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13 UNITED STATES DISTRICT COURT
14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 Eugene Davidovich an individual,
16 Davina Lynch, an individual, and
17 John Kenney, an individual,

18 Plaintiffs,

19 v.

20 CITY OF SAN DIEGO,

21 Defendant.

) Case No.

)
) **VERIFIED COMPLAINT FOR**
) **TEMPORARY RESTRAINING ORDER,**
) **PRELIMINARY INJUNCTION,**
) **PERMANENT INJUNCTION AND**
) **DECLARATORY RELIEF**

22 Plaintiffs allege:

23 **JURISDICTION AND VENUE**

- 24 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which grants
25 the district courts “original jurisdiction of all civil actions arising under the Constitution,
26 laws, or treaties of the United States.”
27 2. Venue in this Court is proper under 28 U.S.C. § 1391(e).

1 **PARTIES**

- 2 3. Plaintiff Eugene Davidovich is an individual residing in San Diego County.
- 3 4. Plaintiff Davina Lynch is an individual residing in San Diego County.
- 4 5. Plaintiff John Kenney is an individual residing in San Diego County.
- 5 6. Defendant City of San Diego is a political subdivision of the State of California.

6 **FIRST CAUSE OF ACTION**
 7 **(INJUNCTIVE RELIEF)**

- 8 7. The foregoing paragraphs are realleged and herein incorporated by reference.
- 9 8. San Diego Municipal Code section 54.0110 provides as follows:

10 **§ 54.0110 Unauthorized Encroachments Prohibited**

11 It is unlawful for any *person* to erect, place, allow to remain, construct, establish,
 12 plant, or maintain any vegetation or object on any public street, alley, sidewalk,
 highway, or other public property or public right-of-way, except as otherwise
 provided by this Code.

13 *(Added 10-18-2007 by O-19670 N.S.; effective 11-17-2007)*

- 14 9. On information or belief, the legislative history of this ordinance is that it was enacted to
 15 prevent encroachment of dumpsters in alleyways.
- 16 10. On or about _____, the San Diego Police Department placed large plastic barricades
 17 filled with water across all entrances to Civic Center Plaza except for a narrow three foot
 18 passageway.
- 19 11. Lt. _____ informed Plaintiff DAVINA LYNCH as the barricades were being
 20 placed that their purpose was to control access to Civic Center Plaza and make it easy to
 21 inform anyone entering that they cannot place any object down, pursuant to SDMC
 22 section 54.0110.
- 23 12. The police sometimes choose to enforce this ordinance very strictly, requiring that no one
 24 entering Civic Center Plaza place any object on the ground, particularly when members
 25 of Occupy San Diego enter the Plaza. On other occasions or with respect to other
 26 individuals, the police allow objects to be placed on the ground.
- 27 13. Section 54.0110 is void for vagueness in that it does not define a criminal offense with
 28 sufficient certainty so that ordinary people can understand what conduct is prohibited,

1 and it encourages arbitrary and discriminatory enforcement. The ordinance fails to
2 establish standards for the police and public that are sufficient to guard against the
3 arbitrary deprivation of liberty interests and fails to give fair notice of what acts will be
4 punished so that First Amendment rights are chilled.

5 14. Section 54.0110 is overbroad because it has a chilling effect on free expression in that
6 individuals are often not permitted to place protest signs down even next to where they
7 are standing. The ordinance also sweeps unnecessarily broadly and thereby invades areas
8 of protected freedoms.

9 15. Plaintiffs have no adequate remedy at law for the injuries currently being suffered and for
10 the injuries that are threatened, in that the injury to their First Amendment rights cannot
11 be remedied by damages and that the quantification of such damages will be impossible
12 to determine. Further, unless enjoined, the Plaintiffs will be forced to institute a
13 multiplicity of suits, because the wrongful conduct by Defendant and its agents is of a
14 repeating and continuing nature.

15 **SECOND CAUSE OF ACTION**
16 **(DECLARATORY RELIEF)**

- 17 1. The foregoing paragraphs are realleged and herein incorporated by reference.
18 2. An actual and concrete dispute now exists as to the rights and duties of Plaintiffs and
19 Defendants herein, and Plaintiffs seek a declaration of the duties and obligations of
20 Defendant and its agents. Plaintiffs seek a declaration that SDMC section 54.0110 is
21 void for vagueness and overbreadth.

22
23 WHEREFORE, Plaintiffs pray for judgments against Defendant as follows:

- 24
25 1. For a temporary restraining order, a preliminary injunction, and a permanent injunction,
26 prohibiting Defendant and its agents or employees from enforcing SDMC section 54.0110;
27 2. For a declaration by the Court of the rights and duties of Plaintiffs and Defendant herein;
28 4. For reasonable attorney's fees according to proof;

- 1 5. For costs of suit herein incurred; and
2 6. For such other and further relief as the court may deem proper.

3
4 Dated: November 16, 2011

By: _____
Bryan W. Pease
Attorney for Plaintiffs

6
7 **VERIFICATION**

8 I, Davina Lynch, am a plaintiff in this action. I have read the foregoing complaint and
9 know the contents thereof. The same is true of my own knowledge, except as to those matters
10 which are therein alleged on information and belief, and, as to those matters, I believe it to be
11 true.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14
15 Dated: November 16, 2011

16
17 By: _____
18 Davina Lynch