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13 *Lee Clark, and Sacramento Homeless Organizing Committee*

14 UNITED STATES DISTRICT COURT FOR THE  
15 EASTERN DISTRICT OF CALIFORNIA

16 SACRAMENTO DIVISION

17 SACRAMENTO REGIONAL COALITION )  
TO END HOMELESSNESS, JAMES LEE )  
18 CLARK, AND SACRAMENTO )  
HOMELESS ORGANIZING COMMITTEE, )

19 Plaintiffs,

20 v.

21  
22 CITY OF SACRAMENTO,

23 Defendant.  
24

Case No.: 2:18-CV-00878-MCE-AC

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

17 **II. JURISDICTION AND VENUE**

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

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

24 4. The United States District Court for the Eastern District of California is the  
25 proper venue under 28 U.S.C. Section 1391(b). The actions giving rise to this suit took  
26 place in this judicial district. Defendant City of Sacramento is located within this judicial  
27 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  
5 entirety.

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

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

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

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

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

15 **PARTIES**

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

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

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

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

12           16.     Mr. Clark's signs are directed to passersby and Natural Foods Co-op  
13 customers, including operators and occupants of motor vehicles who are within 30 feet  
14 of a driveway providing access to the Natural Foods Co-op. Soliciting from motor  
15 vehicles within 30 feet of a driveway accessing a business establishment is a prohibited  
16 act under the Ordinance.

17           17.     One of the locations at the Natural Foods Co-op where Mr. Clark normally  
18 solicits donations is also located within thirty feet of a Sacramento Regional Transit bus  
19 stop, which is prohibited by the Ordinance because the location is a "public  
20 transportation stop" within the meaning of Chapter 8.134.030(E).

21           18.     Mr. Clark selects his locations based on his experience of where he is  
22 most successful obtaining donations.

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

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

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

7           21. SRCEH’s board of directors comprises of direct service providers for  
8 people experiencing homelessness; the interfaith community; as well as healthcare,  
9 disability, homeless youth, and housing advocates.

10           22. SRCEH furthers its mission to advocate on behalf of people who are  
11 homeless by testifying and commenting on proposed legislation, responding to changes  
12 in local regulations, and working to assure that the civil rights of people who are  
13 homeless are not infringed upon by local municipalities. An advocacy priority of SRCEH  
14 is to “oppose any efforts to criminalize homeless people including anti-homeless laws  
15 such as anti-panhandling ordinances.” The enactment of the Ordinance frustrates the  
16 mission of SRCEH.

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

23                   **Plaintiff Sacramento Homeless Organizing Committee**

24           24. Sacramento Homeless Organizing Committee (“SHOC”) was founded in  
25 1987 by advocates, service providers, and formerly homeless and low-income  
26 individuals to amplify the voice of homeless and low-income community members.  
27 SHOC and its members seek to address problems of homelessness through advocacy,  
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1 direct non-violent actions, education, and by bridging the gap between the homeless  
2 community and others in our society.

3 25. SHOC publishes a bi-monthly journal, *Homeward Street Journal*, that  
4 attracts homeless individuals who often author submissions in the publications. In  
5 addition, homeless or nearly homeless people purchase the publication for 10 cents.  
6 Homeless or nearly homeless people then solicit a one-dollar donation from members of  
7 the public in exchange for this publication. Distributors often use these donations from  
8 the public for basic survival needs.

9 26. Because distributors solicit donations in exchange for the publication  
10 widely across the City, the Ordinance puts vendors at risk of incurring civil penalties,  
11 criminal repercussions, and harassment by the City. Consequently, SHOC has been  
12 forced to divert resources to warn and educate its vendors regarding the application of  
13 the Ordinance.

#### 14 **Defendant City of Sacramento**

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

#### 20 **ADOPTION OF THE ORDINANCE**

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

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

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

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

15 32. On November 14, 2017, the City adopted the Ordinance.

#### 16 **IV. LEGAL BACKGROUND**

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

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

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

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

9 37. Sacramento's Ordinance harms Plaintiff Clark by forcing him and other  
10 solicitors, such as Plaintiff SHOC's distributors, to either violate the Ordinance or to  
11 solicit in an area where they cannot effectively reach their intended audience. Mr. Clark  
12 and SHOC's distributors face a credible threat of prosecution without the requested  
13 relief. The City can enforce the Ordinance against Mr. Clark and SHOC's distributors at  
14 any time.

15 38. Sacramento's Ordinance has harmed and continues to harm SRCEH and  
16 SHOC by compelling a diversion of their organizational resources to monitor the  
17 Ordinance.

18 39. The unconstitutional restrictions of Sacramento's Ordinance infringe Mr.  
19 Clark's and SHOC's distributors' freedom to fully exercise their First Amendment rights,  
20 including their rights of freedom of speech and freedom of expression, in violation of the  
21 First Amendment of the United States Constitution and Article I, Section 2 of the  
22 California Constitution.

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

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

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

11 **V. CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **Violation of Freedom of Speech**

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

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

17 43. The Ordinance violates the right to freedom of speech guaranteed by the  
18 First Amendment to the United States Constitution.

19 **SECOND CAUSE OF ACTION**

20 **Violation of Freedom of Speech**

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

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

24 45. The Ordinance violates the right to freedom of speech guaranteed by  
25 Article 1, Section 2 of the California Constitution.

**THIRD CAUSE OF ACTION**

**Equal Protection**

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

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

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

**FOURTH CAUSE OF ACTION**

**Equal Protection**

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

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

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

**FIFTH CAUSE OF ACTION**

**Denial of Due Process**

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

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

51. The Ordinance's vague and uncertain requirements are a denial of due process of law, as guaranteed by the Fourteenth Amendment of the United States Constitution, because they fail to inform Plaintiffs and other members of the public as to

1 what speech or conduct will subject them to criminal penalties and what forms of  
2 speech or conduct will not.

3 **SIXTH CAUSE OF ACTION**

4 **Denial of Due Process**

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

6 52. Plaintiffs incorporate each and every allegation of the preceding  
7 paragraphs as if fully set herein.

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

13 **SEVENTH CAUSE OF ACTION**

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

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

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

18 55. The Ordinance is used or will be used to threaten, intimidate or coerce  
19 Plaintiffs from exercising their right to free speech in violation of the First Amendment of  
20 the United States Constitution and Article I, section 2 of the California Constitution, and  
21 their right to equal protection under the Fourteenth Amendment to the United States  
22 Constitution and Article I, Section 7 of the California Constitution.

23 56. Plaintiffs therefore bring this action to protect the peaceable exercise and  
24 enjoyment of the rights secured to them.

**EIGHTH CAUSE OF ACTION**

**Declaratory Relief**

**(28 U.S.C. §§ 2201-2202)**

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

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

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

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1 **VI. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs prays for judgment against Defendant as follows:

- 3 A. For a declaration that Chapter 8.134 of the Sacramento City Code is unlawful  
4 under the First and Fourteenth Amendments to the U.S. Constitution and Article  
5 1, Sections 2 and 7 of the California Constitution;
- 6 B. For a preliminary and permanent injunction enjoining Defendant from enforcing  
7 Chapter 8.134 of the Sacramento City Code;
- 8 C. For an award of injunctive relief and other appropriate equitable relief pursuant  
9 to California Civil Code Section 52.1(b);
- 10 D. For an award of attorney's fees and costs; and
- 11 E. For such other and further relief as the Court may deem proper.
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- 13

14 Dated: April 27, 2018

LEGAL SERVICES OF NORTHERN CALIFORNIA

15 AMERICAN CIVIL LIBERTIES UNION  
16 FOUNDATION OF NORTHERN CALIFORNIA, INC.

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18 By: /s/ Abre' Conner  
19 Abre' Conner

20 *Attorneys for Plaintiffs*

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