SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

----------X

OWNER OPERATOR INDEPENDENT DRIVERS ASSOCIATION, BRYAN SPOON, D/B/A SPOON TRUCKING, STEVE BIXLER, JACK MCCOMB, and LEWIE PUGH,	:	**SUMMONS**
	:	Index No.: 5551-13
Plaintiffs,	:	Date Filed:
- against-	:	Albany County Clerk Document Number 11489689 Rcvd 10/08/2013 2:36:20 PM
NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, THOMAS H. MATTOX, Individually and in his Official Capacity as Commissioner of the New York State Department of Taxation and Finance; THE STATE OF NEW YORK; and ANDREW M. CUOMO, Individually and in his Official Capacity as the Governor of the State of New York,	:	
Defendants.	:	

----------X

To the above named Defendants:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorneys an Answer to the Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service, within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York, or within thirty (30) days after service is complete if the Summons was served on you by delivery to an official of the state authorized to receive service in your behalf or if it was served pursuant to section 303 of the CPLR, subdivision

two, three, four or five of section 308 of the CPLR, or sections 313, 314 or 315 of the CPLR. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of venue designated above is the residence of the Defendants and CPLR 503.

October 8, 2013
Albany, New York.

Respectfully submitted,

Thomas R. Fallati
Tabner, Ryan and Keniry, LLP
18 Corporate Woods Blvd.
Albany, New York 12211
(518) 512-5307

Co-Counsel for Plaintiffs

Paul D. Cullen, Sr.
Joseph A. Black
Daniel E. Cohen
The Cullen Law Firm, PLLC
1101 30th Street, NW, Suite 300
Washington, D.C. 20007
(202) 944-8600

Lead Counsel for Plaintiffs

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

OWNER OPERATOR INDEPENDENT DRIVERS ASSOCIATION, BRYAN SPOON, D/B/A SPOON TRUCKING, STEVE BIXLER, JACK MCCOMB, and LEWIE PUGH,	:	**CLASS ACTION COMPLAINT**
Plaintiffs,	:	Index No.:
- against-	:	
NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, THOMAS H. MATTOX, Individually and in his Official Capacity as Commissioner of the New York State Department of Taxation and Finance; THE STATE OF NEW YORK; and ANDREW M. CUOMO, Individually and in his Official Capacity as the Governor of the State of New York,	:	
Defendants.	:	

Plaintiffs, Owner Operator Independent Drivers Association ("OOIDA"), Bryan Spoon, D/B/A Spoon Trucking, Steve Bixler, Jack McComb, and Lewie Pugh, by and through their undersigned attorneys, allege for their Verified Complaint as follows:

NATURE OF THE CASE

1. This action challenges the constitutionality of the Defendants' imposition of certain highway taxes in the amounts of $15.00 for a certificate of registration ("Registration Tax"), and a $4.00 decal charge ("Decal Tax") (jointly "Unconstitutional Taxes") on all trucks using New York State highways. Failure to pay the Unconstitutional Taxes on a timely basis can

result in fines, interest, penalties, and seizure of property. The Unconstitutional Taxes are imposed not only on New York-based trucks which are driven mostly in New York, but also on trucks based outside of New York, which are driven mostly in states other than New York. As pertinent to this action, to the extent that trucks owned and/or operated outside of New York travel fewer miles on New York highways than trucks owned and/or operated in New York, the Unconstitutional Taxes impose a higher per mile tax rate on out-of-state trucks, and thus constitute an undue burden on interstate commerce in violation of the Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3. The Unconstitutional Taxes also violate the Due Process Clauses of the United States and New York Constitutions, and are actionable under 42 U.S.C. § 1983 (civil rights).

2. The Named Plaintiffs seek to represent a class of all interstate motor carriers who reside and/or operate trucking equipment primarily outside the State of New York who have paid or will pay the Unconstitutional Taxes and are now or may in the future become subject to the requirements of the Taxes.

3. Plaintiffs bring this class action seeking declaratory and injunctive relief, monetary refunds, and other appropriate relief on behalf of themselves and as class representatives for all others similarly situated.

PARTIES

4. OOIDA is a not-for-profit corporation incorporated in the State of Missouri, with its headquarters located at 1 N.W. OOIDA Drive, P.O. Box 1000, Grain Valley, Missouri 64029. OOIDA was founded in 1973 and has approximately 150,000 members residing in all fifty (50) states, including as pertinent hereto, members who reside and/or operate trucking businesses primarily outside the State of New York, but who also conduct a portion of their

business in New York and are required to pay the Unconstitutional Taxes. OOIDA is acting herein in a representative capacity seeking, among other things, declaratory and injunctive relief on behalf of its members, and similarly situated motor carriers, including the Named Plaintiffs, who operate from time-to-time within the State of New York. The interests OOIDA seeks to protect are germane to the purposes for which it exists.

5. Plaintiff Bryan Spoon, d/b/a Spoon Trucking, is a resident of Grandy, North Carolina. Spoon Trucking conducts its trucking business throughout the United States. Spoon Trucking has paid the Unconstitutional Taxes in order to conduct business in the State of New York.

6. Plaintiff Steve Bixler is a resident of Valley View, Pennsylvania. Plaintiff Bixler conducts his trucking business throughout the United States. Plaintiff Bixler has paid the Unconstitutional Taxes in order to conduct business in the State of New York.

7. Plaintiff Jack McComb is a resident of Littleton, Colorado. Plaintiff McComb conducts his trucking business throughout the United States. Plaintiff McComb has paid the Unconstitutional Taxes in order to conduct business in the State of New York.

8. Plaintiff Lewie Pugh is a resident of Freeport, Ohio. Plaintiff Pugh conducts his trucking business throughout the United States. Plaintiff Pugh has paid the Unconstitutional Taxes in order to conduct business in the State of New York.

9. Defendant New York State Department of Taxation and Finance ("DTF") is an agency of the State of New York organized under section 170 of the Tax Law. DTF maintains offices in Albany, New York. DTF is responsible for administering and enforcing the tax laws of New York State, including the administration and collection of sales and use taxes. These include the Unconstitutional Taxes.

10. Defendant Thomas H. Mattox (the "Commissioner") is the Commissioner of the New York State Department of Taxation and Finance, who maintains offices in Albany, New York. As the principal officer of the DTF, the Commissioner is responsible for administering and enforcing the tax laws of New York State, including the Unconstitutional Taxes.

11. Defendant State of New York is a political body organized under the New York Constitution.

12. Defendant Andrew M. Cuomo (the "Governor") is the Governor of the State of New York, who maintains offices at the State Capitol, Albany, New York. As the State's Chief Executive Officer, the Governor is responsible for executing the laws of New York State.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to C.P.L.R 301, 307 and 3001, as well as 42 U.S.C. § 1983.

14. Venue properly lies in Albany County, pursuant to CPLR 503.

FACTUAL BACKGROUND COMMON TO ALL CLAIMS FOR RELIEF

15. Section 502 of the New York Tax Law requires "[e]ach carrier" to apply to the DTF for a certificate of registration "for each motor vehicle operated or to be operated by him on the public highways in this state." Tax Law § 502(1)(a). A "carrier" is defined, in turn, to "include any person having the lawful use or control, or the right to the use or control of any vehicular unit in this state." Tax Law § 501(5). A "motor vehicle" is defined to include, among other things, "any truck having an unloaded weight in excess of eighteen thousand pounds[.]" Tax Law § 501(2)(a) and (b).

16. Section 502 also requires that an applicant for a certificate of registration pay the Registration Tax, namely, a tax to DTF of $15 per certificate of registration. Tax Law § 502(1)(a).

17. Section 502(6)(a) also permits the DTF to "require the use of decals as evidence that a carrier has a valid certificate of registration for each motor vehicle operated or to be operated on the public highways of this state as required by [Section 502(1)(a)]." The Decal Tax is $4 per decal. Tax Law § 502(6)(a).

18. Section 502 provides for materially identical Registration and Decal Taxes with regard to automotive fuel carriers. Tax Law §§ 502(1)(b) and (6)(b).

19. A party's failure to comply with any of the provisions concerning the highway use tax, including, but not limited to, the Registration Tax and the Decal Tax, may subject the party to statutory penalties, including, but not limited to, those set out in Tax Law § 512.

20. The certificate of registration and decal are intended to demonstrate that a truck is registered to pay a separate highway use tax, which is calculated based on the mileage traveled on New York State public highways. This separate tax is prorated based on actual miles driven in New York.

21. By contrast, the taxes imposed under Section 502 for the registration certificate and decal are not prorated in any respect. The Registration and Decal Taxes are collected uniformly on all trucks using New York highways. These taxes extend equally not only to New York-based trucks that are driven mostly in New York, but also out-of-state trucks that are driven mostly in other states.

22. As a result, the Registration Tax and the Decal Tax discriminate against, and unduly burden, interstate commerce by imposing a heavier per-mile tax burden on out-of-state

trucks than on trucks which operate primarily within the State of New York.

23. Defendants have been collecting both the $15 Registration Tax and the $4 Decal Tax and, upon information and belief, intend to continue to do so.

24. There exists a present and actual controversy that requires the Court to adjudicate the parties' respective rights and duties.

CLASS ACTION ALLEGATIONS

25. The Named Plaintiffs seek to represent the class comprised of all interstate motor carriers (as defined in Section 501 of the Tax Law) residing and/or operating primarily outside of New York who have paid or will pay the Unconstitutional Taxes and are now or may in the future become subject to the requirements of the Taxes.

26. The prerequisites for a class action under CPLR § 901 are met. First, the members of the Plaintiff Class comprise tens of thousands of interstate motor carriers who have paid and/or will become liable to pay the Unconstitutional Taxes. The Class is therefore too numerous for practicable joinder. Second, the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members. Third, the claims of the representative parties who have paid or will pay the challenged taxes are typical of the claims of all members of the Class. Fourth, Plaintiffs will fairly and adequately protect the interests of all members of the Class. Finally, a class action is superior to other available methods for the fair and efficient adjudication of this controversy given the tens of thousands of taxpayers involved.

FIRST CAUSE OF ACTION
(Violation of Commerce Clause)

27. The allegations in paragraphs one through twenty-six above are incorporated herein as if fully set forth below.

28. The Commerce Clause of the U.S. Constitution provides that "Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . ." U.S. Const. art. I, sect. 8, cl. 3.

29. The Commerce Clause prohibits state laws and regulations that, *inter alia*, (i) discriminate against interstate commerce; (ii) regulate extraterritorial commerce; or (iii) unduly burden interstate and extraterritorial commerce.

30. The Unconstitutional Taxes imposing a charge of $15.00 for a certificate of registration, and $4.00 for a decal, violate the Commerce Clause of the United States Constitution, Article I, section 8, Clause 3, both on their face and as applied to Plaintiffs and the putative class members, because they are fixed sum taxes that bear no relationship to the mileage traveled within the State of New York by each affected Plaintiff and putative class member. Because trucks owned and operated by individuals situated outside of New York, on average, travel fewer miles on New York Highways than trucks owned and operated by individuals situated in New York, the Unconstitutional Taxes impose a higher tax rate on out-of-state trucks, and thus discriminate against interstate commerce and constitute an undue burden on interstate commerce in violation of the Commerce Clause.

31. Plaintiffs and putative class members have suffered damages as a result of the Defendants' imposition of the Unconstitutional Taxes in violation of the Commerce Clause.

SECOND CAUSE OF ACTION
(Violation of Due Process Clause)

32. The allegations in paragraphs one through thirty-one above are incorporated herein as if fully set forth below.

33. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property without due process of law." U.S. CONST., amend 14, ¶ 1.

34. The Due Process Clause of the New York Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law." N.Y. CONST., art. 1, ¶ 6.

35. The Unconstitutional Taxes violate the Due Process Clauses of the United States and New York Constitutions, both on their face and as applied to Plaintiffs and the putative class members, because they impose discriminatory taxes on out-of-state trucks doing business in the State of New York.

36. Plaintiffs and putative class members have suffered damages as a result of the Defendants' imposition of the Unconstitutional Taxes in violation of the Due Process Clauses of the United States and New York Constitutions.

THIRD CAUSE OF ACTION
(Declaratory Judgment)

37. The allegations in paragraphs one through thirty-six above are incorporated herein as if fully set forth below.

38. Plaintiffs and all putative class members are entitled to a declaratory judgment that (1) the Unconstitutional Taxes violate the Commerce Clause of the United States Constitution, and therefore are invalid and cannot be enforced; (2) the Unconstitutional Taxes are

unconstitutional under the Due Process Clauses of the United States and New York Constitutions, and therefore are invalid and cannot be enforced; and (3) Plaintiffs and all putative class members are entitled to a refund of all payments of the Unconstitutional Taxes, together with any legally applicable interest and other compensation.

FOURTH CAUSE OF ACTION
(Injunction)

39. The allegations in paragraphs one through thirty-eight above are incorporated herein as if fully set forth below.

40. Plaintiffs and all putative class members are entitled to a preliminary and permanent injunction, enjoining Defendants from implementing or enforcing the Unconstitutional Taxes against Plaintiffs or other truck owners or operators who reside and/or conduct business primarily outside the State of New York.

FIFTH CAUSE OF ACTION
(Section 1983)

41. The allegations in paragraphs one through forty above are incorporated herein as if fully set forth below.

42. Defendants have deprived Plaintiffs and all putative class members of their rights, privileges and immunities under the Commerce Clause of the U.S. Constitution.

43. Defendants have deprived Plaintiffs and all putative class members of protected property interests without due process of law, in violation of the Plaintiffs' rights under the Fourteenth Amendment.

44. The deprivations of the constitutional rights were the result of decisions by officials with final decision-making authority.

45. All of Defendants' actions set forth herein were undertaken under color of state law and were willful and undertaken with reckless indifference to the rights of Plaintiffs and all putative class members under federal law.

46. Defendants have thereby violated 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court issue judgment against all Defendants as follows:

1. A Declaratory Judgment that the Unconstitutional Taxes violate the Commerce Clause of the United States Constitution, and therefore are invalid and cannot be enforced;

2. Declaratory Judgment that the Unconstitutional Taxes are unconstitutional under the Due Process Clauses of the United States and New York Constitutions, and therefore are invalid and cannot be enforced;

3. A preliminary and permanent injunction, enjoining Defendants from implementing or enforcing the Unconstitutional Taxes against Plaintiffs or other truck owners or operators who reside and/or conduct business primarily outside the State of New York;

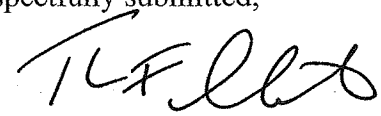
4. Judgment in Favor of Plaintiffs, and all putative class members, for a refund of all payments of the Unconstitutional Taxes, together with any legally applicable interest and other compensation;

5. An award of Plaintiffs' reasonable attorneys' fees and costs pursuant to CPLR 909, 42 U.S.C. § 1988 and any other applicable provisions of law; and

6. An award of such other and further relief to Plaintiffs and all putative class members as may be just and proper under the circumstances.

Dated: October 8, 2013
Albany, New York

Respectfully submitted,



Thomas R. Fallati
Tabner, Ryan and Keniry, LLP
18 Corporate Woods Blvd.
Albany, New York 12211
(518) 512-5307

Co-Counsel for Plaintiffs

Paul D. Cullen, Sr.
Joseph A. Black
Daniel E. Cohen
The Cullen Law Firm, PLLC
1101 30th Street, NW, Suite 300
Washington, D.C. 20007
(202) 944-8600

Lead Counsel for Plaintiffs

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF ALBANY)

Thomas R. Fallati, being duly sworn, deposes and states that deponent is a member of the law firm of Tabner, Ryan and Keniry, LLP, the attorneys of record for Plaintiffs, Owner Operator Independent Drivers Association, Bryan Spoon, D/B/A Spoon Trucking, Steve Bixler, Jack McComb, and Lewie Pugh; that deponent has read the foregoing Verified Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true. This verification is made by your deponent and not by Plaintiffs inasmuch as they are not presently located within the County in which your deponent maintains an office, and such verification is based upon investigations, review of documents, conversations with them and a review of the law office file, among other things.

Thomas R. Fallati

Sworn to and subscribed to before me this
8th day of October, 2013.

Mary C. Marra
Notary Public - State of New York

MARY C. MARRA
Notary Public, State of New York
No. 4721073
Qualified in Schenectady County
Commission Expires July 31, 20 14