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22 UNITED STATES DISTRICT COURT FOR THE
23 EASTERN DISTRICT OF CALIFORNIA

24 SACRAMENTO DIVISION

25 SACRAMENTO REGIONAL COALITION)
26 TO END HOMELESSNESS, JAMES LEE)
27 CLARK,)

28 Plaintiffs,)

v.)

CITY OF SACRAMENTO,)

Defendant.)

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 **I. INTRODUCTION**

2 1. The City of Sacramento (“City”) has adopted an extensive anti-solicitation
3 ordinance that makes it a crime to express a need for help from others, sell things, or engage in
4 charitable solicitation in a variety of public areas. Ordinance No. 2017-0054 (“Ordinance”),
5 which added Chapter 8.134 to the Sacramento City Code, also prohibits what it terms
6 “aggressive and intrusive solicitation” throughout the City. The Ordinance effectively bans a
7 wide range of protected speech in large swaths of the City. In addition, although it is styled as an
8 “aggressive and intrusive solicitation” ordinance, the law criminalizes purely passive activity
9 such as sitting peacefully on the sidewalk with a sign or a donation cup. Because the Ordinance
10 only prohibits signs or speech that are messages or requests for an immediate donation, it is a
11 content-based restriction on speech that is presumptively invalid under the First Amendment. *See*
12 *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015). The Ordinance fails to meet the strict
13 scrutiny test of being the least restrictive means to promote a compelling governmental interest.
14 Accordingly, the Ordinance is invalid on its face and must be struck down.

15 **II. JURISDICTION AND VENUE**

16 2. This Court has jurisdiction over this matter under 28 U.S.C. Sections 1331 and
17 1343 because Plaintiffs sue to address deprivations, under color of state authority, of rights,
18 privileges, and immunities secured by the United States Constitution.

19 3. This Court has supplemental jurisdiction under 28 U.S.C. Section 1367 for claims
20 pursuant to state law because the same case and controversy gives rise to violations of the
21 California Constitution and California Civil Code Section 52.1.

22 4. The United States District Court for the Eastern District of California is the proper
23 venue under 28 U.S.C. Section 1391(b). The actions giving rise to this suit took place in this
24 judicial district. Defendant City of Sacramento is located within this judicial district.

1 **III. FACTUAL ALLEGATIONS**

2 **THE ORDINANCE**

3 5. On November 14, 2017, the City adopted the challenged Ordinance. The
4 Ordinance is attached to this Complaint as Exhibit A, and incorporated herein in its entirety.

5 6. The Ordinance regulates “solicitation,” which it defines as meaning “to ask, beg,
6 request, or panhandle for an immediate donation of money or other thing of value or for the
7 direct and immediate sale of goods or services. Solicitation can be accomplished by using the
8 spoken, written, or printed word, or bodily gestures, signs, or other means.” Sac. City Code §
9 8.134.020. The Ordinance’s definition of solicitation thus bans passive, non-threatening, and
10 non-aggressive speech.

11 7. The Ordinance restricts Plaintiffs’ ability to ask others for help in several ways.
12 The Ordinance bans solicitation in numerous public areas—anywhere within 30 feet of any
13 financial institution or an automated teller machine during operating hours, anywhere within 30
14 feet of a public transportation vehicle stop or inside a public transportation vehicle, on median
15 strips, from anyone dining in an outdoor dining area, from an operator or occupant of a motor
16 vehicle while the vehicle is stopped at a gas station, or from anyone operating or traveling in a
17 vehicle if the vehicle “is located within 30 feet of a driveway providing vehicular access to a
18 shopping center, retail establishment, or business establishment.” Sac. City Code §
19 8.134.030(B)-(G).

20 8. The Ordinance additionally prohibits “aggressive” or “intrusive” solicitation.
21 Aggressive solicitation includes “(1) Conduct intended or likely to cause a reasonable person to
22 fear bodily harm to oneself or to another, to fear damage to or loss of property, or otherwise to be
23 intimidated into giving money or other thing of value; (2) Intentionally touching or causing
24 physical contact with another person or an occupied vehicle without consent; (3) Closely
25 following or approaching a person, after the person has indicated they do not want to be solicited
26 or do not want to give money or any other thing of value; or (4) Making violent gestures toward
27 a person.” Sac. City Code §§ 8.134.020, 8.134.030(A).

1 9. Intrusive solicitation means “(1) Thrusting or forcing oneself close to another
2 person without invitation, permission, or welcome; (2) Physically contacting another person; (3)
3 Blocking a person’s path of travel; or (4) Behaving in a threatening manner towards another
4 person.” Sac. City Code § 8.134.020.

5 10. Any person who violates the Ordinance is guilty of a criminal infraction,
6 punishable by a fine. Sac. City Code § 8.134.040(A). Violators who cannot present “satisfactory
7 identification” may be taken into custody. Cal. Penal Code § 853.5(a). Any person who violates
8 the Ordinance more than two times within a six-month period is guilty of a misdemeanor,
9 punishable by a fine of between \$500 and \$1000, six months in jail, or both. Sac. City Code
10 §§ 1.28.020, 8.134.040(B). In addition, the City may impose administrative penalties ranging
11 from \$100 to \$25,000 per violation. Sac. City Code §§ 1.28.010(C), 8.134.040(C).

12 **PARTIES**

13 **Plaintiff James Lee “Faygo” Clark**

14 11. Plaintiff James Lee “Faygo” Clark is a Sacramento resident who is currently
15 homeless. He has lived in the Sacramento region since he was seven years old and attended
16 elementary, middle, and high school in the Elk Grove Unified School District. He currently lives
17 in the City of Sacramento.

18 12. Mr. Clark regularly panhandles on public sidewalks in the City of Sacramento for
19 food and other basic needs. Mr. Clark currently has no other regular income though he accepts
20 odd jobs when he can do so to earn income. At night, Mr. Clark is usually on 21st Street in
21 Sacramento. He sits on the sidewalk with his dog and lays out two paper signs asking for money,
22 with a cup in between them. Mr. Clark sometimes asks people passing by to watch him juggle as
23 part of his solicitation. During the day, Mr. Clark solicits for immediate donations of food or
24 money on the sidewalk in front of the Sacramento Natural Foods Co-op, a business located at
25 2820 R Street in the City of Sacramento. Mr. Clark chooses to solicit at the Natural Foods Co-
26 op because it is difficult to obtain healthy food while being homeless and he obtains nutritious
27 food and other donations from the store’s patrons.

1 13. The Ordinance severely limits where Mr. Clark can ask for donations that sustain
2 him. The Natural Foods Co-op has three driveways providing access to the business. Mr. Clark
3 solicits by standing on the public sidewalk at the corner of these driveways with a cup and paper
4 signs. His signs state “The Homeless are people too, What would you do if it happened to you?”,
5 “How many of you are a paycheck away?”, “Non-GMO food please”, and “Dog Food.” Mr.
6 Clark uses his cup to collect donations for food and other necessities.

7 14. Mr. Clark’s signs are directed to passersby and Natural Foods Co-op customers,
8 including operators and occupants of motor vehicles that are within 30 feet of a driveway
9 providing access to the Natural Foods Co-op. Soliciting from motor vehicles within 30 feet of a
10 driveway accessing a business establishment is a prohibited act under the Ordinance.

11 15. One of the locations at the Natural Foods Co-op where Mr. Clark normally
12 solicits donations is also located within thirty feet of a Sacramento Regional Transit bus stop,
13 which is prohibited by the Ordinance because the location is a “public transportation stop” within
14 the meaning of Section 8.134.030(E).

15 16. Mr. Clark selects his locations based on his experience of where he is most
16 successful obtaining donations.

17 17. The Ordinance will force Mr. Clark to choose between violating the law and
18 facing prosecution, or moving away from where he solicits and risking not being able to reach
19 his intended audience. Mr. Clark fears the Ordinance will be enforced against him and others
20 who need to solicit immediate funds to subsist.

21 **Plaintiff Sacramento Regional Coalition to End Homelessness**

22 18. Plaintiff Sacramento Regional Coalition to End Homelessness (“SRCEH”) was
23 founded and incorporated in the State of California in April 2014. It has its principal office in
24 Sacramento, California. It is a non-profit, charitable organization whose mission is to end and
25 prevent homelessness in the Sacramento region through policy analysis, community education,
26 civic engagement, collective organizing and advocacy.

1 19. SRCEH’s board of directors comprises of direct service providers for people
2 experiencing homelessness; the interfaith community; and healthcare, disability, homeless youth,
3 and housing advocates.

4 20. SRCEH furthers its mission to advocate on behalf of people who are homeless by
5 testifying and commenting on proposed legislation, responding to changes in local regulations,
6 and working to assure that the civil rights of people who are homeless are not infringed upon by
7 local municipalities. An advocacy priority of SRCEH is to “oppose any efforts to criminalize
8 homeless people including anti-homeless laws such as anti-panhandling ordinances.” The
9 enactment of the Ordinance frustrates the mission of SRCEH.

10 21. Because of the Ordinance, SRCEH has been forced to divert resources from its
11 ongoing activities and instead use them to research, educate, and speak out against the adopted
12 Ordinance. Unless Defendant is enjoined from enforcing the Ordinance, SRCEH will have to
13 continue to use its limited resources to monitor enforcement of the Ordinance and work to
14 mitigate the harm to those who are homeless and may be impacted by the Ordinance.

15 **Defendant City of Sacramento**

16 22. Defendant City of Sacramento (the “City”) is a municipal corporation created
17 under the laws of the State of California. It is authorized by law to maintain a police department,
18 which acts as its agent for law enforcement and for which it is ultimately responsible. At all
19 times relevant to this lawsuit, Defendant City of Sacramento was and is a “person” as that term is
20 used by 42 U.S.C. Section 1983.

21 **ADOPTION OF THE ORDINANCE**

22 23. During the several months that the Ordinance was before the City Council and its
23 committees, several members of the business community testified in favor of it. They provided
24 accounts of general safety concerns about homeless individuals and how their presence would
25 drive down tourism and business development. Most comments had no relation to solicitation,
26 but rather a focus on perceived safety concerns related to homelessness and its impact on
27 business development in Sacramento.

1 24. Bob Erlenbusch, the Executive Director of Plaintiff SRCEH, testified in
2 opposition and made multiple attempts to warn the City that similar anti-solicitation ordinances
3 have been struck down as unconstitutional throughout the nation. In fact, on the night the City
4 voted to adopt the Ordinance, SRCEH circulated a one-page pamphlet that highlighted seven
5 federal cases and one state court case holding similar anti-solicitation ordinances
6 unconstitutional.

7 25. Plaintiff Clark also testified in opposition to the Ordinance on November 14,
8 2017, reminding the City Council that this type of ordinance violates the First Amendment, that
9 the City is taking away one of the few legal and safe means for homeless individuals to obtain
10 money for necessities, and that the act of asking for help should never be criminalized.

11 26. Throughout the deliberations regarding this Ordinance, City Council members
12 centered their discussion around perceived effect of homelessness on the business community.

13 27. On November 14, 2017, the City adopted the Ordinance.

14 **IV. LEGAL BACKGROUND**

15 28. Speech that communicates a need, asks for help, or requests charity is fully
16 protected under the United States Constitution. The Ordinance is facially invalid, content-based,
17 and chills and abridges the First Amendment rights of persons who seek to solicit immediate
18 donations for themselves or others within the City.

19 29. Specifically, the Ordinance singles out speech when the speaker's message is to
20 ask for financial assistance for oneself or others, but not when the speaker's message is a request
21 for something else, such as a signature for a petition.

22 30. The Ordinance's restrictions are not the least restrictive means to further a
23 compelling government interest. As several members of the community testified when the
24 Ordinance was being enacted, the Ordinance is unconstitutional and the City has not provided
25 any convincing evidence before the City Council showing that these restrictions were the least
26 restrictive means to further a compelling governmental interest.

1 31. The Ordinance further targets, stigmatizes and demeans individuals who are
2 homeless and are living in extreme poverty in Sacramento. There was no evidence before the
3 City Council that existing criminal laws prohibiting harassment, obstruction and assault were
4 insufficient to protect the public, or that special criminal laws were needed to target solicitors.

5 32. Sacramento's Ordinance harms Plaintiff Clark by forcing him and other solicitors
6 to either violate the Ordinance or to solicit in an area where they cannot effectively reach their
7 intended audience. Mr. Clark faces a credible threat of prosecution without the requested relief.
8 The City can enforce the Ordinance against Mr. Clark at any time.

9 33. Sacramento's Ordinance has harmed and continues to harm SRCEH by
10 compelling a diversion of its organizational resources to monitor the Ordinance.

11 34. The unconstitutional restrictions of Sacramento's Ordinance infringe Mr. Clark's
12 freedom to fully exercise his First Amendment rights, including his rights of freedom of speech
13 and freedom of expression, in violation of the First Amendment of the United States Constitution
14 and Article I, Section 2 of the California Constitution.

15 35. The unconstitutional restrictions of Sacramento's Ordinance violate the Equal
16 Protection Clause of the Fourteenth Amendment and Article I, Section 7 of the California
17 Constitution. Specifically, but not exclusively, the Ordinance singles out a class of individuals
18 based on the content of their speech for additional burdens and punishment. It also grants a
19 forum to people whose views the City finds acceptable, but denies a forum to those it does not
20 want to hear.

21 36. The vague and uncertain restrictions of Sacramento's Ordinance violate the due
22 process clause of the Fourteenth Amendment of the United States Constitution and Article I,
23 Section 7 of the California Constitution by failing to inform Plaintiffs and other members of the
24 public as to what speech or conduct will subject them to criminal penalties and what forms of
25 speech or conduct will not.

1 37. Sacramento's Ordinance has caused and will continue to cause irreparable harm
2 to the rights of the Plaintiffs and others similarly situated. If not enjoined, this irreparable harm
3 will continue with no adequate remedy at law.

4 **V. CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **Violation of Freedom of Speech**

7 **(First and Fourteenth Amendments to the U.S. Constitution; 42 U.S.C. § 1983)**

8 38. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
9 fully set herein.

10 39. The Ordinance violates the right to freedom of speech guaranteed by the First
11 Amendment to the United States Constitution.

12 **SECOND CAUSE OF ACTION**

13 **Violation of Freedom of Speech**

14 **(Article I, Section 2 of the California Constitution)**

15 40. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
16 fully set herein.

17 41. The Ordinance violates the right to freedom of speech guaranteed by Article 1,
18 Section 2 of the California Constitution.

19 **THIRD CAUSE OF ACTION**

20 **Equal Protection**

21 **(Fourteenth Amendment to the U.S. Constitution; 42 U.S.C. § 1983)**

22 42. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
23 fully set herein.

24 43. The Ordinance impermissibly subjects a class of people to additional burdens and
25 punishments based on the content of their speech, violating the right to Equal Protection
26 guaranteed by the Fourteenth Amendment to the U.S. Constitution.

1 **FOURTH CAUSE OF ACTION**

2 **Equal Protection**

3 **(Article I, Section 7 of the California Constitution)**

4 44. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
5 fully set herein.

6 45. The Ordinance impermissibly subjects a class of people including those
7 experiencing homelessness and/or poverty or who otherwise solicit to additional burdens and
8 punishments based on the content of their speech, violating the right to Equal Protection
9 guaranteed by Article I, Section 7 of the California Constitution.

10 **FIFTH CAUSE OF ACTION**

11 **Denial of Due Process**

12 **(Fourteenth Amendments to the U.S. Constitution; 42 U.S.C. § 1983)**

13 46. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
14 fully set herein.

15 47. The Ordinance's vague and uncertain requirements are a denial of due process of
16 law, as guaranteed by the Fourteenth Amendment of the United States Constitution, because they
17 fail to inform Plaintiffs and other members of the public as to what speech or conduct will
18 subject them to criminal penalties and what forms of speech or conduct will not.

19 **SIXTH CAUSE OF ACTION**

20 **Denial of Due Process**

21 **(Article I, Section 7 of the California Constitution)**

22 48. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
23 fully set herein.

24 49. The Ordinance's vague and uncertain requirements are a denial of due process of
25 law, as guaranteed by Article 1, section 7 of the California Constitution, because they fail to
26 inform Plaintiffs and other members of the public as to what speech or conduct will subject them
27 to criminal penalties and what forms of speech or conduct will not.

1 **SEVENTH CAUSE OF ACTION**

2 **Interference of Civil Rights by Threat, Intimidation or Coercion**

3 **(California Civil Code § 52.1(b))**

4 50. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
5 fully set herein.

6 51. The Ordinance is used or will be used to threaten, intimidate or coerce Plaintiffs
7 from exercising their right to free speech in violation of the First Amendment of the United
8 States Constitution and Article I, section 2 of the California Constitution, and their right to equal
9 protection under the Fourteenth Amendment to the United States Constitution and Article I,
10 Section 7 of the California Constitution.

11 52. Plaintiffs therefore bring this action to protect the peaceable exercise and
12 enjoyment of the rights secured to them.

13 **EIGHTH CAUSE OF ACTION**

14 **Declaratory Relief**

15 **(28 U.S.C. §§ 2201-2202)**

16 53. Plaintiffs incorporate each and every allegation of the preceding paragraphs as if
17 fully set herein.

18 54. Under 28 U.S.C. Section 2201, this Court has authority to issue a judgment
19 declaring the rights of the parties.

20 55. An actual controversy exists between Plaintiffs and Defendant. Plaintiffs contend
21 that Section 8.134 of the Sacramento City Code is unlawful under the First and Fourteenth
22 Amendments to the U.S. Constitution, and Article I, Section 2 and 7 of the California
23 Constitution. Defendant contends that this Ordinance is lawful. Declaratory relief is necessary
24 and appropriate to resolve this controversy.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment against Defendant as follows:

- A. For a declaration that Section 8.134 of the Sacramento City Code is unlawful under the First and Fourteenth Amendments to the U.S. Constitution and Article 1, Sections 2 and 7 of the California Constitution;
- B. For a preliminary and permanent injunction enjoining Defendant from enforcing Section 8.134 of the Sacramento City Code;
- C. For an award of injunctive relief and other appropriate equitable relief pursuant to California Civil Code Section 52.1(b);
- D. For an award of attorney's fees and costs; and
- E. For such other and further relief as the Court may deem proper.

DATED: April 10, 2018

LEGAL SERVICES OF NORTHERN CALIFORNIA

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA, INC

By: /s/ Laurance H Lee
Laurance Lee
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