

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CITIZENS FOR FREE SPEECH AND
EQUAL JUSTICE, LLC; GTL
ENTERPRISES, LLC,

Plaintiffs,

v.

CITY OF SAN JOSE,

Defendant.

PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. CITY ATTORNEY OF THE CITY OF
SAN JOSE, and CITY OF SAN JOSE,

Counterclaimants,

v.

CITIZENS FOR FREE SPEECH AND
EQUAL JUSTICE, LLC; GTL
ENTERPRISES, LLC; ATOUR AMIRKHAS,
an individual; GRACE AMIRKHAS, an
individual; and DOES 1 through 50,

Counterdefendants.

Case No. 5:18-cv-01919-BLF

**PLAINTIFFS' ANSWER TO
COUNTERCLAIM**

JURY TRIAL DEMANDED

Plaintiffs Citizens for Free Speech and Equal Justice, LLC (“Citizens”) and GTL Enterprises, LLC (“GTL”), and Counterdefendants Atour Amirkhas and Grace Amirkhas (collectively “the Amirkhas”), by and through their undersigned attorney, hereby answer the counterclaims of Defendant City of San Jose and Counterclaimant People of the State of California, ex rel. City Attorney of City of San Jose.

JURISDICTION AND VENUE

1. Answering Paragraph 1, upon information and belief, Plaintiffs and Counterdefendants (collectively “Plaintiffs”) admit that this Court has jurisdiction under 28 U.S.C. § 1367 and Federal Rule of Civil Procedure 13. Plaintiffs deny all remaining allegations contained in Paragraph 1.

2. Answering Paragraph 2, upon information and belief, Plaintiffs admit that venue is proper in this Court. Plaintiffs deny that the violations alleged in the Counterclaim occurred within this judicial district, or any other.

ALLEGATIONS

3. Answering Paragraph 3, Plaintiffs admit that the Counterclaim is being brought in the name of the People of the State of California. Plaintiffs deny all remaining allegations contained in Paragraph 3.

4. Answering Paragraph 4, Plaintiffs admit the allegations contained therein.

5. Answering Paragraph 5, Plaintiffs admit the allegations contained therein.

6. Answering Paragraph 6, Plaintiffs admit the allegations contained therein.

7. Answering Paragraph 7, Plaintiffs admit the allegations contained therein with respect to Plaintiffs Citizens and GTL. Plaintiffs deny those allegations with respect to the Amirkhas.

8. Answering Paragraph 8, Plaintiffs deny the allegations contained therein.

9. Answering Paragraph 9, Plaintiffs deny the allegations contained therein.

10. Answering Paragraph 10, Plaintiffs deny the allegations contained therein.

11. Answering Paragraph 11, Plaintiffs deny the allegations contained therein.

12. Answering Paragraph 12, Plaintiffs deny the allegations contained therein.

13. Answering Paragraph 13, Plaintiffs deny the allegations contained therein.

14. Answering Paragraph 14, Plaintiffs admit that Counterdefendant GTL Enterprises, LLC is a limited liability company registered with the Office of the California Secretary of State and that Atour Amirkhas is a member of GTL Enterprises, LLC. Plaintiffs deny the remaining allegations contained in Paragraph 14.

15. Answering Paragraph 15, Plaintiffs admit that Counterdefendant Citizens for Free Speech and Equal Justice, LLC is a limited liability company registered with the Office of the California Secretary of State. Plaintiffs deny the remaining allegations contained in Paragraph 15.

16. Answering Paragraph 16, Plaintiffs deny the allegations contained therein.

17. Answering Paragraph 17, Plaintiffs deny the allegations contained therein.

18. Answering Paragraph 18, Plaintiffs deny the allegations contained therein.

19. Answering Paragraph 19, Plaintiffs deny the allegations contained therein.

20. Answering Paragraph 20, Plaintiffs deny the allegations contained therein.

21. Answering Paragraph 21, Plaintiffs deny the allegations contained therein.

22. Answering Paragraph 22, Plaintiffs deny the allegations contained therein.

23. Answering Paragraph 23, Plaintiffs deny the allegations contained therein.

24. Answering Paragraph 24, Plaintiffs deny the allegations contained therein.

25. Answering Paragraph 25, Plaintiffs admit the allegations contained therein.

26. Answering Paragraph 26, Plaintiffs deny the allegations contained therein.

27. Answering Paragraph 27, Plaintiffs deny the allegations contained therein.

28. Answering Paragraph 28, Plaintiffs deny the allegations contained therein.

29. Answering Paragraph 29, Plaintiffs admit the content of San Jose Municipal Code section 23.02.236.

30. Answering Paragraph 30, Plaintiffs deny the allegations contained therein.

31. Answering Paragraph 31, Plaintiffs deny the allegations contained therein.

32. Answering Paragraph 32, Plaintiffs admit the allegations contained therein.

33. Answering Paragraph 33, Plaintiffs admit the allegations contained therein.

34. Answering Paragraph 34, Plaintiffs admit that the Amirkhases received a notice from the City dated April 17, 2018. Plaintiffs deny the remaining allegations contained in Paragraph 34.

35. Answering Paragraph 35, Plaintiffs admit that the Amirkhases received a notice from the City dated April 17, 2018. Plaintiffs deny the remaining allegations contained in Paragraph 35.

36. Answering Paragraph 36, Plaintiffs admit they have built and maintained signs and supporting structures on the subject property without the permits required by the City's unconstitutional Sign Ordinance. Plaintiffs deny that this was done in violation of the San Jose Municipal Code.

37. Answering Paragraph 37, Plaintiffs admit they have built and maintained signs and supporting structures on the subject property without the permits required by the City's unconstitutional Sign Ordinance. Plaintiffs deny that this was done in violation of the San Jose Municipal Code.

38. Answering Paragraph 38, Plaintiffs deny the allegations contained therein.

FIRST COUNTERCLAIM

39. Answering paragraph 39, Plaintiffs incorporate the answers to Paragraphs 1 through 38 as though fully set forth herein.

40. Answering paragraph 40, Plaintiffs deny the allegations contained therein.

41. Answering paragraph 41, Plaintiffs deny the allegations contained therein.

42. Answering paragraph 42, Plaintiffs deny the allegations contained therein.

43. Answering paragraph 43, Plaintiffs deny the allegations contained therein.

44. Answering paragraph 44, Plaintiffs deny the allegations contained therein.

45. Answering paragraph 45, Plaintiffs deny the allegations contained therein.

46. Answering paragraph 46, Plaintiffs deny the allegations contained therein.

47. Answering paragraph 47, Plaintiffs deny the allegations contained therein.

48. Answering paragraph 48, Plaintiffs deny the allegations contained therein.

49. Answering paragraph 49, Plaintiffs deny the allegations contained therein.
50. Answering paragraph 50, Plaintiffs deny the allegations contained therein.
51. Answering paragraph 51, Plaintiffs deny the allegations contained therein.
52. Answering paragraph 52, Plaintiffs deny the allegations contained therein.
53. Answering paragraph 53, Plaintiffs deny the allegations contained therein.
54. Answering paragraph 54, Plaintiffs deny the allegations contained therein.
55. Answering paragraph 55, Plaintiffs deny the allegations contained therein.
56. Answering paragraph 56, Plaintiffs deny the allegations contained therein.
57. Answering paragraph 57, Plaintiffs deny the allegations contained therein.
58. Answering paragraph 58, Plaintiffs deny the allegations contained therein.
59. Answering paragraph 59, Plaintiffs deny the allegations contained therein.
60. Answering paragraph 60, Plaintiffs deny the allegations contained therein.

SECOND COUNTERCLAIM

61. Answering paragraph 61, Plaintiffs incorporate the answers to Paragraphs 1 through 60 as though fully set forth herein.
62. Plaintiffs deny the allegations contained therein.
63. Answering paragraph 63, Plaintiffs deny the allegations contained therein.
64. Answering paragraph 64, Plaintiffs deny the allegations contained therein.
65. Answering paragraph 65, Plaintiffs deny the allegations contained therein.
66. Answering paragraph 66, Plaintiffs deny the allegations contained therein.
67. Answering paragraph 67, Plaintiffs deny the allegations contained therein.

THIRD COUNTERCLAIM

68. Answering paragraph 68, Plaintiffs incorporate the answers to Paragraphs 1 through 67 as though fully set forth herein.
69. Answering paragraph 69, Plaintiffs deny the allegations contained therein.

70. Answering paragraph 70 Plaintiffs deny the allegations contained therein.
71. Answering paragraph 71, Plaintiffs deny the allegations contained therein.
72. Answering paragraph 72, Plaintiffs deny the allegations contained therein.
73. Answering paragraph 73, Plaintiffs deny the allegations contained therein.
74. Answering paragraph 74, Plaintiffs deny the allegations contained therein.
75. Answering paragraph 75, Plaintiffs deny the allegations contained therein.
76. Answering paragraph 76, Plaintiffs deny the allegations contained therein.
77. Answering paragraph 77, Plaintiffs deny the allegations contained therein.
78. Answering paragraph 78, Plaintiffs deny the allegations contained therein.
79. Answering paragraph 79, Plaintiffs deny the allegations contained therein.

RESPONSE TO PRAYER FOR RELIEF

80. Plaintiffs deny all remaining allegations not specifically admitted herein and deny that Defendant and Counterclaimants are entitled to any of the relief they have requested.

FIRST AFFIRMATIVE DEFENSE **(Failure to State a Claim)**

81. As a first affirmative defense, Plaintiffs assert that the permitting process established by the City's Sign Ordinance constitutes an illegal prior restraint on Plaintiffs' speech, in violation of the First Amendment to the United States Constitution. Because Defendant and Counterclaimants have failed to allege that Plaintiffs have violated any valid, constitutional enactment, the Counterclaim fails to state a claim for which relief can be granted as a matter of law.

SECOND AFFIRMATIVE DEFENSE **(Failure to State a Claim)**

82. As a second affirmative defense, Plaintiffs assert that the permitting process established by the City's Sign Ordinance unlawfully restricts the exercise of Plaintiffs' free speech rights based on the content of the speech and the identity of the speaker, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Because Defendant and Counterclaimants have failed to allege that Plaintiffs have violated any valid, constitutional enactment, the Counterclaim fails to state a claim for which relief can be granted as a matter of law.

THIRD AFFIRMATIVE DEFENSE
(Failure to State a Claim)

83. As a third affirmative defense, Plaintiffs assert that requiring compliance with the unconstitutional Sign Ordinance to obtain required permits and avoid penalties for noncompliance unlawfully deprives Plaintiffs of their rights to due process of law, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Because Plaintiffs' noncompliance with the requirements of an unconstitutional ordinance cannot give rise to legal liability, the Counterclaim fails to state a claim for which relief can be granted as a matter of law.

FOURTH AFFIRMATIVE DEFENSE
(Failure to State a Claim)

84. As a fourth affirmative defense, Plaintiffs assert that the Counterclaim fails to state a claim for which relief can be granted with respect to Counterdefendants Atour Amirkhas and Grace Amirkhas, because the Amirkhases do not own the property at 300 East Gish Road, on which the acts specified in the Counterclaim are alleged to have occurred.

WHEREFORE, Plaintiffs pray:

1. That Counterclaimants take nothing by their counterclaims;
2. That the counterclaims be dismissed with prejudice;
3. That Plaintiffs be awarded their costs of suit incurred in defense of this action, including attorney's fees incurred herein; and
4. For such other and further relief as the Court deems proper.

DATED: June __, 2018

KASSOUNI LAW

By:

TIMOTHY V. KASSOUNI

Attorneys for Plaintiffs and Counterdefendants