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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 CITIZENS FOR FREE SPEECH, LLC;
11 MICHAEL SHAW,

12 Plaintiffs,

13
14 v.

15 COUNTY OF ALAMEDA; ALAMEDA
16 COUNTY EAST COUNTY BOARD OF
17 ZONING ADJUSTMENTS; FRANK J.
18 IMHOFF, SCOTT BEYER, and
19 MATTHEW B. FORD, in their official
20 capacities as members of the Alameda
County East County Board of Zoning
Adjustments,

21 Defendants.
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Case No:

**COMPLAINT FOR CIVIL RIGHTS
VIOLATION AND INJUNCTIVE
RELIEF; DECLARATORY RELIEF;
AND DAMAGES**

**Civil Rights Action (42 U.S.C. Section
1983) for Damages, Declaratory Relief,
and Injunctive Relief**

1. 42 U.S.C. § 1983 [Due Process]
2. 42 U.S.C. § 1983 [Free Speech]
3. 42 U.S.C. § 1983 [Equal Protection]
4. 42 U.S.C. § 1988 [Civil Rights]

DEMAND FOR JURY TRIAL

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Plaintiffs allege the following:

PARTIES

1. Plaintiff CITIZENS FOR FREE SPEECH, LLC (“Citizens”) is a Nevada limited liability corporation qualified to do business in California.
2. Plaintiff MICHAEL SHAW (“Shaw”) is an individual residing within this District.
3. Defendant COUNTY OF ALAMEDA (“County”) is a political subdivision of the State of California, and is a “person” subject to suit within the meaning of 42 U.S.C. § 1983. It is vested with the supervision of regulations and approval of signs within its geographic limits.
4. Defendant ALAMEDA COUNTY EAST COUNTY BOARD OF ZONING ADJUSTMENTS (“Board”) is an administrative board operating under authority of Alameda County Administrative Code Chapter 2.4.140 and Ordinance Code Title 17, and is a “person” subject to suit within the meaning of 42 U.S.C. § 1983. It is vested with conducting abatement hearings relating to signs within its geographic limits.
5. Defendants FRANK IMHOFF, SCOTT BEYER, and MATTHEW B. FORD are, and were at all times relevant to this complaint, members of the Board. These Defendants’ duties include adjudicating alleged violations of the County’s Code of Ordinances relating to signs within the Board’s geographic limits. They are sued in their official capacities.

JURISDICTION

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). Plaintiffs seek to redress a deprivation of rights guaranteed by the First and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983.

INTRADISTRICT ASSIGNMENT

7. Pursuant to Civil L.R. 3-2(c), this case shall be assigned to the San Francisco or the

1 Oakland Division because the action arises in Alameda County. This Court is an appropriate
2 venue for this cause of action pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2). The actions
3 complained of took place in this judicial district, evidence is maintained in this district, the signs
4 erected are in this district, and but for the unlawful regulations and practices of Defendants,
5 Plaintiff would not be subject to monetary fines and deprivation of property.
6

7 **FACTS COMMON TO ALL CAUSES OF ACTION**

8 8. Plaintiff Shaw is the owner of a parcel of land located at 8555 Dublin Canyon Road,
9 within the unincorporated area of the County (the “Parcel”).

10 9. Plaintiff Citizens has entered into an agreement with Shaw for the construction and
11 display of signs on the Parcel.

12 10. In or about 2014, Citizens displayed signs on newly constructed structures on the
13 Parcel per the agreement with Shaw. These signs initially displayed political messages which
14 Plaintiffs considered to be contrary to the political ideology espoused by County officials. The
15 signs currently display both political and commercial messages.
16

17 11. The County has promulgated certain ordinances, known as the Alameda County
18 Code of Ordinances (the “Code”), which purport to regulate the display of signs in
19 unincorporated areas of the County. The display of Plaintiffs’ signs was not allowed under the
20 Code. Other signs are exempt from the speech restrictions imposed by the Code, depending on
21 the entity displaying the sign and the content of the speech displayed thereon. The Code vested
22 unbounded discretion in local officials to determine whether, and when, signs could be
23 displayed.
24

25 12. On or about September 28, 2017, the County mailed to Shaw a “Declaration of
26 Public Nuisance – Notice to Abate” (“2017 Notice”). This notice stated that the signs were in
27 violation of the Code, and demanded that Shaw remove the signs or face monetary penalties.
28

1 13. On or about November 22, 2017, the County mailed to Plaintiff Shaw a “Notice of
2 Administrative Hearing on Abatement of Nuisance” (“Notice of Administrative Hearing”). This
3 notice stated that the Board would conduct an administrative adjudication to determine whether
4 the signs violate the Code, and could authorize the demolition and removal of the signs and their
5 support structures by the County, at Plaintiffs’ expense.
6

7 14. By adjudicating Plaintiffs’ liability for displaying the signs in an administrative
8 proceeding before the Board, the County can unilaterally suppress Plaintiffs’ political and
9 commercial speech without a court order and without the approval of a judicial officer.

10 15. Unless enjoined by this Court, the County will infringe on Plaintiffs’ constitutionally
11 protected rights by removing and suppressing Plaintiffs’ signs and the speech displayed thereon
12 without a judicial determination, thereby causing irreparable injury, as damages alone cannot
13 fully compensate Plaintiffs for the ensuing harm. This threat of injury from continuous
14 violations of Plaintiffs’ free speech and equal protection rights requires temporary, preliminary,
15 and permanent injunctive relief.
16

17 16. The County is attempting to suppress Plaintiffs’ freedom of speech via an
18 administrative adjudication because enforcing the 2017 Notice in a court of law would be barred
19 by res judicata and Federal Rule of Civil Procedure 13(a).
20

21 17. On June 1, 2014, Plaintiffs filed suit in this Court, Case No. 4:14-cv-02513, (the
22 “Litigated Case”), naming the County as defendant. In the Litigated Case, Plaintiffs alleged that
23 the Code’s regulation of signs violated Plaintiffs’ rights to free speech and equal protection under
24 the First and Fourteenth Amendments to the United States Constitution, and prayed that the
25 County be enjoined from any and all conduct enforcing the unconstitutional Code to prohibit,
26 encumber, or penalize Plaintiffs’ signs. The County did not file a cross-complaint in the Litigated
27 Case.
28

1 18. The following day, on June 2, 2014, the County issued a “Declaration of Public
2 Nuisance – Notice to Abate” (“2014 Notice”). Substantially identical to the 2017 Notice, this
3 notice stated that the signs were in violation of the Code, and demanded that Plaintiff Shaw
4 remove the signs or face monetary penalties.
5

6 19. A final Judgment in Plaintiffs’ favor (“Judgment”) was entered in the Litigated Case
7 on March 8, 2017. Plaintiffs were awarded nominal damages and attorneys’ fees.

8 20. The March 8, 2017 Judgment of this Court is a valid, final judgment. Any further
9 litigation by the County against Plaintiffs, attempting to remove the signs or impose monetary
10 penalties under authority of the Code, is barred by res judicata (claim preclusion).

11 21. Because the County did not file a counterclaim in the Litigated Case alleging that the
12 signs violated any provisions of the Code, the County would now be barred from raising such a
13 claim in a court of law by Rule 13(a) of the Federal Rules of Civil Procedure.
14

15 22. Neither the 2017 Notice to Abate nor the Notice of Administrative Hearing makes
16 any mention of the Litigated Case.

17 23. Notwithstanding the preclusive effect of this Court’s Judgment, the County now
18 seeks to adjudicate Plaintiffs’ liability for displaying the signs in administrative proceedings
19 before the Board, rather than before a judicial officer, where such adjudication would be barred
20 by res judicata and Rule 13(a).
21

22 24. Unless enjoined by this Court, the County will continue to flout the final Judgment in
23 the Litigated Case and infringe on Plaintiffs’ constitutionally protected rights, thereby causing
24 irreparable injury as damages alone cannot fully compensate Plaintiffs for the ensuing harm.
25 This threat of injury from violations of free speech and equal protection rights that have already
26 been fully litigated before this Court requires temporary, preliminary, and permanent injunctive
27 relief.
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FIRST CAUSE OF ACTION

**FOR VIOLATION OF RIGHT OF FREE SPEECH
UNDER THE UNITED STATES CONSTITUTION**

25. Plaintiffs incorporate by reference paragraphs 1 through 24 of this Complaint as though set forth herein in their entirety.

26. The County requires that any appeal from the 2017 Notice be adjudicated in an administrative proceeding before the Board. This administrative proceeding can result in the County removing and destroying Plaintiffs’ signs displaying constitutionally protected speech, without a court order and without the approval of a judicial officer. Requiring Plaintiffs to either acquiesce in the removal of the signs, or engage in an administrative proceeding which can result in the forcible removal of Plaintiff’s signs without the approval of a judicial officer, subjects Plaintiffs to the deprivation of free speech rights secured by the First Amendment to the United States Constitution.

27. The deprivation of Plaintiffs’ free speech rights is subject to action pursuant to 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION

**FOR VIOLATION OF RIGHT TO DUE PROCESS OF LAW
UNDER THE UNITED STATES CONSTITUTION**

28. Plaintiffs incorporate by reference paragraphs 1 through 27 of this Complaint as though set forth herein in their entirety.

29. The County’s enforcement of the Code against Plaintiffs via an administrative adjudication, in disregard of the preclusive effect of this Court’s final order in the Litigated Case, and in violation of Rule 13(a) of the Federal Rules of Civil Procedure, subjects Plaintiffs to the deprivation of due process rights secured by the Fourteenth Amendment to the United States

1 Constitution.

2 30. The deprivation of Plaintiffs' due process rights is subject to action pursuant to 42
3 U.S.C. § 1983.

4 **THIRD CAUSE OF ACTION**

5 **FOR VIOLATION OF RIGHT OF FREE SPEECH**
6 **UNDER THE UNITED STATES CONSTITUTION**

7
8 31. Plaintiffs incorporate by reference paragraphs 1 through 30 of this Complaint as
9 though set forth herein in their entirety.

10 32. The Code as set forth herein subjects Plaintiffs to the deprivation of free speech
11 rights secured by the First Amendment to the United States Constitution.

12 33. The deprivation of Plaintiffs' free speech rights is subject to action pursuant to 42
13 U.S.C. § 1983.

14 **FOURTH CAUSE OF ACTION**

15 **FOR VIOLATION OF RIGHT OF EQUAL PROTECTION**
16 **UNDER THE UNITED STATES CONSTITUTION**

17
18 34. Plaintiffs incorporate by reference paragraphs 1 through 33 of this Complaint as
19 though set forth herein in their entirety.

20 35. The Code as set forth herein subjects Plaintiffs to the deprivation of equal protection
21 rights secured by the Fourteenth Amendment to the United States Constitution.

22 36. The deprivation of Plaintiffs' equal protection rights is subject to action pursuant to
23 42 U.S.C. § 1983.

24 **FIFTH CAUSE OF ACTION**

25 **FOR CIVIL RIGHTS VIOLATIONS**

26
27 37. Plaintiffs incorporate by reference paragraphs 1 through 36 of this Complaint as
28 though set forth herein in their entirety.

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9. For such other and further relief as the Court deems just, equitable, and proper.

DATED: FEBRUARY 7, 2018

TIMOTHY V. KASSOUNI
KASSOUNI LAW

By /s/ Timothy V. Kassouni
TIMOTHY V. KASSOUNI
Attorneys for Plaintiffs Citizens for
Free Speech, LLC and Michael Shaw

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: FEBRUARY 7, 2018

TIMOTHY V. KASSOUNI
KASSOUNI LAW

By /s/ Timothy V. Kassouni
TIMOTHY V. KASSOUNI
Attorneys for Plaintiffs Citizens for
Free Speech, LLC and Michael Shaw