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**ENDORSED
FILED**
San Francisco County Superior Court

MAR 23 2006

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10 AMERICAN CIVIL LIBERTIES UNION
11 FOUNDATION OF NORTHERN CALIFORNIA
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GORDON PARK-LI, Clerk
BY: ELIAS BUTT
Deputy Clerk

16 Attorneys for Plaintiffs

17 SUPERIOR COURT FOR THE COUNTY OF SAN FRANCISCO

18 STATE OF CALIFORNIA

19 DANIEL SHEEHAN, an individual; and
20 KATHLEEN SHEEHAN, an individual,

21 Plaintiffs,

22 v.

23 THE SAN FRANCISCO 49ERS, LTD., a
24 limited partnership; and DOES 1 through 10,

25 Defendants.

No. CGC-05-447679

VERIFIED FIRST AMENDED
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

Original complaint filed: 12/15/05
Trial Date: None set

Introduction

1. By this complaint, San Francisco 49ers season-ticket holders Daniel Sheehan and Kathleen Sheehan seek to stop the 49ers from violating their right to privacy by conducting unnecessary and overly intrusive pat-down searches of persons entering Monster Park stadium to

1 watch 49ers football games. The Sheehans ask the court to declare that these warrantless,
2 suspicionless physical searches violate their right to privacy guaranteed by Article I, section 1 of the
3 California Constitution. As grounds for their complaint, the Sheehans allege as follows:

4 **Parties**

5 2. San Francisco 49ers season-ticket holders Daniel Sheehan and Kathleen Sheehan
6 are long-time 49ers fans who were born and raised in San Francisco, California. The Sheehans
7 have been married since 1960 and currently reside in Danville, California. Daniel Sheehan is a
8 retired glazier, and Kathleen Sheehan is a former San Francisco Unified School District employee.

9 3. The San Francisco 49ers, Ltd., is a limited partnership doing business as the San
10 Francisco 49ers. The 49ers operate a professional football franchise in the National Football
11 League. The 49ers play their home games in Monster Park (formerly Candlestick Park), located in
12 San Francisco.

13 4. Does One through Ten are sued herein under fictitious names pursuant to Code of
14 Civil Procedure Section 474. The Sheehans are informed and believe that each Doe defendant is
15 in some manner responsible for the wrongs alleged below. Each of these defendants was acting in
16 concert with every other defendant or was the agent and employee of every other defendant, acting
17 within the course and scope of their agency or employment with every other defendant.

18 **Statement of Facts**

19 5. A lifelong fan of the 49ers, Daniel Sheehan first purchased 49ers season tickets in
20 1967, when the team played in Kezar Stadium in Golden Gate Park. He has purchased 49ers
21 season tickets every year since, including the upcoming 2006-2007 season. Daniel Sheehan
22 attended every regular-season home game at Monster Park in 2005.

23 6. Kathleen Sheehan has purchased 49ers season tickets every year since 2002,
24 including the upcoming 2006-2007 season. She attended every 49ers regular-season home game in
25

1 2005 but one.

2 7. In or around February 2005, the Sheehans renewed their 49ers season tickets for the
3 2005-2006 season. The 49ers charged the Sheehans \$640 each for their season tickets. The
4 Sheehans also purchased a parking pass for each regular season home game at \$25 per pass. In
5 total, the Sheehans spent approximately \$1,480 for 49ers season tickets and parking in 2005.

6 8. In August 2005, the 49ers sent the Sheehans their season tickets and a "2005
7 Season Ticket Holder Handbook." Neither the handbook, the tickets, nor anything else informed
8 the Sheehans that they would be subject to pat-down searches when attending 49ers games.

9 9. Beginning in 2005, the Sheehans – along with every other ticket holder entering or
10 reentering Monster Park – were subjected to a pat-down search by "Event Staff" screeners before
11 they were allowed to enter the stadium. On each such occasion, after being herded through
12 barricades, Daniel Sheehan and Kathleen Sheehan were forced to stand rigid, with arms spread
13 wide. The 49ers screeners then ran their hands around the Sheehans' backs and down the sides of
14 their bodies and their legs. Members of the San Francisco Police Department stood a few feet away
15 from the screeners and observed the pat-down searches taking place.

16 10. The 49ers new pat-down policy is mentioned on the 49ers' official website,
17 www.sf49ers.com, under an undated subpage titled "Security Measures." According to the website,
18 the 49ers have implemented pat-down searches of all 49ers ticket holders "as a result of the new
19 NFL 'Pat down Policy.'" The "Pat down Policy" to which the 49ers website refers was promulgated
20 by the NFL in August 2005. According to the NFL, stadium screeners are supposed to conduct
21 physical searches by "touching, patting, or lightly rubbing" all ticket holders entering every NFL
22 stadium for each NFL game this year.

23 11. The Sheehans have a right to privacy that entitles them to freedom from unwanted
24 physical intrusions. It is reasonable for the Sheehans to expect that they will not have to sacrifice
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1 this privacy as a condition for participating in public events, including 49ers home games. The pat-
2 down searches conducted by the 49ers are unnecessary, intrusive and highly offensive to the
3 Sheehans, and constitute a serious invasion of their privacy. The Sheehans object to being forced
4 to undergo these suspicionless searches as a condition of retaining their season tickets.

5 12. In or about February 2006, Daniel and Kathleen Sheehan purchased 49ers season
6 tickets for the 2006-2007 NFL season. The Sheehans are informed and believe that the 49ers
7 intend to continue conducting physical pat-down searches of all persons entering or reentering
8 Monster Park during the 2006-2007 season.

9 First Cause of Action

10 (Violation of California Constitution, Article 1, Section 1)

11 13. Paragraphs 1 through 12 are incorporated as if set forth fully herein.

12 14. Article I, section 1 of the California Constitution provides: "All people are by nature
13 free and independent and have inalienable rights. Among these are enjoying and defending life and
14 liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety,
15 happiness, and privacy."

16 15. The pat-down searches imposed by the 49ers on the Sheehans violate their
17 constitutional right to privacy guaranteed by article I, section 1 of the California Constitution.

18 16. The Sheehans have no adequate remedy at law, because unless the policy is
19 enjoined they cannot enjoy their right to attend 49ers games without being forced to undergo
20 unconstitutional pat-down searches of their persons without their consent.

21 17. An actual controversy now exists between the Sheehans and the 49ers concerning
22 the legality of the 49ers' pat-down searches. The Sheehans desire a judicial determination and
23 declaration of the parties' respective rights, duties and obligations under the California
24 Constitution.

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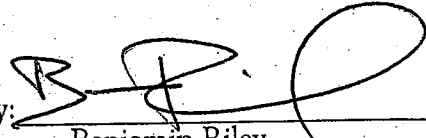
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WHEREFORE, the Sheehans pray for a judgment:

- (a) Declaring the 49ers pat-down searches an invasion of the right to privacy guaranteed by article I, section 1 of the California Constitution;
- (b) Enjoining the 49ers from conducting any further pat-down or similarly physically intrusive search of persons entering Monster Park;
- (c) Awarding the Sheehans their costs of suit and reasonable attorneys fees under Code of Civil Procedure section 1021.5; and,
- (d) Granting additional relief as may be just.

Dated: March 20, 2006

CHAPMAN, POPIK & WHITE LLP

By: 
Benjamin Riley

Ann Brick
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

Attorneys for Plaintiffs

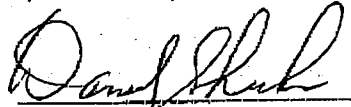
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VERIFICATION

I, Daniel Sheehan, declare:

I am a named plaintiff in this action, and I have read the foregoing complaint and am familiar with the contents thereof. The statements made in the complaint are true of my own knowledge except the statements made on information and belief, which I am informed and believe to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Francisco, California, on MARCH 22, 2006.


Daniel Sheehan

REC'D MAR 28 2006

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SUPERIOR COURT FOR THE COUNTY OF SAN FRANCISCO
STATE OF CALIFORNIA

DANIEL SHEEHAN, an individual; and)
KATHLEEN SHEEHAN, an individual,)
Plaintiffs,)
v.)
THE SAN FRANCISCO 49ERS, LTD., a)
limited partnership; and DOES 1 through 10,)
Defendants.)

No. CGC-05-447679
PROOF OF SERVICE OF VERIFIED
FIRST AMENDED COMPLAINT

1 PROOF OF SERVICE

2 I, the undersigned, declare:

3 I am employed in the City and County of San Francisco, California. I am over the age of
4 eighteen years and not a party to the within entitled action. My business address is Chapman,
Popik & White, 650 California Street, 19th Floor, San Francisco, California, 94108.

5 On March 23, 2006, I served the following document:
6 **VERIFIED FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

7 on the parties involved addressed as follows:

8 Defendant's Counsel
Sonya D. Winner, Esq.
9 Covington & Burling
One Front Street
10 San Francisco, CA 94111

Plaintiff's Co-Counsel
Ann Brick, Esq.
ACLU of Northern California
1663 Mission Street, Ste. 460
San Francisco, CA 94103
Fax: (415) 255-1478

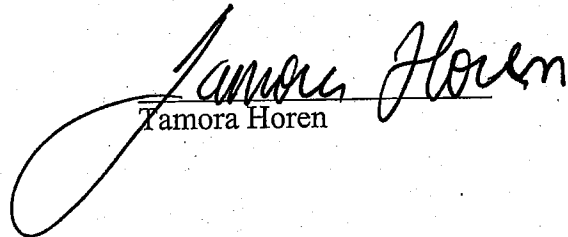
11 _____ **BY PERSONAL DELIVERY:** The within document(s) were served by hand in
12 an envelope addressed to the addressee(s) above on this date. The Proof of
Service by the process server will be filed within five (5) days.

13 **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope with
14 postage fully prepaid, in the United States mail, at San Francisco, California.

15 _____ **BY FACSIMILE:** By use of a facsimile machine telephone number
415/352-3030, I served a copy of the within document(s) on the above interest
16 parties at the facsimile numbers listed above. The transmission was reported as
complete and without error. The transmission report, which is attached to this
17 proof of service, was properly issued by the transmitting facsimile machine.

18 _____ **BY FEDERAL EXPRESS OVERNIGHT DELIVERY:** I caused each
19 envelope, with delivery fees provided for, to be deposited in a box regularly
maintained by Federal Express.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed at San Francisco, California on March 23, 2006.

22 
23 Tamora Horen
24
25
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