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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13 SACRAMENTO DIVISION

14 SACRAMENTO HOMELESS ORGANIZING
COMMITTEE, WILLIAM MURPHY,
15 PAMELA POOLE,

16 Plaintiffs,

17 vs.

18 COUNTY OF SACRAMENTO, and SCOTT R.
JONES, in his official capacity as the Sheriff of
19 the County of Sacramento,

20 Defendants.

Case No.

**COMPLAINT FOR VIOLATION OF
CIVIL AND CONSTITUTIONAL RIGHTS**

DEMAND FOR JURY TRIAL

21 **INTRODUCTION**

22 On May 13, 2014, the County of Sacramento adopted Sacramento County Ordinance No.
23 1559, codified as Sacramento County Code sections 9.81.010-070, purporting to prohibit
24 “aggressive and intrusive solicitation” throughout the unincorporated territory of the County of
25 Sacramento. Instead, the Ordinance broadly and over-inclusively prohibits the expression of First
26 Amendment rights, in violation of the United States Constitution.

1 **JURISDICTION & VENUE**

2 1. This Court has jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. § 1331 (in
3 that they arise under the Constitution of the United States); and pursuant to 28 U.S.C. § 1343(a)(3)
4 (in that they are brought to address deprivations, under color of state authority, of rights,
5 privileges, and immunities secured by the United States Constitution).

6 2. Venue is proper in the United State District Court for the Eastern District of
7 California under 28 U.S.C. § 1391(b). Defendant is located in the Eastern District of California
8 and many of the acts and/or omissions complained of herein occurred or will occur in this District.

9 3. Intradistrict venue is proper in the Sacramento Division of the United State District
10 Court for the Eastern District of California under Local Rule 120(d), because this action arises
11 from acts and/or omissions which occurred or will occur in the County of Sacramento.

12 **PARTIES**

13 4. Plaintiff SACRAMENTO HOMELESS ORGANIZING COMMITTEE (“SHOC”)
14 is an unincorporated association of members who are advocates, homeless and formerly homeless,
15 and low-income individuals. SHOC maintains its office in the State of California, County of
16 Sacramento. SHOC brings this action on its own behalf, and on behalf of its members.

17 5. Plaintiff WILLIAM MURPHY (“MURPHY”) is, and at all relevant times hereto
18 was, a homeless individual residing in the State of California, County of Sacramento.

19 6. Plaintiff PAMELA POOLE (“POOLE”) is, and at all relevant times hereto was, a
20 homeless individual residing in the State of California, County of Sacramento.

21 7. Defendant COUNTY OF SACRAMENTO (“COUNTY”) is a “public entity”
22 within the definition of California Government Code section 811.2. Public entities are subject to
23 suit, pursuant to California Government Code 945. The COUNTY, through its Board of
24 Supervisors, is responsible for enacting the Ordinance.

25 8. Defendant SCOTT R. JONES is the Sheriff of the COUNTY, and responsible for
26 enforcing the Ordinance. SCOTT R. JONES is sued in his official capacity.

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1 **FACTUAL ALLEGATIONS**

2 9. On May 13, 2014, the COUNTY, through its Board of Supervisors, unanimously
3 adopted Sacramento County Ordinance No. 1559, codified as Sacramento County Code sections
4 9.81.010-070 (the “Ordinance”). The Ordinance took effect in full force on June 12, 2014. A true
5 and correct copy of the Ordinance, including the County of Sacramento Board of Supervisors’
6 motion to adopt the Ordinance, is attached hereto as “Exhibit A,” and the text of the Ordinance is
7 expressly incorporated herein.

8 10. The Ordinance prohibits solicitation in “an aggressive or intrusive manner in any
9 public place.” Specifically, the Ordinance prohibits solicitation at the following locations: (1)
10 within 35 feet of any entrance to or exit from any financial institution or automated teller machine
11 (“ATM”), or any ATM where a “reasonable person would or should know that he or she does not
12 have the permission to do so ”; (2) from a vehicle occupant within 200 feet of an intersection;; (3)
13 on any median strip; (4) from a vehicle occupant within 35 feet of a driveway providing vehicular
14 access to a shopping center, retail, or business establishment (5) in any public transportation
15 vehicle or within 50 feet of any public transportation vehicle stop; (6) at any motor vehicle
16 occupant stopped at a gasoline station or pump.

17 11. The Ordinance exempts from its provisions anyone soliciting for charitable
18 purposes. Any person violating the Ordinance is guilty of an infraction. Any person who violates
19 the Ordinance more than two times within a six month period is guilty of a misdemeanor.

20 12. The Ordinance is facially invalid, content-based, and abridges the First Amendment
21 rights of persons who seek to panhandle or solicit for donations for their own needs within the
22 unincorporated areas of the County of Sacramento.

23 13. The Ordinance is facially invalid and content-based because it targets speech based
24 on its content and message of requesting donations for oneself.

25 14. The Ordinance is content-based and therefore facially invalid because it singles
26 speech out for restrictions when the speaker’s message is to ask for financial assistance for
27 himself, but not if he is asking for something else such as for a signature on a petition.
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1 only approaches vehicles when he has been summoned by their occupants. MURPHY keeps the
2 messages on his signs limited to asking for work, sometimes for food as well. For example, one of
3 MURPHY's signs reads "HOMELESS WILL WORK HAVE BIKE WILL TRAVEL [phone
4 number] PLEASE HELP."

5 24. When holding a sign asking for work or help, MURPHY almost always stands on a
6 sidewalk near a driveway or intersection. MURPHY finds that it is important to be near a driveway
7 or intersection so that as many people as possible can see him. Additionally, MURPHY believes
8 that it is important to be near a driveway or intersection where people passing through can safely
9 stop and wave him over without obstructing traffic. When MURPHY panhandles, he is
10 conscientious not to block the entrance to any business or to hinder any foot traffic.

11 25. When MURPHY panhandles at or near driveways, he always stands on the exit side
12 of the sidewalk to best avoid any traffic disruption. MURPHY recognizes that cars are typically
13 proceeding at a controlled speed while pulling out, which is a safe point for them to stop to give
14 money, as long as traffic is funneled into two lanes. MURPHY has found that people generally do
15 not stop to make donations as they are pulling into a driveway from the street, and MURPHY
16 would not want them to because it could cause street traffic to build up behind them.

17 26. MURPHY has frequented different locations throughout the County of Sacramento
18 holding his signs, including in its unincorporated areas. For example, in the past year, MURPHY
19 has panhandled a few dozen instances on the public sidewalks outside both the Starbucks and The
20 Home Depot near the intersection of Madison and Manzanita Avenues in Carmichael, an
21 unincorporated area in the County of Sacramento.

22 27. On March 10, 2014, MURPHY was cited by the City of Citrus Heights police for
23 soliciting on the sidewalk on Auburn Boulevard within the City of Citrus Heights. MURPHY was
24 holding a sign requesting work or help near the driveway of a shopping center on that occasion, in
25 the same fashion as described above. After that experience, the fear of criminal charges and arrest
26 have driven MURPHY out of the City of Citrus Heights completely, and denied him his right to
27 engage in peaceful panhandling within the City of Citrus Heights.

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1 Homeward in the locations described above due to enforcement of the Ordinance, she will lose her
2 sole source of income.

3 35. Beyond working as a SHOC vendor, POOLE presently has no other prospects for
4 employment.

5 **FIRST CLAIM**

6 **Freedom of Speech**

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

8 36. Plaintiffs reallege and incorporate the allegations of each and every preceding
9 paragraph of this Complaint, to the extent relevant, as if fully set forth herein.

10 37. By enforcing its challenged Ordinance, Defendant, under color of state law, has
11 caused and will cause Plaintiffs and others who want to solicit for their own survival needs in the
12 County to be subjected to the deprivation of their constitutional rights, in violation of 42 U.S.C. §
13 1983.

14 38. The Ordinance denies Plaintiffs' rights to freedom of speech guaranteed by the First
15 Amendment to the United States Constitution, on its face and as applied.

16 39. As a direct and proximate result of Defendant's actions, Plaintiffs suffered and will
17 continue to suffer injuries entitling them to receive compensatory damages and injunctive relief.

18 WHEREFORE, Plaintiffs pray for relief as hereunder appears.

19 **SECOND CLAIM**

20 **Equal Protection**

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

22 40. Plaintiffs reallege and incorporate the allegations of each and every preceding
23 paragraph of this Complaint, to the extent relevant, as if fully set forth herein.

24 41. By enforcing its challenged Ordinance, Defendant, under color of state law, has
25 caused and will cause Plaintiffs and others who wish to solicit for their own needs in the County to
26 be subjected to the deprivation of their constitutional rights, in violation of 42 U.S.C. § 1983.

27 42. The Ordinance denies Plaintiffs' rights to equal protection under the law guaranteed
28 by the Fourteenth Amendment to the United States Constitution.

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43. As a direct and proximate result of Defendant’s actions, Plaintiffs suffered and will continue to suffer injuries entitling them to receive compensatory damages and injunctive relief.

WHEREFORE, Plaintiffs pray for relief as hereunder appears.

THIRD CLAIM

Declaratory Judgment

(28 U.S.C. § 2201)

44. Plaintiff realleges and incorporate the allegations of each and every preceding paragraph of this Complaint, to the extent relevant, as if fully set forth herein.

45. There exists an actual, substantial controversy between the parties regarding the constitutionality of the Ordinance. Plaintiffs are entitled to a declaration of their rights pursuant to the First and Fourteenth Amendments to the U.S. Constitution, in light of the enactment of the Ordinance.

WHEREFORE, Plaintiffs pray for relief as hereunder appears.

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PRAYER

WHEREFORE, Plaintiffs seek relief from this Court as follows:

- 1. For preliminary and permanent injunctive relief;
- 2. For declaratory relief;
- 3. For compensatory, general, and special damages in an amount according to proof;
- 4. For attorneys' fees as provided by law, pursuant to 42 U.S.C. § 1988, and any other statute as may be applicable;
- 5. For costs of suit; and
- 6. For such other and further relief as the Court may deem just and proper.

DATED: July 17, 2014

Respectfully Submitted,



By: _____

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DEMAND FOR A JURY TRIAL

A JURY TRIAL IS DEMANDED on behalf of Plaintiffs SACRAMENTO HOMELESS ORGANIZING COMMITTEE, WILLIAM MURPHY, and PAMELA POOLE.

DATED: July 17, 2014

Respectfully Submitted,



By: _____

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