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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**
14

15 OCCUPY FRESNO, an unincorporated association;
16 VANESSA ARANDA; DALLAS JOHN BLANCHARD,
17 Jr.; NOAH CANTON; WILLIAM DELARA; CARLOS
DÍAZ; MICHAEL DOMINQUEZ, MATTHEW STEPHEN
18 DURIS; CHAD AUSTIN HOPPER; JOSEPH HUNTER;
and RUBEN VERDUGO,

19 Plaintiffs,

20 v.

21 COUNTY OF FRESNO; FRESNO COUNTY BOARD
OF SUPERVISORS; MARGARET MIMS, Fresno
22 County Sheriff, in her official capacity;
JOHN NAVARRETTE, County Administrative Officer,
23 in his official capacity; JORGE GRANADOS,
Assistant Director of Public Works and Planning, in
24 his official capacity; JOHN THOMPSON, Resources
Manager, Public Works and Planning, in his official
25 capacity; and Does 1-50;

26 Defendants.
27

No. 2:11cv_____

VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT;
TEMPORARY RESTRAINING
ORDER; PRELIMINARY
INJUNCTION & PERMANENT
INJUNCTION; DAMAGES AND
ATTORNEYS' FEES

DEMAND FOR JURY TRIAL

JURISDICTION AND VENUE

1
2 1. This action seeks declaratory relief, injunctive relief, and damages, pursuant
3 to 42 U.S.C. § 1983 and the First, Fourth and Fourteenth Amendments to the United
4 States Constitution, for policies and customs of the County of Fresno, including the
5 County Board of Supervisors, County Administrative Office, the Division of Public Works
6 and Planning, and the Fresno County Sheriff’s Office, and that violate the rights of
7 Plaintiffs and others engaging in expressive and associational activities. Jurisdiction lies
8 under 28 U.S.C. §§ 1331 and 1343 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201
9 and 2201. At all times pertinent to this Complaint, and in taking all of the actions des-
10 cribed in this Complaint, Defendant County of Fresno, its supervisors, officers, agents and
11 employees, acted and threatened to act under color of law and were effectuating, and will
12 effect, the custom, policy and laws of the County of Fresno. This Court has supplemental
13 jurisdiction of the state law claims under 28 U.S.C. § 1367.

14 2. Venue is proper in the Eastern District of California under 28 U.S.C. §
15 1391(b). Defendants are located in the Eastern District and the acts and all of the acts
16 or omissions complained of herein have occurred or will occur in this district.

INTRODUCTION

17
18 3. Plaintiff Occupy Fresno and the individual Plaintiffs have engaged and plan
19 to continue engaging in peaceful assembly and expression, including demonstrations,
20 educational activity, rallies, and protests within the County of Fresno (“the County”), and
21 in particular in the public forum known as Courthouse Park (“the Park”). These activities
22 are protected by the First Amendment of the United States Constitution. They bring this
23 action to put an end to policies and customs of the County and the Fresno County
24 Sheriff’s Office (“the Sheriff’s Office”) that violate the constitutional rights of people
25 engaged in protected assembly and speech, and that have a chilling effect on the
26 expressive and associational activities of countless people who would otherwise exercise
27 their constitutional right to free speech in public places within the County, were it not for

1 fear of interference and arrest by the County and the Sheriff's Office.

2 4. The County and the Sheriff's Office have adopted and currently enforce
3 policies and customs that operate to suppress protected the speech and association of
4 political activists, and that violate the rights of participants in such activities to be free from
5 unreasonable detention, arrest, and searches and seizures. The challenged policies are:
6 (1) improperly terminating or prohibiting lawfully permitted peaceful assembly and
7 expression in the Park on the basis of a County permit requirement which includes time,
8 place and manner conditions which are unconstitutional and impermissibly discriminatory,
9 and without any other good reason; (2) by maintaining a constant police presence in the
10 Park without any justification and acting to discourage, intimidate or prevent Plaintiffs and
11 other members of the public from participating in the activities of Occupy Fresno in the
12 Park and elsewhere.

13 5. These policies and customs were applied when Plaintiffs sought a permit
14 October 14, 2011, and again when a continuation of the permit was discussed on October
15 31, 2011, and are continuing to be applied daily. The Sheriff's Office had publicly stated
16 that these policies and customs will continue to be applied against people and
17 organizations engaged in lawful, peaceable assembly and expression in the Park until
18 such time as they leave the Park. However, Plaintiffs intend to continue to engage in
19 lawful assembly and expression in the County of Fresno will be subjected to these same
20 unlawful policies and customs unless this Court enjoins them. As of the date of this filing
21 over 50 arrests have been made in the enforcement of Defendants' unconstitutional
22 policies and ordinances.

23 **PARTIES**

24 6. Plaintiff Occupy Fresno is an unincorporated association aligned with the
25 unincorporated association "Occupy Wall Street" and other occupy movements which
26 have sprung up in cities and towns across the United States and the world. Occupy
27 Fresno is a peaceful assembly and forum for the expression of free speech on a variety

1 of economic and social justice issues which is venued in Courthouse Park.

2 7. Plaintiffs Vanessa Aranda, Dallas John Blanchard, Jr.; Noah Canton; William
3 Delara; Carlos Díaz; Michael Dominquez; Matthew Stephen Duris; Chad Austin Hopper;
4 Joseph Hunter; and Ruben Verdugo, are natural persons who reside in the Eastern District
5 of California who have and continue to participate in Occupy Fresno events at the Park in
6 the County of Fresno, but who have been required to leave the Park each night since
7 November 6, 2011, when the Sheriff's Office, in conjunction with the other Defendants,
8 enforce a provision of the Fresno County Code of Ordinances which excludes assembly
9 and speech activities in the Park from midnight to six a.m. regardless of having a permit
10 for the Park, and prevents more than nine persons gathering at the Park for said activities
11 at any other time without a permit.

12 8. Defendant County of Fresno is a municipal corporation organized and existing
13 under the laws of the State of California. Defendant Fresno County Board of Supervisors
14 is the governing body of the County and is empowered to adopt ordinances for the County;
15 John Navarrette, named in his official capacity only, is the County Administrative Officer
16 and is the chief executive officer of the county. Defendant Jorge Granados is the Assistant
17 Director, and John Thompson is the Resources Manager of the Division of Public Works
18 and Planning, which has responsibility for Courthouse Park, are named in their official
19 capacities only. Each of the above-named individual Defendants have been and continue
20 to be involved in the application of the permit requirements for the Park. Margaret Mims
21 is the Fresno County Sheriff, and is named in her official capacity only. Defendant Mims
22 and her deputies, employees, and agents have been and continue to be the enforcement
23 arm of the permit process for the Park.

24 9. Does I through 50 (hereinafter referred to as "unknown Defendants") are
25 unknown to Plaintiffs. These unknown Defendants and each of them have participated in,
26 endorsed, or controlled the constitutional violations which are the subject of this complaint.
27 Plaintiffs are informed and therefore believes, and on that basis alleges that each

1 fictitiously named herein as a DOE is responsible for the events alleged herein. Plaintiffs
2 will seek leave of the Court to amend this Complaint to allege the true names and
3 capacities of said fictitiously named Defendants when ascertained.

4 10. At all times relevant herein, Defendants were acting under color of state law.
5 Further, at all times mentioned herein, all County officers, employees, and agents were
6 acting pursuant to authority delegated or conferred by Defendants and, in doing or failing
7 to do the things complained of herein, were acting within the scope of that authority.

8 11. On information and belief, at all times mentioned herein, Defendants and
9 other County and Sheriff's Office deputies, employees, and agents have acted pursuant
10 to the official policies and customs of the County of Fresno, policies and customs that
11 have been approved of, ratified, and/or enforced by the individual Defendants.

12 **STATEMENT OF FACTS**

13 12. Beginning on October 9, 2011, a group of individual citizens has associated
14 together for the purpose of peaceably assembling and associating to express their political
15 opinions, petition the government for redress of grievances, and engage in constitutionally
16 protected expression in Courthouse Park in downtown Fresno, California. The group is
17 known as "Occupy Fresno" and is a local off-shoot of the national and international
18 "Occupy Wall Street" movement which has similar 24-hour vigils set up in more than 1,100
19 cities across the U.S. and the world.

20 13. Among the issues on which the members of Occupy Fresno have expressed
21 their views are those relating to economic justice and citizen participation in government,
22 including calling for curbs on government and corporate acquisition of public space,
23 institutions, and mechanisms of control. Plaintiffs have engaged in constitutionally
24 protected expressive activity and have communicated their views on these subjects and
25 others to citizens and public officials by way of protests, dialogue, educational activities
26 and other peaceable means in the Park which also houses the main Superior Court
27 building, the Hall of Records, one of the county's jail facilities, and is in close proximity to

1 all the main County and City of Fresno governmental offices. It is a location in which their
2 message regarding economic justice and the need for political and financial reform can
3 be articulated to a broad audience of passers-by as well as to the people who come at all
4 hours of the day or night to participate in this growing movement. Further, the Park is a
5 historic site for peaceable assemblies and free speech, and is designated as a public
6 space for political activity and has its own unique set of county ordinances governing its
7 use.

8 14. They have teach-ins on subjects of public interest and have daily “general
9 assemblies” at which important issues are discussed and voted upon. Plaintiffs have
10 continually made it known that they desire to engage in constitutionally protected political
11 expression twenty-four hours a day in the Park. Plaintiffs do not seek to use the Park to
12 the exclusion of other potential users, and in fact, have occupied only a small portion of
13 the Park’s grounds. The Plaintiffs have been and continue to be vigilant about protecting
14 the Park’s grounds and other features, as well as consistently maintaining cleanliness of
15 their area and making sure they do not impede other’s access to the Park or the nearby
16 government offices.

17 15. Plaintiffs seek and desire to assemble and to communicate on a continuous,
18 around-the-clock 24 hour basis. A continuous presence in the Park, the civic heart of
19 downtown, communicates the urgency of their call for reform, their intention to persist in
20 protected activity and their solidarity and shared sacrifice with like-minded individuals in
21 all parts of the country. The Plaintiffs and others have gathered, intending to remain in
22 the Park and are in continual communication through various media with groups of people
23 occupying public squares and parks in places around the world. Despite continuous
24 arrests and police presence and surveillance, they have maintained a continual presence
25 at the Park and intend and desire to continue their demonstrations, and to maintain their
26 24-hour vigil in the Park toward that end.

27 16. However, a number of the County ordinances for the Park unconstitutionally

1 bar or unreasonably interfere with Plaintiffs' ability to assemble and exercise free speech.
2 The ordinances are unconstitutional on their face and as applied. The ordinances violate
3 fundamental principles of the First Amendment and have been unlawfully applied.

4 Fresno County Ordinance 12.20.020 provides:

5 As used in this chapter, 'public meeting' means the assemblage of ten or
6 more persons by prearrangement, common design or as a result of
advertising, solicitation or other promotion.

7 Fresno County Ordinance 12.20.030 provides:

8 It is unlawful for any person to assemble or participate in a public meeting
9 in the Courthouse Park as described in Section 12.20.020 except
pursuant to a permit except pursuant to a permit for such meeting as
10 provided for in Section 12.24.020 in this code.

11 Fresno County Ordinance 12.20.060 provides, in pertinent part:

12 It is unlawful for any person whether in connection with a public meeting or
13 otherwise to do any of the acts hereinafter enumerated within the limits of
the Courthouse Park: [¶] C. To loiter in the Park or be therein for any
14 other purpose than to pass through the Park on the walks thereof between
the hours of twelve midnight and six a.m. of the next succeeding day. [¶]
K. To camp or lodge therein

15 Finally, Fresno County Ordinance 12.24.010 states in pertinent part:

16 A. Except where otherwise specifically provided for in this title, the
17 administrative officer of the county is authorized to determine and
18 establish conditions and regulations as public convenience, necessity and
safety require to regulate the conduct of persons upon the county-owned
19 grounds of any county institution or building and to change the same from
time to time as such public convenience, necessity and safety require.
20 Such conditions and regulations shall prohibit the following actions: [¶] B.
Such conditions and regulations shall prohibit the following action except
21 where expressly permitted by the administrative officer: [¶] 4. Distribute
any handbills or circulars or to post, place or erect any bills, notices, paper
22 or advertising devices or matter of any kind; provided, that this section
does not apply to legal notices and advertisements placed on the bulletin
boards which are now owned or may be supplied for this purpose.

23 (Copies of the pertinent Fresno County Code Ordinances, parts 13.20 and 13.24 are
24 attached hereto as Exhibits 1 and 2; hereafter the "FCCO Permit Scheme.")

25 17. On October 9, 2011, Occupy Fresno began to maintain a presence in the
26 Park for the purpose of speech, assembly, expressive conduct and association within the
27 meaning of the First Amendment. This presence includes daily general assemblies to

1 discuss and debate issues of the day, and a 24-vigil in solidarity with the other “occupy”
2 movements across the U.S. and internationally. On information and belief, the many other
3 cities or counties in the U.S. with “occupy” groups are engaged in daily general
4 assemblies and 24-hour vigils in solidarity with one another.

5 18. At some point after midnight on October 9, 2011, plaintiffs were told by
6 security officers in the Park that they could not use their tents and sleeping bags and were
7 instead required to continuously walk through the park in order to remain within its
8 borders. Thereafter, until October 14, 2011, Occupy Fresno continued to be present in
9 the Park on a 24-hour basis; however, they utilized sleeping bags and slept in the Park.
10 During the evening hours there was always a person from Occupy Fresno awake and
11 participating in the vigil. Also, there was continual contact with security and law
12 enforcement officers, but Occupy Fresno was not ordered out of the park.

13 19. On Friday, October 14, 2011, attorney Robert Navarro, acting as legal advisor
14 for Occupy Fresno, having been informed of the group’s interest in whether a permit could
15 be obtained, met with Defendant John Thompson, Resources Manager for the Division
16 of Public Works and Planning regarding the permit process. Mr. Thompson was informed
17 that Occupy Fresno’s central purpose in seeking the permit was to be allowed to continue
18 to meet in the Park on a 24 hour basis, as that was an essential political and expressive
19 tenant of the occupy movement. Mr. Thompson was aware of the group’s continual pre-
20 sence in the Park, as he could see their site from his office window. A permit application
21 was drafted and signed. Mr. Thompson explained that the permit had to be circulated to
22 other departments to allow them to comment or add or change conditions. He said it
23 would be forwarded when it was completed, and the process might not be completed until
24 the following Monday. Mr. Thompson said that, speaking for himself, he did not have a
25 problem with Occupy Fresno remaining in the Park overnight until the permit was
26 approved. Mr. Navarro reiterated that the permit request included the request for 24-hour
27 presence. Occupy Fresno, as part of its constitutionally protected speech, assemblies,

1 expressive conduct, and associations intended to participate in the expressive conduct
2 of the Occupy movement, which includes daily assemblies and 24-hour vigils, while at the
3 same time complying with local requirements.

4 20. On Monday, October 17, 2011, Mr. Navarro received the permit which
5 included an added handwritten condition that “all attendees must vacate Courthouse Park
6 prior to 12:00 a.m. (midnight) every night without exception. Time of use is from 6:00 a.m.
7 to 12:00 a.m.” The note was signed by Defendant Jorge Granados. Occupy Fresno
8 participants were informed of the approved permit and received a copy of it. They
9 continued to remain in the Park around-the-clock.

10 21. On Monday, October 17, 2011, defendants sent a signed permit to Mr.
11 Navarro by email (hereafter the “permit as issued”). The permit as issued was marked
12 “approved with the following conditions, see attachment for restrictions.” Although the
13 permit was approved, because of the restrictions, it effectively was denied in the unbridled
14 discretion of defendants as state actors. In many respects the original request was not
15 approved. The request for 24-hour presence was not approved, although the FCCO
16 Permit Scheme, Section 13.24.10 , contemplates that camping and lodging in connection
17 with a public meeting is permissible, but only if there is a permit granted in the County’s
18 discretion. There was no opportunity to negotiate the terms of the permit as issued.

19 22. The permit as issued included an attachment of 12 typed and numbered
20 restrictions, which according to the “footer” to the document was a “standard attachment
21 to facility use permit.” It also included two additional, handwritten conditions, numbered
22 13 and 14. These stated “13. No more than 20 attendees at the event” and “14. All
23 attendees must vacate Courthouse Park prior to 12:00 a.m. (midnight) every night without
24 exception. Time of use is from 6:00 a.m. to 12:00 a.m.”

25 23. The handwritten restrictions on the permit as issued were signed by
26 defendant Jorge Granados.

27 24. Occupy Fresno participants were informed of the approved permit and

1 received a copy of it. They continued to occupy the Park around the clock.

2 25. On Wednesday, October 26, 2011, Defendant John Navarrette, County
3 Administrative Officer, issued a memo to Robert Navarro declaring that Occupy Fresno
4 was in violation of the permit and ordinances, including the act of “camping” and
5 “loitering” in the Park during the closure hours. The letter said that the permit would
6 expire on midnight, Monday October 31st, and that if a new permit was not requested
7 and received by that date Occupy Fresno would have to vacate the Park. Occupy
8 Fresno was informed of the contents of the letter.

9 26. From October 26 to October 31, 2011, Occupy Fresno continued their
10 activities and continual occupation of their meeting site, with minimal interference from
11 various law enforcement agencies, including members of the Sheriff’s Office.

12 27. At about 11:00 a.m. on October 31, 2011, Plaintiffs met with Defendant
13 Thompson of the Public Works department, Bruce Johnson of the County Counsel’s
14 Office, and four law enforcement personnel including Gregg Andreotti, Mark Padilla,
15 and Jose Salinas of the Sheriffs Office. Plaintiffs repeated the bases supporting their
16 need to be allowed to be in the park on a continual basis, and described how they had
17 continuously observed the need for cleanliness, order, protection of property, public
18 access, and peaceable assembly, and that they were committed to honoring those
19 conditions in the future. Plaintiffs took the application papers and said they would
20 discuss it at a specially held general assembly. Mr. Thompson said because they
21 process could not be completed by the end of business on October 31, he and John
22 Navarrette were extending a two day “grace period” on the completion of the permit.
23 By consensus vote that evening, Occupy Fresno decided to forego the permit process
24 because of the unacceptable closure hour condition. There was no alternative channel
25 available for plaintiffs to engage in their speech, expressive conduct, assembly, and
26 association in solidarity with the other Occupy groups in other locations.

1 28. On Tuesday, November 1, 2011, members of the S.E.I.U. Local 521 held a
2 rally in Courthouse Park in protest of labor issues. There were dozens of protesters
3 marching, carrying signs, and chanting. Defendant John Thompson conceded that no
4 permit was obtained for the rally, and that frequently the union holds rallies without
5 bothering to obtain a permit under the FCCO Permit Scheme. S.E.I.U Local 521 has used
6 the Park on numerous occasions and has never applied for a permit and has never
7 received any form of sanction for failing to do so.

8 29. On or about Wednesday, November 2, 2011, when the so-called “grace
9 period” was to end, Defendants placed “eviction notices” around the Occupy Fresno site.
10 However, even though Occupy Fresno was continually present in the Park up until
11 midnight on Saturday, November 5, 2011, no eviction was conducted. The terminology
12 of “eviction” is inapposite, because Defendants are acting in their capacity as sovereign,
13 not landlords. The Park is held by Defendants, but in trust by and for the people under
14 fundamental constitutional principles.

15 30. On Thursday, November 3, 2011, a research sociologist and California
16 attorney, named Elizabeth E. Martinez, visited the Occupy Fresno vigil at the Park at
17 approximately midnight, leading into the morning of Friday, November 4, 2011. Martinez
18 spoke with those who were awake and maintaining the vigil that evening, despite the rain.
19 The evening was quiet. The streets were deserted except for some construction work far
20 away across the street. The vigil was not interfering with any other persons’ use of the
21 Park, sidewalks, or streets. There was no impact on health, safety, traffic flow or public
22 convenience. One person was standing by, carefully watching the Park and surrounding
23 areas. Others were talking quietly in their tents. Others were having coffee.

24 31. At approximately 2:30 a.m., on November 6, a contingent of approximately
25 34 sheriff deputies surrounded Occupy Fresno and woke up its members who were
26 sleeping there. Orders from Defendants were broadcast that all personal property had
27 to be evacuated from the Park or the deputies would begin to confiscate all such items

1 in the Park. Supporters of Occupy Fresno were informed of the police action and
2 came to the Park to support the movement. Occupy Fresno participants then began
3 an orderly process of removing all personal property and other items used by the
4 group and stored them in vehicles. After the property was removed, fifteen individuals,
5 in an act of peaceful civil disobedience, declared that they would not leave the Park on
6 grounds that it was a violation of their right to assembly and speech. The deputies
7 broadcast an order to disperse and vacate the Park. The order was ignored and all
8 fifteen persons were arrested peacefully. They were detained in the Fresno County jail
9 and charged with violations of Penal Code sections 416, subdivision (a) [refusing to
10 disperse upon lawful command] and 647, subdivision (e) [lodging in any building,
11 structure, vehicle, or place, whether public or private, without the permission of the
12 owner or person entitled to the possession or in control of it.]

13 32. On information and belief, at some point on November 6, 2011, Defendant
14 Sheriff Mims ordered a constant or near constant law enforcement presence at the Park
15 just at the perimeter of the Occupy Fresno site. However, since at least as early as
16 November 6, 2011, the vigil being conducted by Occupy Fresno has been under 24-hour
17 surveillance. The daily general assemblies have been videotaped by uniformed officers.

18 33. During the day, while some members were present at the site, they were
19 informed by sheriff deputies that they could not display protest signs or “chant,” because
20 that holding signs or circulars constituted a “meeting” for which a permit was required.
21 The police were informed that “meeting,” for purposes of a permit, required ten or more
22 people. The sheriffs conferred and agreed that the ordinances did so provide, and said
23 that as long as the group was nine or fewer persons they could display signs and chant.

24 34. Then after midnight that evening, i.e., the early morning of November 7, 2011,
25 a second police action occurred when nine persons were prevented from continuing their
26 peaceable vigil of speech, expressive conduct, assembly and association. The nine
27 persons were arrested for refusing to leave the Park, and were charged with the same

1 offenses. An additional charge of violating the FCCO Permit Scheme, under Section
2 12.20.030, was also made.

3 35. Arrests have also occurred during the day for the “offense” of holding a sign,
4 even when there are not 10 or more people at the vigil. At approximately 12:30 p.m., on
5 Monday, November 7, 2011, Plaintiff Michael Dominquez was sitting on the ground in the
6 Occupy Fresno site, holding a protest poster. There were three or four other Occupy
7 Fresno participants present at the time. Deputies, who were still keeping surveillance,
8 demanded that Dominquez desist from holding his sign stating that by doing so he was
9 in violation of the permit requirement. Dominquez stated that he was within his
10 constitutional rights to hold his sign and refused to put it down. He was then peacefully
11 arrested and detained and charged the aforementioned Penal Code violations and
12 infraction of the permit ordinance.

13 36. Plaintiff Occupy Fresno continued to maintain its 24-hour vigil and presence
14 at the Park and on November 8, 2011, eight more peacefully assembled Occupy Fresno
15 participants were prevented from exercising their constitutional rights. The participants
16 were arrested, detained, and charged with the aforementioned Penal Code violations and
17 infraction of the Fresno Permit Scheme.

18 37. On November 9, 2011, seven more peacefully assembled Occupy Fresno
19 participants were prevented from exercising their constitutional rights. The participants
20 were arrested, detained and charged with the aforementioned Penal Code violations and
21 infraction of the permit ordinance.

22 38. On November 10, 2011, eleven more peacefully assembled Occupy Fresno
23 participants were prevented from exercising their constitutional rights. The participants
24 were arrested, detained and charged with the aforementioned Penal Code violations and
25 infraction of the permit ordinance.

26 39. All the Plaintiffs have been under daily threat of forcible eviction from
27 Courthouse Park due to the unconstitutional ordinances and practices of the Defendants,

1 and all the individual have been arrested at least once, and some several times.
2 Defendant Sheriff Mims has publicly stated her intention to continue the arrests as long
3 Occupy Fresno continues to remain at the Park.

4 **FIRST CLAIM FOR RELIEF**

5 Interference with the Right to Peaceably Assemble, the Right of Speech;
6 and, the Right to Petition the Government for a Redress of Grievances;
7 For Declaratory and Injunctive Relief
(First and Fourteenth Amendments)

8 40. The above allegations are incorporated into the First Claim for Relief as
9 though fully set forth herein.

10 41. Fresno County Ordinances 12.20.020, 12.20.030, 12.20.060 and 12.24.010
11 are facially unconstitutional and as applied under the First and Fourteenth Amendment
12 for each of the following reasons:

13 The ordinances operate as an unconstitutional prior restraint on constit-
14 tionally protected assembly and expression;

15 the ordinances abridge the right to freedom of assembly, speech and redress
of grievances protected by the First Amendment;

16 the ordinances confer standardless discretion on county officials to grant or
17 deny permission to remain in Courthouse Park between the hours of
midnight and six a.m.;

18 the ordinances are impermissibly overbroad;

19 the ordinances are unconstitutionally vague;

20 the ordinances deprive Plaintiffs of equal protection of the ordinances;

21 the ordinances deprive Plaintiffs of their right to due process by imposing
22 strict liability for engaging in innocent conduct;

23 the ordinances are selectively and discriminatorily applied; and,

24 the ordinances operates to chill protected speech; expressive conduct,
assembly, association, and petition.

25 Plaintiffs are therefore entitled to a declaration that the challenged Fresno County
26 ordinances violate their rights secured by the First and Fourteenth Amendments to the
27 Constitution, both facially and as applied.

SECOND CLAIM FOR RELIEF

Interference with the Right to Peaceably Assemble, the Right of Speech;
and, the Right to Petition the Government for a Redress of Grievances;
For Declaratory Relief, Injunctive Relief, and Damages
(First and Fourteenth Amendments; 42 U.S.C. § 1983)

42. The above allegations are incorporated into the Second Claim for Relief as though fully set forth herein.

43. Defendants have and enforce a policy and custom of interfering with the right to peaceably assemble, to speech, and the redress of grievances, that are protected by the First Amendment to the United States Constitution.

44. Plaintiffs have engaged in activities involving association, expressive conduct and petitioning of the government, all of which are protected by the First and Fourteenth Amendments to the Constitution, and Plaintiffs are committed to engaging in such activities in the future.

45. Defendants terminated or attempted to terminate Plaintiffs' lawfully permitted assembly, speech and right to petition. Absent judicial relief from this Court, Defendants will continue to interfere with Plaintiffs' rights by unreasonably and unlawfully arresting and intimidating Plaintiffs in the Park.

46. Defendants have and enforce a policy of preventing Plaintiffs from assembling, speaking, engaging in expressive conduct, and petitioning in the Park during the hours between midnight and six a.m. without good reason. Defendants denied plaintiffs application for a permit to lodge under Section 13.20.060 (K) in an exercise of unfettered discretion, which is presumptively unconstitutional. The policy directly interferes with the ability of Plaintiffs to conduct their protected First Amendment activities. Defendants further have and enforce a policy of preventing people from engaging these separate but interrelated protected activities in the Park at anytime if their number is ten or more without a permit issued by Defendants under the FCCO Permit Scheme. This permit policy is unconstitutional and is being enforced specifically against Plaintiffs

1 because of the content and message reflected by their assembly, speech, expressive
2 conduct, associations, and First Amendment activities. Defendants have not enforced the
3 same ordinances and policies against other demonstrations held in Courthouse Park at
4 the same time that Occupy Fresno was being threatened with “eviction.”

5 47. The acts of Defendants set forth above violate Plaintiffs' rights to freedom of
6 speech, freedom of assembly and freedom to petition the government for redress of
7 grievances, all rights protected by the First Amendment and made applicable to the states
8 and local government by the Fourteenth Amendment. The acts complained of herein
9 were directed toward intimidating Plaintiffs, chilling the exercise of these protected expres-
10 sive rights by, among other means, deterring persons from joining with Plaintiffs in the
11 lawful exercise of their constitutional rights.

12 48. Plaintiffs have continuously, and plan to continuously, exercise their rights to
13 assembly, speech, expressive conduct, petition for the redress of grievances, and
14 associations in the Park. As a result of the policies and ordinances of the Defendants
15 complained of herein, Plaintiffs will suffer irreparable injury to their First Amendment
16 rights. Their aforesaid rights and civil liberties are being denied, including their ability
17 effectively to convey their message to public and to associate with the Occupy Movement.
18 People wishing to join their events will be prevented from doing so. As the continuous,
19 nightly arrests taking place in Courthouse Park, Plaintiffs clearly face an actual, concrete
20 and ongoing threat of imminent violation of their First Amendment rights as well as the
21 serious risk of bodily injury or death because the police in riot gear are armed, while
22 plaintiffs are unarmed. Therefore, Plaintiffs seek a judicial determination of their civil
23 liberties, rights and duties and a declaration as to Defendants obligations not to interfere
24 with peaceful assembly, speech, expressive conduct, petitioning, association, and other
25 First Amendment activities in Courthouse Park.

26 49. By reason of Defendants' misconduct and threatened misconduct, and the
27 irreparable harm Plaintiffs have suffered and will continue to suffer, Plaintiffs are entitled

1 to a temporary restraining order, preliminary injunction and permanent injunction enjoining
2 Defendants, their officers, agents, servants, attorneys, and any person acting in concert
3 and participation with them, with actual notice of the injunction by personal service or
4 otherwise, from enforcing the challenged ordinances, practices and customs of the
5 Defendants.

6 50. As a direct and proximate result of the Defendants' actions, Plaintiffs have
7 been deprived of their rights secured by the First and Fourteenth Amendments to the
8 Constitution; they have been prevented and prohibited from engaging in constitutionally
9 protected assembly, speech, expressive conduct, association, and petitioning, and have
10 been deterred from doing so and will continue to be so deprived and deterred in the future,
11 for all of which they are entitled to recover compensatory damages and attorneys' fees
12 under applicable law.

13 **THIRD CLAIM FOR RELIEF**

14 (California Civil Code § 52.1)

15 46. The above allegations are incorporated into the Third Claim for Relief as
16 though fully set forth herein.

17 47. Based on the conduct alleged above, all Defendants, and each of them, are
18 liable to Plaintiffs for violation of their federal and California civil rights under the Bane Act,
19 California Civil Code § 52.1, in that they interfered by threats, intimidation, or coercion with
20 the Plaintiffs' rights to freely assemble and to engage in free speech in Courthouse Park,
21 in violation of the First and Fourteenth Amendments to the U.S. Constitution and in
22 violation of Article 1, Sections 1 and 2 of the California State Constitution.

23 48. As a direct and proximate result of Defendants' violations of Plaintiffs' civil and
24 constitutional rights under the Bane Act, Plaintiffs have suffered harm. Under Civil Code
25 §52, Plaintiffs are entitled to an award of up to three times their actual damages, to
26 exemplary damages in an amount to be determined by the Jury, to a civil penalty of
27

1 \$25,000 for each violation of their rights; and to attorneys' fees to be determined by the
2 Court.

3 **REQUEST FOR RELIEF**

4 Plaintiffs request relief as follows:

5 1. A temporary restraining order, and preliminary and permanent injunction,
6 enjoining defendants, their officers, agents and employees, from interfering with Plaintiffs'
7 speech, expressive conduct, assembly, association, petition and other First Amendment
8 activities.

9 2. A preliminary and permanent injunction, enjoining Defendants, their officers,
10 agents and employees, from using excessive and unreasonable force upon Plaintiffs and
11 those participating in Plaintiffs events.

12 3. For a declaration that defendants' past, present and threatened future actions
13 violate plaintiffs' rights under the First and Fourteenth Amendments to the United States
14 Constitution.

15 4. For a declaration that Defendants' past, present and threatened future
16 actions violate Plaintiffs' rights to be free from the use of force under the Fourth
17 Amendment to the United States Constitution.

18 5. For compensatory damages as permitted by law and according to proof at
19 trial.

20 6. For costs of suit pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988.

21 7. For attorneys fees pursuant to 42 U.S.C. § 1988, and California Civil Code
22 § 52.1.

23 8. For such other relief as this Court deems just and proper.

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JURY TRIAL DEMAND

COMES NOW Plaintiffs OCCUPY FRESNO and the individual Plaintiffs, by and through their counsel, and hereby demands trial by jury pursuant to the terms and conditions of Federal Rule of Civil Procedure 38, in regard to all issues in the above-referenced cause.

DATED: November 13, 2011

Respectfully Submitted,

/s/Robert Navarro
ROBERT NAVARRO
Attorneys for Plaintiffs

VERIFICATION

I, Robert Navarro, am counsel for Plaintiffs in this action. I verify that the facts contained within this Complaint are true and accurate, except those facts asserted on information and belief, and as to those facts, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this Verification was executed on this 13th day of November, 2011, at Fresno, California.

/s/Robert Navarro
ROBERT NAVARRO
Attorneys for Plaintiffs

Title 13 - ROADS, PARKS, OTHER PUBLIC PLACES
Chapter 13.20 - COURTHOUSE PARK

Chapter 13.20 - COURTHOUSE PARK

Sections:

- 13.20.010 - Boundary described.
- 13.20.020 - Public meeting—Defined.
- 13.20.030 - Public use—Permit.
- 13.20.060 - Public meeting—Acts unlawful.

13.20.010 - Boundary described.

All that certain piece or parcel of land surrounding the Courthouse, Hall of Records, and county jail in the city of Fresno and being more particularly described as bounded on the southeasterly side by Tulare Street, on the southwesterly side by Van Ness Avenue, on the northwesterly side by Fresno Street and on the northeasterly side by M Street in the city of Fresno is set apart and declared to be a public park for the use and benefit of the people to be known as the Courthouse Park.

(Prior code, § 200)

13.20.020 - Public meeting—Defined.

As used in this chapter, "public meeting" means the assemblage of ten or more persons by prearrangement, common design or as a result of advertising, solicitation or other promotion.

(Prior code, § 201)

13.20.030 - Public use—Permit.

It is unlawful for any person to assemble or participate in a public meeting in the Courthouse Park as described in Section 13.20.020 except pursuant to a permit for such meeting as provided for in Section 13.24.020 of this code.

(Ord. 0-83-006, § 2; prior code, § 202)

Title 13 - ROADS, PARKS, OTHER PUBLIC PLACES
Chapter 13.20 - COURTHOUSE PARK

13.20.060 - Public meeting—Acts unlawful.

It is unlawful for any person whether in connection with a public meeting or otherwise to do any of the acts hereinafter enumerated within the limits of the Courthouse Park:

A. To violate any condition of a permit issued by the county administrative officer for the holding of a public meeting in the park as in this chapter provided;

B. To ride upon any vehicle or to place any vehicle or drive the same or operate the same upon any of the walks or upon any part of the public park aforesaid, except upon that part consisting of the public driveways lying between the Courthouse Park and Fresno Street on the northwest and between Courthouse Park and Tulare Street on the southeast side of the park;

C. To loiter in the park or to be therein for any other purpose than to pass through the park on the walks thereof between the hours of twelve midnight and six a.m. of the next succeeding day;

D. To damage or cause to be damaged any of the vegetation, trees, shrubbery, flowers, buildings or other property within or upon that public park in any manner whatsoever except that it is lawful for the director of public works and planning or designee and the persons engaged to work thereon under his supervision to care for and attend the flowers, shrubbery, trees, vegetation, buildings therein and thereupon;

E. To throw or place any newspaper, bottle or refuse matter of any kind whatsoever, or any other article or thing, upon the grounds in Courthouse Park, or any of the fountains therein;

F. To write, print, cut or carve or otherwise mark in or upon any building or buildings or any seats or benches or any other property whatsoever within the park, or any other property whatsoever belonging to the county;

G. To place or throw or deposit any thing or article in any lavatory or toilet within the park or any of the buildings therein or any other such property belonging to the county, or to use any such lavatory

Title 13 - ROADS, PARKS, OTHER PUBLIC PLACES
Chapter 13.20 - COURTHOUSE PARK

or toilet for any other purpose than the purpose for which the same is maintained;

H. To lead or let loose any animal or fowl of any kind other than dogs led by a cord or chain not more than six feet long;

I. To carry or discharge any firearms, firecrackers, rockets, torpedoes or any other fireworks, or any air gun or slingshot, or other article of like character or to hunt, pursue, annoy, throw stones or other missiles at or molest and disturb in any way any animal, bird or reptile within the confines of the park;

J. To affix or post any circulars, handbills, notices or advertising device of any kind to any tree, shrub, light standard, railing, bench, monument, statuary or building. The prohibitions of this paragraph shall not apply to matters placed on bulletin boards which may be supplied for this purpose or to matter placed on temporary devices in connection with a public meeting;

K. To camp or lodge therein or make or kindle a fire for any purpose unless pursuant to a permit for a public meeting issued therefor by the county administrative officer as in this chapter provided;

L. To sell or offer for sale any merchandise, article or thing whatsoever unless incidental to a public meeting and specifically allowed as a provision of a valid permit from the county administrative officer for the purpose of a public meeting or to practice or carry on, conduct, or solicit for any trade, occupation, business or profession;

M. To go upon any lawn or grass lot where prohibited by the director of public works and planning or designee, and that prohibition is indicated by proper and legible signs;

N. To open, expose or interfere with any water pipe, hydrant, stopcock, basis, light, sign or other installation in the park.

(Ord. 02-025, § 1; Ord. 611 § 20, 1980; Ord. 542-A-2 § 1, 1974; prior code, § 205)

Title 13 - ROADS, PARKS, OTHER PUBLIC PLACES
Chapter 13.24 - GROUNDS AND BUILDINGS

Chapter 13.24 - GROUNDS AND BUILDINGS

Sections:

13.24.010 - Conduct regulations.

13.24.020 - Public use—Permit.

13.24.010 - Conduct regulations.

Except where otherwise specifically provided for in this title, the administrative
A.

officer of the county is authorized to determine and establish conditions and regulations as public convenience, necessity and safety require to regulate the conduct of persons upon the county-owned grounds of any county institution or building and to change the same from time to time as such public convenience, necessity and safety require. Such conditions and regulations shall prohibit the following actions:

1. Deposit, place, throw or in any manner dispose of any rubbish, trash,

garbage, can, bottle, glass or paper or any decaying or putrid matter of any kind whatsoever except in containers provided for such purpose;

2. Possess any firearm or discharge such firearm within, into or across such county ground or building area provided that this provision shall not apply to any peace officer;

3. Engage in gambling in any form, except that those persons granted an exclusive concession for the operation of a food service facility on county property pursuant to a contract between the county and the California Department of Rehabilitation under its business enterprise program for the blind, may sell California lottery tickets during normal business hours at the food service facility if authorized to do so by the state of California;

4. Damage or cause to be damaged any of the vegetation, trees, shrubs, flowers, buildings or other property except as is required in the maintenance of the building or ground;

5. Throw or place any newspaper, bottle or other refuse matter of any kind whatsoever or any other article or thing upon the county grounds or any of the fountains therein ;

6. Write, print, cut, carve, or otherwise mark in or upon any building or buildings or any seats or benches or any other property whatsoever belonging to the county;

7. Place or throw or deposit anything or any article in any lavatory or toilet within the county grounds or of the buildings thereof or any other such property belonging to the county or to use any such lavatory or toilet for any other purpose than the purpose for which the same is maintained;

Title 13 - ROADS, PARKS, OTHER PUBLIC PLACES
Chapter 13.24 - GROUNDS AND BUILDINGS

8. Go upon any lawn or grass or within any building or portion thereof where prohibited by the administrative officer and that prohibition is indicated by proper and legible signs:

9. Open, expose or interfere with any water pipe, hydrant, stopcock, basin or other construction on the grounds.

Such conditions and regulations shall prohibit the following action except B. where expressly permitted by the administrative officer:

1. Possess intoxicating beverages of any kind;

2. Permit any dog, cat, fowl or other domestic animal under his control to enter or go at large on any county grounds or building areas;

3. Solicit, sell or peddle any food, drink, circulars, papers, goods, wares or merchandise of any kind;

4. Distribute any handbills or circulars or to post, place or erect any bills, notices, paper or advertising devices or matter of any kind; provided, that this section does not apply to legal notices and advertisements placed on the bulletin boards which are now owned or may be supplied for this purpose.

C. Upon determining and establishing such conditions and regulations or changes therein, the administrative officer shall cause copies thereof to be printed and one copy filed and retained in the county administrative office, one copy in the office of the clerk of the board of supervisors, and one copy in the office of the director of the department of public works and development services.

D. The administrative officer shall cause appropriate notices or signs to be erected or placed upon the premises where expressly required herein setting forth such conditions and regulations. When copies of such conditions and regulations have been filed as aforesaid, and when such notices or signs have been erected or placed as expressly required herein, it shall be unlawful for any person to conduct himself in a manner contrary to the provisions of such conditions or regulations as aforesaid.

(Ord. 0-85-017, § 1; prior code, § 210)

13.24.020 - Public use—Permit.

Persons may apply for a permit to use those portions of county-owned grounds or buildings which are available for public meetings under the provisions of this code, the County Administrative Code, or other local rules and regulations.

A permit shall be denied if any of the following conditions exist:

1. The proposed public use will necessarily result in a violation of conduct

Title 13 - ROADS, PARKS, OTHER PUBLIC PLACES
Chapter 13.24 - GROUNDS AND BUILDINGS

regulations established in this chapter; or,

2. The site of the proposed public use is inadequate in size and shape or is without the sanitary, parking, or other necessary facilities to accommodate such use; or,

3. The proposed public use will have an unreasonable adverse impact on abutting property or the surrounding neighborhood.

4. The proposed public use will necessarily result in a violation of County Ordinance Code Section 3.08.110 prohibiting certain types of political activities on county premises relating to elections.

(Ord. 0-83-006, § 3)