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Richard W. Wipking
Clerk, U.S. District Court
Northern District of California
San Jose

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RUSSEL ALLEN NORDYKE and SALLIE
ANN NORDYKE, dba TS TRADE SHOWS,

Plaintiffs,

vs.

MARY V. KING, GAIL STEELE, WILMA
CHAN, KEITH CARSON, SCOTT
HAGGERTY, The COUNTY OF ALAMEDA,
and The COUNTY OF ALAMEDA BOARD
OF SUPERVISORS,

Defendants.

Case No.: _____

**VERIFIED COMPLAINT FOR
DAMAGES, INJUNCTION, AND
DECLARATORY JUDGMENT**

**(VIOLATIONS OF 42 U.S.C. § 1983, FIRST
AND FOURTEENTH AMENDMENTS)**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiffs, RUSSELL ALLEN NORDYKE and SALLIE ANN NORDYKE, dba TS
TRADE SHOWS, on behalf of themselves and the various VENDORS, EXHIBITORS and
PATRONS of the TS TRADE SHOWS; by and through the undersigned counsel, bring this
suit against Defendants: MARY V. KING, GAIL STEELE, WILMA CHAN, KEITH
CARSON, SCOTT HAGGERTY, The COUNTY OF ALAMEDA, and The COUNTY OF
ALAMEDA BOARD OF SUPERVISORS.

1 2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988. Plaintiffs are seeking
2 damages, injunctive relief and declaratory relief to protect their rights under Equal
3 Protection, Due Process and the Freedoms of Speech and Assembly.

4 3. Defendants have acted under color of law to deprive Plaintiffs – and other third
5 parties similarly situated – of their Constitutional Rights by interfering with
6 political/commercial speech and the lawful assembly of persons attending gunshows at the
7 Alameda County Fairgrounds located in Pleasanton, California.

8 4. The Plaintiffs – and third parties similarly situated – are being denied Due Process
9 of Law by the arbitrary, capricious and discriminatory acts by the Defendants in disregard
10 of well established constitutional and legal doctrine. Furthermore, this disregard of
11 important constitutional and legal rights is part of a pattern and practice of the Defendants.

12 5. The Plaintiffs – and third parties similarly situated – are being denied Equal
13 Protection of the law because the Defendants irrationally discriminate between and among
14 promoters, vendors, exhibitors and patrons of various events at the Alameda County
15 Fairgrounds on the basis that some displays of certain kinds of merchandise are
16 inappropriate. This constitutes content based regulation of speech and assembly in violation
17 of State and federal law.

18 6. Finally, the Defendants' actions are contrary and in conflict with State and federal
19 law that preempts the field of firearms' regulations on possession and sales at gunshows.
20 Plaintiffs – and third parties similarly situated – seek declaratory relief from this Court.

21 22 **JURISDICTION AND VENUE**

23 7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1343(3) which
24 provides for original jurisdiction in suits brought under 42 U.S.C. §§ 1983 and 1988. As this
25 action arises under the United States Constitution this Court also has jurisdiction pursuant
26 to 28 U.S.C. § 1331. As the Plaintiffs – and third parties similarly situated – are seeking
27 declaratory relief, this Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 2201
28 and 2202.

1 8. Venue for this action is properly in this District pursuant to 28 U.S.C. § 1391. The
2 action arose and the Defendants reside in the Northern District of California.

3
4 **NOTICE OF RELATED CASE**

5 9. Pursuant to Local Rule 3-12, Plaintiffs hereby notify the Court that this action is
6 related to an action that was previously pending in this District. That case is: Nordyke v.
7 County of Santa Clara, (1996) 933 F.Supp. 903. The appellate citation for the related case
8 is: Nordyke v. County of Santa Clara, (1997) 110 F.3d 707.

9
10 **PARTIES**

11 10. Plaintiffs RUSSELL ALLEN NORDYKE and SALLIE ANN NORDYKE, doing
12 business as TS TRADE SHOWS, are in the business of promoting trade shows throughout
13 the State of California. This involves the exhibition and offering for sale of: firearms, coins,
14 knives, ammunition, camping equipment, gun safes, jewelry, antiques, militaria, art work,
15 food stuffs, toys, t-shirts, books and bumper-stickers. In addition to providing a marketplace
16 for commerce, it has always been the policy of the Plaintiffs to permit political candidates,
17 political parties, and other political and community service organizations to have tables and
18 displays at their trade shows on a first come first serve basis. Plaintiffs' business address is
19 in Willows, California. They have been conducting trade shows [a.k.a. - gunshows] at the
20 Alameda County Fairgrounds in Pleasanton, California since February, 1991.

21 11. Plaintiffs RUSSELL ALLEN NORDYKE and SALLIE ANN NORDYKE, dba TS
22 TRADE SHOWS, also assert third party rights for similarly situated VENDORS,
23 EXHIBITORS and PATRONS associated with TS TRADE SHOWS. These third parties
24 would find it difficult to assert their own rights [NAACP v. Alabama, 357 U.S. 449 (1958)]
25 and/or, the injuries suffered by the named Plaintiffs adversely affects their relationship to
26 these third party VENDORS, EXHIBITORS and PATRONS who are customers of TS
27 TRADE SHOWS. [Craig v. Boren, 429 U.S. 190 (1976)]

28 ////

1 12. Defendant MARY V. KING is a duly elected member of the Board of Supervisors
2 for the County of Alameda, California. As a Supervisor, she is charged with authority over
3 the County of Alameda. She is being sued in her official capacity as she has ultimate
4 authority over the Alameda County Fairgrounds located in Pleasanton, California. By
5 abridging the Freedoms of Speech and Assembly, by un-equal application of the law and
6 through deprivation of Due Process of law, this Defendant has violated clearly established
7 constitutional rights held by the Plaintiffs and the third parties similarly situated.

8 13. Defendant GAIL STEELE is a duly elected member of the Board of Supervisors for
9 the County of Alameda, California. As a Supervisor, she is charged with authority over the
10 County of Alameda. She is being sued in her official capacity as she has ultimate authority
11 over the Alameda County Fairgrounds located in Pleasanton, California. By abridging the
12 Freedoms of Speech and Assembly, by un-equal application of the law and through
13 deprivation of Due Process of law, this Defendant has violated clearly established
14 constitutional rights held by the Plaintiffs and the third parties similarly situated.

15 14. Defendant WILMA CHAN is a duly elected member of the Board of Supervisors for
16 the County of Alameda, California. As a Supervisor, she is charged with authority over the
17 County of Alameda. She is being sued in her official capacity as she has ultimate authority
18 over the Alameda County Fairgrounds located in Pleasanton, California. By abridging the
19 Freedoms of Speech and Assembly, by un-equal application of the law and through
20 deprivation of Due Process of law, this Defendant has violated clearly established
21 constitutional rights held by the Plaintiffs and the third parties similarly situated.

22 15. Defendant KEITH CARSON is a duly elected member of the Board of Supervisors
23 for the County of Alameda, California. As a Supervisor, he is charged with authority over
24 the County of Alameda. He is being sued in his official capacity as he has ultimate authority
25 over the Alameda County Fairgrounds located in Pleasanton, California. By abridging the
26 Freedoms of Speech and Assembly, by un-equal application of the law and through
27 deprivation of Due Process of law, this Defendant has violated clearly established
28 constitutional rights held by the Plaintiffs and the third parties similarly situated.

1 16. Defendant SCOTT HAGGERTY is a duly elected member of the Board of
2 Supervisors for the County of Alameda, California. As a Supervisor, he is charged with
3 authority over the County of Alameda. He is being sued in his official capacity as he has
4 ultimate authority over the Alameda County Fairgrounds located in Pleasanton, California.
5 By abridging the Freedoms of Speech and Assembly, by un-equal application of the law and
6 through deprivation of Due Process of law, this Defendant has violated clearly established
7 constitutional rights held by the Plaintiffs and the third parties similarly situated.

8 17. The Defendant COUNTY OF ALAMEDA is a political subdivision of the State of
9 California.

10 18. The Defendant COUNTY OF ALAMEDA BOARD OF SUPERVISORS is the duly
11 elected legislative body with the power to pass ordinances in accordance with the county
12 charter and in accordance with the laws of the State of California.

13 19. The actions, customs and practices of all the Defendants and their agents, assigns and
14 employees, are performed under color of law. These actions, customs and practices therefore
15 constitute state action as defined by the Fourteenth Amendment to the United States
16 Constitution. Furthermore, these actions, customs and practices have been carried out with
17 the knowledge and intent that they would violate the well established constitutional rights
18 of the Plaintiffs and third parties similarly situated.

19
20 **GENERAL ALLEGATIONS**

21 20. The Alameda County Fairgrounds is located in Alameda County. Public and private
22 events are scheduled at the fairgrounds on a regular basis. Many of these events are of
23 interest to the news media, businesses, community groups and agencies, and the general
24 public. [See Exhibit A, attached hereto and incorporated by reference.]

25 21. The Alameda County Fairgrounds is situated within a Public and Institutional zoning
26 district on unincorporated county property within the City of Pleasanton, California. [See
27 Exhibit B, attached hereto and incorporated by reference.]

28 ////

1 22. The Alameda County Fair Association is a non-profit corporation which manages the
2 fairgrounds through an Operating Agreement with the County of Alameda. By contract the
3 Alameda County Fair Association is required to operate the fairgrounds in compliance with
4 all Federal, State and County regulations. [See Exhibit C, attached hereto and incorporated
5 by reference.]

6 23. On or about May 20, 1999 – Defendant MARY V. KING contacted County Counsel
7 Richard Winnie and asked him to draft an ordinance to get rid of gunshows on County
8 property. Indicating her hostility toward the First Amendment and her displeasure with
9 “spineless people hiding behind the constitution” {emphasis added}, MARY V. KING
10 sought to abridge one and punish the other by prohibiting gun shows on county property.
11 [See Exhibit D, attached hereto and incorporated by reference.]

12 24. On or about July 20, 1999 – Defendant MARY V. KING held a press conference
13 wherein she stated that her aim, and the purpose of the ordinance, is to “outlaw (gun) shows
14 on county property.” Defendant MARY V. KING admits in her press release that she is
15 unaware of any violations of law taking place at the Alameda County Fairgrounds. [See
16 Exhibit E, attached hereto and incorporated by reference.]

17 25. On or about August 17, 1999 the Alameda County Board of Supervisors adopted an
18 ordinance prohibiting the possession of firearms on County property. Said ordinance was
19 specifically designed and intended to prohibit gunshows at the Alameda County Fairgrounds.
20 [See Exhibit F, attached hereto and incorporated by reference.]

21 26. On or about August 23, 1999, County Counsel for Alameda County sent a letter to
22 Richard K. Pickering – General Manager of the Alameda County Fairgrounds – in which
23 County Counsel indicates the following: [See Exhibit G, attached hereto and incorporate by
24 reference.]:

- 25 a. The subject matter of the letter links and therefor infers that the ordinance is really
26 about banning shows.
- 27 b. The body of the letter contains language purporting to demonstrate that gunshows
28 are not per se illegal, only that “Firearms accessories and other paraphernalia that

are not in within the definitions of section 9.12.120 of the ordinance may be displayed and sold at any gun show.” {emphasis added} The letter goes on to state: “The ordinance also does not proscribe the sale of firearms or ammunition provided that such articles cannot be displayed on the premises.” {emphasis added, again}

27. TS TRADE SHOWS has typically rented the fairgrounds facilities for up to five (5) gunshows per year. Attendance at each show is estimated at approximately 4,000 persons. Revenue from these shows profits the Fairgrounds in the amount of \$78,000 annually through building rental fees, parking fees and food sales. [See Exhibit H, attached hereto and incorporated by reference.]

28. The contracts between TS TRADE SHOWS and the Fair Association calls for the following [Taken from Exhibit H, attached hereto and incorporate by reference]:

- a. 10 day waiting periods before possession can be taken of a purchased firearm in accordance with California Penal Code § 12001(e).
- b. Sales by licensed dealers only - as required by California Penal Code § 12078.
- c. No explosive powder & restrictions on smokeless powder as required by the National Fire Code & the California Fire Marshall.
- d. Items banned from sale, display, possession or brining onto the fairgrounds include:
 1. Parts or combinations of parts designed for converting a weapon into a machine gun or suppressors and sound silencers.
 2. Live cannon, artillery shells, mines, grenades, or other destructive devices.
 3. Anti-personnel sprays, shields, shells, canisters or other disabling devices such as animal repellants or electric prods, tear gas, pepper gas, etc...
 4. Caseless ammunition.
 5. Firearms capable of firing caseless ammunition.
 6. Gun replicas (non-guns), except as used by vendors for demonstration purposes in compliance with California Penal Code § 417.2.
 7. Illegal knives, swords & edged weapons as defined by California and Federal law.

- e. All firearms transactions are restricted to Licensed California Dealers.
- f. Ammunition must be displayed in unopened original factory boxes or closed containers with tamper-proof seals.
- g. Restricted ammunition sales - vendors must segregate ammunition from firearms of the same caliber. Vendors can not sell firearms to any member of the public who has in their immediate possession ammunition of the same caliber of the firearm.
- h. All firearms brought to the event by the general public must be checked, cleared and tagged by the promoter in verification that the firearms is unloaded. No member of the general public may bring a firearm & ammunition of the same caliber into the show/event.
- i. Loaded firearms are prohibited. Only duly sworn active peace officers may carry or display loaded firearms. Persons with Concealed Weapons Permits shall not carry firearms which are concealed or loaded during the show/event.
- j. All Federal, State and Local laws must be complied with by the promoter and vendors.

29. TS TRADE SHOWS abides by the Mandatory Show Producer Rules and the Recommended Show Producer Rules of the National Association of Arms Shows Incorporated. In addition, TS TRADE SHOW abides by the Contract For Shows/events Held at District Agricultural Associations (District) Where Firearms or Other Weapons Are Displayed whenever they hold shows at those venues. TS TRADE SHOWS in turn requires contracts with its exhibitor/vendors that are designed to insure compliance with all its contract provisions, federal, state and local laws. [See Exhibit I, attached hereto and incorporated by reference.]

30. TS TRADE SHOWS has always complied by the term of their contracts for the use of the Fairgrounds and have paid all appropriate taxes and obtained the necessary business licenses from the City of Pleasanton to conduct business at the Alameda County Fairgrounds. [See Exhibit J, attached hereto and incorporated by reference.]

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- 1 31. Plaintiffs further allege that the Governor of the State of California has signed into
2 law comprehensive gunshow regulations that preempt the Alameda Ordinance. [See Exhibit
3 K, attached hereto and incorporated by reference.]
- 4 32. Plaintiffs further allege, on information and belief, that the legislators who enacted
5 this law did so with the intent to completely occupy the field of gun show regulation and
6 preempt local governments from establishing a hodge-podge of arbitrary and contradictory
7 ordinances. [See Exhibit L, attached hereto and incorporated by reference.]
- 8 33. TS TRADE SHOWS has tentative dates set for shows on November 6 & 7, 1999 and
9 has already placed a deposit of \$6,000.00 dollars with the Alameda County Fair for that date.
10 However, Plaintiffs have recently received a letter from the Alameda County Fair
11 Association indicating that the County intends to enforce its new ordinance at the November
12 show. The Fairground Association has required Plaintiffs to provide a written plan by
13 October 15, 1999 as to how TS TRADE SHOW will conduct a gun show at the Fairgrounds
14 and remain in compliance with an ordinance that prohibits firearms on county property. [See
15 Exhibit C, attached hereto and incorporated by reference.]
- 16 34. Based upon their experience in this business, Plaintiffs require several weeks to plan
17 and prepare for each event at the Alameda County Fairgrounds. Therefore, Plaintiffs need
18 immediate relief from the unlawful and unconstitutional burden that the Defendants have
19 placed upon them.
- 20 35. TS TRADE SHOWS also has dates for the year 2000 reserved and scheduled for the
21 months of February, April, September, November, and December. [See Exhibit M, attached
22 hereto and incorporated by reference.]
- 23 36. TS TRADE SHOWS has hosted gunshows at the Alameda County Fairgrounds for the
24 benefit of various combinations of Non-Firearms Vendors, Firearms Vendors, Exhibitors,
25 and Patrons. These persons associate with TS TRADE SHOWS at the Alameda County
26 Fairgrounds for a number of different reasons, including but not limited to the following:
- 27 a. To obtain political information regarding my Constitutional Rights, including but not
28 limited to the right to keep and bear firearms;

- b. To assemble with other individuals and organizations to discuss the issues and pending legislation that effect my Constitutional Rights, including but not limited to, my right to own, possess, and trade firearms;
- c. To obtain the latest information regarding the safe, responsible and lawful ownership and storage of firearms;
- d. To obtain the latest information regarding the firearms industry, with specific reference to developments in technology and safety;
- e. To purchase and/or sell firearms [in accordance with federal and state law], firearm accessories, ammunition, safety devices and gun safes;
- f. To petition political candidates, both those elected and currently campaigning, on issues of government policy;
- g. To obtain information from political candidates, both those in office and campaigning, on issues of government policy;
- h. To obtain and/or offer for sale historical and philosophic information from organizations sympathetic to, but not directly involved, with firearms issues;
- i. To obtain information and engage in the trade of stamps and coins;
- j. To obtain information and engage in the trade of knives;
- k. To obtain information and engage in the trade of antiques and/or other collectibles;
- l. To obtain information and engage in the trade of historical and military memorabilia;
- m. To obtain information and engage in the trade of political souvenirs such as: buttons, bumper-stickers, t-shirts, books and signs;
- n. To circulate and sign petitions for state and local initiatives;
- o. To engage in the fellowship and affiliation of like-minded individuals in a marketplace of ideas and products, and to enjoy our common culture and collective heritage.

[See Exhibit N, attached hereto and incorporated by reference, for a sample blank declaration.

The actual declarations are lodged under separate cover. Please also note the declaration of Amy Ho, Staff at the Law Offices of Donald Kilmer for a statistical breakdown of declarations.]

1 37. Plaintiffs allege on information and belief that if the Alameda County ordinance in
2 question is enforced that it will be contrary to the Constitution of the United States in
3 following respects:

- 4 a. By prohibiting the possession – and therefor the display – of firearms, for sale the
5 ordinance infringes on commercial and/or pure speech that is protected by the United
6 States Constitution.
- 7 b. By prohibiting the possession – and therefor the display – of firearms, as symbolic
8 speech the ordinance infringes on pure speech that is protected by the United States
9 Constitution.
- 10 c. By prohibiting the possession – and therefor the display – of firearms, for sale or
11 otherwise, the ordinance denies the Plaintiffs Equal Protection of the law of the
12 United States by treating them differently from other shows and exhibitions on
13 County Property.
- 14 d. By prohibiting the possession – and therefor the display – of firearms, for sale or
15 otherwise, the ordinance is and has had a chilling effect on the lawful assembly of
16 persons gathering to engage in political discussion and take political action with
17 regard to their “right to keep and bear arms.” That chilling effect is shown by:
- 18 1. By banning the possession and display of firearms from the Fairgrounds, the
19 Defendants will cause the Firearms Vendors to refrain from contracting with
20 TS TRADE SHOW for exhibit space at the Alameda County Fairgrounds.
21 [See: Declaration of Russell Allen Nordyke in Support of Injunctive Relief
22 and Declaration of Sallie Ann Nordyke in Support of Injunctive Relief.]
- 23 2. The loss of the Firearms Vendors will render the TS TRADE SHOWS
24 unprofitable. Once the shows become unprofitable the Plaintiffs will have
25 no choice but to decline the use of the Alameda Fairgrounds as a venue for
26 their shows.
- 27 3. That will have the effect of diminishing – if not outright extinguishing – the
28 Alameda County Fairground’s function as an historically effective and

1 convenient public forum for people to assemble to discuss important issues
2 of public policy and take political actions in accordance with our democratic
3 traditions and institutions.

4 e. By prohibiting the possession – and therefor the display – of firearms, for sale or
5 otherwise, the ordinance is an intentional and blatant disregard of the formally
6 established laws of the State of California that establishes the regulatory scheme for
7 the lawful possession of firearms by individuals within this State; and therefor
8 violates due process of law as guaranteed by the Fourteenth Amendment of the
9 United States Constitution.

10 f. By prohibiting the possession – and therefor the display – of firearms, for sale or
11 otherwise, the ordinance is an intentional and blatant disregard of the formally
12 established laws of the State of California that establishes the regulatory scheme for
13 Gunshows throughout this State; and therefor violates due process of law as
14 guaranteed by the Fourteenth Amendment of the United States Constitution.

15 38. As a result of Defendants' unlawful and unconstitutional actions, the Plaintiffs – and
16 third parties similarly situated – are being denied the exercise of fundamental rights protected
17 by the Equal Protection and Due Process Clauses of the Fourteenth Amendment and the
18 Freedoms guaranteed by the First Amendment as made applicable to the states through the
19 Fourteenth Amendment's Due Process Clause. Plaintiffs have suffered, are now suffering
20 and will continue to suffer damages – including but not limited to:

- 21 a. Expenses for advertising future shows;
- 22 b. Lost revenue for future shows;
- 23 c. Loss of deposit on shows already scheduled;
- 24 d. Goodwill that has been, or will be disrupted, by the gunshow cancellations and loss
25 of repeat business from long standing vendors;
- 26 e. Medical expenses brought on from the stress of having their livelihood threatened.

27 39. Plaintiffs – and other third parties similarly situated – will also suffer damages by
28 reason of being denied substantial rights that once violated will be irreparable and for which

1 there is no adequate remedy at law. Therefore financial remedies will be wholly inadequate
2 to make the Plaintiffs – and other third parties similarly situated – whole. Additionally, any
3 delay in remedial action will cause further irreparable harm making time of the essence in
4 the adjudication of this matter.

5
6 **FIRST CLAIM: FREEDOM OF SPEECH**

7 40. Plaintiffs – and third parties similarly situated – incorporate by reference each and
8 every allegation contained in Paragraphs 1 through 39 as though fully set forth herein.

9 41. Plaintiffs – and third parties similarly situated – have historically used the Alameda
10 County Fairgrounds to assemble and discuss issues of political and social importance,
11 including but not limited to their Second Amendment Rights.

12 42. Plaintiffs – and third parties similarly situated – further allege that they have
13 historically brought firearms onto county property at the Alameda County Fairgrounds for
14 various symbolic and expressive purposes including but not limited to:

- 15 a. The display of firearms to facilitate commercial transactions in firearms,
- 16 b. The display of firearms of military and historical importance,
- 17 c. The display of firearms for the purpose of instruction in safe and responsible gun
18 storage,
- 19 d. The display of firearms for the purpose of instruction in the safe and responsible
20 handling of firearms at various courses taught by various organizations,
- 21 e. The display of firearms for the purpose of conducting raffles that benefit community
22 service organizations,
- 23 f. The display of firearms for the purpose of engaging in commercial transactions for
24 the sale of trigger locks and gun safes,
- 25 g. The display of firearms as props for historical re-enactment clubs and organizations.
- 26 h. The display of firearms as part of an Honor Guard in various patriotic and United
27 States Flag ceremonies. Many of which are conducted by High School and Junior
28 College ROTC members,

- i. The display of firearms as part of cultural events such as the 134th Scottish Gathering & Games sponsored by the Caledonian Club of San Francisco,
- j. For the purpose of purchasing firearms accessories that only match certain types and models of firearms – such as: extra barrels, carrying cases, scopes, optical sights, holsters and trigger locks,
- k. For the purpose of contracting for the repair or overhaul of firearms by qualified gunsmiths,
- l. For the purpose of receiving an appraisal of a firearm from a qualified expert.

43. Plaintiffs – and third parties similarly situated – allege that the Defendants’ ban on the possession of firearms on county property at the Alameda County Fairgrounds constitutes content based regulation of symbolic and expressive speech. Furthermore the County’s ban on the possession of firearms at the Fairgrounds would deny them the right to engage in the aforementioned constitutionally protected speech and symbolic conduct, as guaranteed by the First Amendment.

44. Plaintiffs – and third parties similarly situated – further allege that many of the Defendants have expressed open hostility to the American practice and custom regarding the private ownership of firearms as embodied in the Second Amendment. It is further alleged that the ban on the possession of firearms at the Alameda County Fairgrounds is merely a pretext to suffocate, disperse and deny a forum to political groups that support the private ownership of firearms as set forth in the Second Amendment to U.S. Constitution.

45. Plaintiffs – and third parties similarly situated – further assert that gunshows in that take place in a public forum for lawful commerce in firearms, and the related activities has themselves become a symbolic institution that embodies and preserves the “right to keep and bear arms” as set forth in the Second Amendment to the United States Constitution. Regardless of the unsettled and controversial nature of that right, a free people ought not be denied a public forum and the opportunity to participate lawful conduct in that marketplace of products and ideas.

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1 46. Plaintiffs – and third parties similarly situated – further allege that as a result of
2 Defendants’ actions they have suffered, are currently suffering and will continue to suffer
3 damages based upon violations of their First Amendment rights as it is made applicable to
4 the states through the Fourteenth Amendment’s Due Process Clause.

5 47. Plaintiffs – and third parties similarly situated – further allege that as a result of the
6 Defendants’ actions they are being deprived of the fundamental right of freedom of speech
7 as embodied in the First Amendment as it is made applicable to the states through the
8 Fourteenth Amendment’s Due Process Clause. They will continue to be irreparably deprived
9 of these rights for which there is no plain, speedy or adequate remedy at law.
10

11 **SECOND CLAIM: COMMERCIAL SPEECH**

12 48. Plaintiffs – and third parties similarly situated – incorporate by reference each and
13 every allegation contained in Paragraphs 1 through 47 as though fully set forth herein.

14 49. Plaintiffs – and third parties similarly situated – have historically used the Alameda
15 County Fairgrounds to assemble and discuss issues of commercial importance.

16 50. Plaintiffs – and third parties similarly situated – have historically brought firearms
17 onto the Alameda County Fairgrounds to conduct the following lawful commercial activities:

- 18 a. The display of firearms to facilitate commercial transactions in firearms,
19 b. The display and inspection of firearms to insure that gun sales¹ are conducted in
20 accordance with all federal, State and local laws – for example:

21 1. Only a hands on inspection of a firearm will enable a purchaser of a semi-
22 automatic rifle to determine if the firearm’s characteristics take it within the
23 ambit of the federal and state assault weapons laws,

24 2. Only a hands on inspection of a firearm will enable a purchaser to determine
25 if the serial number on a firearm has been obliterated or tampered with,
26

27 ¹ Defendants, by and through counsel, cynically assert that “[T]he ordinance also does not
28 proscribe the sale of firearms or ammunition provided that such articles cannot be displayed on the
premises. [See Exhibit G]

1 3. Only a hands on inspection and verification of the firearm serial number will
2 enable the buyer and seller to determine if the correct serial number is entered
3 on paperwork that must be submitted to authorities to conclude a lawful
4 transaction,

5 c. The display of firearms for the purpose of engaging in commercial transactions for
6 the sale of trigger locks and gun safes,

7 d. For the purpose of purchasing firearms accessories that only match certain types and
8 models of firearms – such as: extra barrels, carrying cases, scopes, optical sights,
9 holsters, safes and trigger locks,

10 e. For the purpose of contracting with gunsmiths.

11 51. Plaintiffs – and third parties similarly situated – allege that the commercial speech
12 and activities described above are so “inextricably intertwined” with pure speech activities
13 that the commercial speech should be afforded the same constitutional protections as pure
14 speech.

15 52. Plaintiffs – and third parties similarly situated – allege that the Defendants’ ban on
16 the possession of firearms on county property at the Alameda County Fairgrounds constitutes
17 content based regulation of speech. Furthermore the County’s ban on the possession of
18 firearms at the Fairgrounds would deny them the right to engage in the aforementioned
19 constitutionally protected speech and symbolic conduct, as guaranteed by the First
20 Amendment to the United States Constitution as it is made applicable to the states through
21 the Fourteenth Amendment’s Due Process Clause.

22 53. Plaintiffs – and third parties similarly situated – further allege that many of the
23 Defendants have expressed open hostility to the American practice and custom regarding
24 the private ownership of firearms as embodied in the Second Amendment. It is further
25 alleged that the ban on the possession of firearms at the Alameda County Fairgrounds is
26 merely a pretext to suffocate, disperse and deny a forum to political groups that support the
27 private ownership of firearms as set forth in the Second Amendment to U.S. Constitution.

28 ////

1 54. Plaintiffs – and third parties similarly situated – assert that any public forum that is
2 also a marketplace for lawful commerce in firearms, and related activities, has itself become
3 a symbolic institution that embodies and preserves the “right to keep and bear arms” as set
4 forth in the Second Amendment to the U.S. Constitution. Regardless of the unsettled and
5 controversial nature of that right, a free people ought not be denied a public forum and the
6 opportunity to participate lawful conduct in that marketplace of products and ideas.

7 55. Plaintiffs – and third parties similarly situated – further allege that as a result of
8 Defendants’ actions they have suffered, are currently suffering and will continue to suffer
9 damages based upon violations of their First Amendment rights as it is made applicable to
10 the states through the Fourteenth Amendment’s Due Process Clause.

11 56. Plaintiffs – and third parties similarly situated – further allege that as a result of the
12 Defendants’ actions they are being deprived of the fundamental right of freedom of speech
13 as it is guaranteed by the First Amendment rights as it is made applicable to the states
14 through the Fourteenth Amendment’s Due Process Clause. They will continue to be
15 irreparably deprived of these rights for which there is no plain, speedy or adequate remedy
16 at law.

17
18 **THIRD CLAIM: FREEDOM OF ASSEMBLY and ASSOCIATION**

19 57. Plaintiffs – and third parties similarly situated – incorporate by reference each and
20 every allegation contained in Paragraphs 1 through 56 as though fully set forth herein.

21 58. Plaintiffs – and third parties similarly situated – have historically used the Alameda
22 County Fairgrounds to assemble, associate and discuss issues of political and cultural
23 importance.

24 59. Plaintiffs – and third parties similarly situated – further allege that gunshows at the
25 Alameda County Fairgrounds provides the only well-advertised, well-attended public event
26 where gun owners and firearms enthusiasts can meet on a regular basis to petition their
27 government for change and engage in other various forms of political action that is the
28 lifeblood of a Constitutional Republic. For example:

- 1 a. The Madison Society – a public interest legal foundation – regularly obtains
2 exhibition space at TS TRADE SHOWS. Without the draw from patrons of the
3 gunshow seeking to engage in the commerce of firearms, the Madison Society would
4 not be able to reach the same number and quality of potential clients and donors.
- 5 b. VetoTheGovernor.Org is an organization that is collecting signatures on a state-wide
6 referendum to repeal the assault weapon law passed by the California legislature.
7 This organization has been present at each and every TS TRADE SHOW since the
8 organization sprang into existence. Without the draw from patrons of the gunshow
9 seeking to engage in the commerce of firearms, VetoTheGovernor.Org would not
10 be able to reach the same number and same quality of petitioner signers and petition
11 gatherers.
- 12 c. The National Rifle Association, through their Members' Councils solicit
13 memberships and hand out public service information at the TS TRADE SHOWS.
14 Without the draw from patrons of the gunshow seeking to engage in the commerce
15 of firearms, the NRA Members' Councils would not be able to reach the same
16 number and same quality of potential members.
- 17 d. Patrons assemble at TS TRADE SHOWS to get information from political candidates
18 that share their viewpoints, especially with respect to firearms issues. Without the
19 draw from other patrons of the gunshow seeking to engage in the commerce of
20 firearms, the gunshows would become unprofitable and would have to discontinue
21 leasing the Alameda Fairgrounds, by extension the political candidates would not be
22 given a forum for campaign and election activities and citizens seeking to participate
23 in the democratic process would be damaged.
- 24 e. Patrons also assemble at the gunshows hosted by TS TRADE SHOWS to buy, sell,
25 give away and receive: books, magazines, t-shirts, campaign buttons, bumper-
26 stickers and pamphlets. Many of these items are of a political nature and specifically
27 concern themselves with issues involving firearms ownership and the "right to keep
28 and bear arms." Without the draw from other patrons of the gunshow seeking to

engage in the commerce of firearms, the gunshows would become unprofitable and would have to discontinue leasing the Alameda Fairgrounds, by extension the Non-Firearms Vendors would lose a forum and marketplace for their products and services and citizens seeking to become active participants the democratic process would be damaged.

60. Plaintiffs – and third parties similarly situated – assert that assembly and associational rights that are closely linked to other rights and freedoms found in the United States Constitution are deserving of broader protection due to the Fourteenth Amendment’s unique role in striking down laws such as the 1833 Virginia Statute prohibiting “[e]very *assemblage* of negroes for the purpose of religious worship, when such worship is conducted by a negro, . . . shall be an unlawful *assembly*.”²

61. Plaintiffs – and third parties similarly situated – further allege that the Defendants’ actions have and will diminish, if not outright extinguish, the assembly and associational rights of citizens who are actively engaged in the important and controversial public debate on the role of firearms in our society.

62. Plaintiffs – and third parties similarly situated – further allege that as a result of Defendants’ actions they have suffered, are currently suffering and will continue to suffer damages based upon violations of their First Amendment rights as it is made applicable to the states through the Fourteenth Amendment’s Due Process Clause.

63. Plaintiffs – and third parties similarly situated – further allege that as a result of the Defendants’ actions they are being deprived of the fundamental freedoms of assembly and association guaranteed by the First Amendment as it is made applicable to the states through the Fourteenth Amendment’s Due Process Clause. They will continue to be irreparably deprived of these rights for which there is no plain, speedy or adequate remedy at law.

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² Akhil Reed Amar, The Bill of Rights 245 - 46 (1998) Yale University Press

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