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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

Howard Jarvis Taxpayers Association, Jonathan Coupal, and Debra Desrosiers, Plaintiffs, v. The California Secure Choice Retirement Savings Program and John Chiang, in his official capacity as chair of the California Secure Choice Retirement Savings Investment Board, Defendants.	No. 18-977 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1.

Plaintiff Howard Jarvis Taxpayers Association ("HJTA"), on behalf of itself as a non-governmental employer and on behalf of its members as non-governmental employees, non-governmental employers, and California taxpayers, and Plaintiffs Jonathan Coupal and Debra Desrosiers as non-governmental employees and California taxpayers, bring this complaint against The California Secure Choice Retirement Savings Program ("Program") and against John Chiang in his official capacity as the chair of the California Secure Choice Retirement Savings Investment Board ("Board").

2.

The California Secure Choice Retirement Savings Trust Act (aka "CalSavers" fka "Secure Choice") codified at California Government Code sections 100000-100050[1] violates the Supremacy Clause of the United States Constitution because it is expressly preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et. seq. ("ERISA"). ERISA establishes nationally uniform standards to protect private employees and does not allow state-run retirement programs for private employees. Without preemption of CalSavers, such non-governmental employees' funds will have none of the ERISA protections intended for them by the federal government since 1974. CalSavers is thus *ultra vires*, and HJTA seeks a declaration that CalSavers is void. Per supplemental jurisdiction, HJTA further seeks injunctive relief under California Code of Civil Procedure Section 526a to enjoin the waste of taxpayer funds on implementation costs under way.

JURISDICTION AND VENUE

3.

This Court has subject matter jurisdiction pursuant to the Supremacy Clause, U.S. Const. art. VI, cl. 2, and pursuant to 28 U.S.C. § 1331, because this case raises questions arising under federal law. This Court has exclusive jurisdiction under ERISA pursuant to 29 U.S.C. § 1132(e). This Court also has supplemental jurisdiction over the California Code of Civil Procedure section 526a claim pursuant to 28 U.S.C. § 1367.

4.

This Court has personal jurisdiction pursuant to 29 U.S.C. § 1132(e), because defendant John Chiang may be found in this district, and pursuant to 29 U.S.C. § 1132(d), because the Program is an employee benefit plan which may be sued as an entity.

[1] Attached hereto as **Exhibit A**, and incorporated herein by this reference, is a true and correct copy of California Government Code sections 100000 – 100050.

5.

This Court is the proper venue pursuant to 28 U.S.C. § 1391, because the Defendant John Chiang as a California Constitutional officer has his office in the State Capitol of Sacramento, and because substantial events giving rise to the claim occurred and are occurring in this district.

PARTIES

6.

Plaintiff HJTA is a California nonprofit public benefit corporation with over 200,000 members. The late Howard Jarvis, founder of HJTA, utilized the People's reserved power of initiative to sponsor Proposition 13 in 1978. Proposition 13 was overwhelmingly approved by California voters and added Article XIIIA to the California Constitution. Proposition 13 has kept thousands of fixed-income Californians secure in their ability to stay in their own homes by limiting the rate and annual escalation of property taxes. HJTA continues to represent the interests of taxpayers at the state and local levels, including taxpayer and employee interests in pension reform, and the public interest in avoiding waste of taxpayer funds. HJTA members are participants or putative participants in CalSavers; employers subject to mandatory participation in CalSavers and thus putative fiduciaries; and California taxpayers. HJTA is itself an employer of five to eight employees without a private retirement plan and is thus a putative fiduciary.

7.

Plaintiff Jonathan Coupal is a non-governmental employee of HJTA and a California taxpayer residing in Sacramento County.

8.

Plaintiff Debra Desrosiers is a non-governmental employee of HJTA and a California taxpayer residing in Sacramento County.

9.

Defendant John Chiang is the California State Treasurer and Chair of the Board. Per California Government Code section 100002, Chiang and the Board "shall discharge their duties as fiduciaries with respect to the trust solely in the interest of the program participants" and shall do so "[f]or the exclusive purposes of providing benefits to program participants and defraying

reasonable expenses of administering the program." Chiang and the Board must "design and implement the California Secure Choice Retirement Savings Program."

10.

Defendant Program is a savings arrangement established by California Government Code sections 100000-100050 for non-governmental employees.

FEDERAL LAW

11.

ERISA supersedes state law pursuant to 29 U.S.C. § 1144(a). In 1974, ERISA's Congressional findings acknowledged the widespread growth and use of retirement plans as employee benefits and other employee benefits, along with widespread potential for abuse and mismanagement of those benefits and hard-earned wages. As a matter of national public interest, ERISA answered the call for consistency in minimum standards of funding, protections, and enforcement for employees. ERISA's purposes are to protect employees and beneficiaries; protect interstate commerce; and protect the federal taxing power. (29 U.S.C. § 1001.) ERISA protects "the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance." (29 U.S.C. § 1001.) Of specific concern are "unfunded pension liabilities" and "funding deficiencies and future obligations," all of which put participants' retirement benefits at risk. (29 U.S.C. § 1001b.)

12.

The Secretary of the Department of Labor ("DOL") may enact regulations to carry out the provisions of ERISA. (29 U.S.C. § 1135.)

13.

DOL has implemented regulations regarding employee pension benefit plans at 29 CFR 2510.3-2(a-g.). DOL had implemented a "new safe harbor" in subsection (h) on August 30, 2016, entitled "Savings Arrangements Established by States for Non-Governmental Employees." (81 Fed. Reg. 59464.) This regulation, according to the fact sheet published by DOL's Employee

Benefits Security Administration ("EBSA") on November 16, 2015, "describe[d] circumstances under which a state-required payroll deduction savings IRA program would not give rise to an employee pension benefit plan under ERISA and, therefore, should not be preempted by ERISA." The same fact sheet stated that "The state must be responsible for the security of payroll deductions and employee savings." A simultaneous EBSA news release stated that the "new safe harbor…would adopt a standard stating that the state-sponsored payroll deduction IRA programs must be 'voluntary' for workers, rather than 'completely voluntary' as defined in a 1975 rule." It noted that "the employees and states would retain control of the program and IRA accounts."

14.

Under the Congressional Review Act, the United States Congress repealed 29 CFR 2510.3-2(h) on May 17, 2017, as follows:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled.* That Congress disapproves the rule submitted by the Department of Labor relating to "Savings Arrangements Established by States for Non-Governmental Employees" (published at 81 Fed. Reg. 59464 (August 30, 2016)), and such rule shall have no force or effect.
> Approved May 17, 2017.

(Pub. L. No. 115-35 (May 17, 2017) 131 Stat. 848.)

CALIFORNIA STATE PROVISIONS

15.

CalSavers states: "The board shall not implement the program if the IRA arrangements offered fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code, **or if it is determined that the program is an employee benefit plan under the federal Employee Retirement Income Security Act**." (Cal. Gov. Code, § 100043(a), emphasis added.) Accordingly, the Budget Change Proposal for fiscal year 2017-2018[2] which requested a $170,000,000.00 loan to implement CalSavers stated:

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[2] Attached hereto as **Exhibit B**, and incorporated herein by this reference, is a true and correct copy of pages 1 and 5 of the 2017-2018 Budget Change Proposal.

"Before the Program can open for enrollment, SB1234 requires the Board to report to the Governor and Legislature:

…

- That the United States Department of Labor (DOL) has finalized a regulation setting forth a safe harbor for savings arrangements established by states for nongovernmental employees for the purposes of the federal Employee Retirement Income Security Act (ERISA)

- That the Board has defined in regulation the roles and responsibilities of employers pursuant to criteria outlined in the DOL regulation"

(Cf. Cal. Gov. Code, § 100043(b)(1)(A).)

16.

CalSavers was implemented on January 1, 2017. (Cal. Gov. Code, § 100046.) Per the CalSavers statutes, the Board has broad powers to manage all funds, including to contract with any California public retirement system or private institution, but the employee plans are not to be treated as ERISA plans. (Cal. Gov. Code, §§ 100012(j); 100043.) Per the CalSavers statutes, the State has no liability for payment of these employee benefits. (Cal. Gov. Code, § 100036.)

17.

CalSavers is mandatory on employers of five or more employees. (Cal. Gov. Code, §§ 100000(d)(1); 100032.) Employees are automatically enrolled, but may opt out. (Cal. Gov. Code, § 100032(f).)

FIRST CLAIM FOR RELIEF AS TO ALL DEFENDANTS

(DECLARATORY JUDGMENT)

CalSavers Is Preempted By ERISA

18.

HJTA repeats and incorporates paragraphs 1 through 17 as if fully set forth herein.

19.

Declaratory judgment is available to HJTA pursuant to 28 U.S.C. § 2201 and 29 U.S.C. § 1132(a)(3). Each HJTA member would have standing to sue in his or her own right and need not sue individually for preemption.

20.

ERISA's express preemption statute declares that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) [29 USCS § 1003(a)] and not exempt under section 4(b) [29 USCS § 1003(b)]." (29 U.S.C. § 1144(a).) A savings arrangement established by a State for non-governmental employees is not listed in the exceptions of § 1003(b).

21.

ERISA contains extensive fiduciary duties as part of its minimum standards, including to discharge those duties "in accordance with the documents and instruments governing the plan." (29 U.S.C. § 1104(a)(1)(D).) Per the Field Assistance Bulletin No. 2018-01 published by EBSA and dated April 23, 2018 at page 3: "A statement of investment policy is part of the 'documents and instruments governing the plan' within the meaning of ERISA section 404(a)(1)(D)." The Board issued its "Investment Policy Statement" on May 21, 2018.

22.

An "employee benefit plan" under ERISA "means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan." (29 USCS § 1002(3).) The Program is primarily a "retirement savings program" (Cal. Gov. Code, § 100000(b)), but it also includes "life insurance" and "investment products." (Cal. Gov. Code, §§ 100000(j); 100016.) Thus, as a pension benefit plan or both a pension benefit plan and welfare benefit plan, the Program is an "employee benefit plan" under ERISA. HJTA has standing to sue on behalf of its members, which comprise hundreds of thousands of working California taxpayers who are "or may become eligible to receive a benefit of any type from an employee benefit plan" per ERISA, 29 U.S.C. § 1002(7).

23.

The CalSavers statutes expressly declare that the Program is designed not to be an "employee benefit plan" under ERISA. (Cal. Gov. Code, § 100043.) If this is so, then participants, putative participants, beneficiaries, and putative beneficiaries across California suffer the loss of all nationally uniform ERISA protections in their imminent automatic employee

benefit plans. Per CalSavers statutes, the State has no liability "for the payment of the retirement savings benefit earned by program participants." (Cal. Gov. Code, § 100036.)

24.

Because CalSavers applies to employers of five or more employees, CalSavers subjects small businesses to administrative and legal turmoil should they have five or more employees initially, but later only four or fewer employees. Such employers automatically become ERISA plan administrators with all attendant administrative and legal liabilities. (81 Fed. Reg. 59464, 59471.) This is an undue burden on small business employers and employees alike. As small business owners, both HJTA members and HJTA itself have putative fiduciary standing to sue for preemption because they are at risk of involuntarily becoming ERISA plan administrators under the Program.

25.

Because the U.S. Congress has expressly disavowed savings arrangements established by States for non-governmental employees in Public Law 115-35, there is no potentially valid DOL regulation permitting this state-run retirement arrangement. The nationally uniform application of ERISA requires that this Court declare CalSavers void.

SECOND CLAIM FOR RELIEF AS TO ALL DEFENDANTS

(INJUNCTIVE RELIEF)

CalSavers' Waste of Taxpayer Funds Is Subject to Injunction Under California Code of Civil Procedure 526a

26.

HJTA repeats and incorporates paragraphs 1 through 25 as if fully set forth herein.

27.

All California private employees have equal access to individual retirement accounts ("IRA"s) by telephone, internet, or walk-in options in the general marketplace. All Californians with checking accounts have the right and opportunity to authorize regular automatic debits by an IRA vendor of their choice.

28.

California Code of Civil Procedure section 526a states:

> An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer; provided, that no injunction shall be granted restraining the offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities.
>
> An action brought pursuant to this section to enjoin a public improvement project shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

29.

California Code of Civil Procedure section 526a applies to State legislative action through established case law, and thus applies to CalSavers. The purpose of section 526a, "'which applies to citizen and corporate taxpayers alike, is to permit a large body of persons to challenge wasteful government action that otherwise would go unchallenged because of the standing requirement. [Citation.] . . . [A]lthough by its terms the statute applies to local governments, it has been judicially extended to all state and local agencies and officials. [Citations.]' (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1240.) '[T]he individual citizen must be able to take the initiative through taxpayers' suits to keep government accountable on the state as well as on the local level.' [Citation.]' (*Farley v. Cory* (1978) 78 Cal. App. 3d 583, 589.)" (*Vasquez v. State of California* (2003) 105 Cal.App.4th 849.)

30.

HJTA members, Plaintiff Jonathan Coupal, and Plaintiff Debra Desrosiers have all paid sales taxes, income taxes, and other taxes to the State of California within one year of the date of filing this action. Plaintiff HJTA has also paid sales taxes and other taxes to the State of California within one year of the date of filing this action.

31.

Defendant Chiang, by and through the Board, has spent, and continues to spend California taxpayer dollars implementing the Program. As of September 25, 2017, $450,000.00 was spent from a general fund loan, and $20,000,000.00 more was requested from the Department of Finance. The Legislature approved a loan of $16,900,000.00. As of March 31, 2018, expenditures since the Program's inception totaled $1,549,629.00.

REQUEST FOR RELIEF

WHEREFORE, HJTA respectfully requests that this Court:

(1) Declare that ERISA applies to the Program and expressly preempts CalSavers as codified at California Government Code sections 100000-100050;

(2) Permanently enjoin Defendant Program and Defendant Chiang and his successors, agents, and employees from wasting taxpayer funds by further implementing CalSavers; and

(3) Grant HJTA any such additional or different relief as it deems just and proper.

DATED May 30, 2018.

By: **/s/ Laura E. Murray**
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