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**IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
WASATCH COUNTY, STATE OF UTAH**

DAVID E. SALZMAN, an individual,
DAVID E. SALZMAN UTAH RESIDENCE
TRUST, ROBERT J. MCCORMICK, an
individual, KENT W. TAYLOR, an
individual, GARY M. HOLLOWAY, an
individual, PATRICIA B. HOLLOWAY, an
individual and ADA LLC, a Utah Limited
Liability Company.
Plaintiffs,

vs.

WASATCH COUNTY FIRE
PROTECTION SPECIAL SERVICE
DISTRICT, a county improvement district,
Defendant.

COMPLAINT

Case No.

Judge Derek P. Pullan

Plaintiffs David E. Salzman, David E. Salzman Utah Residence Trust, Robert J.

McCormick, Kent W. Taylor, Gary M. Holloway and ADA LLC ("collectively "Plaintiffs") by

and through counsel, and as their Complaint for Declaratory Judgment pursuant to Utah Code Ann. 11-42-101, et seq., Utah Code Ann. 78B-6-401 et seq., the Constitution of the state of Utah, the United States Constitution and Rule 57 of the *Utah Rules of Civil Procedure*, allege against Defendant Wasatch County Fire Protection Special Service District (“Fire District”) through this Complaint as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff David E. Salzman is an individual and the owner of real property located in Wasatch County, Utah.
2. Plaintiff David E. Salzman Utah Residence Trust is the owner of real property located in Wasatch County, Utah.
3. Plaintiff Robert J. McCormick is an individual and the owner of real property located in Wasatch County, Utah.
4. Plaintiff Kent W. Taylor is an individual and the owner of real property located in Wasatch County, Utah.
5. Plaintiff Gary M. Holloway is an individual and the owner of real property located in Wasatch County, Utah.
6. Plaintiff Patricia B. Holloway is an individual and the owner of real property located in Wasatch County, Utah.
7. Plaintiff ADA LLC is a Utah Limited Liability Company and owner of real property located in Wasatch County, Utah.
8. Defendant Wasatch County Fire Protection Special Service District is a special

service district purportedly created by Wasatch County.

9. This is an action based upon facts, circumstances and conduct that took place primarily in Wasatch County, Utah.

10. Jurisdiction is proper in this court pursuant to Utah Code Ann. §78A-5-102 and Utah Code Ann. §11-42-106(2)(a).

11. Venue is proper in this court pursuant to Utah Code Ann. §78B-3-303(1) and Utah Code Ann. §11-42-106(2)(a)

GENERAL ALLEGATIONS

The Fire District Attempts to Create the Assessment Area

12. On or about September 6, 2012, the Fire District indicated its intent to levy an assessment associated with the creation of an assessment area ("Assessment Area") pursuant to Utah Code Ann. §11-42-101, the Area Assessment Act (the "Act").

13. On or about October 3, 2012, the Wasatch County Council adopted a Notice of Intention to Designate Assessment Area ("Notice of Intent"). A copy of the Notice of Intent is attached as Exhibit 1.

14. The Notice of Intent declared the Fire District's intention to create the Assessment Area.

15. The creation of the Assessment Area was purportedly to finance the operation and maintenance costs associated with paying for full-time staffing of the fire station located near Jordanelle Reservoir (the "Station").

16. According to the Notice of Intent, the intended purpose of the Assessment Area is to levy assessments on property owners within the Assessment Area to pay approximately

\$671,602 in annual costs associated with staffing the Station.

17. The Notice of Intent states that the Assessment Area will levy annual assessments in the amount of \$671,602, with annual adjustments, for at least five years.

18. The Notice of Intent indicates that properties within the Assessment Area will be assessed at the rate of \$.56 per \$1,000 of assessed market value.

19. The Notice of Intent states:

Any person who is the owner of record of property to be included within the Assessment Area shall have the right to file in writing a protest against the designation of the Assessment Area or to make any other objections thereto. Protests shall describe or otherwise identify the property owned of record by the person or persons making the protest. Protests shall be filed in writing with the County Auditor/Clerk of Wasatch County, Utah, either in person during regular business hours Monday through Friday, or by mail on or before the date of the hearing at 5:00 p.m. on November 8, 2012....*Id.* (emphasis added).

20. The Notice of Intent states:

Thereafter, at 7:00 p.m. on November 8, 2012, the County Council will meet in public meeting at the County Council Chambers in Heber City, Utah, to consider all protests so filed and hear all objections relating to the proposed Assessment Area and the proposed [operating and maintenance] Assessments. After such consideration and determination, the Council shall adopt a resolution either abandoning the Assessment Area or designating the Assessment Area either as described in this Notice of Intention to Designate Assessment Area or with deletions and changes made as authorized by the Act; but the County Council shall abandon the designation of the Assessment Area if the necessary number of protests as provided herein have been filed on or before the time specified in this Notice of Intention to Designate Assessment Area for the filing of protests after eliminating from such filed protests: (a) protests relating to property that has been deleted from the Assessment Area, and (b) protests that have been withdrawn in writing prior to the conclusion of the hearing. *Id.* (emphasis

added).

21. The Notice of Intent states that:

The necessary number of protests shall mean the following: Protests representing at least one-half of the total market value of all properties to be assessed where an assessment is proposed to be made according to assessed market value. *Id.* (emphasis added).

22. In the Notice of Intent, the County did not disclose the total market value of the property included in the Assessment Area.

23. Subsequently, the Fire District has, at various times, stated that the total market value of properties in the Assessment Area is approximately \$1.2 Billion.

24. On November 8, 2012, the Fire District held a public hearing regarding the Notice of Intent and regarding protests to the creation of the Assessment Area.

25. During the November 8, 2012 hearing, the Fire District did not provide any information regarding the number of protests submitted or whether the Assessment Area had passed or failed.

26. On November 8, 2012, the Fire District held a public hearing regarding the Notice of Intent and regarding protests to the creation of the Assessment Area.

27. During the November 8, 2012 hearing, the Fire District did not provide any information regarding the number of protests submitted or whether the Assessment Area had passed or failed.

28. After the November 8, 2012 hearing, the Fire District refused to disclose the total market value of those property owners that had submitted protests or otherwise to discuss whether the Assessment Area had passed or failed.

29. Despite the representations that all protests would be delivered to the Fire District's outside consultant, Laura Lewis, immediately following the November 8, 2012 meeting, the Fire District retained sole possession of the protests through late November or early December.

30. On December 5, 2012, Ms. Lewis issued her report regarding whether a sufficient number of protests had been submitted to defeat the creation of the Assessment Area (the "Lewis Report"). A copy of the Lewis Report has been attached as Exhibit 2.

31. The Lewis Report states that the Fire District asked her to tally the protests received by the County and provide a report of the results.

32. The Lewis Report states that each protest was given a value equal to the amount of assessment proposed against the property being protested.

33. The Lewis Report states that "...protests.... received after the deadline (close of the public hearing on November 8, 2012) were tallied, but were not included in the official count." *Id.*

34. The Lewis Report did not disclose the "tally" of the market value of protests purportedly received after the deadline.

35. The Lewis report states that the percentage of protests received was 50.78% of the properties the Assessment Area. Under this calculation, the Assessment Area failed and the Fire District should have abandoned the attempts to create the Assessment Area.

36. However, the Lewis Report states that .38% of the protests were not counted because they were purportedly withdrawn before the November 8, 2012 deadline.

37. The Lewis Report also states that .82% of the protests were not counted because the owners allegedly told the Fire District that they did not submit a protest.

38. The Lewis Report concluded that 49.58% of the properties in the Assessment Area submitted protests.

39. Thus, according to the Lewis Report, the Assessment Area passed by a mere .42%, or a money value of approximately \$5 million.

40. The Lewis Report states that after counting the protests received by the Fire District, (excluding protests deemed “late”) she confirmed that the total amount of protests in the official count was less than 50% and that the Fire District could move forward with the creation of the Assessment Area.

41. On December 5, 2012, the Fire District appears to have verbally decided to proceed with adoption of a resolution to create the Assessment Area.

42. At some point after December 5, 2012, the Fire District drafted a written resolution creating the Assessment Area – this resolution was called Resolution No. 12-15.

43. After Resolution No. 12-15 was reduced to writing by the Fire District, the Fire District then elected to engage in a series of actions to pursue adoption of an ordinance to levy an assessment on all properties in the Assessment Area.

The Fire District Improperly Excluded Valid Protests as “Late”

44. As noted above, the Notice of Intent provides:

Protests shall be filed in writing with the County Auditor/Clerk of Wasatch County, Utah, either in person during regular business hours Monday through Friday, or by mail on or before the date of the hearing at 5:00 p.m. on November 8, 2012....

45. The Notice of Intent does not require protests submitted by mail to be *received* by November 8, 2012, but only that they be *filed* by mail on or before November 8, 2012.

46. Thus, if a protest was mailed on November 8, 2012, it was timely under the Notice of Intent.

47. In addition, Utah Code Annotated § 68-3-8.5 (2)(a) provides:

[A] report ... that is transmitted through the United States mail is considered to be filed or made and received by the state or political subdivision on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapping containing it[.]

48. Utah Code Ann. § 68-2-8.5 (1)(b) defines “report” as “a report, claim, tax return, statement, or other document required or authorized to be filed with the state or a political subdivision of the state.”

49. Accordingly, if a protest was mailed on or before November 8, 2012, it was timely under the Utah Code Annotated § 68-3-8.5 (2)(a).

50. After receiving the Lewis Report, it was evident that many protests had been excluded because they were allegedly filed after the deadline for submission of protests.

51. On January 28, 2013, Gary Oliverson, an owner of property in the proposed Assessment Area, sent a GRAMA request to Wasatch County and the Fire District, asking for a copy of all protests deemed to be late by the Fire District together with a copy of their accompanying postmarked envelopes. A copy of the GRAMA request is attached as Exhibit 3.

52. On January 31, 2013, Janet Carson, on behalf of the Fire District, responded to the January 28, 2013 GRAMA request. This response included protest forms and the post marked envelopes associated with each protest (each such protest is discussed below). A copy of the cover email to the response is attached as Exhibit 4.

53. Plaintiff ADA LLC is the owner of properties in Wasatch County; one property, parcel number 00-0020-8184 has a 2012 assessed property value of \$235,000 and another property, parcel number 00-0020-8182, has a 2012 assessed property value of \$107,000.

54. On November 5, 2012, David Salzman, on behalf of Plaintiff ADA LLC, dated and mailed its protest via United States Postal Service ("USPS"). A copy of the protest and accompanying postmarked envelope is attached as Exhibit 5.

55. This timely protest was improperly excluded as late by the Fire District.

56. Plaintiff David Salzman Utah Residence Trust is the owner of properties in Wasatch County; one property, parcel number 00-0020-8181 has a 2012 assessed property value of \$2,601,871 and another property, parcel number 00-0020-8185, has a 2012 assessed property value of \$4,140.

57. In November 5, 2012, Plaintiff David Salzman / David Salzman Trust dated and mailed a protest via USPS. See, Exhibit 5.

58. This timely protest was improperly excluded as late by the Fire District.

59. Plaintiff Robert J. McCormick is the owner of property in Wasatch County with accompanying parcel number 00-0016-7028 with a 2012 assessed property value of \$3,840,009.

60. On November 5, 2012, Plaintiff Robert J. McCormick dated and mailed his protest via USPS. A copy of the protest and accompanying postmarked envelope is attached as Exhibit 6.

61. This timely protest was improperly excluded as late by the Fire District.

62. Plaintiff Kent W. Taylor is the owner of property in Wasatch County with accompanying parcel number 00-0016-6921 with a 2012 assessed property value of \$3,590,366.

63. On November 7, 2012, Plaintiff Kent W. Taylor mailed his protest via USPS. A copy of the protest and accompanying postmarked envelope is attached as Exhibit 7.

64. This timely protest was improperly excluded as late by the Fire District.

65. Plaintiffs Gary M. Holloway and Patricia B. Holloway are the owners of property in Wasatch County with accompanying parcel number 00-0016-1591 with a 2012 assessed property value of \$5,409,736.

66. On October 23, 2012, Plaintiffs Gary M. Holloway and Patricia B. Holloway mailed their protest via USPS certified mail with mail tracking service. A copy of the protest, accompanying postmarked envelope and letter tracking information is attached as Exhibit 8.

67. This timely protest was improperly excluded as late by the Fire District.

68. The total market value of Plaintiffs' properties is \$15,788,122.

69. As noted above, the Lewis Report concludes that the protests to the creation of the Assessment Area total 49.58% of the total market value of the proposed Assessed Area.

70. Plaintiffs' excluded protests, which were postmarked on or before the November 8, 2012 deadline, equate to a total market value of \$15,788,122.00 and represent at least 1.3% of the total market value of the Assessment Area.

71. If Plaintiffs' valid protests had been counted, the total protest to the creation of the Assessment Area would have surpassed the 50% requirement to defeat the proposed Assessment Area pursuant to Utah Code Ann. § 11-42-206 (2012).

Fire District Improperly Passed Resolution Levying Assessments

72. On March 6, 2013, the Fire District passed Resolution 13-04, which levied assessments against property owned by Plaintiffs. The first assessment payment is due on May 15, 2013 and will be due each year thereafter for a period of no less than five years. In the event a property owner does not pay his or her assessment payment, the property would be subject to foreclosure and sale.

73. Utah Code Annotated § 11-42-403(9) provides:

[An] owner of property within the assessment area ... [may] object to the levy of the assessment ... [if the] governing body failed to obtain jurisdiction to order that the improvements which the assessment is intended to pay be provided to the assessment area.

74. The Fire District failed to obtain jurisdiction to properly levy the assessment to the Assessment Area because once Plaintiffs' valid protests are taken into account, as they must

be, the Assessment Area must be deemed to have failed, must be abandoned pursuant to the Act and is void *ab initio*.

75. As a result, both the attempt to create the Assessment Area and any attempt to levy an assessment is improper, null and illegal.

FIRST CAUSE OF ACTION
(Declaratory Relief – Assessment Area Null and Void)

76. Plaintiffs incorporate by this reference each of the preceding paragraphs of this Complaint, as if fully set forth herein.

77. There presently exists an actual and continuing controversy between the Plaintiffs and the Fire District concerning whether their protests to the creation of the Assessment Area were timely and should have been counted. In addition, there is an actual and continuing controversy regarding whether Plaintiffs' protests were sufficient to defeat creation of the Assessment Area and accordingly whether the attempts to create the Assessment Area and whether any attempts to levy any assessment are null, void, illegal and should be set aside.

78. The Act provides that an Assessment Area shall not be created if the owners of more than 50% of the property within the proposed area submit protests.

79. The Lewis Report concludes that 49.58% of the properties in the Assessment Area submitted protests. Thus, the Assessment Area passed by a mere .42% or a dollar value of less than \$5 Million.

80. Pursuant to the Notice of Intent and Utah statute, Plaintiffs' valid protests were dated and their respective envelopes were postmarked on or before November 8, 2012.

81. The Lewis Report improperly failed to count Plaintiffs' valid protests, exceeding \$15 Million in market value.

82. Accordingly, Plaintiffs are entitled to a declaration and order that Plaintiffs' valid protests were submitted in a timely manner and they should have been counted by the Fire District.

83. Plaintiffs are also entitled to a declaration that the Assessment Area failed because more than 50% of the market value filed valid protests against the creation of the Assessment Area.

84. Plaintiffs are also entitled to a declaration that the Fire District failed to obtain jurisdiction to levy any assessments.

85. As such, all resolutions and ordinances relating to the attempt to create the Assessment Area and the attempt to levy any assessment should be declared null and void and should be set aside.

SECOND CAUSE OF ACTION
(Declaratory Relief - Violation of Due Process)

86. Plaintiffs incorporate by this reference each of the preceding paragraphs of this Complaint, as if fully set forth herein.

87. There presently exists an actual and continuing controversy between the Plaintiffs and the Fire Districts concerning whether its refusal to include Plaintiffs' valid protests when calculating the protests against the creation of the Assessment Area deprived Plaintiffs of their

property interests without due process of law in violation of the Fourteenth Amendment to the United States Constitution and Article I, Section 7 of the Utah Constitution.

88. Plaintiffs are the owners of property within the purported Assessment Area and their properties are now subject to levy by the Fire District.

89. The Notice of Intent required protests to the Assessment Area to be submitted to the County on or before November 8, 2012.

90. Plaintiffs' protests were mailed and postmarked on or before the November 8, 2012 and, under the plain language of the Notice of Intent and Utah law, should have been counted.

91. Accordingly, by failing to count valid protests, Defendants have deprived Plaintiffs of their right to protest the creation of the Assessment Area.

92. As a result, Plaintiffs' properties are now improperly subject to Assessment Area, which has and will cause damage to their property values.

93. As a result of the Fire District's refusal to count Plaintiffs' valid protests, Plaintiffs' properties are now also subject to improper and illegal levy.

94. Plaintiffs' property and the right to not pay an improper and illegal levy are constitutionally protected property interests.

95. Plaintiffs' valid protests were effectively discarded by the Fire District, an entity of the state. As such, Plaintiffs' legitimate right to protest the creation of the Assessment Area was improperly denied by the Fire District.

96. Because their valid protests were discarded by the Fire District, Plaintiffs have been disenfranchised and were denied a meaningful opportunity to be heard with respect to the creation of the Assessment Area, which deprived Plaintiffs of their constitutionally protected property interests under the Fourteenth Amendment and the Utah Constitution.

97. Due process requires treatment of citizens by a state actor which in its totality is fundamentally fair, and through the failure of the Fire District to count valid and timely protests, the Fire District has also deprived Plaintiffs of Plaintiffs' fundamental right to vote and protest, violating Plaintiffs' liberty interests protected by the Fourteenth Amendment.

98. Accordingly, Plaintiffs are entitled to a declaratory judgment from this Court that the Fire District should be required to count Plaintiffs' valid protests.

99. Plaintiffs are also entitled to a declaration that all actions taken by the Fire District to attempt to create the Assessment Area failed because more than 50% of market value of properties in the Assessment Area protested and, as such, all resolutions, ordinances or other actions taken to create the Assessment Area are null, void and should be set aside.

100. Plaintiffs are also entitled to declaration that any resolutions, ordinances or actions to levy an assessment within the Assessment Area are null, void and should be set aside.

THIRD CAUSE OF ACTION
**(Declaratory Relief - Equal Protection Clause and Uniform
Operation of Laws Clause of the Utah Constitution)**

101. Plaintiffs incorporate by this reference each of the preceding paragraphs of this Complaint, as if fully set forth herein.

102. There presently exists an actual and continuing controversy between Plaintiffs and the Fire District regarding whether the attempt to create the Assessment Area and the subsequent levy of an assessment violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and/or the Uniform Operation of Laws clause found in Article 1, Section 24 of the Utah Constitution.

103. The Equal Protection Clause of the Fourteenth Amendment and the Uniform Operation of Laws Clause both require that any governmental or legislative classification or differentiation not involving a suspect class (as exists here) must be reasonable and must not be arbitrary and capricious.

104. The decision by the Fire District to exclude Plaintiffs' valid protests in order to cause the overall number of protests to fall below the minimum number necessary to require abandonment of the Assessment Area is not reasonable, is arbitrary and capricious and violates the Utah Constitution, Article I, Section 24 and the Fourteenth Amendment to the U.S. Constitution.

105. In creating special assessment areas, which have the power involuntarily to impose substantial project costs on property owners, a governing body is required to treat opponents and proponents of a project equally and even-handedly and the process for counting votes cannot be discriminatory. Here, the Fire District refused to count Plaintiffs' valid protests in order to ensure that the Assessment Area passed.

106. By refusing to count Plaintiffs protests, the Fire District has disenfranchised Plaintiffs and has favored those property owners that support the creation of the Assessment Area.

107. Having been given by statute the right to protest, Plaintiffs cannot be disenfranchised by refusing to count their valid protests entirely.

108. The Fire District may not discriminate against the Plaintiffs by counting some protests and not others, to thereby thwart the will of the majority.

109. Because the Fire District's decision to discard Plaintiffs' protests amounts to discriminatory treatment of otherwise similarly-situated property owners, and denied the fundamental right to vote on a proposed tax, the Fire District's actions violate state and federal constitutional requirements of uniform application of laws and equal protection, and should be declared unconstitutional.

110. Accordingly, Plaintiffs are entitled to a declaratory judgment from this Court that the Fire District should be required to count Plaintiffs' valid protests.

111. Plaintiffs are also entitled to a declaration that all actions taken by the Fire District to attempt to create the Assessment Area failed because more than 50% of market value of properties in the Assessment Area protested and, as such, all resolutions, ordinances or other actions taken to create the Assessment Area are null, void and should be set aside.

112. Plaintiffs are also entitled to declaration that any resolutions, ordinances or actions to levy an assessment within the Assessment Area are null, void and should be set aside.


PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiffs pray for judgment in their favor, and against Defendant as follows:

1. Declaration that Plaintiff' protests must be counted and that sufficient protests were submitted to defeat the Assessment Area. Accordingly, all resolutions, ordinances, or other actions taken by the Fire District relating to the creation of the Assessment Area, are null and void and the Assessment Area is declared to be defeated and set aside.
2. Declaration that the Fire District lacked jurisdiction to enact the Assessment Area, and accordingly, all related resolutions, ordinances or other actions taken by the Fire District relating to the levy of any assessment in the Assessment area, are null, void and should be set aside.
3. Declaration that Plaintiffs' due process rights were violated, and any attempts to create the Assessment Area and to levy and assessment in the Assessment Area should be declared null and void and should be set aside.
4. Declaration that Plaintiffs' equal protection rights were violated, and any attempts to create the Assessment Area and to levy and assessment in the Assessment Area should be declared null and void and should be set aside.

DATED this 3^d day of April, 2013.

WRONA LAW FIRM, P.C.



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