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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
8

9 TODD AND JANET LOWE; TOM AND
10 NANCY HENDERSON; J. ROBERT AND
CAROLE ANDERSON; DEAN
11 INGEMANSON, TRUSTEE OF THE
DEAN INGEMANSON TRUST; KATHY
12 NELSON, TRUSTEE OF THE KATHY
NELSON TRUST; ARTHUR BERLINER;
13

Case No.

14 Plaintiffs, for themselves and
and other similarly situated
15 residential real property taxpayers
at Incline Village and Crystal Bay,
16

17 vs.

18 WASHOE COUNTY, a political subdivision
of the State of Nevada; JOSH WILSON,
19 Washoe County Assessor; BILL BERRUM,
Washoe County Treasurer;
20

Defendants.
21 /

22 **COMPLAINT FOR DECLARATORY AND**
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF
23

24 Plaintiffs complain of Defendants and allege as follows:

25 **NATURE OF THE ACTION**

26 1. This is a class action under 42 U.S.C. §1983 for declaratory and
27 injunctive relief. Plaintiffs are owners of real property at Lake Tahoe, in Washoe
28 County, Nevada, and bring this action for themselves and other similarly

1 situated taxpayers. The Washoe County Assessor has failed to follow regulations
2 promulgated by the Nevada Tax Commission in the valuation of approximately
3 9,000 parcels of residential real property at Lake Tahoe for the 2008-2009 tax year
4 in violation of the Nevada and U.S. Constitutions, the Nevada statutes governing
5 ad valorem taxation, and the Nevada Supreme Court decision in *State ex rel State*
6 *Board of Equalization v. Bakst*, 22 Nev., Adv. Op. 116, 148 P.3d 717 (2006). Plaintiffs
7 seek a judgment declaring that the Washoe County Assessor's 2008-2009
8 valuations of residential real property at Incline Village and Crystal Bay are
9 unconstitutional. Plaintiffs further seek a preliminary and permanent order
10 enjoining and restraining the Washoe County Treasurer from billing for and
11 collecting taxes from the plaintiff class of residential taxpayers at Lake Tahoe for
12 the 2008-2009 tax year based on those unconstitutional valuations. Plaintiffs and
13 the class of homeowner taxpayers represented by Plaintiffs have no plain, simple
14 or efficient or otherwise adequate remedy under State law for the violations of
15 the State and U.S. Constitutions alleged in this Complaint.

16 2. This Court has jurisdiction over this action under 28 U.S.C. §1331
17 and §1343 because the matter in controversy arises under the Constitution and
18 laws of the United States. This Court has supplemental jurisdiction to hear any
19 state law claims under 28 U.S.C. §1367(a). Venue is proper in this Court under 28
20 U.S.C. §1391(b) because the events that give rise to the claims for relief took place
21 within Washoe County and other counties in Northern Nevada and all the
22 parties are located in Washoe County.

23 PARTIES AND CLASS ALLEGATIONS

24 3. Plaintiffs Todd and Janet Lowe are citizens and residents of Washoe
25 County, Nevada, who own and are assessed for ad valorem tax purposes on real
26 property at Lake Tahoe identified as Washoe County APN 122-162-09.

1 4. Plaintiffs J. Robert and Carole Anderson are citizens and residents of
2 Washoe County, Nevada, who own and are assessed for ad valorem tax purposes
3 on real property at Lake Tahoe identified as Washoe County APN 123-260-11.

4 5. Plaintiffs Thomas and Nancy Henderson are citizens and residents
5 of Washoe County, Nevada, who own and are assessed for ad valorem tax
6 purposes on real property at Lake Tahoe identified as Washoe County APN 125-
7 503-01.

8 6. Plaintiff Kathy Nelson is a Trustee of the Kathy Nelson Trust which
9 owns and is assessed for ad valorem tax purposes on real property at Lake Tahoe
10 in Washoe County, Nevada identified as Washoe County APN 130-241-24.

11 7. Plaintiff Dean Ingemanson is a Trustee of the Dean Ingemanson
12 Trust which owns and is assessed for ad valorem tax purposes on real property
13 at Lake Tahoe in Washoe County, Nevada identified as Washoe County APN
14 130-241-21.

15 8. Plaintiff Arthur Berliner is a citizen and resident of Washoe County,
16 Nevada, who owns and is assessed for ad valorem tax purposes on real property
17 at Lake Tahoe identified as Washoe County APN 122-193-06.

18 9. Plaintiffs bring this action for themselves and all similarly situated
19 residential real property taxpayers at Lake Tahoe in Washoe County, Nevada,
20 whose property has been valued by the Washoe County Assessor for ad valorem
21 tax purposes for the 2008-2009 tax year using methodologies and standards not
22 approved and promulgated as regulations by the Nevada Tax Commission as
23 required by law, rendering those valuations and the resulting assessments and
24 tax bills unlawful, unconstitutional and void.

25 10. Defendant Washoe County is and, at all times mentioned in this
26 complaint, was a political subdivision of the State of Nevada. Defendant Josh
27 Wilson is the duly elected Assessor of Washoe County. Defendant Bill Berrum is
28 the duly elected Treasurer of Washoe County. It is the duty, among others, of the

1 County Assessor to list and determine the taxable value of all real property
2 subject to taxation within the County. It is the duty of the County Treasurer to
3 collect all real property taxes. The defendants Wilson and Berrum are sued in
4 this action in their individual as well as their official capacities.

5 11. The plaintiff class consists of the owners of approximately 9,000
6 parcels of real property at Lake Tahoe, in Washoe County, Nevada; said class is
7 so numerous that the joinder of each individual member of the class is
8 impracticable.

9 12. The claims of class members against defendants involve common
10 questions of law and fact including, without limitation, the failure of the Washoe
11 County Assessor to comply with the valuation regulations approved and
12 promulgated by the Nevada Tax Commission in his valuation of the land portion
13 of residential real property at Incline Village and Crystal Bay for ad valorem tax
14 purposes for the 2008-2009 tax year and the resulting failure of the assessments
15 and bills based on those valuations to meet statutory and constitutional
16 standards of fairness, equality and uniformity.

17 13. The claims of plaintiffs are representative and typical of the claims of
18 the class. The claims of all members of the class arise from the same duties, acts
19 and omissions of defendants that give rise to the claims and rights of plaintiffs.

20 14. Plaintiffs, as representatives of the class, are able to, and will, fairly
21 and adequately protect the interests of the class.

22 15. This action is properly maintained as a class action because
23 defendants have acted, failed or refused to act, or intend or threaten to act as
24 more specifically alleged below, on grounds which are applicable to the class and
25 have by reason of such conduct made appropriate declaratory and related relief
26 with respect to the entire class as sought in this action.

27
28

1 HISTORICAL BACKGROUND

2 16. Section 1(1) of Article 10 of the Nevada Constitution requires that the
3 Nevada Legislature "provide by law for a uniform and equal rate of assessment
4 and taxation" of real and personal property throughout the state and "prescribe
5 such regulations as shall secure a just valuation for the taxation of all property...."
6 A failure of uniform and equal taxation violates not only Article 10, Section 1(1)
7 of the Nevada Constitution but also the provisions of the U.S. Constitution which
8 guarantee the equal protection of the laws and that private property will not be
9 taken without due process.

10 17. Prior to 1981, residential real property in Nevada was valued at its
11 full cash value or market value and assessed accordingly. In 1981, responding to
12 complaints of increasing property taxes as a result of increasing property values,
13 the unfair impact of those tax increases on longtime homeowners, and the
14 potential of a tax movement in Nevada analogous to California's Proposition 13,
15 the Nevada Legislature adopted a "taxable value" system of property taxation
16 unique to Nevada.

17 18. Under the statutory scheme adopted by the Nevada Legislature in
18 1981, the land and the improvements of residential real property are valued
19 separately. The two numbers are added together to determine the "taxable
20 value" of the property. "Improved land" is valued at its "full cash value"
21 consistently "with the use to which the improvements are being put." NRS
22 361.227(1). The improvements are valued under a formula for replacement cost
23 less depreciation. NRS 361.227. Since the total "taxable value" is less than the
24 full cash value of the property that was the previous basis of assessment, the
25 assessed value and the taxes based on that value are proportionately less as well,
26 providing the property tax relief intended by the Legislature.

27 19. The Nevada Legislature has enacted a statutory scheme to achieve
28 and maintain the Constitutionally-mandated equality and uniformity of taxation

1 throughout the State. Each county assessor in Nevada is required to determine
2 each year the "taxable value" of all real property within the respective county.
3 NRS 361.260. The Nevada Tax Commission must establish and prescribe
4 regulations for the determination of taxable value which all of the county
5 assessors must adopt and put into practice. NRS 360.250(1); NRS 360.280(1). The
6 Department of Taxation must "consult with and assist county assessors to
7 develop and maintain standard assessment procedures to be applied and used in
8 all of the counties of the state, to ensure that assessments of property by county
9 assessors are made equal in each of the several counties of this state." NRS
10 360.215 (2). The Department must also "continually supervise assessment
11 procedures" as carried on in the several counties of the state for the purpose of
12 maintaining uniformity of assessment and taxation. NRS 360.215(6). The
13 County and State Boards of Equalization were created to act as "fail-safes" within
14 their respective jurisdiction, to correct improperly determined values and to
15 bring property into equalization as may be required.

16 20. In 1982, the Nevada Tax Commission, pursuant to its statutory
17 mandate, adopted regulations for the valuation of property under the new
18 "taxable value" system, including NAC 361.118 which governed the valuation of
19 the land portion of improved property. Unlike the full cash value/market value
20 standard, the "taxable value" standard created by the 1981 Nevada Legislature
21 lacks an objective, external benchmark. Accordingly, the sole means of assuring
22 equal and uniform valuation, assessment and taxation is through enforcement of
23 uniform valuation methodologies adopted by Tax Commission regulation.

24 21. Under the Nevada statutes, each county assessor in Nevada is
25 required to determine each year the "taxable value" of all real property within the
26 respective county. The statutes, however, do not require that all real property be
27 appraised or reappraised every year. Some Nevada counties, including Washoe
28 County, reappraise properties for ad valorem tax purposes on a five-year cycle.

1 The Washoe County Assessor divides the County into five areas and reappraises
2 one of the five areas every year. Properties in areas that are not reappraised are
3 adjusted by factors developed by the County Assessor and approved by the
4 Nevada Tax Commission in a non-reviewable action.

5 22. The residential real property of plaintiffs and of the members of the
6 plaintiff class at Incline Village and Crystal Bay, Lake Tahoe, is part of Area 1 as
7 identified by the Washoe County Assessor's Office and was reappraised for
8 property tax purposes in 2007 for the 2008-2009 tax year. That property was
9 previously reappraised in 2002 for the 2003-2004 tax year. When residential real
10 property owners at Incline Village and Crystal Bay received their valuation
11 notices for the 2003-2004 tax year, they became aware that, while property taxes
12 in the rest of Washoe County rose less than 2.5% and some casinos had their
13 taxes reduced by as much as 31%, the average increase in property taxes for
14 Incline Village and Crystal Bay property owners was 31%, with increases of as
15 much as 400% in some individual cases.

16 23. The increased valuations for the 2003-2004 tax year combined with
17 substantial increases from the previous year caused many Incline Village/Crystal
18 Bay homeowners to the Washoe County Assessor's office to seek explanations.
19 In the course of seeking those explanations, Incline Village/Crystal Bay
20 homeowner-taxpayers learned for the first time that the Washoe County Assessor
21 had valued the land portion of their properties using methodologies that had not
22 been promulgated in regulations by the Nevada Tax Commission and that were
23 not used elsewhere either in Washoe County or in other counties in Nevada.
24 Those methodologies included, without limitation, the use of a variable and
25 subjective "view" classification system, the use of improved properties as
26 "teardowns" or comparable "vacant" land sales, the use of a "time-value" method
27 of increasing the sales prices of old vacant land sales for use as "comparable"
28 sales, the use of a "front-foot" formula for lake frontage of improved lakefront

1 property, the use of an inconsistent, variable and subjective "rock" classification
2 for improved real properties with beaches, and the use of sales of single family
3 residential properties throughout Washoe County to determine the value of the
4 "land" portion of Incline Village/Crystal Bay condominiums.

5 24. Incline Village/Crystal Bay homeowner taxpayers complained to the
6 Washoe County Assessor that the methodologies used by the Assessor were not
7 authorized by Tax Commission regulation, were not uniformly applied otherwise
8 in Washoe County or throughout the state, and resulted in valuations that were
9 excessive and unconstitutional. The Washoe County Assessor took the position
10 that there were insufficient sales of vacant land at Incline Village and Crystal Bay
11 to permit the use of the comparable sales approach to valuation as provided by
12 the existing Tax Commission regulation NAC 361.118, that the alternative
13 methods of valuation identified in the existing Tax Commission regulation to be
14 used in the absence of sufficient comparable vacant land sales were inapplicable,
15 and that each County Assessor was allowed and empowered to establish his own
16 valuation standards and methodologies.

17 25. As of 2003, notwithstanding the legislative requirement that
18 regulations be reviewed every ten years, the Tax Commission regulations for the
19 valuation of the land portion of improved real property had not been reviewed
20 or changed since their adoption in 1982.

21 26. Having obtained no relief from their discussions with the Assessor's
22 Office, Incline Village/Crystal Bay homeowner taxpayers filed petitions in
23 January of 2003 with the Washoe County Board of Equalization challenging the
24 Washoe County Assessor's unlawful and unconstitutional methodologies and
25 resulting valuations and assessments for the 2003-2004 tax year. The 2003
26 Washoe County Board of Equalization denied all those petitions.

27 27. In March of 2003, Incline Village/Crystal Bay homeowner taxpayers
28 filed appeals with the State Board of Equalization from the decisions of the

1 Washoe County Board of Equalization upholding the Washoe County Assessor's
2 unlawful and unconstitutional methodologies and the resulting unlawful and
3 unconstitutional 2003-2004 valuations. The State Board of Equalization, sitting in
4 its 2003 term, denied all of the taxpayer appeals.

5 28. In October of 2003, some of the Incline Village/Crystal Bay
6 homeowner taxpayers filed petitions for judicial review with the First Judicial
7 District Court in Carson City, Nevada, asserting the Washoe County Assessor's
8 use of unauthorized and unlawful valuation methodologies and violation of the
9 statutory and Constitutional guarantees of equal and uniform taxation, and
10 asking that the decisions of the State Board of Equalization be reversed.

11 29. Real property taxes are assessed annually. Valuation notices are sent
12 to taxpayers in November or December. Petitions challenging those valuations
13 must be filed with the county board of equalization by January 15 of the
14 following year. The county board of equalization decides those petitions by the
15 end of February and appeals from county board decisions to the State Board of
16 Equalization must be taken by March 10. Tax bills are prepared and mailed out
17 by August 1. Taxes are due the third Monday in August.

18 30. Accordingly, in or about December of 2003, while the individual
19 taxpayers' petitions for judicial review of the 2003-2004 Incline Village/Crystal
20 Bay residential property valuations were being litigated in the Carson City
21 District Court, the Washoe County Assessor issued his valuation notices for the
22 2004-2005 tax year. For Incline Village/Crystal Bay residential real property,
23 2004-2005 was not a reappraisal year but a factor year. For the 2004-2005 tax
24 year, the Washoe County Assessor proposed and the Tax Commission approved
25 a factor of 1.0, which meant that the valuations for Incline Village/Crystal Bay for
26 the 2004-2005 tax year were the same as for the 2003-2004 reappraisal year. The
27 Washoe County Assessor based his factor of 1.0 for the 2004-2005 tax year on the
28 absence of vacant land sales to support any new valuation. There are no statutes

1 or Commission regulations which expressly govern the determination of the
2 factor. The factor is determined differently in different counties and has been
3 determined differently in Washoe County in different years.

4 31. In January of 2004, as in the previous year, a number of individual
5 Incline Village/Crystal Bay homeowner taxpayers challenged the Washoe County
6 Assessor's 2004-2005 methodologies, assessments and valuations before the
7 Washoe County Board of Equalization. The Washoe County Board of
8 Equalization again rejected those challenges as it had in the previous year.
9 Again, some Incline Village/Crystal Bay homeowner taxpayers pursued appeals
10 to the State Board of Equalization and, after being denied relief there as well,
11 brought, in late 2004, petitions for judicial review in the Carson City District
12 Court again asserting the Washoe County Assessor's use of unauthorized and
13 unlawful valuation methodologies and violation of the statutory and
14 Constitutional guarantees of equal and uniform taxation, and seeking an order
15 reversing the State Board of Equalization be reversed and directing Washoe
16 County to refund excessive taxes paid on the basis of the Washoe County
17 Assessor's unconstitutional 2004-2005 property valuations (which were identical
18 in every way to the 2003-2004 property valuations already before the court).

19 32. In August of 2004, while the 2003-2004 and 2004-2005 Incline
20 Village/Crystal Bay land valuations were being contested in the administrative
21 process and the courts, the Nevada Tax Commission, after holding more than 30
22 public workshops, amended its regulations with particular attention to
23 determining the value of land in the absence of sufficient comparable vacant land
24 sales. The previous NAC 361.118 was replaced with two regulations, NAC
25 361.118 and NAC 361.119, along with several new definitions. Copies of NAC
26 361.118 and NAC 361.119 are attached as Exhibits 1 and 2. The regulations as
27 amended in 2004 with respect to the valuation of the land portion of improved
28

1 real property remained unchanged through the 2008-2009 reappraisal year for
2 Incline Village and Crystal Bay.

3 33. As amended, Tax Commission regulations did not permit the use of
4 a view or rock classification system, did not permit the use of "teardowns" as
5 vacant land sales, did not permit the use of time adjusted sales, and did not
6 permit the use of "paired sales" or the other methodologies that had been used by
7 the Washoe County Assessor to value property at Incline Village and Crystal Bay
8 in the 2003-2004 reappraisal year. Notwithstanding the Tax Commission's
9 August 2004 amendment of the regulations and rejection of the methodologies
10 used by the Washoe County Assessor for the 2003-2004 reappraisal of Incline
11 Village and Crystal Bay and the fact that, under the 5-year reappraisal cycle,
12 those 2003-2004 valuations and their rejected methodologies not only provided
13 the values for the 2003-2004 and 2004-2005 tax years but would also provide base
14 values for the 2005-2006, 2006-2007 and 2007-2008 tax years, the Washoe County
15 Assessor made no effort to reappraise residential real property at Incline Village
16 or Crystal Bay or to address the County's ongoing reliance on rejected
17 methodologies. The Washoe County Assessor took the position that the
18 amended regulations only applied prospectively as different areas of the County
19 were reappraised for ad valorem tax purposes.

20 34. In or about November or December of 2004, the annual property tax
21 sequence began again, this time for the 2005-2006 tax year. While the individual
22 petitions for judicial review of the 2003-2004 and 2004-2005 valuations at Incline
23 Village/Crystal Bay remained pending in the Carson City District Court, the
24 Washoe County Assessor issued his valuation notices for the 2005-2006 tax year
25 for Incline Village/Crystal Bay as well as the remainder of Washoe County. For
26 Incline Village/Crystal Bay residential real property, 2005-2006 was again not a
27 reappraisal year but a factor year. The Washoe County Assessor proposed and
28 the Tax Commission approved as an administrative matter without substantive

1 review a land factor of 1.08 for Incline Village/Crystal Bay for the 2004-2005 tax
2 year. Applying a land factor of 1.08 meant that the valuations of the land portion
3 of properties owned by Incline Village/Crystal Bay homeowners for the 2005-
4 2006 tax year were 8% higher than the valuations of the land portion of the same
5 property for the 2003-2004 and 2004-2005 tax years. The base values for the
6 properties of Incline Village/Crystal Bay homeowner taxpayers for the 2005-2006
7 tax year remained the 2003-2004 reappraisal values.

8 35. In or about January of 2005, more than 1,200 of the approximately
9 9,000 Incline Village/Crystal Bay homeowner taxpayers challenged the Washoe
10 County Assessor's 2005-2006 valuations of their property before the Washoe
11 County Board of Equalization. The County Board of Equalization set aside the
12 8% factor increase. In March of 2005, the Washoe County Assessor appealed the
13 County Board of Equalization decision to the State Board of Equalization which
14 subsequently reversed the County Board and reinstated the 8% factor increase.
15 After the adverse determinations of the State Board of Equalization, most of the
16 Incline Village/Crystal Bay homeowner taxpayers filed timely petitions for
17 judicial review in the Carson City District Court making 2005-2006 the third tax
18 year with judicial review actions pending in the Carson City District Court.

19 36. In May of 2005, with challenges to the Washoe County Assessor's
20 valuations for 2003-2004, 2004-2005 and 2005-2006 pending either in the Carson
21 City District Court or before the State Board of Equalization, the Nevada
22 Legislature amended the tax statutes to clarify the duty and obligation of the
23 Nevada Tax Commission to adopt "general and uniform regulations governing
24 the assessment of property by the county assessors of the various counties,
25 county boards of equalization, the State Board of Equalization and the
26 Department" and the duty and obligation of the county assessor as well as the
27 County and State Boards of Equalization to follow Tax Commission regulations.
28 NRS 360.250(1); NRS 361.260(7); NRS 361.340(10); and NRS 361.375(10). The 2005

1 amendment to the statutes specifically provided that Tax Commission
2 regulations "must include, without limitation, standards for the appraisal and
3 reappraisal of land to determine its taxable value." NRS 360.250(1).

4 37. In or about November or December of 2005, while taxpayer judicial
5 review proceedings challenging his land valuations at Incline Village and Crystal
6 Bay for the three prior tax years (2003-2004, 2004-2005 and 2005-2006) continued
7 to be litigated in Carson City District Court, the Washoe County Assessor issued
8 his valuation notices for the 2006-2007 tax year. For Incline Village/Crystal Bay
9 residential real property, 2006-2007 was again a factor year. The "factor" for land
10 proposed by the Washoe County Assessor and approved administratively
11 without substantive review by the Tax Commission for the 2006-2007 tax year
12 was 1.02, which meant the addition of another 2% to the value of the land portion
13 of properties owned by Incline Village/Crystal Bay homeowners for the 2006-
14 2007 tax year. The base values for the properties of Incline Village/Crystal Bay
15 homeowner taxpayers for the 2006-2007 tax year remained the 2003-2004
16 reappraisal values.

17 38. In January of 2006, the Carson City District Court decided the first
18 taxpayer petition for judicial review, involving only the 2003-2004 reappraisal
19 year. The Carson City District Court reversed the decision of the State Board of
20 Equalization, set aside the 2003-2004 valuations and the 2003-2004 tax
21 assessments based on those valuations as void, returned the land portion value of
22 the taxpayers' residential real property to their 2002-2003 levels and ordered
23 refunds to the approximately 17 taxpayers who had persisted in the pursuit of
24 judicial relief. Although relief could be granted by the Carson City District
25 Court only to the limited number of individual taxpayers who brought that
26 petition, the Court broadly held that the methodologies used by the Washoe
27 County Assessor in reappraising residential real property throughout Incline
28 Village and Crystal Bay for the 2003-2004 reappraisal year were unlawful and, as

1 a result, all those valuations were unconstitutional. A copy of the District Court
2 decision is attached as Exhibit 3.

3 39. In February of 2006, the Washoe County Board of Equalization
4 began hearing taxpayer challenges to the Assessor's 2006-2007 residential real
5 property valuations at Incline Village and Crystal Bay. Acknowledging the
6 ruling of the Carson City District Court, the County Board began setting aside the
7 2006-2007 valuations because of their unlawful 2003-2004 base valuations. In
8 keeping with the Carson City District Court decision, the County Board returned
9 the land value of those properties to their 2002-2003 level. After the first few
10 decisions of this kind from the County Board of Equalization, Washoe County
11 took an appeal of the Carson City District Court decision to the Nevada Supreme
12 Court and asked that Court to stay the application of that decision to the pending
13 2006-2007 valuations. The Nevada Supreme Court issued a partial stay directing
14 the County Board of Equalization to follow the rationale of the District Court
15 decision in determining challenges to the 2006-2007 valuations but staying any
16 implementation by the Board of its decisions. A copy of the Supreme Court
17 partial stay order is attached as Exhibit 4.

18 40. After the entry of the Supreme Court partial stay order, the Washoe
19 County Board of Equalization heard the remaining challenges to the Assessor's
20 2006-2007 valuations. Pursuant to the Supreme Court partial stay order and the
21 rationale of the Carson City District Court decision, the Washoe County Board of
22 Equalization set aside the land portion of these 2006-2007 valuations and
23 returned or "rolled back" the value of the land portion of all those properties to
24 2002-2003 levels, the last year whose property valuations at Incline Village and
25 Crystal Bay were not based on the unconstitutional 2003-2004 reappraisal.
26 However, unlike the County Board decisions that preceded the Supreme Court
27 partial stay order, none of the County Board's "rollback" decisions after the entry
28

1 of that partial stay order were implemented by an actual change in the 2006-2007
2 Washoe County tax roll.

3 41. In addition, at the end of its 2006 term after hearing all of the
4 individual taxpayer petitions that had been filed, the Washoe County Board of
5 Equalization, on its own motion and acting pursuant to the mandate of NAC
6 361.624 that it equalize property values within a geographic area, voted
7 unanimously to roll back the land portion of the valuation of all remaining
8 residential real property at Incline Village and Crystal Bay to 2002-2003 levels.
9 Like other County Board decisions made after the entry of the Supreme Court's
10 partial stay order, this general rollback decision was not implemented by any
11 change in the Washoe County 2006-2007 tax roll.

12 42. The county treasurer prepares property tax bills based on the
13 valuations contained on the county's property tax roll. Because, with the
14 exception of a few properties on which decisions were made prior to the
15 Supreme Court's partial stay order, the County Board of Equalization decisions
16 rolling back 2006-2007 land values to 2002-2003 levels were not implemented by
17 any actual changes in the tax rolls, the Washoe County Treasurer prepared and
18 sent tax bills to homeowner taxpayers in Incline Village and Crystal Bay based on
19 the Assessor's 2006-2007 valuations (rather than the 2002-2003 valuation levels
20 determined by the County Board of Equalization) and Incline Village and Crystal
21 Bay taxpayers were required to pay taxes based on those excessive Assessor's
22 valuations.

23 43. In March of 2006, the Washoe County Assessor took appeals to the
24 State Board of Equalization from both the approximately 300 decisions of the
25 Washoe County Board of Equalization on 2006-2007 individual property appeals
26 and the mass rollback of the 2006-2007 land values of approximately 8,700
27 properties to 2002-2003 levels. The State Board of Equalization elected not to
28 hear the Assessor's 2006 appeals during the Board's 2006 term, leaving taxpayers

1 no alternative but to pay tax bills based on the Assessor's excessive 2006-2007
2 valuations.

3 44. In May of 2006, with the original 2003-2004 tax year decision on
4 appeal in the Supreme Court, the 2005-2006 petitions for judicial review pending
5 in the district court and the 2006-2007 Assessor appeals stalled in the State Board
6 of Equalization, the Carson City District Court decided the 2004-2005 tax year
7 petitions. Based on the representations of counsel for the state and county
8 respondents that the 2003-2004 and 2004-2005 cases were identical and,
9 acknowledging the prior district court decision for the 2003-2004 tax year, the
10 District Court similarly reversed the 2004-2005 decisions of the State Board of
11 Equalization, set aside the 2004-2005 valuations and the tax assessments based on
12 those valuations, returned the land portion value of the taxpayers' residential real
13 property to their 2002-2003 levels, prior to the unlawful and unconstitutional
14 base valuations of 2003-2004 which were unchanged in 2004-2005, and directed
15 that refunds should be paid to the approximately 37 taxpayers who pursued
16 judicial relief. The County Assessor as well as the State Board of Equalization
17 and Tax Commission promptly appealed the 2004-2005 tax year decision to the
18 Nevada Supreme Court to join the appeal for the 2003-2004 tax year.

19 45. In or about November or mid-December of 2006, while the 2003-2004
20 and 2004-2005 tax year appeals remained pending before the Nevada Supreme
21 Court, while individual petitions for judicial review of the 2005-2006 valuations
22 continued to be litigated in Carson City District Court, and while the 2006-2007
23 decisions of the Washoe County Board of Equalization rolling back the land
24 portion of all approximately 9,000 residential properties at Incline Village and
25 Crystal Bay to 2002-2003 levels remained unheard by the State Board of
26 Equalization, the Washoe County Assessor issued his valuation notices for the
27 2007-2008 tax year for Incline Village/Crystal Bay as well as the remainder of
28 Washoe County. For Incline Village/Crystal Bay residential real property, 2007-

1 2008 was the fourth "factor" year. The "factor" for land proposed by the Washoe
2 County Assessor and approved administratively without substantive review by
3 the Tax Commission for the 2007-2008 tax year was 1.15, which meant the
4 addition of another 15% to the value of the land portion of properties owned by
5 Incline Village/Crystal Bay homeowners for the 2006-2007 tax year. In calculating
6 the 2007-2008 tax year valuations, the Assessor applied the 15% increase to the
7 Assessor's 2006-2007 valuations notwithstanding the decision of the 2006 Washoe
8 County Board of Equalization to set aside those valuations. The compounded
9 effect of the "factors" of 8% (2005-2006), 2% (2006-2007), and 15% (2007-2008) was
10 an increase of more than 25% over the 2003-2004 reappraised values that the
11 district court had determined to be unconstitutional and void.

12 46. At the end of December 2006, the Supreme Court issued its decision
13 on the taxpayers' original challenge to the 2003-2004 valuations. Affirming the
14 district court, in *State ex rel. State Board of Equalization v. Bakst*, 122 Nev., Adv. Op.
15 116, 148 P.3d 717 (2006), the Nevada Supreme Court held that the Assessor could
16 not use "standards or methods of valuation not approved by the Nevada Tax
17 Commission," that the Assessor's use of unapproved methodologies "was
18 improper under the Nevada Constitution's requirement that property be taxed
19 according to a uniform and equal rate of assessment," that "the 2003-2004
20 valuations, which were based on those methodologies, are therefore unjust and
21 inequitable," that "[a]ny taxes collected that can be attributed to those invalid
22 methodologies are unconstitutional," and that "the Taxpayers who paid such
23 taxes are entitled to a refund."

24 47. Although the refunds ordered in the *Bakst* case were limited to the 17
25 taxpayers who pursued their objections to the Assessor's valuations of their
26 property to the end, the ruling in *Bakst* was that the methodologies adopted and
27 used by the Washoe County Assessor throughout Incline Village and Crystal Bay
28 were unauthorized by Tax Commission regulation and that any assessment

1 based on those methodologies was unconstitutional. Under the *Bakst* decision,
2 any property valuation at Incline Village and Crystal Bay that relied on the
3 Assessor's 2003-2004 reappraisal as its base value resulted in an unconstitutional
4 assessment. Under the *Bakst* decision, any property valuation at Incline Village,
5 Crystal Bay or elsewhere in Washoe County or the State of Nevada that was
6 based on the use of a methodology not authorized and approved by Tax
7 Commission regulation resulted in an unconstitutional assessment.

8 48. When the *Bakst* decision became final, the partial stay order was
9 lifted and the Washoe County tax rolls for 2006-2007 were finally conformed to
10 the 2006 Washoe County Board of Equalization decision returning the land
11 portion of the valuation of all residential real property at Incline Village and
12 Crystal Bay to 2002-2003 levels. However, notwithstanding the correction of the
13 2006-2007 tax rolls, the Washoe County Treasurer refused to send out revised tax
14 bills or to refund any taxes paid by Incline Village and Crystal Bay homeowners
15 to satisfy tax bills issued by the County Treasurer on the basis of the Assessor's
16 excessive 2006-2007 valuations.

17 49. In February of 2007, when it met to hear and determine the
18 approximately 900 individual taxpayer challenges to the Assessor's 2007-2008
19 valuations of the land portion of residential real property at Incline Village and
20 Crystal Bay, the Washoe County Board of Equalization had the directive of the
21 Supreme Court's *Bakst* decision. Based on the *Bakst* decision and its rationale, the
22 2007 Washoe County Board of Equalization set aside the Assessor's 2007-2008
23 valuations, rejected the application of the 15% land factor and set the value of the
24 land portion of the properties at their 2006-2007 levels (as corrected by the
25 Assessor to 2002-2003 levels). The Board viewed the determination of the land
26 factor as a valuation subject, under the statutes as well as the *Bakst* decision, to
27 the valuation regulations of the Tax Commission and based its rejection of the
28 factor on the grounds that the Assessor had not followed those regulations.

1 50. After a dispute with the District Attorney's office which provides
2 counsel to the Board, the Chairman of the 2007 Washoe County Board of
3 Equalization resigned. After his resignation, the Board refused to equalize the
4 valuations of the remaining residential real properties within the geographic area
5 of Incline Village and Crystal Bay to the 900 taxpayers who had been awarded
6 relief.

7 51. In March of 2007, the Washoe County Assessor took appeals to the
8 State Board of Equalization from the County Board of Equalization decisions in
9 favor of the approximately 900 taxpayers who filed individual appeals. Non-
10 equalized Incline Village and Crystal Bay homeowner taxpayers appealed to the
11 State Board of Equalization from the failure of the 2007 County Board to perform
12 its duty, mandated by NAC 361.624, of geographic equalization.

13 52. The State Board of Equalization, sitting in its 2007 term, heard both
14 the Assessor's 2006 and 2007 appeals. The State Board of Equalization refused to
15 hear the taxpayers' appeal from the 2007 County Board's failure to equalize
16 values throughout the Incline Village and Crystal Bay geographic area.

17 53. For most of the Assessor's appeals of County Board of Equalization
18 decisions granting individual taxpayer petitions for the 2006-2007 tax year, the
19 State Board of Equalization approved a compromise valuation proposed by the
20 Assessor and agreed to by approximately 200 individual taxpayers. This
21 compromise consisted of setting aside the 2003-2004 base value for the land
22 portion of taxpayer property where the Assessor acknowledge the use of one or
23 more of the four specific methodologies identified in *Bakst* as unauthorized by
24 Tax Commission regulation, substituting the 2002-2003 land portion value and
25 then applying the "factors" of 8% (2005-2006) and 2% (2006-2007) for the interim
26 years. Because these taxpayers had been assessed and billed and had paid taxes
27 on the unadjusted 2006-2007 Assessor's valuations during the effective period of
28 the partial stay order, this compromise valuation meant the payment of refunds

1 to taxpayers. The failure of Washoe County to pay refunds in accordance with
2 the estimates on which the compromise agreements were reached is the subject of
3 an action in the Carson City District Court.

4 54. The remainder of the Assessor's appeals of County Board of
5 Equalization decisions granting individual taxpayer petitions for the 2006-2007
6 tax year consisted of taxpayers who rejected the Assessor's offer of compromise
7 and taxpayers whose property the Assessor claimed, contrary to the record
8 before the County Board, that none of the four specific methodologies identified
9 in *Bakst* were used. The State Board of Equalization reversed the decisions of the
10 County Board as to those taxpayers. Taxpayers have filed a petition for judicial
11 review of those State Board decisions in the Carson City District Court. The
12 State Board of Equalization entered an order remanding the area-wide
13 equalization rollback to the County Board. That order was stayed pending
14 review by extraordinary writ in the Supreme Court.

15 55. With the exception of a small number of cases resolved by
16 agreement, the 2007 State Board of Equalization also reversed the County Board's
17 decisions in favor of individual taxpayers with respect to the 2007-2008 tax year.
18 The State Board's decisions with respect to the valuation of residential real
19 property at Incline Village and Crystal Bay for the 2007-2008 tax year are the
20 subject of pending actions in the Carson City District Court.

21 **THE 2008-2009 REAPPRAISAL OF INCLINE VILLAGE/CRYSTAL BAY**

22 56. The 2007-2008 tax year was the last factor year for Incline Village and
23 Crystal Bay for the five-year cycle which began with the 2003-2004 tax year for
24 which the Assessor's valuations were invalidated in the *Bakst* decision. From the
25 2003-2004 tax year to the 2007-2008 tax year, notwithstanding the 2004
26 promulgation of amended valuation regulations, the 2005 clarification of the
27 statute requiring Assessor compliance with Commission regulation, or the 2006
28 *Bakst* decision itself, the Assessor took the position that no reappraisal of Incline

1 Village and Crystal Bay residential real properties using valid methodologies
2 authorized by Tax Commission regulation was required. By the 2008-2009 tax
3 year, however, the statutorily permitted five year cycle had run its course, and a
4 reappraisal of Incline Village and Crystal Bay was unavoidable.

5 57. In its *Bakst* decision, the Nevada Supreme Court wrote that:

6 We note that the legislative amendments to NRS 361.260(7)¹
7 remove any argument that an assessor might make in the
8 future that he or she could select appraisal methods that
9 have not been expressly approved in regulations adopted by
the Nevada Tax Commission. 148 P.3d at 722, fn. 13.

10 After the *Bakst* decision, the Director of the Department of Taxation, the
11 Chairman of the Tax Commission and the Washoe County Assessor all concurred
12 that the existing valuation regulations, as amended in 2004, did not provide
13 adequate direction to the county assessors to value the land portion of improved
14 property in the absence of comparable vacant land sales so as to satisfy the
15 Constitutional mandate of equal and uniform taxation. Notwithstanding the
16 widespread acknowledgement that the existing regulations were inadequate, the
17 Tax Commission promulgated no additional or amended regulations.

18 58. In 2007, the Washoe County Assessor reappraised residential real
19 property at Incline Village and Crystal Bay, and, in December of 2007, issued his
20 valuation notices based for the 2008-2009 tax year based on that reappraisal. The
21 value of the land portion of most residential real property at Incline Village and
22 Crystal Bay was substantially increased. In January of 2008, approximately 1500
23 Incline Village and Crystal Bay homeowner taxpayers challenged the Assessor's
24 valuations by filing petitions with the County Board of Equalization.

25 59. Since the Assessor is required by law to certify that, in assessing
26 property, he has complied with the regulations of the Nevada Tax Commission
27

28 ¹ See Paragraph 36 *supra*.

1 (NRS 360.250(3)) and since both the Legislature and the Supreme Court have
2 reconfirmed that obligation, Incline Village/Crystal Bay homeowner taxpayers
3 anticipated that the Assessor's Office would at least attempt to value the land
4 portion of their residential real property in accordance with the 2004 amended
5 regulations, however inadequate. In the process of challenging the 2008-2009
6 reappraisal valuations, however, taxpayers became aware that, as with the 2003-
7 2004 reappraisal, the Assessor had again adopted his own methodologies,
8 including methodologies expressly rejected by the *Bakst* court as well as entirely
9 new methodologies, none of which were "expressly approved in regulations
10 adopted by the Nevada Tax Commission."

11 60. In the 2008-2009 reappraisal and valuation of the land portion of
12 residential real property at Incline Village and Crystal Bay, the Washoe County
13 Assessor used a view classification system, time adjustments, paired sales and
14 teardowns as vacant land sales, all methodologies expressly rejected in *Bakst* and
15 not authorized by the 2004 amended Tax Commission regulations. In addition,
16 the Assessor used an unintelligible statistical "mass appraisal" model involving
17 multiple regression analysis to create and value hypothetical "base" vacant lots.
18 Nothing of the kind is remotely suggested let alone expressly authorized in Tax
19 Commission regulations.

20 61. The mass appraisal methodologies utilized by the Washoe County
21 Assessor in the 2008-2009 reappraisal and valuation of the land portion of
22 residential real property at Incline Village and Crystal Bay are not only wholly
23 unauthorized by any Tax Commission regulation, they are, in fact, prohibited by
24 the Nevada statutes which govern the Tax Commission. Mass appraisal
25 involves the appraisal of groups of properties using statistical analysis. NRS
26 361.227(2) specifically provides that the "**unit of appraisal must be a single**
27 **parcel**" except where two or more parcels function as a single parcel, there is a
28 group of contiguous parcels which qualifies for valuation as a subdivision, or the

1 parcel is one of a group of parcels which should be valued as a collective unit.
2 None of these exceptions to the "single parcel" appraisal requirement is
3 applicable to properties at Incline Village or Crystal Bay. Mass appraisal
4 techniques have been developed for use in market value tax systems and, except
5 in limited circumstances, are not appropriate to Nevada's taxable value system.

6 62. Attached to this Complaint as Exhibits 5 through 9 are copies of the
7 Assessor's valuation of the land portion of the properties of Plaintiffs Lowe,
8 Henderson, Ingemanson, Nelson and Anderson, respectively.

9 63. For the property of Plaintiffs Lowe, Ingemanson and other similarly
10 situated lakefront properties at Lake Tahoe, the Washoe County Assessor
11 described his methodology as follows:

12 For the 2008 reappraisal of the lakefront properties at
13 Incline Village, a multi-parcel vacant land sale, one
14 fully obsolete sale, and abstraction models were
15 analyzed in order to arrive at an estimated front foot
value. (Exhibits 5 and 7)

16 The Assessor calculated a "range" of "front foot" values based on the actual sale,
17 the "fully obsolete" sale, and the abstraction model and then, independent of the
18 "front foot" values, chose a hypothetical "base lot" value and divided that by the
19 "100 front feet of the typical lot" to come up with a "front foot value" which
20 coincidentally falls within the range. The Assessor's basis for determining the
21 hypothetical base lot value is unstated. (Exhibits 5 and 7)

22 64. For the property of Plaintiffs Henderson, Nelson, Berliner and other
23 similarly situated non-lakefront single family residential properties at Incline
24 Village and Crystal Bay, the Washoe County Assessor similarly describes a
25 combination of one or more vacant land sales, one or more "fully obsolete" or
26 "teardown" sales, and an "abstraction model" to create a range of values and then
27 the unexplained, arbitrary selection of a hypothetical "base lot" value somewhere
28

1 within that range. (Exhibits 6 and 8) Although vacant land sales are identified
2 and referenced, no comparable sales analysis as prescribed in NAC 361.118 is
3 performed. "Fully obsolete" sales or "teardowns" are treated as standalone
4 "evidence" of land value. (Exhibits 6 and 8)

5 65. The 2004 amended Tax Commission regulations do not authorize an
6 "estimated" value based on a "combination" of comparable vacant land sales and
7 other methodologies. The 2004 amended Tax Commission regulations do not
8 authorize an "abstraction model", a hypothetical "base lot" value, or a "front foot"
9 valuation methodology. The 2004 amended Tax Commission regulations do not
10 authorize the use of one or more isolated vacant land sales as "evidence" of value.
11 The 2004 amended Tax Commission regulations do not authorize the use of
12 "teardowns" or "fully obsolete" sales as separate "evidence" of land value.

13 66. In NAC 361.119, in the absence of a sufficient number of vacant land
14 sales to permit a comparable sales analysis of the value of the land portion of
15 improved property, the Tax Commission authorizes a county assessor to use
16 sales of comparable improved properties pursuant to any of several alternative
17 methods, including the "abstraction method." The Tax Commission has defined
18 the "abstraction method" as "a method of estimating the value of land by
19 subtracting from the sales prices of improved parcels the full contributory value
20 of all items attributable to the value of the improvements, thus yielding estimates
21 of the residual or remainder value of the land." NAC 361.107. The "full
22 contributory value of all items attributable to the value of the improvements"
23 includes, "without limitation, improvements, direct and indirect costs, soft costs,
24 entrepreneurial profit, and personal property and other nonrealty components of
25 value." NAC 361.119(2)(a).

26 67. The "abstraction method" of determining the value of the land
27 portion of improved residential property from sales of comparable improved
28 properties as authorized by NAC 361.119 does not encompass the use by the

1 Washoe County Assessor of what he calls an "abstraction model" consisting of a
2 statistical analysis of some 583 improved sales throughout the Incline
3 Village/Crystal Bay area over a four-year period. Rather than apply the
4 abstraction method to the sales of comparable improved properties, the Assessor
5 developed an abstraction model using sales that only demonstrated similarity to
6 any particular subject property was their location within the general Incline
7 Village/Crystal Bay geographic area. The Washoe County Assessor did not use
8 the sales of comparable improved properties, remove the full contributory value
9 of all items attributable to the value of the improvements" and then make
10 adjustments to the comparable properties "to account for the differences in
11 elements of comparison between the comparable properties and the subject
12 property" as prescribed by the Tax Commission regulations. Instead, the
13 Washoe County Assessor made a statistical analysis of sales of improved
14 properties within the larger geographic area of Incline Village and Crystal Bay,
15 called it "abstraction," and used that statistical analysis in combination with one
16 or more selected vacant land sales and "fully obsolete" sales, estimated a "base lot
17 value" for a hypothetical lot in the neighborhood of the subject property.
18 Working from the "base lot value," the Assessor then adjusted the subject
19 property to account for differences in view, topography and other elements of
20 comparison, notwithstanding the Tax Commission express prohibition on
21 adjustments to the subject property. NAC 361.118(a)(2); NAC 361.119(2).

22 68. In the absence of sufficient comparable vacant land sales to perform
23 a comparable sales determination of the value of the land portion of improved
24 property, the use of one or two vacant land sales or "fully obsolete" sales as
25 "evidence" of that value violates the Nevada statutes as well as the Nevada and
26 U.S. Constitutions. The Nevada system of property taxation distinguishes
27 between vacant land and improved land. NRS 361.227. Vacant land sales
28 function as a fair measure of the value of the land portion of improved property

1 only in a normal market where there are a sufficient number of vacant land sales.
2 Where there are too few vacant land sales to permit a comparable sales method
3 of valuation, the market forces place a scarcity premium on vacant land. The
4 very existence of "fully obsolete" sales corroborates that scarcity premium.
5 Under those circumstances, to value improved land as vacant land taxes the
6 property owner on a nonexistent value. The land portion of improved property
7 does not share the scarcity premium of vacant land. The owner of improved
8 property has no vacant land for sale and cannot constitutionally be taxed on a
9 value his property does not possess.

10 69. In *Bakst*, the Nevada Supreme Court determined that the "view
11 classification" system used by the Washoe County Assessor to value the land
12 portion of residential real property at Incline Village and Crystal Bay was not
13 authorized by Tax Commission regulation and accordingly resulted in land
14 values that were unconstitutional and void. The Tax Commission's 2004
15 amendments to the valuation regulations included specific provisions regarding
16 view and other property attributes, requiring the county assessor to "make a
17 physical determination of the view influence from the land of each respective
18 view parcel. . . ." and be prepared to provide the taxpayer with specific market
19 evidence to support any view adjustment. NAC 361.118(1)(f). Notwithstanding
20 both *Bakst* and the express provisions of the existing Tax Commission regulation,
21 the Washoe County Assessor, in valuing the land portion of the improved
22 property of Plaintiff Henderson and other similarly situated "view" properties at
23 Incline Village and Crystal Bay for the 2008-2009 reappraisal, used a view
24 classification system based on points assigned according to a specific form. A
25 true and correct copy of the form used in the valuation of the Henderson
26 property is attached as Exhibit 10.

27 70. The Washoe County Assessor's view classification form is wholly
28 unauthorized by Tax Commission regulation. Contrary to the requirement of the

1 Commission regulation that the view be determined only "from the land," the
2 form permits the addition of a "point" for a view "likely" to be "obtainable from
3 the interior of the house." (Exhibit 10) The view classification form is also
4 subjective, arbitrary and illogical. For example, the form requires the appraiser
5 to assign one point to the existence of a view and then to "add" points for the
6 extent of the view. A 30° view is a 2-point view; a total panoramic or 180° view is
7 a 7-point view. Another point can be added for the "likely" view from inside the
8 house. Then, however, the appraiser is required to "subtract" points for the
9 extent to which the view is blocked, but only up to 2 points even for a view that is
10 blocked 100%. Without addressing the existential question whether a blocked
11 view is any view at all, the math is clearly problematical. Since the most that can
12 be subtracted under the form is 2 points, the result could be 5 or even 6 points for
13 a totally blocked view. (Exhibit 10)

14 71. For a 3-point view, the Assessor adjusts the value of the subject
15 property upward by 30%. See Exhibit 11 attached. The Washoe County
16 Assessor, however, has testified that he assigns no value whatsoever to a 1 or 2
17 point view. Under the math required by the form, a property with a completely
18 blocked view could be assigned 3 points or even more and have the land value
19 increased accordingly for the "view" while a property with a partial 2-point view
20 would have no increase at all. The Tax Commission has not authorized or
21 approved either the form or the methodology used by the Washoe County
22 Assessor to assign a value to "view." The adjustments to value for "view" made
23 by the Washoe County Assessor for the 2008-2009 reappraisal of property at
24 Incline Village and Crystal Bay are unauthorized, unlawful and void.

25 72. Plaintiffs Anderson own a condominium/townhouse.
26 Condominiums and townhouses generally own the "space" within the perimeter
27 of the walls but not the land under their dwelling areas. NRS 117.010. The
28 separation of the "land portion" of the value of a condominium or townhouse

1 from the improvement value for purposes of Nevada's taxable value system is a
2 valuation and assessment fiction. Because of the nature of the real property
3 interest in a condominium/townhouse, there are no comparable vacant land sales
4 on which to base the valuation of the non-existent "land" portion. The Tax
5 Commission has not promulgated specific regulations governing the valuation of
6 condominiums for ad valorem tax purposes. In the absence of specific
7 regulations, the Assessor must use one of the alternatives provided by the Tax
8 Commission for the valuation of the land portion of single family homes in the
9 absence of sufficient vacant land sales. NAC 361.119. The Washoe County
10 Assessor claims to have used the "allocation method" alternative to value the
11 "land" portion of the Anderson's condominium/townhouse and other similarly
12 situated condominiums and townhouses at Incline Village and Crystal Bay.
13 (Exhibit 9). The Assessor, however, has used that method in a manner not
14 authorized or permitted by Tax Commission regulation.

15 73. The Tax Commission has defined the "allocation" method of valuing
16 the land portion of improved real property as follows:

17 A method used to value land, in the absence of sales of
18 vacant land, by estimating, from sales of comparable
19 improved properties, a typical ratio of land to total value
20 and applying that ratio to the improved property being
21 analyzed to determine the value that the land contributes
22 to the total value of the property. NAC 361.109

22 74. As provided by Tax Commission regulation, the alternative
23 "allocation method" is specifically limited to use only with properties that are
24 "substantially similar." NAC 361.119. As further provided by Tax Commission
25 regulation, the "allocation method" involves determining a "typical ratio of land
26 to total value" and then "applying that ratio to the improved property being
27 analyzed." The "allocation method" as defined and authorized by Tax
28

1 Commission regulation does not include the adjustment of the "land to value"
2 ratio.

3 75. The valuation of the land portion of the Anderson condominium/
4 townhouse for the 2008-2009 reappraisal by the Washoe County Assessor is
5 shown in Exhibit 9. There are three parts to the Assessor's valuation analysis for
6 the Anderson property and similarly situated properties. First the Assessor
7 calculates a "time adjustment" increase using 23 land sales (not a single
8 condominium sale) ranging in size from one tenth of an acre to 80 acres and
9 taking place over a 30-month period, with only one of those sales involving
10 property at Lake Tahoe. Nothing in the allocation method as defined and
11 prescribed by Tax Commission regulation authorizes time adjustments.

12 76. The second step in the three-part valuation is an "allocation" analysis
13 based on the time-adjusted property values. The Washoe County Assessor's
14 "allocation" analysis is based on 19 properties of various sizes up to 10 and 11
15 acres in various parts of Washoe County's reappraisal Area 1, including Sparks,
16 Red Rock, Cold Springs, and Lemmon Valley. None of these properties is a
17 condominium and only one of them is located at Lake Tahoe. The allocation of
18 land to improvement ratio in these 19 properties ranges from 14.4% to 48.8%.
19 The Assessor takes the median at 29.4%, rounds it to 30% and uses it as a base
20 allocation to apply to condominiums at Incline Village and Crystal Bay.

21 77. Once he has determined the allocation ratio, however, the Assessor
22 is still not finished. In the third part of his "allocation" valuation of Incline
23 Village/ Crystal Bay condominiums and townhouses, the Assessor applies a
24 "paired sales" methodology to increase the 30% allocation ratio to 40%, 50% and
25 even 60% as in the case of the Andersons' property.

26 78. As expressly described and limited by Tax Commission regulation,
27 the "allocation method" involves using actual sales of similar improved
28 properties to establish a typical land to improvement ratio which is then applied

1 to the subject property. The Washoe County Assessor calls it "allocation" but
2 uses time adjusted sales of non-similar properties to establish a "median" rather
3 than a typical land to improvement ratio which the Assessor then adjusts upward
4 as much as double. A "median" land to improvement ratio is not authorized by
5 Tax Commission regulation. "Time adjustments" are not authorized by Tax
6 Commission regulation. "Paired sales" analyses are not authorized by Tax
7 Commission regulation. As defined by Tax Commission regulation, allocation is
8 limited to the determination and application of a "typical" land to value ratio.
9 Both time adjustments and paired sales were specifically identified by the
10 Supreme Court in *Bakst* as unauthorized and nothing in the 2004 amendments
11 changed the regulations in that regard. The use of unauthorized methodologies
12 is a violation of the Nevada statutes which require the Commission to establish
13 uniform valuation methodologies and the Assessors to implement those
14 methodologies, the Nevada Supreme Court's ruling in *Bakst* which specified that
15 assessors can only use those valuation and appraisal methods that have been
16 "expressly approved" by the Tax Commission, and the Nevada Constitutional
17 requirement of uniform and equal taxation.

18 79. The methodologies implemented by the Washoe County Assessor
19 for the valuation of the land portion of improved residential properties at Incline
20 Village and Crystal Bay for the 2008-2009 reappraisal, including, without
21 limitation, mass appraisal and multiple regression techniques, hypothetical "base
22 lots," the continuing use of "teardowns" as vacant land sales, the use of view and
23 rock classification systems, the use of a "front foot" valuation method for
24 lakefront properties, the use of "paired sales" and "time adjustments" and the use
25 of a combination of methodologies including single vacant land sales and
26 "teardowns" as "evidence" of value, were not only unauthorized by Tax
27 Commission regulation but in direct contravention of existing regulations. The
28 mass appraisal and multiple regression techniques as well as the creation and use

1 of hypothetical "base lot" values violate not only the regulations but the tax
2 statutes as well.

3 80. The result if not the intent of the methodologies used by the Washoe
4 County Assessor to value the land portion of residential real property at Incline
5 Village and Crystal Bay is to drive up the land value disproportionately. In
6 connection with both the valuation of Incline Village and Crystal Bay
7 condominiums and townhouses (Exhibit 9) and in the report and recommen-
8 dation of land factors to the Department of Taxation (Exhibit 12), the Assessor
9 has determined from the available sales information that the median land to total
10 value ratio of single family residential properties in Washoe County is 30%.
11 Although sales prices of the plaintiffs' respective properties are not available, the
12 Assessor identifies comparable properties and lists their sales prices as part of his
13 valuation analysis. Comparing the Assessor's land valuation of the plaintiffs'
14 properties to the sales prices of comparable properties gives an approximate land
15 to total value ratio. That comparison put the land to total value ratio of the
16 Henderson property at 40% and the land to total value ratio of the Nelson, Lowe,
17 Ingemanson and Anderson properties in a range from 60% to more than 100%.
18 These rough calculations show a much greater percentage of the total value
19 attributed to the land at Incline Village and Crystal Bay than in other parts of
20 Washoe County and is a further indication of the scarcity premium on vacant
21 residential property at Lake Tahoe. These Incline Village/Crystal Bay plaintiffs
22 and other similarly situated taxpayers, however, have no vacant residential land
23 to sell. Taxing the plaintiff homeowners and other similarly situated
24 homeowners on a property attribute they do not own violates not only the
25 Nevada statutes but also both the Nevada and U.S. Constitutions.

1 **RELIEF FROM UNCONSTITUTIONAL VALUATION AND ASSESSMENT**

2 81. Although, for all practical purposes, the Washoe County Assessor
3 acknowledged his failure to comply with existing Tax Commission regulations in
4 the valuation of the land portion of residential real property at Incline Village
5 and Crystal Bay for the 2008-2009 tax year, the Washoe County Board of
6 Equalization denied taxpayers any relief on that ground.

7 82. Plaintiffs Lowe, Anderson, Henderson, Nelson, and Ingemanson
8 filed petitions with the Washoe County Board of Equalization seeking relief on
9 behalf of themselves and all similarly situated homeowner taxpayers in Incline
10 Village and Crystal Bay from the Washoe County Assessor's improper and
11 unconsti-tutional valuations of the land portion of their residential real property.
12 Those petitions were denied on the basis that the County Board of Equalization
13 lacked jurisdiction to hear and determine class petitions.

14 83. Plaintiff Berliner relied upon the class petition to seek relief from the
15 unlawful and unconstitutional valuation methodologies used by the Washoe
16 County Assessor to value all residential real property at Incline Village and
17 Crystal Bay.

18 84. Unless enjoined and restrained by this Court, Defendant Bill Berrum,
19 Washoe County Treasurer, on or before August 1, 2008, will issue real property
20 tax bills to Plaintiffs and to members of the class represented by Plaintiffs based
21 on the Washoe County Assessor's unconstitutional 2008-2009 valuations of real
22 property at Lake Tahoe and will seek to collect tax payments from Plaintiffs and
23 the members of the class represented by plaintiffs based on those unlawful bills.

24 85. Plaintiffs cannot obtain relief from the State Board of Equalization
25 which has determined not even to hear the individual taxpayers' appeals of the
26 decisions of the Washoe County Board of Equalization until August and
27 September of 2008.

28

1 86. Unless Defendant Washoe County Treasurer is enjoined and
2 restrained by this Court from billing and collecting property taxes based on the
3 unconstitutional valuations of the Washoe County Assessor, members of the class
4 of residential real property taxpayers at Incline Village and Crystal Bay
5 represented by Plaintiffs will be irreparably harmed.

6 87. The Washoe County Assessor and Treasurer take the position that
7 their unconstitutional valuation, assessment, billing and collection of property
8 taxes is shielded from review other than through the administrative process
9 which would require each individual property owner at Incline Village and
10 Crystal Bay to challenge their valuation before the County Board of Equalization,
11 take an appeal to the State Board of Equalization, pursue judicial review in the
12 district court and ultimately take an appeal to the Nevada Supreme Court. In the
13 meantime, taxpayers would have to pay the unconstitutional taxes and could
14 only obtain refunds at the end of the process if they had paid those taxes under
15 protest with a separate writing to that effect submitted with each payment.

16 88. The Washoe County Assessor and Treasurer take the position that
17 the law requires each individual taxpayer to pursue their administrative remedy
18 even though the Assessor's openly unconstitutional valuations create only issues
19 of law which neither the County Board of Equalization nor the State Board of
20 Equalization can effectively address, particularly in that both the County Board
21 of Equalization and the State Board of Equalization have clear conflicts of interest
22 in that the County Board is represented by the District Attorney's office as is the
23 County Assessor and that the State Board is represented by the Attorney General
24 as is the Department of Taxation and the Tax Commission, which are and have
25 been openly aligned with the Washoe County Assessor since the 2003-2004
26 reappraisal.

27 89. Plaintiffs take the position that the administrative procedures
28 establish by the Nevada tax statutes were intended to allow for administrative

1 review of individual valuation issues not to countenance flagrantly unconsti-
2 tutional actions by the Assessor or to preclude class relief for classwide
3 deprivation of constitutional rights.

4 90. Over the five tax years from 2003-2004, 2004-2005, 2005-2006, and
5 2006-2007, the approximately 9000 residential real properties at Incline Village
6 and Crystal Bay were valued approximately 45,000 times using the 2003-2004
7 base values that the Nevada Supreme Court determined to be unconstitutional
8 and void. Of those 45,000 unconstitutional assessments, 17 taxpayers have
9 obtained court-ordered refunds for 2003-2004 and approximately 200 taxpayers
10 have obtained partial refunds through a compromise agreement with Washoe
11 County as to which taxpayers have been forced to sue for full performance. The
12 insulation of the Washoe County Assessor and Treasurer from any effective
13 administrative or legal remedy has emboldened the Assessor to disregard both
14 the statutory requirements and the Supreme Court's holding in *Bakst* that Tax
15 Commission regulations must be followed in the valuation of property if
16 constitutionally mandated equal and uniform taxation is to be achieved.

17 91. Members of the class of residential real property homeowner
18 taxpayers at Incline Village and Crystal Bay have no plain, speedy or efficient or
19 otherwise adequate remedy at law from the unconstitutional assessment and
20 collection of taxes by defendants. The Washoe County Assessor has been aware
21 since February of 2003 that he was using, is using and continues to use valuation
22 methodologies at Incline Village and Crystal Bay that were not promulgated by
23 the Nevada Tax Commission and that were not used in the same way elsewhere
24 in the State or in Washoe County. The Nevada Legislature, the Nevada Supreme
25 Court, as well as two Carson City District Courts, have directed that the Washoe
26 County Assessor as well as the other county assessors in Nevada follow and
27 comply with valuation regulations promulgated by the Nevada Tax Commission
28

1 in order to achieve the uniform and equal taxation mandated by the Nevada
2 Constitution.

3 92. Unless enjoined and restrained by this Court, the billing and
4 collection of taxes by the Washoe County Treasurer based on the unlawful and
5 unconstitutional valuation and assessment by the Washoe County Assessor will
6 violate not only the guaranty of equal and uniform taxation in the Nevada
7 Constitution but also the guarantees of due process and equal protection of the
8 U.S. Constitution.

9 93. Plaintiffs and the members of the class of residential real property
10 taxpayers at Incline Village and Crystal Bay are prepared to tender property tax
11 payments based on the valuation of the land portion of their respective
12 properties at 2002-2003 levels as approved by the Nevada Supreme Court in
13 *Bakst*.

14 94. Plaintiffs are entitled to an award of their costs of suit and
15 reasonable attorneys' fees incurred in this action.

16 Wherefore, Plaintiffs pray as follows:

17 1. That the Court determine, adjudge and declare that, in valuing
18 residential real property at Incline Village and Crystal Bay, Lake Tahoe, for the
19 2008-2009 tax year, the Washoe County Assessor failed to follow the valuation
20 methodologies promulgated by the Nevada Tax Commission for uniform use
21 throughout all seventeen counties in Nevada, that the resulting valuations and
22 assessments violate the Nevada and U.S. Constitutions and Nevada statutes, and
23 that any tax bills based on those valuations/assessments are unconstitutional and
24 void;

25 2. That the Court determine, adjudge and declare that the plaintiff
26 homeowner taxpayers and other similarly situated homeowner taxpayers have
27 no plain, speedy, efficient or otherwise adequate remedy under state law from
28 the unconstitutional valuation and assessment of their properties or from the

1 unconstitutional and excessive tax bills based on that unconstitutional valuation
2 and assessment;

3 3. That the Court enter an order preliminarily and permanently
4 enjoining Defendant Washoe County Treasurer Bill Berrum from collecting any
5 taxes on any residential real property at Lake Tahoe, in Washoe County for the
6 tax year 2008-2009 based or calculated on the unconstitutional valuations and
7 resulting unconstitutional assessments;

8 4. That Plaintiffs be awarded costs of this action and their reasonable
9 attorneys' fees; and

10 5. That Plaintiffs be awarded such other and further relief as they may
11 be adjudged entitled to in the premises.

12 DATED this ____ day of April, 2008.

13
14 MORRIS PICKERING & PETERSON

15
16 By 

17 Suellen Fulstone
18 Attorneys for Plaintiffs
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VERIFICATION


I, Todd Lowe, declare:

I am one of the plaintiffs in this action for declaratory and injunctive relief;
and

I have read the foregoing COMPLAINT FOR DECLARATORY AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF and the contents thereof are true of my own knowledge, except as to any matters stated on information and belief, and as to such matters I believe them to be true.

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

DATED this 23rd day of April, 2008.



TODD LOWE