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

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

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

13 Plaintiffs,

14 v.

15 CITY OF SAN JOSE,

16 Defendant.

Case Number: 5:18-cv-01919-BLF

**CITY OF SAN JOSE'S ANSWER AND  
COUNTERCLAIM TO PLAINTIFFS'  
SECOND AMENDED COMPLAINT**

17  
18 PEOPLE OF THE STATE OF  
19 CALIFORNIA, ex rel. CITY ATTORNEY  
OF THE CITY OF SAN JOSE, and CITY  
20 OF SAN JOSE,

21 Counterclaimants,

22 v.

23 CITIZENS FOR FREE SPEECH AND  
24 EQUAL JUSTICE, LLC; GTL  
25 ENTERPRISES, LLC; LOTUS GLASS,  
INC.; ATOUR AMIRKHAS, an individual;  
26 GRACE AMIRKHAS, an individual;  
27 LOTUS SHIN, an individual; and DOES 1  
through 50,

28 Counter-Defendants.

JURY TRIAL DEMANDED

**ANSWER**

Defendant City of San Jose (hereinafter “City”) in answer to Plaintiffs’ Second Amended Complaint (hereinafter “complaint”), admits, denies, and alleges as follows:

1. This paragraph consists of Plaintiffs’ characterization of their own complaint as well as legal argument and conclusion and, therefore, it requires no response; to the extent a response is required, the City denies the allegations therein.

2. Answering paragraph 2, the City admits the allegations therein.

3. Answering paragraph 3, the City admits the allegations therein.

4. Answering the first sentence in paragraph 4, the City admits the allegations therein. Answering the second sentence in paragraph 4, the City admits that it regulates signs within the City; the City denies the remaining allegations therein.

5. Answering the first sentence of paragraph 5, it consists of legal conclusions and, therefore, requires no response. Answering the second sentence of paragraph 5, it consists of Plaintiffs’ characterization of their own complaint and, therefore, requires no response. Answering the third sentence of paragraph 5, in consists of legal argument and conclusion and, therefore, requires no response.

6. Answering the first and second sentence of paragraph 6, they consist of legal argument and conclusions and, therefore, require no response. Answering the third sentence of paragraph 6, the City admits that it is a charter City in the County of Santa Clara and that the real property is located in San Jose; the City denies the remaining allegations therein.

7. Answering paragraph 7, the City admits that the parcel at 300 East Gish is located in San Jose; the City denies the remaining allegations therein.

8. Answering paragraph 8, the City lacks sufficient information and belief to be able to answer it and, therefore, denies the allegations therein.

9. Answering paragraph 9, the City lacks sufficient information and belief to be able to answer it and, therefore, denies the allegations therein.

10. Answering the first and second sentence of paragraph 10, the City lacks

1 sufficient information and belief to be able to answer it and, therefore, denies the  
2 allegations therein; answering the third sentence of paragraph 10, it consists of legal  
3 argument and conclusion and, therefore, requires no response.

4 11. Answering paragraph 11, the City lacks sufficient information and belief to be  
5 able to answer it and, therefore, denies the allegations therein.

6 12. Answering paragraph 12, it consists of legal argument and conclusions and,  
7 therefore, requires no response; to the extent paragraph 12 requires a response, the City  
8 denies the allegations therein; the City avers that San Jose Municipal Code sections  
9 17.48.210 and 23.02.505 speak for themselves.

10 13. Answering paragraph 13, it consists of legal argument and conclusions and,  
11 therefore, requires no response; to the extent paragraph 13 requires a response, the City  
12 denies the allegations therein.

13 14. Answering paragraph 14, the City admits that on or about March 27, 2018,  
14 Code Enforcement Inspector Manuel Duarte from the City of San Jose Department of  
15 Planning, Building and Code Enforcement sent a letter to Atour Amirkhas and Grace  
16 Amirkhas, the owners of the real property commonly known as 300 East Gish Road; the  
17 City admits that a copy of the letter is attached to the complaint as exhibit A; the City avers  
18 that the letter speaks for itself; the City lacks sufficient information and belief as to whether  
19 Plaintiff GTL received this letter and, therefore, denies that allegation; the City denies the  
20 remaining allegations in paragraph 14.

21 15. Answering paragraph 15, the City admits that on or about January 22, 2019,  
22 Code Enforcement Inspector Manuel Duarte from the City of San Jose Department of  
23 Planning, Building, and Code Enforcement issued a Compliance Order for the property at  
24 300 East Gish Road; the City avers that the Compliance Order speaks for itself; the City  
25 denies the remaining allegations therein.

26 16. Answering paragraph 16, it requires no response because it characterizes the  
27 contents of the Compliance Order; the City avers that the Compliance Order speaks for  
28 itself.

1           17.     Answering paragraph 17, it requires no response because it characterizes the  
2 contents of the Compliance Order; the City avers that the Compliance Order speaks for  
3 itself.

4           18.     Answering the first sentence of paragraph 18, the City admits the allegations  
5 therein. Answering the second sentence of paragraph 18, it constitutes a statement of intent  
6 and, therefore, requires no response.

7           19.     Answering paragraph 19, it consists of legal argument and conclusions and,  
8 therefore, requires no response; the City avers that San Jose Municipal Code speaks for  
9 itself.

10          20.     Answering paragraph 20, it consists of legal argument and conclusions and,  
11 therefore, requires no response; the City avers that San Jose Municipal Code speaks for  
12 itself.

13          21.     Answering paragraph 21, it consists of legal argument and conclusions and,  
14 therefore, requires no response; to the extent a response is required, the City denies the  
15 allegations therein; the City avers that San Jose Municipal Code section 23.02.1310 speaks  
16 for itself.

17          22.     Answering paragraph 22, it constitutes a statement of intent and consists of  
18 legal conclusions and, therefore, requires no response; to the extent paragraph 22 requires  
19 a response, the City denies the allegations therein.

20          23.     Answering paragraph 23, it consists of legal argument and conclusions and,  
21 therefore, requires no response; to the extent paragraph 23 requires a response, the City  
22 denies the allegations therein.

23          24.     Answering paragraph 24, it constitutes a statement of intent and consists of  
24 legal argument and conclusions and, therefore, requires no response; to the extent a  
25 response is required, the City denies the allegations therein; the City avers that San Jose  
26 Municipal Code section 23.02.1370 speaks for itself.

27          25.     Answering paragraph 25, it characterizes the contents of San Jose Municipal  
28 Code section 23.02.1370 and, therefore, requires no response; the City avers that the Code

1 section speaks for itself.

2 26. Answering paragraph 26, it consists of legal argument and conclusions and,  
3 therefore, requires no response; to the extent a response is required, the City denies the  
4 allegations therein.

5 27. Answering paragraph 27, it consists of legal argument and conclusion and,  
6 therefore, requires no response; to the extent paragraph 27 requires a response, the City  
7 denies the allegations therein.

8 28. Answering paragraph 28, it consists of legal argument and conclusions and,  
9 therefore, requires no response; to the extent a response is required, the City denies the  
10 allegations therein.

11 29. Answering paragraph 29, it consists of legal argument and conclusions and,  
12 therefore, requires no response; to the extent a response is required, the City denies the  
13 allegations therein.

14 30. Answering paragraph 30, it consists of legal argument and conclusions and,  
15 therefore, requires no response; to the extent a response is required, the City denies the  
16 allegations therein.

17 31. Answering paragraph 31, the City admits the allegations therein.

18 32. Answering paragraph 32, the City incorporates the answers to paragraphs 1  
19 through 31 as though fully set forth herein.

20 33. Answering paragraph 33, the City denies the allegations therein.

21 34. Answering paragraph 34, it characterizes the contents of San Jose Municipal  
22 Code section 23.02.1370 and consists of legal conclusions and, therefore, requires no  
23 response; to the extent a response is required, the City denies the allegations therein; the  
24 City avers that Code section 23.02.1370 speaks for itself.

25 35. Answering paragraph 35, it consists of legal conclusions and, therefore,  
26 requires no response; to the extent a response is required, the City denies the allegations  
27 therein.

28 36. Answering paragraph 36, the case of *City of Lakewood v. Plain Dealer Pub.*

1 Co. speaks for itself. To the extent a response is required, the City denies the allegations  
2 therein.

3 37. Answering paragraph 37, it consists of a legal conclusion and, therefore,  
4 requires no response.

5 38. Answering paragraph 38, the City incorporates the answers to paragraphs 1  
6 through 37 as though fully set forth herein.

7 39. Answering paragraph 39, it consists of legal argument and conclusions and,  
8 therefore, requires no response; to the extent a response is required, the City denies the  
9 allegations therein.

10 40. Answering paragraph 40, it consists of a legal conclusion and, therefore,  
11 requires no response.

12 41. Answering paragraph 41, the City incorporates the answers to paragraphs 1  
13 through 40 as though fully set forth herein.

14 42. Answering paragraph 42, it consists of legal conclusions and, therefore,  
15 requires no response; to the extent a response is required, the City denies the allegations  
16 therein.

17 43. Answering paragraph 43, it purports to quote from San Jose Municipal Code  
18 and, therefore, requires no response; the City avers that the San Jose Municipal Code  
19 speaks for itself.

20 44. Answering paragraph 44, the City denies the allegations therein.

21 45. Answering paragraph 45, it consists of a legal conclusion and, therefore,  
22 requires no response.

23 46. Answering paragraph 46, the City incorporates the answers to paragraphs 1  
24 through 45 as though fully set forth herein.

25 47. Answering paragraph 47, the City denies the allegations therein.

26 48. Answering paragraph 48, it consists of a legal conclusion and, therefore,  
27 requires no response.

28 49. Answering paragraph 49, the City incorporates the answers to paragraphs 1

1 through 47 as though fully set forth herein.

2 50. Answering paragraph 50, it consists of a statement of intent and, therefore,  
3 requires no response.

4 51. Answering paragraph 51, the City denies the allegations therein.

5 The remainder of the complaint consists of Plaintiffs' request for relief, to which no  
6 response is required; to the extent a response is required, Defendant denies that Plaintiffs  
7 are entitled to the relief sought in the complaint or to any relief whatsoever.

8 **AFFIRMATIVE DEFENSES**

9 1. The complaint fails to state a claim upon which relief can be granted.

10 2. Any harm Plaintiffs suffered was the result of negligent or otherwise wrongful  
11 conduct of persons other than the City and the conduct of persons other than the City was  
12 the sole and proximate cause of the injuries and damages alleged by Plaintiffs.

13 3. The complaint is barred by the applicable statutes of limitation, including, but  
14 not limited to, those set forth in the California Code of Civil Procedure.

15 4. The City's actions towards Plaintiffs were the result of Plaintiffs' negligence  
16 and/or criminal conduct and said actions of Plaintiffs were the sole and proximate cause of  
17 the City's actions and any damages alleged by Plaintiffs in this case.

18 5. The City's actions were lawful and justified under the facts of this case.

19 6. Any damages or injuries suffered by Plaintiffs were occasioned by their own  
20 wrongful actions.

21 7. Plaintiffs have failed to mitigate their damages.

22 8. Plaintiffs' claims are barred by the doctrine of res judicata.

23 9. Plaintiffs and each of them are collaterally estopped from bringing their claims.

24 10. Plaintiffs and each of them do not have standing under the United States  
25 Constitution, federal statutes and common law to bring all or a portion of their claims,  
26 including, but not limited to, the fact that Plaintiffs do not have a business license to conduct  
27 business within the City and the fact that Plaintiff never applied for a building or sign permit  
28 with the City.

1           11. Plaintiffs and each of them by their words, conduct and actions made a  
2 knowing intentional and voluntary waiver of any and all claims raised in their complaint.

3           12. Plaintiffs' claims are barred by the equitable doctrine of estoppel.

4           13. Plaintiffs' claims are barred, in whole or in part, by the equitable doctrine of  
5 unclean hands.

6           14. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

7           15. The damages sought by Plaintiffs are unavailable to the extent that Plaintiffs'  
8 alleged damages were caused by one or more acts or omissions of parties other than the  
9 City.

10           16. Plaintiffs' claims are barred to the extent any recovery would result in unjust  
11 enrichment to Plaintiffs.

12           17. Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs have  
13 failed to exhaust administrative remedies.

14           18. Plaintiffs' claims are barred, in whole or in part, by their failure to adequately  
15 supervise the activities of their lessees.

16           19. Plaintiffs failed to join other necessary parties.

17           20. Plaintiff GTL Enterprises, LLC, does not own the parcel of land commonly  
18 known as 300 E. Gish in San Jose.

19           21. Plaintiffs' claims are barred, in whole or in part, to the extent they do not own  
20 or possess the requisite legal interest in the property commonly known as 300 E. Gish in  
21 San Jose to assert any or all of their claims.

22           22. The City's conduct was lawful in all respects under the express federal, state,  
23 and local laws then applicable.

24           23. Plaintiffs' claims are barred in whole or in part by the doctrine of assumption of  
25 risk.

26           24. Plaintiffs are not entitled to injunctive relief because they have failed to state  
27 facts sufficient to show continuing acts, the threat of irreparable harm, or a reasonable  
28



1 likelihood of repetition of the alleged conduct of the City if it were, in fact, established to be  
2 wrongful.

3 25. Plaintiffs are not entitled to injunctive or declaratory relief because they have a  
4 plain, common, adequate and speedy remedy at law.

5 26. The complaint does not describe its claims or events with sufficient  
6 particularity to permit the City to ascertain what other affirmative defenses may exist, and  
7 the City has insufficient knowledge or information to form a belief as to whether it has  
8 additional, as yet unstated, affirmative defenses available to it. The City therefore reserves  
9 the right to assert all affirmative defenses which may pertain to the complaint once the  
10 precise nature of the claims is ascertained and in the event discovery indicates that they  
11 would be appropriate.

12 WHEREFORE, the City prays:

- 13 1. That Plaintiffs take nothing by their complaint;
- 14 2. That Plaintiffs' complaint be dismissed with prejudice;
- 15 3. That the City be awarded its costs of suit, including attorney's fees incurred  
16 herein; and
- 17 4. For such other and further relief as the Court deems proper.

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**COUNTERCLAIM**

The People of the State of California, by and through Richard Doyle, City Attorney for the City of San José, and the City of San José hereby allege as follows.

**JURISDICTION AND VENUE**

1. Jurisdiction in this Court is proper under 28 U.S.C. section 1367 and Federal Rule of Civil Procedure 13 with respect to all counterclaims. All counterclaims arise out of the same transaction or occurrence as Plaintiffs' claims and thus fall squarely within this Court's supplemental/ancillary jurisdiction.

2. Venue in this Court is proper under 28 U.S.C. section 1391(b) because the properties subject to this lawsuit are located within this judicial district, the violations alleged herein occurred within this judicial district, Counter-Defendants Citizens for Free Speech and Equal Justice, LLC, and GTL Enterprises, LLC, have submitted to personal jurisdiction within this judicial district by initiating the present action, Counter-Defendant Lotus Glass, Inc. owns property and transacts business within this judicial district, and Counter-Defendants Atour Amirkhas, Grace Amirkhas, and Lotus Shin reside within this judicial district.

**PRELIMINARY ALLEGATIONS**

3. Richard Doyle, as City Attorney of the City of San José, brings this action in the public interest in the name of the People of the State of California for the purpose of protecting the public health, safety and welfare.

4. The City of San José ("City") is a municipal corporation in the County of Santa Clara, State of California. The People and the City are collectively referred to herein as "Counterclaimants," unless otherwise stated.

5. The City has a population in excess of 750,000 people.

6. Counterclaimants bring this action under the Unfair Business Practices Law, California Business & Professions Code section 17200, *et seq.* and 17500, *et seq.*, and the provisions of the San José Municipal Code sections alleged herein.

7. Counter-Defendants own property and/or transact business within the City,

1 County of Santa Clara, State of California.

2 8. The acts and omissions of Counter-Defendants, and each of them, jointly and  
3 severally, as alleged herein, are in violation of the laws and public policies of the City and  
4 the State of California and are inimical to the rights and interests of the general public.  
5 Unless enjoined and restrained by an order of the Court, Counter-Defendants are likely to  
6 continue to engage in the unfair and unlawful acts and omissions alleged herein.

7 9. Counterclaimants seek to perpetually enjoin Counter-Defendants from  
8 engaging in unfair and unlawful business practices, based on their acts and omissions  
9 constituting violations of state and local regulatory laws, and based on their acts and  
10 omissions contravening public policy, as alleged herein.

11 10. Counterclaimants seek civil penalties, costs, and fees as authorized by law.

12 11. Counterclaimants are informed and believe and on such information and  
13 belief allege that during the relevant times herein, Counter-Defendants, in their respective  
14 capacities as property owners, business owners, business operators, business licensees,  
15 commercial lessees, employees, representatives, servants, assignees, agents, subsequent  
16 business owners, subsequent business operators, subsequent business licensees,  
17 subsequent commercial lessees, subsequent employees, subsequent representatives,  
18 and/or in other capacities currently unknown to Counterclaimants, are persons responsible  
19 for the unlawful business practices, unfair business practices, and state and municipal code  
20 violations as alleged herein at the real properties located on (1) Assessor's Parcel Number  
21 237-27-057, commonly known as 300 East Gish Road, within the State of California,  
22 County of Santa Clara, City of San Jose and (2) Assessor's Parcel Number 235-17-017,  
23 commonly known as 1120 N. 10<sup>th</sup> Street, within the State of California, County of Santa  
24 Clara, City of San Jose.

25 12. Counter-Defendants Atour Amirkhas and Grace Amirkhas, individuals, own  
26 the real property located at 300 East Gish Road in San Jose, County of Santa Clara,  
27 California (hereinafter "Subject Property No. 1") as husband and wife, as community  
28 property with right of survivorship.

1           13.     The City is informed and believes, and thereon alleges, that at all times  
2 relevant herein, Counter-Defendants Atour Amirkhas and Grace Amirkhas own, manage,  
3 control and/or operate a business on Subject Property No. 1, and are responsible for, or  
4 caused, the construction and maintenance of sign structures and programmable electronic  
5 signs on Subject Property No. 1.

6           14.     Counter-Defendant GTL Enterprises, LLC, is a limited liability company  
7 registered with the Office of California Secretary of State. Counter-Defendant Atour  
8 Amirkhas is a member of GTL Enterprises, LLC. The City is informed and believes, and  
9 thereon alleges, that at all times relevant herein, Counter-Defendant GTL Enterprises, LLC,  
10 owns, manages, controls and/or operates one or more businesses on Subject Property No.  
11 1, and is responsible for, or caused, the construction and maintenance of sign structures  
12 and programmable electronic signs on Subject Property No. 1.

13           15.     Counter-Defendant Lotus Glass, Inc. is a corporation registered with the  
14 Office of California Secretary of State and owns the real property located at 1120 N. 10<sup>th</sup>  
15 Street in San Jose, County of Santa Clara, California (hereinafter "Subject Property No. 2").

16           16.     The City is informed and believes, and thereon alleges, that at all times  
17 relevant herein, Counter-Defendant Lotus Shin, as CEO of Lotus Glass, Inc., owns,  
18 manages, controls, and/or operates a business on Subject Property No. 2, and is  
19 responsible for, or caused, the construction and maintenance of sign structures on Subject  
20 Property No. 2.

21           17.     Subject Property No. 1 and Subject Property No. 2 are collectively referred to  
22 herein as the "Subject Properties".

23           18.     Counter-Defendant Citizens for Free Speech and Equal Justice, LLC, is a  
24 limited liability company registered with the Office of California Secretary of State. The City  
25 is informed and believes, and thereon alleges, that at all times relevant herein, Counter-  
26 Defendant Citizens for Free Speech and Equal Justice, LLC, owns, manages, controls  
27 and/or operates one or more businesses on Subject Properties, and is responsible for, or  
28 caused, the construction and maintenance of sign structures and programmable electronic

1 signs on the Subject Property.

2 19. Counterclaimants are informed and believe, and on such information and  
3 belief allege, that during the relevant times herein, Counter-Defendants violated provisions  
4 of the San Jose Municipal Code, and conducted otherwise unlawful business practices, and  
5 unlawfully created and continue to create nuisances in violation of the San José Municipal  
6 Code as alleged herein within the State of California, County of Santa Clara, City of San  
7 José.

8 20. Counterclaimants are informed and believe, and on such information and  
9 belief allege, that Does 1 through 100, inclusive, are persons or entities responsible for the  
10 public nuisance, unlawful business practices, and/or unfair business practices based upon  
11 their acts and/or omissions in one or more of the capacities set forth herein.

12 Counterclaimants are ignorant of these fictitiously named Counter-Defendants but will  
13 amend this Counterclaim to state each such Counter-Defendant's true name when such  
14 information has been ascertained.

15 21. Whenever reference is made in this Counterclaim to any act of Counter-  
16 Defendants, such allegations shall be deemed to mean the act of each and every Counter-  
17 Defendant, including, without limitation, the individually named Counter-Defendants herein  
18 and Does 1 through 100, and each of them, acting both individually and jointly.

19 22. Counterclaimants have not yet completed their investigation in this case, in  
20 part because Counter-Defendants have not allowed them access to inspect the Subject  
21 Properties. Counterclaimants' investigation may uncover additional violations of the City's  
22 Sign Ordinance on the Subject Properties that may require amendment of this counterclaim  
23 in the future.

24 **SUBJECT PROPERTY NO. 1**

25 In March 2018, the City received a complaint regarding installation of an oversized  
26 digital display on Subject Property No. 1 in violation of City and/or state law or regulations.

27 23. San Jose Municipal Code section 23.02.410 defines the term "programmable  
28 electronic sign" as follows: "Programmable electronic sign" means a type of animated sign

1 capable of displaying words, symbols, figures, or images that can be electronically or  
2 mechanically changed by remote or automatic means. The elements may be internally  
3 illuminated or may be illuminated by reflected light. The sign may be part of a permanent  
4 sign that is not a programmable electronic sign. "Programmable electronic sign" includes  
5 sign display screens commonly known as liquid crystal display (LCD), plasma and digital  
6 displays, and their functional equivalents. This definition applies whether the display is used  
7 to produce a series of still images, or images that appear to move on the display screen.

8 24. San Jose Municipal Code section 23.02.1010.A.5 prohibits programmable  
9 electronic signs, unless expressly allowed in Title 23 of the Municipal Code.

10 25. Title 23 of San Jose Municipal Code does not expressly allow programmable  
11 electronic signs at the Subject Property.

12 26. The Subject Property, Assessor Parcel Number 237-27-057, is situated at  
13 East Gish Road, and is immediately adjacent to U.S. Route 101 ("US-101") and the junction  
14 and interchange of US-101 and Interstate Highway 880 ("I-880").

15 27. The programmable electronic signs are adjacent to, visible from, and fronting  
16 US-101 South and from US-101 North.

17 28. Title 23 of San Jose Municipal Code does not allow a sign visible from a  
18 freeway at the Subject Property.

19 29. San Jose Municipal Code section 23.02.1010 prohibits signs facing and  
20 visible from a freeway, unless the parcel where the sign is located is separated from the  
21 freeway by another public right-of-way or unless the parcel has direct access to the  
22 freeway, among other conditions.

23 30. The Subject Property is not separated from US-101 or I-880 by a public right-  
24 of-way nor does it have direct access to US-101 or I-880.

25 31. San Jose Municipal Code section 23.02.236 defines "freeway sign" as "a large  
26 freestanding sign oriented to and designed to be viewed from a freeway."

27 32. Title 23 of San Jose Municipal Code, including but not limited to section  
28 23.04.035, and state law, prohibit freeway signs on the Subject Property.

1           33.     On or about March 27, 2018, the City sent a letter to the owners of Subject  
2 Property No. 1, Counter-Defendants Atour Amirkhas and Grace Amirkhas, informing them  
3 that the City’s Department of Planning, Building, and Code Enforcement received a  
4 complaint concerning installation of an oversized digital display without permits on Subject  
5 Property No. 1; the letter requested prompt contact in order to arrange a property  
6 inspection. The City received no response to the letter.

7           34.     On or about April 11, 2018, in response to a contact attempt by telephone,  
8 Counter-Defendant Atour Amirkhas referred the City Inspector to attorney Timothy  
9 Kassouni.

10          35.     On or about April 12, 2018, the City was served with a lawsuit concerning the  
11 sign on Subject Property No. 1, challenging the City’s Sign Ordinance, among other issues.

12          36.     On or about April 17, 2018, the City issued a written warning notice to the  
13 owners of Subject Property No. 1, Counter-Defendants Atour Amirkhas and Grace  
14 Amirkhas, informing them that the City’s Department of Planning, Building, and Code  
15 Enforcement, the Code Enforcement Division, has received and confirmed a report of the  
16 following violations of the San Jose Municipal Code at Subject Property No. 1:

- 17           i.     Violation of San Jose Municipal Code section 23.02.820: “No person shall  
18               erect, maintain or suffer, or cause to be erected, maintained or suffered, any  
19               sign except in strict conformity with this title [23].”
- 20           ii.    Violation of San Jose Municipal Code section 23.02.1300.A: “No person shall  
21               erect or alter, or cause to be erected or altered, any sign except pursuant to a  
22               development permit issued in accordance with Chapter 20.100 or pursuant to  
23               approval in accordance with Section 23.02.1300.C below, unless exempted  
24               from such requirement by Section 23.02.1310.” San Jose Municipal Code  
25               section 23.02.1300.C provides in part: “Signs not approved in conjunction  
26               with a development permit issued pursuant to Chapter 20.100, and the  
27               alternation of existing signs may be approved by: . . . 3. A sign permit or sign  
28               permit adjustment issued pursuant to Section 23.02.1330 . . . .”

1           iii. Violation of San Jose Municipal Code section 24.01.130: “It shall be unlawful  
2           for any person to erect, construct, enlarge, alter, repair, move, improve,  
3           remove, convert, demolish, equip, use, occupy or maintain any building or  
4           structure in the city, or cause or permit or suffer the same to be done, in  
5           violation of this title [24] or in violation of any of the provisions of the Codes  
6           adopted hereunder.”

7           iv. Violation of San Jose Municipal Code section 24.02.100: “Except as specified  
8           in this part, no building, structure or building service equipment regulated by  
9           this title and the technical codes shall be erected, constructed, enlarged,  
10          altered, repaired, moved, improved, removed, converted or demolished  
11          unless a separate, appropriate permit for each building, structure or building  
12          service equipment has first been obtained from the building official.”

13          37.     The warning notice required the following corrective action by May 18, 2018:  
14     “Remove electronic sign or obtain permit for electronic sign constructed without  
15     Planning/Building approvals.” The warning notice noted that in the event of failure to timely  
16     correct the violations, an administrative citation may be issued and a fine of \$250 may be  
17     imposed.

18          38.     Counter-Defendants Atour Amirkhas, Grace Amirkhas, GTL Enterprises, LLC,  
19     and Citizens for Free Speech and Equal Justice, LLC have built and maintain a sign  
20     structure and freestanding electronic programmable signs on Subject Property No. 1  
21     without a permit for the sign structure and signs and without a building permit for the sign  
22     structure and signs, in violation of San Jose Municipal Code, including, but not limited to  
23     sections 23.02.820, 23.02.1300, and 24.02.100.

24          39.     Counter-Defendants Atour Amirkhas, Grace Amirkhas, GTL Enterprises, LLC,  
25     and Citizens for Free Speech and Equal Justice, LLC have built and maintain sign  
26     structures and programmable electronic signs on Subject Property No. 1 in a location where  
27     the sign structure and signs are not allowed, in violation of San Jose Municipal Code,  
28     including, but not limited to sections 23.02.820, 23.02.1010.5, and 23.02.1010.9.



1 40. Violations have occurred from March 2018 through the present, at Subject  
2 Property No. 1, which has continually been owned, operated, maintained and/or used in  
3 violation of the San Jose Municipal Code and state law.

4 **SUBJECT PROPERTY NO. 2**

5 41. Plaintiffs' First Amended Complaint indicated, for the first time, that Plaintiff  
6 Citizens for Free Speech and Equal Justice, LLC also had entered into a contract with Lotus  
7 Glass, Inc. for the construction and display of signs on Subject Property No. 2.

8 42. San Jose Municipal Code section 24.01.130 ("Compliance with Title  
9 Provisions Required") states that "it shall be unlawful for any person to erect, construct,  
10 enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy or  
11 maintain any building or structure in the city, or cause or permit or suffer the same to be  
12 done, in violation of this title or in violation of any of the provisions of the Codes adopted  
13 hereunder."

14 43. San Jose Municipal Code section 24.02.100 ("Permits Required") states that  
15 "except as specified in this part, no building, structure or building service equipment  
16 regulated by this title and the technical codes shall be erected, constructed, enlarged,  
17 altered, repaired, moved, improved, removed, converted or demolished unless a  
18 separate, appropriate permit for each building, structure or building service equipment  
19 has first been obtained from the building official.

20 44. On February 28, 2019, Code Enforcement Inspector Manuel Duarte with the  
21 City of San Jose's Planning, Building, and Code Enforcement Division visited Subject  
22 Property No. 2. From public view, Mr. Duarte observed a sign structure on Subject Property  
23 No. 2.

24 45. Inspector Duarte later determined that the sign structure on Subject Property  
25 No. 2 had been constructed without the owner of the property, Lotus Glass, Inc., by and  
26 through its CEO Lotus Shin, first obtaining a building permit from the City of San Jose.  
27 Under San Jose Municipal Code section 24.02.100, Lotus Glass, Inc. was required to first  
28 obtain a building permit prior to constructing the sign structure on Subject Property No. 2.

1 46. None of the building permit exemptions identified in San Jose Municipal Code  
2 section 24.02.120 apply to the sign structure erected on Subject Property No. 2.

3 47. Counter-Defendants Citizens for Free Speech and Equal Justice, LLC, Lotus  
4 Glass, Inc., and Lotus Shin have built and maintain a sign structure on Subject Property No.  
5 2 without a building permit for the sign structure, in violation of San Jose Municipal Code  
6 section 24.02.100.

7 48. Counter-Defendant Citizens for Free Speech and Equal Justice, LLC admits  
8 at paragraph 11 of the First Amended Complaint that it intends to erect signs on Subject  
9 Property No. 2 from this sign structure, similar to the signs erected on Subject Property No.  
10 1.

11 49. Violations have occurred at least from February 28, 2019, through the present  
12 at Subject Property No. 2, which has continually been owned, operated, maintained, and/or  
13 used in violation of the San Jose Municipal Code and state law.

14 **FIRST COUNTERCLAIM FOR RELIEF**

15 **ACTION FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**  
16 **UNDER SAN JOSE MUNICIPAL CODE**

17 **[Public Nuisance--“Nuisance Per Se”]**

18 50. Counterclaimants incorporate by reference paragraphs 1 through 50 as if set  
19 forth in full herein.

20 51. Counterclaimants bring this first counterclaim for relief under the San Jose  
21 Municipal Code based on a continuing public nuisance created by Counter-Defendants’  
22 acts or omissions alleged herein from March 2018 through the present for Subject Property  
23 No. 1, and at least from February 28, 2019, through the present for Subject Property No. 2,  
24 constituting violations of San Jose Municipal Code at the Subject Properties.

25 52. Counterclaimants further bring this first counterclaim for relief to enjoin and  
26 abate violations of the San Jose Municipal Code section 1.13.040 prohibiting a public  
27 nuisance.

28 53. Counter-Defendants have acted in one or more of the capacities set forth  
above, and in those respective capacities Counter-Defendants have conducted,

1 maintained, and/or permitted a nuisance, directly or indirectly, based on the use of the  
2 Subject Properties in violation of San Jose Municipal Code.

3 54. Whenever a violation of San Jose Municipal Code based on acts or omissions  
4 of Counter-Defendants is alleged, it shall include causing, permitting, aiding, abetting,  
5 suffering or concealing the facts of such acts or omissions.

6 55. The violations of the San Jose Municipal Code constitute a “public nuisance,”  
7 are subject by ordinance to injunctive relief and civil penalties, and so each of these  
8 violations constitutes a “nuisance per se” as a matter of law.

9 56. California Government Code section 38771 provides that, by ordinance, the  
10 City’s legislative body may declare what constitutes a public nuisance.

11 57. San Jose Municipal Code section 23.02.830 provides that “[t]he erection of  
12 any sign in violation of this title [23] shall be, and is hereby declared to be, unlawful and a  
13 public nuisance.” It further provides that “any court of competent jurisdiction may award any  
14 relief as will abate or remove such use and restrain any person from using any property  
15 contrary to the provisions of this title [23],” and that “[a]n injunction may be issued by any  
16 court of competent jurisdiction for any violation of this title upon suit by the city.”

17 58. Additionally, San Jose Municipal Code section 1.08.010.G provides: “Any  
18 condition existing in violation of any of the provisions of any state or federal law or  
19 regulation or of this Code or any other city ordinance shall be deemed a public nuisance  
20 and may be abated by the city. Nuisance shall include, but is not limited to, the factors in  
21 Section 1.13.050.”

22 59. San Jose Municipal Code section 1.13.050.A defines “public nuisance” as:

23 The maintenance or use of property in the city in a manner that jeopardizes or  
24 endangers the health, safety or welfare of persons on the premises or in the  
25 surrounding area; or real property that has been the situs of nuisance activity  
including, but not limited to the following: . . . .

26 The maintenance or use of property in the city in a manner that  
27 violates, or real property that has been the situs of a violation of, any  
28 provision of this code or any other city, state or federal law or  
regulation.

1           60.     San Jose Municipal Code section 1.08.015.A provides: “In addition  
2 to all other remedies provided by law, any provision of this code may be enforced  
3 by injunction issued by the superior court upon a suit brought by the City of San  
4 Jose.”

5           61.     San Jose Municipal Code section 1.08.015.B provides that:

6                     In addition to all other remedies, as part of any civil action brought by  
7 the City, a Court may assess a civil penalty in an amount not to  
8 exceed two thousand five hundred dollars per violation for each day,  
9 payable to the City, against any person who commits, continues,  
operates, allows or maintains any violation of any provision of this  
code.

10           62.     San Jose Municipal Code section 1.13.040 provides that: “No person may  
11 maintain or use property or allow their property to be maintained or used in a manner that  
12 creates or fosters the creation of a public nuisance.”

13           63.     San Jose Municipal Code section 1.04.110 provides that: “Whenever in this  
14 code any act or omission is made unlawful, it shall include causing, permitting, aiding,  
15 abetting, suffering or concealing the facts of such act or omission.”

16           64.     Counterclaimants allege that the ownership, building, and maintenance of  
17 programmable electronic signs on Subject Property No. 1, without permits, in violation of  
18 the San Jose Municipal Code and state law, has created or fostered creation of a public  
19 nuisance.

20           65.     Counterclaimants further allege that the ownership, building, and  
21 maintenance of programmable electronic signs without permits on Subject Property No. 1  
22 creates a risk to the public’s health, safety and welfare.

23           66.     Counterclaimants further allege that the ownership, building, and maintenance  
24 of a sign structure or structures on Subject Property No. 2, without a building permit, in  
25 violation of the San Jose Municipal Code, has created or fostered creation of a public  
26 nuisance.

27           67.     Counter-Defendants have violated the San Jose Municipal Code by owning,  
28 building, and/or maintaining programmable electronic signs and sign structures on the

1 Subject Properties in a manner that jeopardizes or endangers the health, safety or welfare  
2 of persons on the premises or in the surrounding area, which constitutes a public  
3 nuisance.

4 68. Counter-Defendants have acted in one or more of the respective capacities  
5 set forth herein relative to this cause of action. In those respective capacities, said  
6 Counter-Defendants have conducted, maintained, and/or permitted a nuisance, directly or  
7 indirectly, based upon the ownership, building and/or maintaining programmable electronic  
8 signs on Subject Property No. 1 and have conducted, maintained, and/or permitted a  
9 nuisance, directly or indirectly, based upon the ownership, building, and/or maintaining a  
10 sign structure on Subject Property No. 2 without a building permit.

11 69. The acts or omissions of the Counter-Defendants have resulted in the  
12 ownership, building, and/or maintenance of programmable electronic signs and sign  
13 structures on the Subject Properties in a manner that jeopardizes or endangers the health,  
14 safety or welfare of persons on the premises or in the surrounding area.

15 70. Counterclaimants bring this first counterclaim for relief to abate the nuisance  
16 alleged herein.

17 71. The continuing public nuisance alleged herein constitutes great and  
18 irreparable harm as a matter of law.

19 72. Counterclaimants have no plain, speedy, or adequate remedy at law, and  
20 injunctive relief is authorized under San Jose Municipal Code section 1.08.015 to ensure  
21 compliance with the Code.

22 Wherefore Counterclaimants pray for the relief requested below.

23 **SECOND COUNTERCLAIM FOR RELIEF**

24 **ACTION FOR INJUNCTIVE RELIEF, ATTORNEY'S FEES AND COSTS**  
25 **UNDER CALIFORNIA CODE OF CIVIL PROCEDURE §731 AND**  
26 **CALIFORNIA CIVIL CODE §§3479, 3480 & 3496**

27 **[Public Nuisance]**

28 73. Counterclaimants allege and incorporate by reference paragraphs 1 through  
73, inclusive, as if set forth in full herein.

1           74. Counterclaimants bring this second counterclaim for relief in the name of the  
2 People of the State of California, under California Code of Civil Procedure section 731.

3           75. Counterclaimants bring this second counterclaim for relief in equity under  
4 California Civil Code sections 3479 and 3480 to abate a continuing public nuisance created  
5 by the ownership, building and maintenance of programmable electronic signs and sign  
6 structures without permits on the Subject Properties in a manner that jeopardizes or  
7 endangers the health, safety or welfare of persons on the premises or in the surrounding  
8 area, in violation of the San Jose Municipal Code and state law.

9           76. Counter-Defendants have acted in one or more of the respective capacities  
10 set forth above as to this counterclaim. In those respective capacities, said Counter-  
11 Defendants have conducted, maintained, and/or permitted a nuisance, directly or  
12 indirectly, based upon the ownership, building and maintenance of programmable  
13 electronic signs and sign structures on the Subject Properties.

14           77. The ownership, building and maintenance of programmable electronic signs  
15 and sign structures on the Subject Properties resulting in the nuisance described above  
16 constitute a “public nuisance” within the meaning of California Civil Code sections 3479  
17 and 3480 that is subject by statute to injunctive relief to abate the public nuisance.

18           78. Counterclaimants bring this second counterclaim for relief to abate the  
19 nuisance alleged herein and for costs, including without limitation costs of investigation  
20 and discovery, and reasonable attorney’s fees, under California Civil Code section  
21 3496(b).

22           79. The continuing public nuisance alleged herein constitutes great and  
23 irreparable harm as a matter of law.

24           Wherefore Counterclaimants pray for the relief requested below.

25 ///  
26 ///  
27 ///  
28 ///

**THIRD COUNTERCLAIM FOR RELIEF**

**ACTION FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES FOR UNLAWFUL/  
UNFAIR BUSINESS PRACTICES UNDER CALIFORNIA BUSINESS AND  
PROFESSIONS CODE §§17200, ET SEQ.**

**[Unfair Competition Law]**

1  
2  
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4  
5 80. Counterclaimants incorporate by reference paragraphs 1 through 80 as if set  
6 forth in full herein.

7 81. Counterclaimants bring this third counterclaim for relief in equity under  
8 California Business and Professions Code sections 17200 et seq. (hereinafter “Unfair  
9 Competition Law”) based on unfair and/or unlawful business practices on the Subject  
10 Properties within four (4) years of filing the action herein.

11 82. Counterclaimants bring this third counterclaim for relief in the name of the  
12 People of the State of California under California Business and Professions Code section  
13 17204.

14 83. Within four (4) years prior to the filing of this counterclaim, Counter-  
15 Defendants have engaged in ongoing unlawful and/or unfair business practices, within the  
16 meaning of California Business and Professions Code sections 17200 *et seq.*, based on  
17 the acts, omissions, violations of state and local law, violations of public policy, and other  
18 factual allegations alleged in Counterclaimants’ first and second counterclaim for relief  
19 herein, including ownership, building and maintenance of programmable electronic signs  
20 and sign structures on the Subject Properties.

21 84. Counter-Defendants have acted in one or more of the capacities set forth  
22 above as to this counterclaim. In those respective capacities, said Counter-Defendants  
23 have engaged in unfair and/or unlawful business practices on the Subject Properties by  
24 conducting, maintaining, or permitting a nuisance based upon the continued ownership,  
25 building and maintenance of programmable electronic signs and sign structures on the  
26 Subject Properties in violation of the San Jose Municipal Code, in a manner that  
27 jeopardizes or endangers the health, safety or welfare of persons on the premises or in the  
28 surrounding area, constituting a public nuisance under California Civil Code sections 3479

1 and 3480.

2 85. The ownership, building and maintenance of programmable electronic signs  
3 and sign structures on the Subject Properties have created a “public nuisance” within the  
4 meaning of California Civil Code sections 3479 and 3480. Thus, they constitute an unfair  
5 business practice in contravention of established public policy.

6 86. The maintenance or use of the Subject Properties in such a manner that  
7 jeopardizes or endangers the health, safety or welfare of persons on or around the  
8 premises and resulting in unsafe conditions of property is a “public nuisance” as defined in  
9 San Jose Municipal Code section 1.13.050.A.1 and as such is an unfair business practice  
10 in contravention of established public policy.

11 87. The maintenance or use of the Subject Properties in such a manner that  
12 violates or has been the situs of a violation of any provision of San Jose Municipal Code or  
13 state law or regulation is a “public nuisance” as defined in San Jose Municipal Code section  
14 1.13.050.A.3 and as such is an unfair business practice in contravention of established  
15 public policy.

16 88. Whenever a violation of the San Jose Municipal Code based on the acts or  
17 omissions of Counter-Defendants is alleged, it shall include causing, permitting, aiding,  
18 abetting, suffering or concealing the facts of such acts or omissions.

19 89. Counter-Defendants have acted in one or more of the respective capacities  
20 set forth herein as to Counterclaimants’ third counterclaim for relief. In these respective  
21 capacities, said Counter-Defendants have violated provisions of the San Jose Municipal  
22 Code and provisions of California Business and Professions Code as alleged in the first  
23 and second counterclaims herein, and have contravened the public policies set forth in said  
24 provisions of San Jose Municipal Code and California Business and Professions Code, and  
25 each of them, including without limitation San Jose Municipal Code Title 23 and Chapter  
26 1.13 at the Subject Properties.

27 90. Counter-Defendants have received or will receive income and other benefits  
28 from their unlawful ownership, building and maintenance of programmable electronic signs



1 on the Subject Properties, which Counter-Defendants would not have received had  
2 Counter-Defendants not engaged in the violations of the San Jose Municipal Code and  
3 California Business and Professions Code as described in this counterclaim.

4 91. Counterclaimants bring this third counterclaim for relief to perpetually enjoin  
5 the unfair and unlawful business activities alleged herein and for civil penalties under  
6 California Business and Professions Code section 17206.

7 Wherefore Counterclaimants pray for the relief requested below.

8 **PRAYER FOR RELIEF**

9 WHEREFORE Counterclaimants demand judgment as follows:

10 A. For a temporary, preliminary, and permanent injunction restraining and enjoining  
11 Counter-Defendants from engaging in or performing, directly or indirectly, any and all acts or  
12 practices in violation of San José Municipal Code including, but not limited to, Title 23,  
13 Chapters 1.08 and 1.13, specifically, the creation of a public nuisance as defined in San Jose  
14 Municipal Code sections 23.02.830 and 1.13.050.

15 B. For a final and permanent injunction restraining and enjoining Counter-  
16 Defendants from engaging in or performing, directly or indirectly, any and all acts or practices  
17 in the State of California that constitute unfair competition in violation of California Business  
18 and Professions Code sections 17200, *et seq.*, including, but not limited to, violations of Title  
19 23 and Chapter 1.13 of San Jose Municipal Code.

20 C. Counterclaimants pray that, as part of any restraining order, or preliminary  
21 and/or permanent injunctive relief ordered by the Court, Counter-Defendants who are  
22 subject to said injunctive orders be required to notify any prospective purchaser of the  
23 Subject Properties, any lessee, and other successor in interest of the existence of said  
24 injunctive orders, and of their application to successors in interest, prior to entering into any  
25 agreement to sell or lease the Subject Properties, or any portion thereof, which is the  
26 subject of said injunctive orders.

27 D. For civil penalties in the amount of TWO THOUSAND FIVE HUNDRED  
28 DOLLARS (\$2,500) per day per violation, in an amount according to proof, under San Jose

1 Municipal Code section 1.08.015.B.

2 E. For Counterclaimants' costs of suit incurred in this action, including but not  
3 limited to, the costs of investigating and prosecuting this action incurred by the City of San  
4 Jose.

5 F. Counterclaimants pray that Counter-Defendants pay reasonable attorney's fees  
6 as permitted by law, including but not limited to those provided under California Code of Civil  
7 Procedure section 1021.5 and San Jose Municipal Code section 1.08.016.

8 G. For such other and further relief as is proper and just.

9  
10 Respectfully submitted,

11 Dated: August 7, 2019

RICHARD DOYLE, City Attorney

12  
13 By: s/ Wesley Klimczak  
14 WESLEY KLIMCZAK  
Sr. Deputy City Attorney

15 Attorneys for PEOPLE OF THE STATE OF  
16 CALIFORNIA, ex rel, CITY ATTORNEY OF  
17 CITY OF SAN JOSE, and CITY OF SAN  
18 JOSÉ

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**PROOF OF SERVICE**

CASE NAME: Citizens for Free Speech and Equal Justice, LLC, et al., v. People of the State of California, ex rel, et al.

CASE NO.: 5:18-cv-01919-BLF

I, the undersigned declare as follows:

I am over 18 years of age and not a party to this action. My business address is 200 East Santa Clara Street, San Jose, California 95113-1905, and is located in the county where the service described below occurred.

On August 7, 2019, I caused to be served the within:

CITY OF SAN JOSE'S ANSWER AND COUNTERCLAIM TO PLAINTIFFS' SECOND AMENDED COMPLAINT

by ELECTRONIC TRANSMISSION, with a copy of this declaration, to an electronic address listed below.

I further declare that the electronic transmission was sent on August 7, 2019, before 5:00 p.m. and that the City of San Jose, City Attorney's electronic address is [CAO.Main@sanjoseca.gov](mailto:CAO.Main@sanjoseca.gov).

The above-described transmission was reported as sent by a transmission report available for printing from the computer.

Addressed as follows:

Frank C. Gilmore  
Robison, Sharp, Sullivan & Brust  
71 Washington Street  
Reno Nevada 89503  
Phone Number: (775) 329-3151  
Fax Number: (775) 329-7941  
Email: [FGilmore@rssblaw.com](mailto:FGilmore@rssblaw.com)

Attorneys for plaintiffs/counter defendants  
Citizens for Free and Equal Justice, LLC and  
GTL Enterprises, LLC

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 7, 2019, at San Jose, California.

/s/ Tracy Duarte  
TRACY DUARTE