IN THE COURT OF COMMON PLEAS
FOR FRANKLIN COUNTY, OHIO
GENERAL DIVISION

BRUCE A. VANCE, el al., Plaintiffs,	CASE NO. 16CVH-04-3295 JUDGE JENIFER FRENCH
THE TAX COMMISSIONER OF OHIO, Defendant.LEAVE TO PLAINTIFFS' SECOND	I) MOTION OF DEFENDANT TAX COMMISSIONER OF OHIO FOR FILE FIRST AMENDED ANSWER TO AMENDED COMPLAINT

Defendant, The Tax Commissioner of Ohio (hereinafter, "Tax Commissioner"), pursuant to Civ. R. 15(A), respectfully moves this honorable Court for an Order granting the Tax Commissioner leave to file the attached First Amended Answer to the Second Amended Class Action Complaint of Plaintiffs, Bruce A. Vance, et al.

For grounds set forth in the following Memorandum in Support, the Tax Commissioner seeks leave to amend his Answer to assert the affirmative defense of failure to exhaust administrative remedies. This defense was recently confirmed by the Supreme Court of Ohio's December 7, 2017 opinions in Adams v. Tesla, 2017-0hio-8853 and Adams v. Tesla, 2017-0hio8854. Because the Tax Commissioner's proposed amendment is being made in good faith, is timely under the circumstances, and will not cause any undue prejudice to Plaintiffs, it should be freely granted in accordance with Ohio's liberal policy favoring amendment.

Respectfully submitted,

MICHAEL DEWINE
Attorney General of Ohio

[s/ Robert A. Hager

Robert A. Hager (0040196)*
* Trial A Ilorney
Justin M. Alaburda (0082139)

Daniel J. Rudary (0090482)
BRENNAN, MANNA & DIAMOND, LLC
75 E. Market Street
Akron, OH 44308
Telephone: (330) 253-5060
Facsimile: (330) 253-1977
E-mail: rahager@bmdllc.com
jmalaburda@bmdllc.com
djrudary@bmdllc.com
-and-

Daniel W. Fausey (0079928)
Christine Mesirow (0015 590)
Daniel Kim (0089991)
Assistant Attorneys General
30 East Broad street, 25 th Floor
Columbus, Ohio 43215
Telephone: (614) 995-9032 Facsimile (866) 513-0356
daniel.fausey@ohioattorneygeneral.gov
christine.mesirow@ohioattorneygeneral.go
v daniel.kim@ohioattorneygeneral.gov

Counse/för *Defendant Tax* Commissioner of()hio

MEMORANDUM IN SUPPORT

1. Civ. R. 15(A) Provides that Leave to Amend Should be Freely Granted

Rule 15 of the Ohio Rules of Civil Procedures espouses a liberal policy in favor of amendment "when justice so requires." In pertinent part, the rule provides as follows:

> A party may amend its pleading once as a matter of course within twenty-eight days after serving it or, if the pleading is one to which a responsive pleading is required within twenty-eight days after service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court shall freely give leave when justice so requires.

Civ. R. 15(A) (emphasis added).

Although the decision to permit amendment of the pleadings is confined to the trial court's sound discretion, the Supreme Court of Ohio has held that leave to amend should only be denied where there "there is a showing of bad faith, undue delay, or undue prejudice to the opposing party." Turner v. Cent. Local School Dist., 85 Ohio St.3d 95, 1999-0hio-207, 706 N.E.2d 1261 (1999); see also Fed. Mgt. Co. v. Coopers & Lybrand, 137 Ohio App.3d 366, 378, 738 N.E.2d 842, 850 (10th Dist.2000) ("Civ.R. 15(A) addresses amended pleadings, and the language therein favors a liberal policy with regard to amending a pleading beyond the time limit when amendment is automatically allowed.").

Because the Tax Commissioner's Motion for leave to file its First Amended Complaint is made in good faith, is timely under the circumstances, and will not result in any prejudice to Plaintiffs, it should be granted.

A. The Tax Commissioner's Motion is Made in Good Faith

On December 7, 2017, the Supreme Court of Ohio released slip opinions in Adams v. l&sla, 2017-0hio-8853 ("Adams I") and Adams v. l&sla, 2017-0hio-8854 ("Adams Il"). The Court's holding in both cases recognizes an additional affirmative defense that should be considered by the Court in the interests of justice.

By way of background, Adams I presented the question of whether a property owner can appeal the Tax Commissioner's annual journal entry establishing CAUV values to the Ohio Board of Tax Appeals. The case was brought by a group of landowners who believed that their

agricultural woodlands were being overvalued by the Tax Commissioner. Specifically, the landowners claimed that the Tax Commissioner set an unreasonably low "clearing cost" as a part of his annual CAUV journal entry. [I] The landowners brought their challenge to the Tax Commissioner's journal entry setting CAUV values in a proceeding before the Board of Tax Appeals ("BTA") and argued that the Commissioner ignored evidence that would have established a higher clearing cost. The BTA dismissed the appeal on the grounds that it did not have jurisdiction under R.C. 5717.02 because the Tax Commissioner's journal entry is not a "final determination." The BTA also rejected an attempt by the landowners to challenge the journal entry as a "rule" that either is unreasonable or had been improperly issued.

Affirming in part and reversing in part, the Supreme Court agreed with the B TA that the journal entry setting annual CAUVs is not a rule and is not subject to challenge under statutory provisions dealing with rulemaking. However, the Court also concluded that the Tax Commissioner's CAUV journal entry is a "final determination," which the BTA has jurisdiction to review under R.C. 5717.02. The Supreme Court therefore reinstated the landowners' appeal before the BTA.

Adams Il involved a separate challenge initiated by the landowners in the BTA pursuant to R.C. 5703.14, which authorizes an injured party to challenge a rule issued by the Tax

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1 To value agricultural woodland, the Tax Commissioner calculates a cost to clear the land to convert it to cropland. See Ohio Adm.Code 57()3-25-33(M)(4). The clearing cost is then subtracted from the cropland value to determine the woodland value. Thus, a lower clearing cost will yield a higher taxable value.

Commissioner on the basis that it is unreasonable. As in Adams I, the landowners specifically challenged the CAUV clearing cost for woodlands adjacent to cropland as being too low. In addition to arguing that the Tax Commissioner's CAUV journal entries (which they claimed were "rules") were unreasonable, the landowners argued in Adams Il that the administrative rules

governing the Tax Commissioner's calculation of CAUV (Ohio Adm. Code 5703-25-06 and 5703-25-30 through 5703-25-36) are per se unreasonable.

Based on its decision in Adams I, the Supreme Court held that the BTA lacked jurisdiction to consider the first part of the landowners' challenge because the Tax Commissioner's journal entries adopting CAUV values are not "rules."

With respect to the second part of the landowners' challenge (i.e., that the rules governing computation of CAUV are themselves unreasonable), the Court held that the landowners failed to meet their burden. Adams Il at Il l l . The Court accordingly affirmed the B TA's dismissal of the landowners' challenge, concluding, "[t]he landowners' appeal boils down to a challenge to the tax commissioner's application of the rules, rather than a challenge to the reasonableness of the rules themselves. Their quarrel is with the CAUVs, not the rules. Their rule-review challenge is without merit, but as we held in Adams I, they may challenge the CA UVs through an appeal under R.C. 5717.02 " Id. at Il 13 (emphasis added).

The Supreme Court's holdings in Adams I and Adams Il stand for the proposition that landowners may challenge the Tax Commissioner's journal entries promulgating CAUVs as a ‚'final determination" in the Board of Tax Appeals pursuant to R.C. 5717.02. In the context of this litigation, that holding now affords the Tax Commissioner with the affirmative defense of failure to exhaust administrative remedies. See also BP Communicalions Alaska, Inc. v. Cenl. Co//eclion Agency, 136 Ohio App.3d 807, 737 N.E.2d 1050 (8th Dist.2000) (holding that if a

party is challenging the "amount of the tax," as opposed to the "legal authority to collect a tax," its challenge should be brought administratively through the BTA, as "[t]he Board of Tax Appeals has special expertise in tax matters and would be able to compile an adequate record, thus preparing

the way, if the litigation should take its ultimate course, for a more informed and precise determination by the Court.").

Citing to BP Communications, Plaintiffs have consistently affirmed in this action that they are disputing their individual CAUV "valuations," not the Tax Commissioner's legal authority to promulgate current agricultural use values:

> Plaintiffs here are, like BP, disputing the amounts of the valuations, not the right of the State to levy CAUV taxes. More importantly, Plaintiffs are in the unfortunate position of having no administrative remedies to exhaust before invoking Subchapter 2723, as the Tax Commissioner has articulated at length before the Board of Tax Appeals and in the Ohio Supreme Court in Adams, et al v. Testa [...].

Plfs.' Initial Br. in Opp. to Def. ' s Mtn. for Summary J. (July 23, 2017) at 24.

Moreover, Plaintiffs have acknowledged that BP Communications stands for the proposition that "[t]here is no common pleas jurisdiction for disputes over the amount of valuation, until administrative remedies have been exhausted, as the Eighth District Court of Appeals held in a claim filed by BP against the City of Cleveland's tax collector, the Central Collection Agency." Plfs.' Initial Br. in Opp. to Def. 's Mtn. for Summary J. (July 23, 2017) at 23 (emphasis added).

Now that Adams I and Adams Il have held that Plaintiffs do have an administrative remedy to exhaust, Plaintiffs' prior admissions concerning the applicability of the administrative process to "disputes over the amount of valuation" require that this Court address the affirmative defense of failure to exhaust administrative remedies. Because the Tax Commissioner' s proposed

amendment raising this defense is being made in good faith pursuant to recently-decided Supreme Court authority, it should be permitted.

B. The Tax Commissioner's Proposed Amendment is Timely

The Supreme Court's decisions in Adams I and Adams Il were released on December 7, 2017, and the Tax Commissioner has sought this Court's leave to file an Amended Answer based on those decisions less than three weeks later. The Tax Commissioner's proposed amendment based on the Adams decisions is therefore timely under the circumstances.

c. The Tax Commissioner's Amended Answer Will Not Unfairly Prejudice Plaintiffs

Finally, the Tax Commissioner's Amended Answer will not unfairly prejudice Plaintiffs. First, Plaintiffs will not have to file any response to the Tax Commissioner's Amended Answer, and will therefore not incur any additional fees and costs. Moreover, Plaintiffs have already made significant concessions regarding the preclusive effect that administrative review of tax valuation disputes has on this Court's jurisdiction. See Plfs.' Initial Br. in Opp. to Def. 's Mtn. for Summary J. (July 23, 2017) at 23 ("[t]here is no common pleas jurisdiction for disputes over the amount of valuation, until administrative remedies have been exhausted, as the Eighth District Court of Appeals held in a claim filed by BP against the City of Cleveland's tax collector, the Central Collection Agency."). As such, Plaintiffs can hardly claim that the Tax Commissioner's assertion of a defense predicated on these same arguments is an unfair surprise or a frivolous, illfounded attempt to delay and frustrate proceedings. Finally, and although trial is presently scheduled to commence in February 2018, that date will in all likelihood need to be continued in light of the Tax Commissioner's pending Motion for Summary Judgment, and (if that motion is denied), Plaintiffs' anticipated motion for class certification and related class certification discovery. Accordingly, the filing of the Tax Commissioner's Amended Answer would not

require the continuance of any case management dates that would not otherwise be continued by virtue of the complex substantive and procedural questions yet to be resolved in this case.

Accordingly, and because Plaintiffs will not be unduly prejudiced by the Tax Commissioner's Amended Answer, leave to file it should be freely granted.

11. Conclusion

The Tax Commissioner's Motion for leave to file his First Amended Answer to Plaintiffs' Second Amended Class Action Complaint is made in good faith, is timely under the circumstances, and will not result in any unfair prejudice to Plaintiffs. Accordingly, and pursuant to Ohio's liberal policy in favor of amendment, the Tax Commissioner respectfully requests that this Court enter an Order granting him leave to file the attached First Amended Answer forthwith.

Respectfully submitted,

MICHAEL DEWINE
Attorney General of Ohio

/s/ Robert A. Hager

Robert A. Hager (0040196)*
* li•ia/ A Ilorney
Justin M. Alaburda (0082139)
Daniel J. Rudary (0090482)
BRENNAN, MANNA & DIAMOND, LLC
75 E. Market Street
Akron, OH 44308

Telephone: (330) 253-5060
Facsimile: (330) 253-1977
E-mail: rahager@bmdllc.com
jmalaburda@bmdllc.com
djrudary@bmdllc.com

-and-

Daniel W. Fausey (0079928)
Christine Mesirow (0015 590)
Daniel Kim (0089991)
Assistant Attorneys General

30 East Broad Street, 25 th Floor
Columbus, Ohio 43215
Telephone: (614) 995-9032 Facsimile: (866) 513-0356
daniel.fausey@ohioattorneygeneral.gov
christine.mesirow@ohioattorneygeneral.go
v daniel.kim@ohioattorneygeneral.gov

Counselfor Defendanl Tar Commissioner of()

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

[s/ Robert A. Hager
Counse/för Commissioner of Ohio

4849-6805-2569, v. 1

IN THE COURT OF COMMON PLEAS
FOR FRANKLIN COUNTY, OHIO
GENERAL DIVISION

BRUCE A. VANCE, el al., Plaintiffs, THE TAX COMMISSIONER OF OHIO, Defendant.	CASE NO. 16CVH-04-3295 JUDGE JENIFER FRENCH DEFENDANT TAX COMMISSIONER OF OHIO'S FIRST AMENDED ANSWER TO PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT

Defendant Tax Commissioner of Ohio ("Tax Commissioner") submits the following First Amended Answer to the Second Amended Class Action Complaint of Plaintiffs Vance, el al. ("Vance"):

1. Paragraph I contains no allegation against the Tax Commissioner. The referenced law speaks for itself. Further answering, the Tax Commissioner denies that land is valued exclusively upon "agricultural productivity," because the Constitution provides that land shall be valued for "agricultural use. See Art. Il Sec. 36. Vance improperly attempts to conflate agricultural "production capability" with agricultural "use" valuation. See, e.g. Paragraphs I and 41. CAUV is designed to calculate the market value of agricultural property as if it could only be farmed (as opposed to highest and best use valuation). The use of an "income" approach to valuation recognizes the agricultural use, and is a way of calculating that restricted market value. Further answering, the Tax Commissioner denies that "the State" is obligated to value all land for CAUV purposes. Instead, the Ohio Constitution permits the enactment of legislation to value, for real property tax purposes, land devoted exclusively to agricultural use, at the current value such land has for such agricultural use. In turn, the General Assembly has passed laws enabling CAUV, and the Tax Commissioner is tasked with broad discretion in determining and executing the process

by which CAUV is to be determined. The Tax Commissioner denies having acted inconsistently with Ohio law.

2. Admit that the General Assembly has provided for CAUV and has designated the Tax Commissioner as the executive branch official tasked with creating the process by which CAUV is to be determined.

3. Paragraph 3 contains no allegation against the Tax Commissioner. The Tax Commissioner admits the importance of Ohio's agricultural industry. He admits the public policy interest in the fair and proper implementation of CAUV. He denies having acted inconsistently with Ohio law.

4. Deny.

5. Paragraph 5 is a characterization by Vance of his Complaint and not an allegation. As such, Paragraph 5 speaks for itself. The Tax Commissioner denies having acted inconsistently with Ohio law.

6 The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 6.

7 The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 7.

8 The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 8.

9 The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 9.

10. The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 10.

11. The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph I l .

12. The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 12.

13. The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 13.

14. The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 14.

15. The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 15.

16. The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 16. He denies that any increase in taxation has occurred because the Tax Commissioner has acted inconsistently with Ohio law.

17 The Tax Commissioner admits he is a Defendant to this lawsuit. He admits he is the current Tax Commissioner of Ohio. The Tax Commissioner denies that he has acted inconsistently with Ohio law. The Tax Commissioner is the head of an administrative agency and his authority is limited to the powers and duties conferred on him by the General Assembly. He denies that he is the appropriate representative for the "State of Ohio," as that term is used by Vance.

18 Subject to the affirmative defenses listed below, the Tax Commissioner admits that courts of common pleas may adjudicate claims for declaratory and equitable relief against

the Tax Commissioner in some circumstances. He denies that this Court has jurisdiction in this case. He denies that he has collected and retained specific funds of which Plaintiffs seek restitution. He denies that Vance has properly stated a claim for either declaratory judgment or equitable restitution.

19. Civ.R. 3 speaks for itself. The Tax Commissioner maintains his position that this case should be dismissed. He denies the remainder of Paragraph 19.

20. Paragraph 20 contains no allegation against the Tax Commissioner. The referenced laws speak for themselves. The Tax Commissioner denies he has acted inconsistently with those laws.

21. Paragraph 21 is ambiguous because it alleges that "ODR" sets CAUV Land Tables. Thus, the Tax Commissioner denies Paragraph 21. To the extent Vance alleges that the Ohio Department of Taxation sets CAUV Land Tables, the Tax Commissioner denies that he calculates CAUV values and distributes those values to "all 88 County Auditors." Instead, the Department of Taxation promulgates CAUV land tables annually and distributes those tables only to those counties scheduled to reappraise or update property values. The Tax Commissioner does not "calculate" CAUV values for individual parcels.

22 The Tax Commissioner denies each owner of CAUV land must file an annual application. CAUV property owners must file an annual renewal with the county auditor. There is a meaningful distinction between application and renewal processes. The Tax Commissioner also denies that a county auditor "must apply the annual CAUV Land Tables" if the property is still used for agriculture for two reasons. First, the auditor applies the table issued for that county's most recent revaluation year. Secondly, prudent property owners only opt into the
CAUV program if their tax bills would be lower than they would be under a fair market value

appraisal. Agricultural property owners are not required to participate in the CAUV program simply because their property is used for agriculture.

23. The referenced laws speak for themselves. The Tax Commissioner denies having acted inconsistently with Ohio law. He admits that there is no administrative right of appeal of the Land Tables to a Board or Revision or similar forum. He denies that Vance has no other recourse, because mandamus is an appropriate remedy if the property owner believes that the Tax Commissioner erred in setting the values in the Land Tables.

24. The Tax Commissioner admits the existence of Ohio Adm.Code 5703-25-33. The Tax Commissioner denies that Ohio Adm.Code 5703-22-33 is comprised only of "mandates." Rather, Ohio Adm.Code 5703-25-33 is directory, not mandatory. The Tax Commissioner denies the remainder of Paragraph 24.

25. As this Paragraph is misleading and oversimplifies the complexity of CAUV, the Tax Commissioner denies it.

26. As this Paragraph is misleading and oversimplifies the complexity of CAUV, the Tax Commissioner denies it.

27 As this Paragraph is misleading and oversimplifies the complexity of CAUV, the Tax Commissioner denies it. Further, the provisions of the Ohio Administrative Code are directory, not "mandatory.',

28. As this Paragraph is misleading and oversimplifies the complexity of CAUV, the Tax Commissioner denies it.

29. As this Paragraph is misleading and oversimplifies the complexity of CAUV, the Tax Commissioner denies it.

30. As this Paragraph is misleading and oversimplifies the complexity of CAUV, the Tax Commissioner denies it.

31. The Tax Commissioner denies using a 10 percent capitalization rate in 2002. He also denies Vance's implication that he arbitrarily changed the capitalization rate. The capitalization rate is formulated from a variety of market and government data. In 2002, the capitalization rate was 9.3 percent. In 2016, the rate was 6.3 percent. The Tax Commissioner denies the third sentence because it is misleading and oversimplifies the complexity of the CAUV. The third sentence is also unintelligible and is therefore denied.

32. The Tax Commissioner admits he publishes information on CAUV and CAUV tables. He denies that he acted inconsistent with Ohio law. He denies the remainder of Paragraph 32.

33. Paragraph 33 contains no averment against the Tax Commissioner. The referenced administrative rule speaks for itself. The Tax Commissioner denies having acted inconsistently with that rule.

34 The Tax Commissioner denies the first sentence of Paragraph 34 He admits to using corn, soybeans, and wheat to determine net agricultural income. He denies using those commodities for the capitalization rate. The Tax Commissioner uses corn, soybeans, and wheat because those three crops constitute the overwhelming majority of Ohio's agricultural produce, commonly referred to as field crops. CAUV is calculated "assuming typical management, cropping, and land use patterns and yields for a given type of soil." Ohio Adm.Code 5703-2233. Vance misconstrues the term "land use patterns.' The actual definition can be found in Ohio Adm.Code 5703-25-30. "Land use pattern" means "[t]he typical sequence or distribution of major field crops and uses with the proportion of each crop or use expressed as a decimal

fraction of the total acreage being farmed." (Emphasis added) Vance cannot prove injury here because if the other products he lists (hay, livestock, poultry, etc.) were included in the income calculation, income would increase, not decrease. Thus, Vance's class would pay more in property taxes than it does now. In fact, some of these products have been removed from the income calculation to prevent an inflated income rate (hay being an example). The Tax Commissioner denies any portion of Paragraph 34 not specifically admitted.

35. The Tax Commissioner denies having acted inconsistently with any "legislative mandate" (and Vance points to none). Here again, Vance misstates the meaning of "land use.' See Answer at Il 34. The Tax Commissioner denies any remaining portion of Paragraph 35.

36. The referenced rule speaks for itself. The Tax Commissioner denies having acted inconsistently with that rule.

37. Deny.

38. The Tax Commissioner denies the first sentence as false. Ohio law does not require valuing agricultural property "as it compares to land with the very best soil." The Tax Commissioner sets rates for each soil type for accuracy. The Tax Commissioner also denies having "overlooked[] local conditions... and land use patterns." Again, Vance ignores the legal definition and redefines "land use patterns" and local conditions to serve his purpose. Here also again, Vance cannot prove injury because if the other products he lists (hay, livestock, poultry, etc.) were included in the income calculation, income would increase. Thus, Vance's class would pay more in property taxes than it does now. In fact, some of these products have been removed from the income calculation to prevent an inflated income rate (hay being an example). The Tax Commissioner admits that hay has been excluded since 2010 (to Vance's benefit). The

Tax Commissioner denies any portion of Paragraph 38 not specifically admitted.

39. Paragraph 39 contains no averment against the Tax Commissioner. The referenced administrative rule speaks for itself. The Tax Commissioner denies he has acted inconsistently with that rule.

40. Paragraph 40 contains no averment against the Tax Commissioner. The referenced administrative rule speaks for itself. The Tax Commissioner denies he has acted inconsistently with that rule. The Court should note that Paragraph 40 in misleading because Vance does not reproduce the entire relevant portion of this rule. Instead, he inaccurately abridges the rule.

41. The Tax Commissioner denies the first sentence of Paragraph 41. The Tax Commissioner does consider the land capability classes. In fact, he drills down all the way to soil classifications within those capability classes to more accurately determine land values. The Tax Commissioner's practice meets and exceeds the requirements of Ohio Adm.Code 5705-2533. The Tax Commissioner denies the remaining allegations in Paragraph 41. CAUV is designed to calculate market value of agricultural property as if it could only be farmed. The income approach is a way of calculating that value (as an alternative to the much higher fair market value of property subject to potential development for commercial or residential purposes). If a property cannot produce crops or be used for agricultural purposes (as Vance claims) it should not be treated as CAUV property.

42 Deny. See also Answer at 41.

43 Deny. See also Answer at 41.

44 Paragraph 44 contains no averment against the Tax Commissioner. The referenced administrative rule speaks for itself. The Tax Commissioner denies he has acted inconsistently with that rule.

45. Deny. The Tax Commissioner's practice comports with Ohio Adm.Code 570325-33.

46. On the advice of the Agricultural Advisory Committee established in Ohio Adm.Code 5703-25-32, the Tax Commissioner reviews ten year averages to obtain more accurate yield numbers. 1984 was the last year for which actual crop yield data was available. Thus, a broader range of supplemental data is necessary to reach accurate yield numbers. Here again, Vance can show no harm from this practice.

47. Deny. No rule or statute "obviously requires" the Tax Commissioner to consider Vance' s factors.

48. The referenced administrative rule speaks for itself. The Tax Commissioner denies the remainder of Paragraph 48.

49. The referenced administrative rule speaks for itself. The Tax Commissioner denies he acted inconsistently with that rule. The Tax Commissioner denies the remainder of Paragraph 49.

50 Deny. The Tax Commissioner does not arbitrarily pick a management deduction factor. The 5 percent factor is derived from the Ohio State University's published crop budgets, which expresses management costs in the marketplace.

51. The Tax Commissioner denies removing risk from the CAUV calculation. Risk was included in the calculation until 2009. Risk is now addressed in the detailed soil maps and paints a more accurate picture of each soil type and the risk associated with that soil type. Different soils carry different levels of risk. The Tax Commissioner denies the third and fourth sentences of Paragraph 51. He denies that the risk rate should be eleven percent (Vance gives no basis for that number). The Tax Commissioner denies that the oil and gas risk factors statutorily

set in R.C. 5713.051 have any applicability in this case or to CAUV. The Tax Commissioner denies any remaining allegations in Paragraph 51.

52. The Tax Commissioner admits the first sentence of Paragraph 52. Since sentence two is misleading, the Tax Commissioner denies it. ODT has repeatedly sought clearing cost data from CAUV stakeholders including Vance. No verifiable evidence has ever been submitted showing the actual cost of clearing woodland. Only anecdotal information has been submitted. . The Tax Commissioner admits increasing the clearing cost credit to $1,000 per acre in 2015. He denies any allegation in Paragraph 52 not specifically admitted.

53. Deny.

54. The referenced rule speaks for itself. The Tax Commissioner denies having acted inconsistently with that rule. He denies the remainder of Paragraph 54. The Tax Commissioner has never received probative information from "reliable sources." See also Answer at Il 52.

55. The Tax Commissioner denies that he has not increased these credits. The credits were increased in 2015 stemming from Ohio State University data. The Tax Commissioner denies any allegation in Paragraph 55 not specifically admitted.

56 Deny.

57 Because Paragraph 57 grossly (and misleadingly) oversimplifies CAUV, the Tax Commissioner denies it entirely. CAUV is an alternative method that results in the valuation under restricted conditions not tied to the land itself. Vance suggests each parcel should be calculated individually. Not only does the Ohio Constitution not require that to occur, that system is un-administrable. If property is not being used for agriculture (as Vance's example assumes), then it should not be CAUV property.

58. Deny.

59. Deny.

60. Deny.

61. The laws referenced in Paragraph 61 speak for themselves. The Tax Commissioner denies the remainder of Paragraph 61.

62. Deny. The Tax Commissioner does investigate market data. The Agricultural Advisory Committee experts report findings to the Department of Taxation. Public hearings are also held on these issues. The data collection process is very comprehensive.

63. Admit that the Tax Commissioner primarily relies on the Farm Credit Services, but he also benefits from any advice on such matters provided by the Advisory Committee.

64. Deny. The Tax Commissioner selected the Loan to Value ratios and loan terms based on the advice of the Advisory Committee.

65. Deny.

66. Ohio Adm. Code 5703-25-33(b) speaks for itself. Deny any characterization of that provision made by Vance in paragraph 66.

67. Admit that the Tax Commissioner uses the Prime Rate published in the Wall Street Journal plus 2^0 0. Deny everything else in paragraph 67.

68 Ohio Adm. Code 5703-25-33(b) speaks for itself. The Tax Commissioner denies having acted inconsistently with Ohio law. The Tax Commissioner also denies the remainder of Paragraph 68 as legal argument.

69. Ohio Adm. Code 5703-25-33(c) speaks for itself. The Tax Commissioner denies having acted inconsistently with Ohio law.

70. Admit the second sentence of paragraph 70 Deny the remainder of that paragraph.

71. Because Paragraph 71 is ambiguous, the Tax Commissioner denies it.

72. Ohio Adm. Code 5703-25-33(M)(2) speaks for itself. The Tax Commissioner denies having acted inconsistently with Ohio law.

73. The Tax Commissioner denies having acted inconsistently with the law. The methods followed by the Tax Commissioner are in accordance with income appraisal standards. Because the Tax Commissioner is charged with determining the value of agricultural land using the income approach, the tax rates utilized are those that farm property is subject to. This ensures that the tax additur represents the actual expense to the farming operation.

74. Deny.

75. The laws referenced in Paragraph 75 speak for themselves. The Tax Commissioner denies having acted inconsistently with Ohio law. He denies the remainder of Paragraph 75.

76. Deny.

77. Deny.

78 Deny.

79 Deny.

80 Deny. Also deny that the rule is mandatory. It is directory.

81. Deny. Moreover, Vance improperly couches an argument touching on fraud and conspiracy, without naming any defendant other than the Tax Commissioner, and without appropriately pleading the elements of fraud.

82 The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of the first two paragraphs of Paragraph 82. He denies the remainder of that

paragraph. He further denies the improper insinuation that the values set in his Land Tables stem from any improper motive.

83. The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 83. Beyond that, Vance has dropped the Governor as a defendant in this action, and any statement that purportedly was made from that office is irrelevant to the issue of whether the Tax Commissioner has violated Ohio law.

84. Admit.

85. Admit that the landowners cannot appeal the actual values set in the Land Tables to the BTA as such. If the landowners believe that the rules governing the CAUV program are unreasonable, they can file a rule review request with the BTA.

86. The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 86.

87. The Tax Commissioner is without knowledge or information sufficient to form a belief as to the truth of Paragraph 87.

88 Deny.

89 Paragraph 89 is a characterization of Vance's Complaint. The Tax Commissioner admits he is attempting to bring a class action. He denies Vance or his putative class is entitled to relief.

90 Deny.

91. Deny.

92 Deny.

93 Deny.

94 Deny.

95. Deny.

96. Deny.

97. Paragraph 97 is a characterization of Vance's Complaint. The Tax Commissioner admits he is attempting to bring a class action. He denies Vance or his putative class is entitled to relief.

98. Paragraph 98 contains no averments against the Tax Commissioner. The Tax Commissioner denies having acted inconsistently with Ohio law.

99. Paragraph 99 is a characterization of Vance's Complaint. The Tax Commissioner admits he is attempting to bring a class action. He denies Vance or his putative class is entitled to relief.

100. Deny.

101. Deny.

102. Deny.

103. Deny.

104 Deny.

105 Paragraph 105 is a characterization by Vance of his complaint. The Tax Commissioner denies acting inconsistently with Ohio law. He denies Vance or his putative class is entitled to relief.

106. The Tax Commissioner likewise incorporates by reference all preceding paragraphs.

107. The referenced law speaks for itself. The Tax Commissioner denies that this complaint meets the requirements of a declaratory judgment action. Rather, in that plaintiffs

contend that the Tax Commissioner has violated a clear legal duty, the appropriate cause of action is mandamus.

108. The Tax Commissioner acknowledges Vance seeks a declaratory judgment. He denies that Vance is entitled to such relief.

109. The Tax Commissioner likewise incorporates by reference all preceding paragraphs.

110. Deny.

111. Deny. Neither the State of Ohio nor the Tax Commissioner assess or retain property taxes on CAUV land. There is no constitutional or statutory authority that would permit the Tax Commissioner or the State of Ohio to assess or retain the subject property taxes. Therefore, neither the State nor the Tax Commissioner has been unjustly enriched by the alleged overpayment of property taxes.

DEFENSES

FIRST DEFENSE - FAILURE TO STATE A CLAIM

112. Vance's Complaint fails to state a claim upon which relief can be granted.

113. Vance's proper remedy is mandamus, as explained in the Tax Commissioner's Motion to Dismiss. Declaratory relief and equitable restitution are not appropriate claims and cannot be used to order the Tax Commissioner to perform an act within his executive statutory duties.

114. Additionally, equitable restitution requires that the funds that are alleged to have been wrongfully taken from the claimant be in the possession of the Defendant. Santos v. Ohio Bur. Of Workers ' Comp., 2004-0hio-28, 1114, 101 Ohio St.3d 74, 77. Real property taxes are levied by county auditors and paid to county treasurers. See, R.C. 5713.01, 5713.31 (county auditor is the assessor): R.C. 5713.12, 5713.31 (auditor is assessor, county treasurer is collector). The State of Ohio and the Tax Commissioner do not assess or collect real property tax. The State of Ohio and the Tax Commissioner do not receive any money collected from real property taxation. Vance does not contend that the taxes he paid are in the possession of the Tax Commissioner, or even that the taxes were ever paid to the Tax Commissioner.

115 Separately, Vance is essentially asserting a subrogation claim against the Tax Commissioner, because the Tax Commissioner does not, and never did, have possession of the real property tax money that Vance allegedly overpaid. However, a claim of subrogation will not lie against the Tax Commissioner. Communily Ins. Co. v. ()hio Depl. of (2001), 92
Ohio St. 3d 376.

116. Vance's prayer for relief is unavailable under R.C. 5703.38, which provides that

"[n]o injunction shall issue suspending or staying any order, determination, or direction of the department of taxation, or any action of the treasurer of state or attorney general required by law to be taken in pursuance of any such order, determination, or direction. This section does not affect any right or defense in any action to collect any tax or penalty.',

SECOND DEFENSE - STANDING

117. Some or all of Vance's putative class may lack standing.

THIRD DEFENSE - FAILURE TO NAME NECESSARY PARTIES

118. Vance has failed to join indispensable parties.

119. Vance seeks repayment of real property taxes overpaid. However, the only defendant in this suit is the Tax Commissioner, who never possesses the tax money.

120. Moreover, R.C. 2723.03 requires that the complaint "be brought against the officer whose duty it is to collect [those taxes]. In this case, it is the duty of the County Treasurer, not the State to collect these taxes.

121. Accordingly, all county auditors and treasurers are necessary and indispensible parties to this suit and full relief cannot be awarded in their absence.

FOURTH DEFENSE - STATUTE OF LIMITATIONS

122 Some or all of Vance's claims are barred by a statute of limitations. Vance claims that the Tax Commissioner has "flouted the legislative and statutory mandates" "[flor close to a decade." Complaint at Paragraph 4. And, Vance seeks recompense for years 2005 through 2014. See, Complaint at Paragraphs 108 and 1101-1 l l . Vance's cause of action accrued therefore, a decade ago, and, as such, Vance's claims are foreclosed by the applicable statutes of limitations.

123. Ohio law holds that "[a] 'cause of action against the government has 'first accrued' only when all the events which fix the government's alleged liability have occurred and the plaintiff was or should have been aware of their existence.' " Slate ex rel. Nickoli v. Erie MelroParks, 2010-

0hio-606, Il 34, (quoting Hopland Band of Pomo Indians v. United Slates, 855 F.2d 1573, 1577 (Fed.Cir. 1988)). Based upon Vance's allegation, the causes of action in this case first accrued in or before 2005.

124. The statute of limitations for declaratory judgments is based upon the substantive underlying claim. "[A] declaratory judgment action is a procedural device used to vindicate substantive rights," and thus "is time barred only if relief on a direct claim based on such rights would also be barred." Slone v. Williams, 970 F.2d 1043, 23 U.S.P.Q.2d (BNA) 1492 (2d Cir. 1992). In this case, Vance's substantive claim is a declaration regarding the illegal assessment and collection of taxes, for which a cause of action is provided by R.C. 2723.01. Under R.C. 2723.01 "Courts of common pleas may enjoin the illegal levy or collection of taxes and assessments and entertain actions to recover them when collected, without regard to the amount thereof, but no recovery shall be had unless the action is brought within one year after the taxes or assessments are collected."

125. Accordingly, R.C 2723.01 sets forth a one-year statute of limitations for Vance's declaratory judgment action. The action must be brought within one year of the collection of taxes. But here, the Complaint asserts claims back to 2005. See, Complaint at Paragraphs 108 and 1101-1 l l . Vance seeks recompense for tax years 2005 forward. Id. Such claims do not meet the applicable statute of limitations.

126. Further, "[u]njust enrichment is a quasi-contractual claim and its statute of limitations is six years as set forth at R.C. 2305.07." Cily of Parma v. ()hio Bureau of Workers '

Compensation, 2016 WL 821154 (2016), citing Hambleton v. R. G. Barry Corp., 12 Ohio St. 3d 179, 183 (1984).

127. Additionally, and in the alternative, pursuant to R.C. 2743.16(A), there is a twoyear statute of limitations on claims brought against the State.

FIFTH DEFENSE - LACHES

128. Some or all of Vance's claims are barred by laches. Vance claims that the Tax Commissioner has "flouted the legislative and statutory mandates" "[flor close to a decade." Complaint at Paragraph 4. And, Vance seeks recompense for years 2005 through 2014. See, Complaint at Paragraphs 108 and 1101-1 l l . Vance knew, or should have known, of the alleged actions of the Tax Commissioner a decade ago, and yet Vance took no action. As such, Vance's claims are foreclosed by the doctrine of laches.

SIXTH DEFENSE - FAILURE TO PLEAD FRAUD WITH PARTICULARITY

129. To the extent Vance's Complaint alleges fraud, he has failed to properly plead with specificity as required by Civ.R. 9.

SEVENTH DEFENSE - LACK OF SUBJECT MATTER JURISDICTION

130 This Court may lack subject matter jurisdiction to hear some or all of Vance's claims.

131. Among other reasons, pursuant to R.C. 2743.03(A)(2), the Court of Claims has subject matter jurisdiction over injunction and declaratory judgment actions that are coupled with a claim for monetary damages, when the true intent of the suit is for money damages from a state agency. Vance's equitable restitution claim is in actuality a legal claim for damages in disguise, which can only be brought in the Ohio Court of Claims. Crislino v. ()hio Bur. of Workers' Comp., 2008-0hio-2013, Il 7, 118 Ohio St. 3d 151, 152 ("In order to determine whether a claim

for restitution requests legal or equitable relief, we look to the basis for the plaintiffs claim and the nature of the underlying remedies sought.").

EIGHTH DEFENSE - SOVEREIGN IMMUNITY

132. Well-settled law holds that under principles of sovereign immunity a state is not subject to suit in its own courts unless it expressly consents to be sued. Proctor, 115 Ohio St.3d 71, 2007-Ohi0-4838, at 7; Manning, 62 Ohio St.3d at 29-30.

133. The Ohio Constitution explains that that the State cannot be sued, absent its consent, in Article I, Section 16. ("Suits may be brought against the state, in such courts and in such manner, as may be provided by law."). See also, Raudabaugh v. Stale, 96 Ohio St. 513 ,518 (1917) (Holding that "[Article l, Section 16] is not self-executing, and that legislative authority by statute is required as a prerequisite to the bringing of an action against the state in its own courts.").

134. The General Assembly has waived the state's immunity in R.C. 5703.54(A) for certain actions or omissions of an officer or employee of the Department of Taxation, specifying that any suit from such action or omission must be brought in the Court of Claims. This limited waiver applies only if all of the following elements exist:

a. The action or omission frivolously disregards a provision of R.C .Chapters 571 1 (personal property), 5733 (corporate franchise), 5739 (sales), 5741 (use), or 5747 (personal income), or a rule of the Tax Commissioner adopted under authority of one of those chapters; b The action or omission occurred in connection with an audit or assessment and the review or collection proceedings stemming therefrom; and

c. The officer or employee did not act manifestly outside the scope of his employment and did not act with malicious purpose, bad faith or in a wanton or reckless manner.

135. The alleged acts and omissions committed by the Tax Commissioner that Vance claims aggrieved him did not involve any of the above-specified Chapters of the Revised Code, or

any rule of the Tax Commissioner adopted under the authority of those chapters. Thus, this limited waiver of immunity does not provide a cause of action against the Commissioner for any of the counts of Vance's Complaint.

NINTH DEFENSE - FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

136. Pursuant to the Supreme Court of Ohio's decisions in Adams v. Tesla, 2017-0hio8853 ("Adams I") and Adams v. Tesla, 2017-0hio-8854 ("Adams Il"), a landowner seeking to challenge the Tax Commissioner's current agricultural use valuations is afforded an administrative remedy in the Board of Tax Appeals ("B TA") pursuant to R.C. 5717.02.

137. As the Supreme Court of Ohio held in Adams Il, aggrieved landowners "may challenge the CAUVs through an appeal under R.C. 5717.02." Adams 11 at 13.

138 Prior to filing an action in this Court, Plaintiffs did not attempt to exhaust this administrative remedy by filing an appeal with the B TA.

TENTH DEFENSE

139. The Tax Commissioner reserves the right to assert additional defenses based upon information that may become known after the filing of this Answer.

PRAYER FOR RELIEF

Wherefore, the Tax Commissioner requests this Court:

1 Deny class certification of Vance and his putative class;

2 Decline to enter a declaratory judgment against the Tax Commissioner;

3. Deny an award of restitution against the Tax Commissioner;

4. Deny Vance's request for attorney's fees and costs;

5. Deny all other relief.

Respectfully submitted,

MICHAEL DEWINE
Attorney General of Ohio

Is/ Robert A. Hager
Robert A. Hager (0040196)*
* Trial A Ilorney
Justin M. Alaburda (0082139)
Daniel J. Rudary (0090482)
BRENNAN, MANNA & DIAMOND, LLC
75 E. Market Street
Akron, OH 44308
Telephone: (330) 253-5060
Facsimile: (330) 253-1977
E-mail: rahager@bmdllc.com
jmalaburda@bmdllc.com
djrudary@bmdllc.com
-and-

Daniel W. Fausey (0079928)
Christine Mesirow (0015 590)
Daniel Kim (0089991)
Assistant Attorneys General
30 East Broad street, 25 th Floor
Columbus, Ohio 43215
Telephone: (614) 995-9032 Facsimile: (866) 513-0356 daniel.fausey@ohioattorneygeneral.gov
christine.mesirow@ohioattorneygeneral.gov
daniel.kim@ohioattorney general. gov

Counse/för Defendant Tax Commissioner of()hio

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Robert A. Hager
Counselfor Defendant Tax Commissioner of Ohio

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