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12 Attorneys for Plaintiffs and Petitioners

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SAN FRANCISCO

16 LUCKY CHANCES, INC.; V C CARDROOM,
INC.; HALCYON GAMING, LLC; PACIFIC
17 GAMING SERVICES, LLC; BJ GAMING,
LLC; FORTUNE PLAYERS GROUP, INC.;
18 GOLD GAMING CONSULTANTS, INC.;
CERTIFIED PLAYERS, INC.; LE GAMING,
19 INC.; and RHINO GAMING INC., on their
20 own behalf and on behalf of those similarly
situated,

21 Plaintiffs and Petitioners,

22 vs.

23 THE STATE OF CALIFORNIA;
CALIFORNIA GAMBLING CONTROL
24 COMMISSION; BUREAU OF GAMBLING
CONTROL, A DIVISION OF THE
25 CALIFORNIA DEPARTMENT OF JUSTICE;
FIONA MA, in her official capacity as the State
26 Treasurer; and DOES 1 through 20, Inclusive,

27 Defendants and Respondents.
28

FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

MAY 18 2020

CLERK OF THE COURT

by Angelica Sunga
Deputy Clerk

ANGELICA SUNGA

Case No. **CPF-20-517086**

CLASS ACTION

CLASS ACTION PETITION AND
COMPLAINT FOR (1) WRIT OF MANDATE,
(2) DECLARATORY AND INJUNCTIVE
RELIEF, (3) MONEY HAD AND RECEIVED,
(4) UNJUST ENRICHMENT, (5) VIOLATION
OF THE CALIFORNIA CONSTITUTION,
AND (6) ACCOUNTING

Judge:
Department:

BY FAX

1 Plaintiffs and Petitioners Lucky Chances, Inc., V C Cardroom, Inc., Halcyon Gaming,
2 LLC, Pacific Gaming Services, LLC, BJ Gaming, LLC, Fortune Players Group, Inc., Gold
3 Gaming Consultants, Inc., Certified Players, Inc., LE Gaming Inc., and Rhino Gaming Inc.
4 (together, “Plaintiffs”), on their own behalf and on behalf of those similarly situated, demanding a
5 jury trial for any issue triable by a jury, allege:

6 INTRODUCTION

7 1. This case arises from unlawful and invalid fees that Defendants and Respondents
8 California Gambling Control Commission (the “Commission”) and the Bureau of Gambling
9 Control, a division of the California Department of Justice (the “Bureau” and together with the
10 Commission, “Defendants”), collected, and continue to collect, from Plaintiffs and those similarly
11 situated in connection with the licensing and/or regulation of (1) gaming businesses referred to as
12 card rooms, and (2) certain service providers for the card rooms referred to as third-party providers
13 of proposition player services (“proposition player providers”).

14 2. Plaintiffs are each California card rooms or proposition player providers that pay,
15 or have paid, fees to Defendants. Pursuant to state statute and regulation, card rooms and
16 proposition player providers are subject to significant licensing and regulatory fees that ostensibly
17 support the Commission and Bureau’s activities. (*See* Bus. & Prof. Code §§ 19951, 19984; 4
18 C.C.R. § 12200.20.) In aggregate, those fees have amounted to more than twenty million dollars a
19 year for each of the last five years.

20 3. At the direction of the Joint Legislative Audit Committee, the Auditor of the State
21 of California (the “Auditor”) conducted an audit of the Commission and Bureau beginning in or
22 around 2018 which addressed these fees and Defendants’ operations more broadly. On May 16,
23 2019, the Auditor issued a written report summarizing the findings of that audit. That report,
24 entitled “Bureau of Gambling Control and California Gambling Control Commission: Their
25 Licensing Processes Are Inefficient and Foster Unequal Treatment of Applicants” (the “Report”),
26 offered—for the first time—a sharp critique of Defendants’ operations and fee practices.

27 4. Among other things, the Report found that the Commission and Bureau operated in
28 an inefficient manner that compounded backlogs in licensing applications for card rooms and

1 proposition player providers. Further, the Report concluded that Defendants' regulations and
2 practices had resulted in unequal treatment of licensing applicants.

3 5. The Report also found that the licensing and regulatory fees that Defendants
4 charged, and continue to charge, did not remotely align with the Bureau and Commission's
5 regulatory costs. To the contrary, the Auditor concluded that Defendants' fees in the aggregate far
6 exceed Defendants' actual or reasonable costs of conducting their regulatory and licensing
7 functions. As a result, the California state budget fund from which Defendants receive funding for
8 operations (the "Gambling Control Fund") has accumulated nearly \$100 million, in excess of
9 amounts authorized by law, which is bankrolled by fees paid by Plaintiffs and others similarly
10 situated. Further, the Report found that Defendants have improperly used surpluses in fees that
11 are supposed to be designated for one activity (general regulatory activity) to offset deficits for
12 another activity (licensing activity). In addition, the State of California has borrowed at least \$29
13 million of these unlawful and excess fees—paid by Plaintiffs and others similarly situated—to
14 fund the State's general operations and obligations. The Auditor concluded:

15 [N]either the [B]ureau nor the [C]ommission has addressed the fact that the fees
16 they charge do not align with their costs for providing oversight. Such
17 misalignment has contributed to an excessive surplus in the Gambling Control
18 Fund and *may call into question the legality of some fees*. (Report, Cover Letter
(emphasis added).)

19 6. Under California law, if amounts charged as purported regulatory fees exceed the
20 costs of the regulatory activity for which they are charged, or if the reasonable costs of that
21 regulatory activity are not shown to be allocated to fee payors in a manner which bears a fair and
22 reasonable relationship to the fee payors' burdens or benefits from the regulatory activity, then the
23 fees are not valid or lawful as "regulatory fees" and should be viewed as *taxes*, subject to
24 California's constitutional constraints. As the Report summarized in analyzing the Commission
25 and Bureau, "When an agency uses regulatory fees to subsidize different activities because the fee
26 structure for those activities is inadequate, the regulatory fees may be serving as taxes rather than
27 regulatory fees—*which is unlawful*." (Report, p. 35 (emphasis added).)

28 ///

1 13. Plaintiff Fortune Players Group, Inc. is a California corporation that operates, or
2 operated, a proposition player provider located in Daly City, California.

3 14. Plaintiff Gold Gaming Consultants, Inc. is a California corporation that operates, or
4 operated, a proposition player provider located in Elk Grove, California.

5 15. Plaintiff Certified Players, Inc. is a California corporation that operates, or
6 operated, a proposition player provider located in Anaheim, California.

7 16. Plaintiff L.E. Gaming Inc. is a California corporation that operates, or operated, a
8 proposition player provider located in Anaheim, California.

9 17. Plaintiff Rhino Gaming, Inc. is a California corporation that operates, or operated, a
10 proposition player provider located in Anaheim, California.

11 18. Defendant State of California is a state of the United States of America.

12 19. The Commission is an independent state regulatory commission that focuses on
13 gambling establishments and proposition player providers. The Commission is responsible for
14 setting policy, establishing regulations, making determinations of suitability for gaming
15 employees and other persons in the gambling industry, issuing licenses to gaming establishments,
16 and administering the provisions of the Gambling Control Act, Business & Professions Code
17 sections 19800, *et seq.*

18 20. The Bureau is a division of the California Department of Justice with special
19 jurisdiction over activities within the State. Relevant to this litigation, the Bureau receives
20 applications for card room and proposition player providers licensing, collects fees, and conducts
21 investigations and audits in connection with those applications. The Bureau then transmits
22 recommendations to the Commission regarding whether a person should be licensed. The
23 Commission acts on these recommendations.

24 21. Defendant Fiona Ma, named in her official capacity, is the California State
25 Treasurer. The Gambling Control Fund at issue in this litigation is a fund in the State Treasury.

26 JURISDICTION AND VENUE

27 22. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
28 sections 1085, 1060, 526, and 527, and Government Code section 814.

1 23. Venue is proper in this Court as this action seeks relief against the Commission, an
2 independent state agency, and the Bureau, which is a division of the Department of Justice. (Code
3 of Civ. Proc. § 401; Gov't Code § 955.)

4 **COMMON ALLEGATIONS**

5 *Gaming and Fees*

6 24. California law authorizes a limited number of cards rooms not located on tribal
7 lands. Plaintiffs Lucky Chances, Inc. and V C Cardroom, Inc. operate, or operated, such card
8 rooms.

9 25. Per state law, those card rooms may not have a financial stake in the outcome of the
10 card games played on their premises. This limits the types of games that card rooms can offer.
11 The limitation has given rise to proposition player providers that are permitted to provide certain
12 services to card rooms pursuant to state law. Those companies provide third-party players who
13 participate in card room games with a rotating player-dealer position. A third-party player sits at
14 each table to pay players that win and collect from players that lose. (See Bus. & Prof. Code
15 § 19984(a).) All Plaintiffs other than Lucky Chances, Inc. and V C Cardroom, Inc. are proposition
16 player providers.

17 26. The Gambling Control Act authorizes fees in an amount "sufficient to enable the
18 [Department of Justice] and the [C]ommission to fully carry out their duties and responsibilities"
19 under that Act. (Bus. & Prof. Code § 19951(g).) The State Legislature enacted some of the fees,
20 and the Commission promulgated some of the fees in reliance on authority granted by the State
21 Legislature in the Gambling Control Act. Funds collected are deposited in the Gambling Control
22 Fund, which is a fund in the State Treasury. (Bus. & Prof. Code § 19950.)

23 27. The fees that Defendants collect can generally be broken into two categories:
24 (1) licensing fees and (2) regulatory fees.

25 28. The licensing fees ("Licensing Fees") include (1) nonrefundable, flat fees collected
26 with each initial or renewal application for a license or permit needed in connection with the
27 operation of a card room business or proposition player provider business, (Bus. & Prof. Code
28 § 19951(a); 4 C.C.R. § 12008(a)), and (2) refundable background investigation deposits that "will

1 be adequate to pay the anticipated costs and charges incurred in the investigation and processing
2 of the application.” (Bus. & Prof. Code § 19867(a); 11 C.C.R. § 2037 (schedule of investigation
3 fees and processing costs).) Certain Licensing Fees were revised by the State Legislature through
4 Assembly Bill 1620 (“A.B. 1620”) during the 2005-2006 Regular Session. That bill passed by a
5 vote of 22 ayes to 12 noes in the state Senate, and 43 ayes to 31 noes in the state Assembly, which
6 does not constitute a supermajority in either body.

7 29. Separately, Defendants have also collected, and continue to collect, annual
8 regulatory fees (the “Regulatory Fees”) for purposes of funding Defendants’ non-licensing
9 regulatory activities.

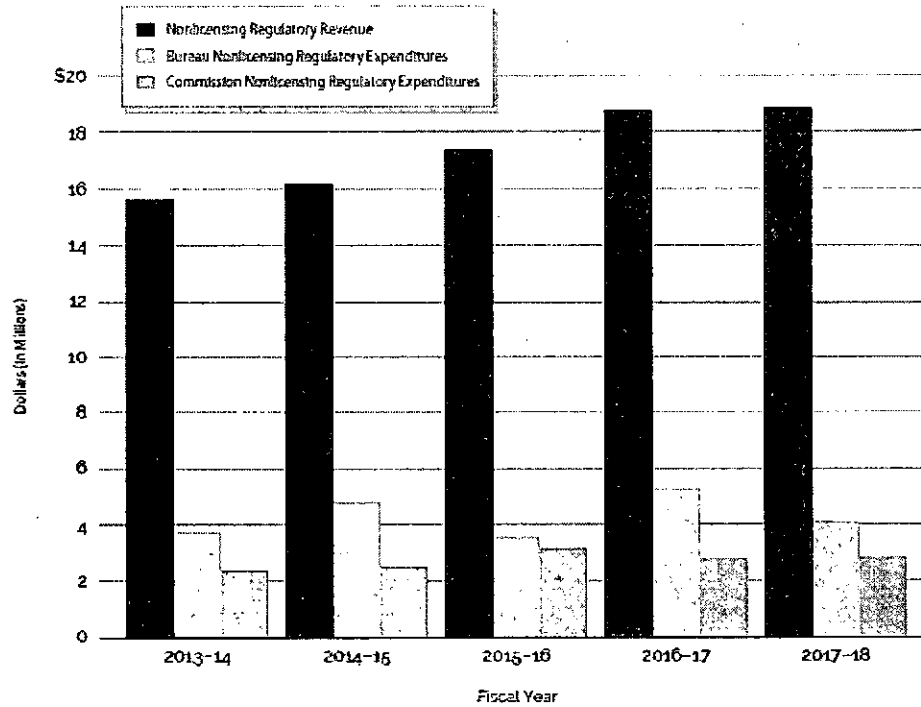
10 a. **Card rooms:** With respect to card rooms, the Regulatory Fees are tied
11 either to the number of gaming tables that a card room operates or the gross revenues that a card
12 room receives during the prior fiscal year. (Bus. & Prof. Code § 19951(c), (d).) Like the
13 Licensing Fees, the State Legislature set the Regulatory Fee schedule for card rooms via A.B.
14 1620 without the votes of a supermajority of either the Senate or Assembly.

15 b. **Proposition player providers:** With respect to Regulatory Fees imposed on
16 proposition player providers, Business and Professions Code section 19984 authorizes annual
17 “reasonable fees and deposits as necessary to defray the costs of providing [the] regulation and
18 oversight.” (Bus. & Prof. Code § 19984(c).) Pursuant to regulation issued by the Commission in
19 2004, the annual Regulatory Fees for proposition player providers are calculated based on the
20 number of registrants or licensees affiliated with the primary owner. (4 C.C.R. § 12200.20.)

21 30. Based on these provisions, Defendants collect significant amounts of Licensing
22 Fees and Regulatory Fees on an annual basis from card rooms and proposition player providers.
23 In the 2018-2019 period alone, for example, Plaintiffs allege on information and belief that
24 Defendants had fee revenues in excess of \$23 million. Failure to pay the Licensing Fees may
25 result in a denial of a necessary licensing application. (Bus. & Prof. Code § 19951(a); 4 C.C.R.
26 § 12008(a).) Failure to pay the annual Regulatory Fees may result in the closure of a card room or
27 proposition player provider. (Bus. & Prof. Code § 19955; 4 C.C.R. § 12200.18.)

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Nonlicensing Regulatory Fees Significantly Overcharge for the Activities They Fund



Source: Gambling Fund condition statements, fiscal years 2013-14 through 2017-18; fiscal year 2017-18 commission budget change proposal; fiscal year 2018-19 bureau budget change proposal; and analysis of staffing documentation.

15 35. Plaintiffs are informed and believe, and based thereon allege, that the Auditor’s
 16 conclusions reached in accordance with generally accepted government auditing standards are
 17 correct and accurate. In written responses attached in the appendix of the Report, neither the
 18 Commission nor the Bureau disputed that the Regulatory Fees that they collected significantly
 19 exceeded the reasonable costs of the regulatory activities that the Regulatory Fees are supposed to
 20 fund. Further, as a result of the Report, Plaintiffs now are informed and believe that the
 21 Commission and Bureau have been collecting Regulatory Fees that significantly exceed the
 22 reasonable costs of the regulatory activities that the Regulatory Fees are supposed to fund since
 23 2004, when the Commission and Bureau began first collecting Regulatory Fees from proposition
 24 player providers.

25 36. Separately, the Auditor also determined that the Licensing Fees that the
 26 Commission and Bureau collected were insufficient to cover the agencies’ licensing expenditures.
 27 Instead of obtaining a lawful increase in Licensing Fees, the Commission and Bureau have
 28 apparently applied Regulatory Fees to cover licensing expenditures. The excessive Regulatory

1 Fees that the agencies collected, and continue to collect, have more than covered the shortfall in
2 Licensing Fees, and are causing the Gambling Control Fund's balance to continue to increase.
3 The Gambling Control Fund's ending balance for the fiscal year 2013-2014 was approximately
4 \$30 million. By the end of fiscal year 2017-2018, the balance was \$61 million. The Auditor's
5 Report estimated that the Gambling Control Fund's balance would grow to more than \$97 million
6 by mid-2020. The Auditor noted that this was "a surplus of more than five times the [B]ureau's
7 and [C]ommission's projected annual expenditures." (Report, p. 35.)

8 37. The Gambling Control Fund's bloated balance, consisting of the fees that Plaintiffs
9 and others similarly situated paid, and continue to pay, were improperly used for purposes other
10 than Commission and Bureau oversight costs. For example, in 2008 and 2011, California's
11 General Fund received "loans" from the Gambling Control Fund totaling approximately \$29
12 million. Plaintiffs have not been able to determine whether and how these "loans" were properly
13 authorized or documented.

14 38. Despite this fact, Defendants continue to collect the Licensing Fees and Regulatory
15 Fees, and continue to require Plaintiffs and others similarly situated to pay such fees to avoid
16 suspension or closure of their businesses if those fees are not paid.

17 *Defendants' Regulatory "Fees" Are Unlawful And Unauthorized Taxes*

18 39. Valid fees charged in connection with regulatory activities include fees which "do
19 not exceed the reasonable cost of providing services necessary to the activity for which the fee is
20 charged and which are not levied for unrelated revenue purposes." (*Sinclair Paint Co. v. State Bd.*
21 *of Equalization* (1997) 15 Cal. 4th 866, 876 (citation omitted).) "What a fee cannot do is exceed
22 the reasonable cost of regulation with the generated surplus used for general revenue collection.
23 An excessive fee that is used to generate general revenue becomes a tax." (*Cal. Farm Bureau*
24 *Fed'n v. State Water Res. Control Bd.* (2011) 51 Cal. 4th 421, 438.)

25 40. As described above, the Regulatory Fees that Defendants have collected, and
26 continue to collect, from Plaintiffs far exceeded, and continue to exceed, the reasonable cost of
27 regulating the relevant gambling activities. Those Regulatory Fees are therefore invalid and
28 improper. The excessive amounts of those fees must be returned to Plaintiffs and others similarly

1 situated, including for the following reasons:

2 a. First, Article XIII A of the California Constitution, section 3(a) provides
3 that “Any change in state statute which results in any taxpayer paying a higher tax must be
4 imposed by an act passed by not less than two-thirds of all members elected to each of the two
5 houses of the Legislature” As alleged herein, the Regulatory Fees that Defendants imposed
6 on, and/or collected from, Plaintiffs were either enacted (1) pursuant to A.B. 1620 with less than a
7 Legislative supermajority, or (2) imposed through regulations promulgated directly by the
8 Commission without a Legislative supermajority. Because the Regulatory Fees exceed the
9 reasonable costs of the regulatory activities they are supposed to fund, but were not approved by a
10 two-thirds Legislative supermajority, they are invalid and unlawful.

11 b. Second, and separately, established California law makes clear that fees
12 imposed against businesses must not be more than is reasonably necessary for the purpose they are
13 sought—i.e. the regulation of the business. Fees intended to realize revenue under the guise of
14 regulation cannot stand as a proper exercise of the State’s police power. Accordingly, to the
15 extent that the total Regulatory Fees exceed the reasonable costs of the regulatory activities that
16 they are supposed to fund, they violate limitations on the power of Defendants to impose
17 unwarranted financial burdens on particular businesses.

18 c. Third, the Commission ostensibly imposed Regulatory Fees on proposition
19 player providers pursuant to its authority under Business and Professions Code section 19984.
20 Consistent with the legal principles cited above, that statute authorizes only “reasonable fees and
21 deposits as necessary to defray the costs of providing [the] regulation and oversight.” To the
22 extent that the Regulatory Fees promulgated through regulation(s) exceed the reasonable costs of
23 the regulatory activities that they are supposed to fund, these Regulatory Fees also exceed the
24 authority granted to the Commission through Business and Professions Code section 19984 and
25 are therefore also invalid and unlawful.

26 41. The imposition and collection of the Regulatory Fees is an ongoing and continuous
27 violation which breaches state law anew with each collection. Further, Plaintiffs are informed and
28 believe, and based thereon allege, that funds collected pursuant to the Gambling Control Act have

1 been used for, and allocated to, purposes other than those for which they were authorized.

2 42. Article XIII A of the California Constitution, section 3(d) further provides that
3 “The State bears the burden of proving by a preponderance of the evidence that a levy, charge, or
4 other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs
5 of the governmental activity, and that the manner in which those costs are allocated to a payor bear
6 a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the
7 governmental activity.” Accordingly, Defendants bear the burden of establishing that the
8 Regulatory Fees are not a tax, are not more than necessary to cover the reasonable cost of the
9 specific regulatory activity, and bear a reasonable relationship to the burdens Plaintiffs and other
10 similarly situated put on the specific regulatory activity.

11 43. Plaintiffs were required to make payments as license and regulatory fees, and assert
12 that the provisions of the Government Claims Act, Government Code sections 810, *et. seq.* and
13 other administrative remedies relevant to “tax” refund claims do not apply to their claims for
14 return, disgorgement and/or reimbursement of the monies that Defendants have unlawfully
15 collected. Nonetheless, in an abundance of caution to preserve all rights, Plaintiffs submitted a
16 government claim to the appropriate entity in May 2020.

17 **CLASS ACTION ALLEGATIONS**

18 44. Plaintiffs bring this complaint and petition on behalf of themselves and for the
19 benefit of all others similarly situated pursuant to Code of Civil Procedure section 382 or, in the
20 alternative, as a common law class action.

21 45. Plaintiffs seek to represent the following proposed class (the “Class”):

22 All persons who are licensed by or through the Bureau and/or the Commission as
23 card rooms or proposition player providers who were assessed and have paid
24 Regulatory Fees that are unlawful taxes or excessive in light of regulatory costs.

24 46. This Class satisfies each requirement for the maintenance of a class action.

25 47. The Class is ascertainable. Information identifying card rooms or proposition
26 player providers who have paid Regulatory Fees to Defendants is readily available from
27 Defendants.

28 ///

1 48. The Class is sufficiently numerous such that joinder of all members is
2 impracticable. Plaintiffs are informed and believe that there are currently, as of the time of filing,
3 86 card rooms in operation in California, and 34 proposition player providers in operation in
4 California, in addition to card rooms and proposition player providers that have paid Regulatory
5 Fees but are no longer in operation.

6 49. There is a well-defined community of interest in the questions of law and fact
7 affecting all members of the Class.

8 50. Common questions of law and fact predominate over any facts pertaining to
9 individual Class members. Those questions of law and fact include, but are not limited to:

- 10 a. Whether the Regulatory Fees have been improperly charged and collected.
- 11 b. Whether the Regulatory Fees constitute a tax requiring approval by a supermajority
12 of the State Legislature.
- 13 c. Whether the Regulatory Fees are an improper exercise of the State's police power
14 where they exceed the reasonable costs of the regulatory activities that they are
15 supposed to fund and violate limitations on the power of Defendants to impose
16 unwarranted financial burdens on particular businesses.
- 17 d. Whether the Regulatory Fees imposed on proposition player providers exceed the
18 authority of provisions of the Gambling Control Act granting the Commission
19 authority to establish reasonable regulatory fees to fund the Commission's and the
20 Bureau's regulatory activities.
- 21 e. Whether Plaintiffs and members of the Class are entitled to declaratory and
22 injunctive relief.
- 23 f. Whether Plaintiffs and members of the Class are entitled to a writ of mandate.
- 24 g. Whether Plaintiffs and members of the Class are entitled to recovery and/or
25 restitution and disgorgement of the unlawfully collected amounts.

26 51. Plaintiffs' claims are typical of the Class that they seek to represent.

27 52. Plaintiffs will fairly and adequately protect the interests of the Class. There are no
28 conflicts of interest between Plaintiffs and the members of the Class. Plaintiffs will vigorously

1 represent the Class's interest. Plaintiffs and proposed Class members will be ably represented by
2 Rutan & Tucker, LLP ("Rutan") and by J. Blonien, APLC ("J. Blonien"). Rutan is a California
3 law firm with over 150 attorneys in three offices practicing in seven areas, including a Trial
4 Department and Government and Regulatory Law Department. Rutan has significant experience
5 in actions involving the invalidity of public fees and class action matters, and maintains a large
6 and sophisticated litigation department. J. Blonien, also a California-based law firm, has long and
7 extensive experience representing the interests of both card rooms and proposition player
8 providers. It also has deep knowledge of the California gaming industry and the challenges that
9 high Regulatory Fees have imposed on the California gaming industry.

10 53. A class action proceeding will confer substantial benefits rendering it superior to
11 the alternatives. Further, the resolution of these claims in a single case will result in increased
12 efficiency for the judicial system and will reduce the potential for inconsistent outcomes arising
13 from other matters.

14 54. Defendants are acting or refusing to act on grounds generally applicable to the
15 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with
16 respect to the Class as a whole.

17 **FIRST CAUSE OF ACTION**

18 ***Petition for Writ of Mandate, Code of Civil Procedure sections 1085, et. seq., On Behalf of***
19 ***Plaintiffs and the Class Against Defendants and Does 1 Through 20***

20 55. Plaintiffs incorporate the allegations of the foregoing paragraphs as though set forth
21 in full by this reference.

22 56. Defendants' actions in establishing, collecting, and retaining the excessive charges,
23 in the guise of purported Regulatory Fees, were arbitrary, capricious, without evidentiary or
24 statutory justification, procedurally improper, and in derogation of their limited authority and
25 mandatory duties under the law.

26 57. At all times alleged, Defendants were under a mandatory duty to conform their
27 actions to the controlling provisions of state law, and to act only with their authority, and to refrain
28 from adopting regulations or fees in excess of that authority.

1 58. In doing the things alleged above, Defendants failed to conform to such controlling
2 legal mandates, by imposing unlawful amounts of Regulatory Fees without justification or
3 authority, and in contravention of the controlling provisions of state law.

4 59. For each of the reasons alleged above, Plaintiffs contend that Defendants'
5 establishment and imposition of large portions of the Regulatory Fees was unlawful and
6 unauthorized, was in conflict with other provisions of state law and the California Constitution,
7 was unjustified, arbitrary, discriminatory, and excessive, and that the Regulatory Fees were not
8 established as required by law, and have been established in violation of controlling state law and
9 constitutional protections, such that they may not be lawfully imposed or collected.

10 60. Defendants are obligated but have failed to provide adequate pre-deprivation or
11 post-deprivation remedies for the illegal collection and retention of the excessive Regulatory Fees,
12 including (without limitation) making refunds and restitution of all excessive charges collected as
13 alleged in this action.

14 61. Issuance of a writ of mandate requiring Defendants to set aside and vacate the
15 excessive amounts of the Regulatory Fees, and to conform their actions to state law as set forth
16 above, is therefore appropriate and necessary as provided by Code of Civil Procedure sections
17 1085, *et. seq.*

18 62. Plaintiffs seek a writ of mandate requiring Defendants to provide an adequate
19 remedy for persons subjected to the unlawful collection of the Regulatory Fees, and to transfer to
20 Plaintiffs and the Class property in the form of the wrongfully collected fees.

21 **SECOND CAUSE OF ACTION**

22 ***Declaratory and Injunctive Relief On Behalf of Plaintiffs and the Class Against Defendants and***
23 ***Does 1 Through 20***

24 63. Plaintiffs incorporate the allegations of the foregoing paragraphs as though set forth
25 in full by this reference.

26 64. An actual controversy has arisen and now exists between the parties regarding their
27 respective rights, duties, and obligations with respect to the Regulatory Fees. Specifically,
28 Plaintiffs contend for reasons including those stated above that large portions of the Regulatory

1 Fees paid by Plaintiffs are unlawful in violation of California's Constitution and/or other common
2 law, statutory, and constitutional limitations, and are therefore invalid and should not have been
3 collected, and should not be collected in the future.

4 65. Plaintiffs are informed and believe, and on that basis allege, that Defendants
5 dispute these contentions and assert that the Regulatory Fees are valid and proper.

6 66. Plaintiffs desire a judicial determination and decree, pursuant to Code of Civil
7 Procedure section 1060, establishing the respective rights, duties and obligations of the parties
8 with regard to Plaintiffs' contentions and the above described actions.

9 67. In addition, Defendants' actions will cause irreparable and permanent harm and
10 will unlawfully and unnecessarily expose Plaintiffs to unlawful fees, including the Regulatory
11 Fees.

12 68. Plaintiffs have no adequate remedy at law to prevent or mitigate this ongoing
13 imminent harm and the actions described above, have exhausted all available remedies, and
14 therefore issuance of temporary, preliminary, and permanent injunctive relief is necessary to
15 restrain and enjoin Defendants, and all others acting in concert, from in any way seeking to impose
16 or authorize the imposition of the excessive Regulatory Fees.

17 **THIRD CAUSE OF ACTION**

18 ***Money Had and Received On Behalf of Plaintiffs and the Class Against Defendants and Does 1***
19 ***Through 20***

20 69. Plaintiffs incorporate the allegations of the foregoing paragraphs as though set forth
21 in full by this reference.

22 70. Article XIII A of the California Constitution, section 3, prohibits the imposition of
23 taxes that are not approved by a supermajority of each of the two houses of the State Legislature.
24 Thus, Defendants had a constitutional duty to refrain from assessing and/or collecting a tax that
25 had not been approved in that manner. Further, Defendants had a duty to refrain from the
26 continued collection and retention of the Regulatory Fees in excess of their police power and
27 without valid legal authority.

28 ///

1 FIFTH CAUSE OF ACTION

2 *Violation of California Constitution Article XIII A § 3 (Invalid Tax) On Behalf of*
3 *Plaintiffs and the Class Against Defendants and Does 1 Through 20*

4 78. Plaintiffs incorporate the allegations of the foregoing paragraphs as though set forth
5 in full by this reference.

6 79. Article XIII A of the California Constitution, section 3, prohibits the imposition of
7 taxes that are not approved by a supermajority of each of the two houses of the State Legislature.
8 Thus, Defendants had a constitutional duty to refrain from assessing and/or collecting a tax that
9 had not been approved in that manner. Further, Defendants had a duty to refrain from the
10 continued collection of the Regulatory Fees in excess of their police power and without valid legal
11 authority.

12 80. As described above, Defendants collected excessive amounts of the Regulatory
13 Fees in violation of the California Constitution. The unlawful collection of the Regulatory Fees
14 requires Defendants to restore the amounts of the illegally collected fees to Plaintiffs and the Class
15 in an amount to be determined by proof at trial.

16 SIXTH CAUSE OF ACTION

17 *Accounting On Behalf of Plaintiffs and the Class Against Defendants and Does 1 Through 20*

18 81. Plaintiffs incorporate the allegations of the foregoing paragraphs as though set forth
19 in full by this reference.

20 82. Defendants have transferred or misappropriated unlawful fees for which
21 Defendants have failed to account to Plaintiffs and the Class. There is a balance due to Plaintiffs
22 and the Class. Therefore, Defendants should provide an accounting to Plaintiffs and the Class in
23 connection with the Regulatory Fees including, without limitation, of the total amount of the funds
24 unlawfully collected under the guise of the Regulatory Fees.

25 83. The maintenance and prosecution of this action will, if successful, result in the
26 enforcement of important rights affecting the public interest and will confer a significant benefit
27 on the general public or a large class of persons and thus, Defendants may recover attorneys' fees
28 under Code of Civil Procedure section 1021.5.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants as
3 follows:

4 1. For certification of the Class pursuant to California Code of Civil Procedure section
5 382;

6 2. For appointment of Plaintiffs' counsel as Class counsel;

7 3. For a judicial declaration, decree, or order determining that the excessive
8 Regulatory Fees were not authorized under State law, were and are unlawfully levied and
9 collected, and are invalid, and that any demands, imposition, or levy of such unlawful fees are
10 invalid and shall immediately cease;

11 4. For injunctive relief immediately enjoining and restraining Defendants from
12 collecting or continuing to collect any unlawful amounts of Regulatory Fees;

13 5. For an order requiring Defendants to provide an accounting of the total amount of
14 the funds illegally collected under the guise of the Regulatory Fees;

15 6. For an alternative and preemptory writ of mandate commanding Defendants to
16 immediately set aside and vacate the excessive Regulatory Fees, and to provide a constitutionally
17 adequate remedy including refunds and restitution of all excessive charges collected from
18 Plaintiffs and the Class and mandating the transfer of Plaintiffs' and the Class' property to
19 Plaintiffs and the Class;

20 7. For an award of restitution and disgorgement to Plaintiffs and the Class in the
21 amount of the unlawful benefit to Defendants in the form of unlawful fees;

22 8. For Plaintiffs' costs of suit, including the recovery of reasonable attorneys' fees
23 incurred herein under the common fund and/or private attorney general doctrines; and

24 9. For such other and further relief as the Court deems proper.

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1 Dated: May 9, 2020

RUTAN & TUCKER, LLP
DAVID P. LANFERMAN
MARK B. FRAZIER
MATTHEW CARRUTH
LUCAS K. HORI

4 By: *Mark B. Frazier*

5 Mark B. Frazier

6 J. BLONIEN, APLC
7 JARHETT P. BLONIEN
8 DANIELLE M. GUARD

9 By: *Jarhett Blonien*
Jarhett P. Blonien

10 Attorneys for Plaintiffs and Petitioners

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VERIFICATION

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I have read the foregoing Class Action Petition and Complaint for (1) Writ of Mandate, (2) Declaratory and Injunctive Relief, (3) Money Had and Received, (4) Unjust Enrichment, (5) Violation of the California Constitution, and (6) Accounting.

I am President and Chief Executive Officer of Lucky Chances, Inc., a Plaintiff and Petitioner in this action. I am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

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

Executed on May 11, 2020 at COLMA, California.

LUCKY CHANCES, INC.

By: Rommel Medina
ROMMEL MEDINA