCE; HENRY E. HALLMARK;  
19 KRISTINE E. HALLMARK; ERIC H.  
20 STEINMANN;

21 Plaintiffs,

22 vs.

23 THE BOARD OF SUPERVISORS OF  
24 SAN BERNARDINO COUNTY; THE  
25 BOARD OF SUPERVISORS OF SAN  
26 BERNARDINO COUNTY FIRE  
27 PROTECTION DISTRICT; and DOES 1-  
28 10;

Defendants.

Case No. CIV DS 1826559

**DECLARATION OF TOM MURPHY IN  
SUPPORT MOTION FOR PRELIMINARY  
INJUNCTION**

Dept.: S30

Judge: Hon. Brian S. McCarville

Hearing Date: December 20, 2018

Time: 8:30 AM

Action Filed: October 11, 2018

Trial Date: Not Yet Set

**DECLARATION OF TOM MURPHY**

I, TOM MURPHY, declare:

1           1.       I, TOM MURPHY, am President of The Red Brennan Group. The Red Brennan  
2 Group is a 501(c)(4) organization dedicated to promoting more efficient governance in  
3 California cities and counties.

4           2.       I have personal knowledge of the facts stated herein and, if called to testify could  
5 and would competently testify thereto.

6           3.       Plaintiffs Henry E. Hallmark and Kristine E. Hallmark are residents of San  
7 Bernardino County and informed me that they were sent a Notice of Hearing by Defendants  
8 informing them of their right to protest the FP-5 expansion.

9           4.       In response to a social media post by The Red Brennan Group, the Plaintiffs  
10 contacted The Red Brennan Group seeking information on how they could help in efforts to  
11 protest this new unconstitutional special tax. This declaration is submitted in support of  
12 Plaintiffs' Motion for Preliminary Injunction.

13           5.       According to the Board of Director's meeting agenda posted online, during the  
14 June 12, 2018 budget presentation to the San Bernardino County Board of Supervisors  
15 ("Board"), the San Bernardino County Fire District ("Fire District") proposed expanding the  
16 boundaries of the fifth FP service zone ("FP-5") to include all unincorporated areas of San  
17 Bernardino County as well as some incorporated areas. This would add approximately  
18 12,207,306 acres or 19,073 square miles according to Attachment A produced by the County  
19 which describes the territories to be included in FP-5.

20           6.       According to the Board's online meeting materials, they act as the governing  
21 body of the Fire District. The Board controls the Fire District and the same individuals comprise  
22 both boards. As such, the same individuals comprise both entities and both entities are  
23 controlled by the same individuals.

24           7.       I watched the video listed on the Fire District's website entitled "FP-5  
25 Presentation by Fire Chief Mark Hartwig" ("Hartwig Video"). The Hartwig Video is available  
26 at the following URL: <https://www.sbcfire.org/ServiceZoneFP-5.aspx>. This video is also hosted  
27 on YouTube at the following URL: <https://www.youtube.com/watch?v=2X7jXJWQvuA>. The  
28



1 purpose of this video is to inform affected landowners about the proposed expansion of service  
2 zone FP-5.

3 8. In the Hartwig Video, Hartwig makes multiple statements about why funding is  
4 needed for the expansion of boundaries for service zone FP-5. Throughout the video it is made  
5 clear that the Fire District's costs are continuing to rise but revenue is not meeting the rising  
6 costs.

7 9. At time mark 4:44 in the Hartwig Video, Hartwig makes the following statement:  
8 "The County of San Bernardino, even though they have no legal requirement to provide funding  
9 to the District, they actually provide additional funding to the district on top of the property  
10 taxes that we receive in the grey area and the assessment revenue we receive in the mauve areas  
11 on the map."

12 10. One of the slides used in the Hartwig Video, visible at 9:29 in the video states  
13 that: "The services currently provided by the County Fire District are primarily funded through:  
14 property taxes and contract revenue; 10 separate service zones (FP 1—6 and PM 1-4); MOU  
15 with the County of San Bernardino for service "enhancements." The Fire Chief states at 9:55 in  
16 the video that: "We call that an MOU with the County. A memorandum of understanding. Some  
17 people call it a contract." At 11:15 in the video, the Fire Chief states that the MOU for service  
18 enhancements is a "major part" of their funding.

19 11. At 20:00 in the Hartwig Video, Hartwig states that if the service zone expansion  
20 is not approved then the Fire District will pursue other avenues to meet the revenue deficit such  
21 as special taxes, general taxes and sales taxes.

22 12. The Fire District is seeking to cover its budget deficit by imposing a parcel tax of  
23 \$157.26 per year, per parcel, on all unincorporated land in specifically outlined areas within the  
24 County of San Bernardino.

25 13. The Fire District does not state how the additional revenue to be obtained from  
26 taxpayers will be spent and has instead used vague aggregate indicators such as "staffing  
27 expenses" and "other operating expenses" to justify why new funding is needed.  
28

1           14.     Affected landowners are being told this proposed expansion and new tax levy are  
2 needed, but have not been given specifics as to where their money is being spent or why the  
3 budget seems to continuously increase at such a high rate.

4           15.     It appears not all relevant information is being provided in the campaigning  
5 efforts being put forth by the County such as Hartwig Video. Because of this, affected  
6 landowners have no way of discerning what the relevant facts are and, instead, must defer to  
7 officials in uniform acting under color of authority telling the landowners only what the public  
8 officials believe those landowners need to know at various local presentations campaigning for  
9 the service zone expansion.

10          16.     The fact that the County did not make any effort to take live questions, but only  
11 took written questions at their campaign presentations where Fire Chief Mark Hartwig was  
12 speaking, does a great disservice to the voters and leaves them wanting for more information  
13 that only his organization and other County entities could provide.

14          17.     This newly proposed levy is an expansion of a special tax which must be  
15 approved by a two-thirds vote of the electorate, which would make the adoption and  
16 implementation of this parcel tax through Board resolution contrary to the provisions in the  
17 California Constitution.

18          18.     Even though some or all of the affected landowners were sent notice through  
19 mail of the public hearing regarding the proposed FP-5 service zone expansion, many affected  
20 landowners I spoke with informed me that they did not receive a copy of the protest form.  
21 Instead, according to the Notice of Hearing, affected landowners needed to either download the  
22 forms online or contact "211" to obtain the required protest forms.

23          19.     211 appears to be a County specific service. When I called 211 on September 19,  
24 2018 from my San Diego area code, the call center was unfamiliar with the FP-5 topic. The call  
25 center was unable to help in any way. Upon my prompt asking for a way to contact San  
26 Bernardino County 211, I was provided a toll-free number specific to San Bernardino County.

27          20.     Once I called this new number, which was different from just dialing 211 as  
28 stated on the County's Notice of Hearing, I requested a protest form for FP-5.



1           21.     Several days after my call to San Bernardino County 211, an envelope arrived  
2 via U.S. Mail. I received this envelope on September 27, 2018. The return address was stamped  
3 with a United Way Logo and address. "FP-5" was handwritten over the top of the United Way  
4 return address. A protest form was contained within the envelope.

5           22.     The protest process adopted by the County is materially defective and does not  
6 give proper representation to all affected landowners who want to protest the imposition of this  
7 new special tax.

8           23.     The protest process implemented by the County does not give affected  
9 landowners the ability to vote on the special tax being implemented by the Fire District.

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

12           DATE  
13           11/14/2018



Tom Murphy

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