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13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT  
15 EASTERN DISTRICT OF CALIFORNIA

16 OCCUPY SACRAMENTO, an unincorporated association;  
17 CESAR AGUIRRE; AMY ANDERSON; FRANK BAREI;  
18 LUKE BARNES; KAREN BERNAL; BRENDAN  
BISHOP; MARK BRADLEY, PAUL BURKE; JOSH  
19 CADJI; KEVIN CARTER; CLARA CROSSMAN;  
KATHRYN COKE; JERMAINE DAWSON; GABRIELA  
20 DEOLIVEIRA; CONNOR FINNEGAN; DANNY  
GARZA; MIKE ISRAEL; ERIC LEE; MORGAN LESKO;  
21 STACIA LINDE; STEVE LINDE; MELISSA MASON;  
BRANDON MILLER; DAVID NORTHALL; SARAH  
22 PRODEN; RYAN PAAVOLA; ANDREW RAMSEY;  
RUSSELL RAWLINGS; TRACIE RICE-BAILEY; PAT  
23 RIORDAN; CINDY SHEEHAN; SEAN THOMPSON;  
CRESCENT VELLUCCI; NICK WARE,

24 Plaintiffs,

25 vs.

26 CITY OF SACRAMENTO; JOHN F. SHIREY,  
Sacramento City Manger, in his official capacity; JIM  
COMBS, Sacramento City Director of Parks and  
27 Recreation, in his official capacity,

28 Defendants.

Case No. \_\_\_\_\_

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

**DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1 The Occupy Wall Street movement is sweeping the Country with sites of “occupation”  
2 present in over 1,100 cities across the country. In sympathy with and in support for the Occupy Wall  
3 Street movement, occupations are now active in cities across Europe and even in the Middle East where  
4 recently protests were held in Cairo, Egypt against the recent police violence in Oakland, California.  
5 According to the Washington Post and the Pew Research Center, the Occupy movement is now more  
6 popular than the tea party.  
7

8 Since early October, persons participating in “Occupy Sacramento” have gathered in  
9 Cesar Chavez Park, in downtown Sacramento across from City Hall and, in a demonstration of grassroots  
10 democracy, have organized committees, assemblies and teach-ins centered around the profound  
11 economic inequality in this country and the deterioration of our way of life. People are being drawn to  
12 the Occupy Sacramento gatherings but Defendant CITY OF SACRAMENTO and its city manager have  
13 steadfastly refused to permit Occupy Sacramento to remain in Cesar Chavez Park past 11:00 p.m. on  
14 weekdays and midnight on weekends, and have forced those associated with Occupy Sacramento to  
15 evacuate the park, arresting those who, insisting on their constitutional rights to peacefully assemble and  
16 engage in free speech, refuse to leave the park on the ground that they are violating section 12.70.090 of  
17 the Sacramento City Code which sets park hours. To date 79 people have been arrested, among them  
18 plaintiffs in the within complaint.

19 This complaint seeks a declaration that the challenged section of the city code is  
20 unconstitutional and requests a temporary restraining order and a preliminary injunction against its  
21 enforcement on the principle ground that it confers unfettered discretion on the Defendants to interfere  
22 with Plaintiffs constitutional rights of freedom of assembly and of speech.

**JURISDICTION**

23  
24 1. Jurisdiction is conferred upon this Court by 20 U.S.C. § 1331, this being a civil action  
25 arising under the Constitution and the laws of the United States. Jurisdiction is also conferred upon this  
26 Court by 28 U.S.C. § 1343(a)(3) and (4), 28 U.S.C. § 2201 and 2202 and 42 U.S.C. §§ 1983 and 1988,  
27 this being an action for declaratory judgment, equitable relief and damages authorized by law to redress  
28 deprivation under color of law of rights, privileges and immunities secured by the Constitution of the

1 United States. This Court has supplemental jurisdiction of the state law claims under 28 U.S.C. §1367.

2 2. At all times pertinent to this Complaint, and in taking all of the actions described in this  
3 Complaint, Defendant CITY OF SACRAMENTO, its officers, agents and employees, acted and  
4 threatened to act under color of law and were effectuating, and will effect, the custom, policy and laws of  
5 the CITY OF SACRAMENTO.

6 **PARTIES**

7 3. Plaintiff OCCUPY SACRAMENTO is an unincorporated association aligned with the  
8 unincorporated association “Occupy Wall Street” and other occupy movements which have sprung up in  
9 cities and towns across the United States. It is a peaceful assembly and forum for the expression of free  
10 speech on a variety of economic and social justice issues which is venued in Cesar Chavez Park.

11 4. Plaintiffs CESAR AGUIRRE, AMY ANDERSON, LUKE BARNES, KAREN BERNAL,  
12 BRENDAN BISHOP, MARK BRADLEY, PAUL BURKE, JOSH CADJI, KEVIN CARTER, CLARA  
13 CROSSMAN, KATHRYN COKE, JERMAINE DAWSON, GABRIELA DEOLIVEIRA, CONNOR  
14 FINNEGAN, DANNY GARZA, MIKE ISRAEL, ERIC LEE, MORGAN LESKO, STACIA LINDE,  
15 STEVE LINDE, MELISSA MASON, BRANDON MILLER, DAVID NORTHALL, SARAH PRODEN,  
16 RYAN PAAVOLA, ANDREW RAMSEY, RUSSELL RAWLINGS, TRACIE RICE-BAILEY, PAT  
17 RIORDAN, CINDY SHEEHAN, SEAN THOMPSON, CRESCENT VELLUCCI, and NICK WARE are  
18 natural persons who reside in the Eastern District of California who were arrested while participating in  
19 Occupy Sacramento events at Cesar Chavez Park in the City of Sacramento when they refused to disrupt  
20 and discontinue their peaceful gathering when police decided to enforce a provision of the Sacramento  
21 City Code which limits park use to certain hours, unless the meeting or event which persons are attending  
22 is sponsored or co-sponsored by the Director of Parks and Recreation.

23 5. Plaintiff FRANK BAREI is a resident of the Eastern District of California who was  
24 unable to participate in the Occupy Sacramento gatherings because he was employed as an instructor at a  
25 technical school and did not get off work until 11:00 p.m. He took a substantial cut in pay in order to get  
26 earlier hours so that he could participate in at least some of the Occupy Sacramento events but desires to  
27 return to his prior hours of employment and still to participate in Occupy Sacramento when the  
28 occupation is permitted to continue throughout the night.



1 well as to the people who come at all hours of the day or night to participate in this growing movement.

2 11. Plaintiffs seek and desire to assemble and to communicate on a continuous basis, around  
3 the clock on a 24 hour basis. A continuous presence in Cesar Chavez Park, the civic heart of downtown,  
4 communicates the urgency of their call for reform, their intention to persist in protected activity and their  
5 solidarity with like-minded individuals in all parts of the country. The Plaintiffs and others have  
6 gathered, intending to remain in Cesar Chavez Park and have participated in “live streams” of their  
7 actions with groups of people occupying public squares and parks in places around the world where it is  
8 daytime while it is night in Sacramento. They intend and desire to continue their demonstrations, and to  
9 maintain a continuous presence in Cesar Chavez Park toward that end, indefinitely.

10 12. However, Sacramento City Code § 12.72.090 prohibits Plaintiffs from remaining in Cesar  
11 Chavez Park and engaging in political protest, political speech and other constitutionally protected  
12 activity after 11:00 p.m. and before 5:00 a.m. each week day, and after midnight and before 5:00 a.m. on  
13 weekends. More specifically, the ordinance states:

14 **12.72.090 Remaining or loitering in parks during certain hours prohibited.**

15 A. No person shall remain or loiter in any public park:

- 16 1. Between the hours of midnight Friday or Saturday and five a.m. of  
17 the following day; and  
18 2. Between the hours of eleven p.m. Sunday through Thursday and  
19 five a.m. of the following day.

20 B. The prohibitions contained in subsections (A)(1) and (A)(2) of this section  
shall not apply:

- 21 1. To any person on an emergency errand;  
22 2. To any person attending a meeting, entertainment event, recreation  
23 activity, dance or similar activity in such park provided such  
24 activity is sponsored or co-sponsored by the department of parks  
and community services or a permit therefor has been issued by the  
25 department of parks and community services;  
26 3. To any person exiting such park immediately after the conclusion  
of any activity set forth in subsection (B)(2) of this section;  
27 4. To any peace officer or employee of the city while engaged in the  
28 performance of his or her duties.

1 C. The director, with the concurrence of the chief of police, may designate  
2 extended park hours for any park when the director determines that such  
3 extension of hours is consistent with sound use of park resources, will  
4 enhance recreational activities in the city, and will not be detrimental to the  
5 public safety or welfare. The prohibitions contained in subsections (A)(1)  
6 and (A)(2) of this section shall not apply to any person present in a public  
7 park during extended park hours designated pursuant to this subsection.

8 D. The chief of police, with the concurrence of the director of parks and  
9 community services, may order any park closed between sunset and sunrise  
10 when he or she determines that activities constituting a threat to public  
11 safety or welfare have occurred or are occurring in the park and that such  
12 closing is necessary to protect the public safety or welfare. At least one  
13 sign designating the sunset to sunrise closing shall be installed prominently  
14 in the park. When a park is ordered closed between sunset and sunrise, it is  
15 unlawful for any person to remain or loiter in said park during said period.  
16 (Prior code § 27.04.070)

17 13. On October 7, 2011, shortly after 11:00 p.m., and on succeeding nights until the present,  
18 members of the CITY OF SACRAMENTO's Police Department arrived at Cesar Chavez Park and  
19 arrested a number of individuals engaged in the exercise of their rights secured by the First and  
20 Fourteenth Amendments, ostensibly for violating Sacramento City Code § 12.72.090 prohibiting their  
21 remaining in the park after 11:00 p.m.<sup>1</sup> Upon information and belief the City routinely sponsors and/or  
22 co-sponsors events which are held after the hours specified in city code section 12.72.090, and there are  
23 no standards by which determinations are made and discretion is exercised as to which events are  
24 permitted to be held after such hours. Occupy Sacramento, through its counsel, has requested permission  
25 from Defendants to remain in Cesar Chavez Park after park hours but Defendants have failed and refused  
26 to grant such permission (see letter attached hereto as "Exhibit 1").

27 14. As a result of the CITY OF SACRAMENTO's enforcement of Sacramento City Code §  
28 12.72.090, Plaintiffs are afraid to exercise their constitutional rights to peaceably assemble, to engage in  
constitutionally protected activity, to engage in political speech, to petition the government for redress of  
grievances, to freely associate with other like-minded citizens in Cesar Chavez Park after 11:00 p.m. on

<sup>1</sup> The persons arrested that night and on succeeding nights included plaintiffs who were cited not only for violating City Code Section 12.72.090 but also for violating Penal Code Section 409 (remaining at the site of an unlawful assembly) but the District Attorney of Sacramento County has refused to prosecute the persons arrested on any grounds and has stated that, in her opinion, there was no violation of state law. The City Attorney, however, has thrown the resources of her office into prosecution of those arrested for violating the park hours ordinance referenced above.

1 week days and after 12:00 a.m. midnight on weekends. Others, because they do not get off of work until  
2 after 11:00 p.m., are foreclosed from participating in Occupy Sacramento events at all.

3 15. More specifically, Plaintiffs fear that their liberty will be abridged and they will be  
4 arrested again and charged with violating Sacramento City Code § 12.72.090 if they remain in Cesar  
5 Chavez Park and engage in constitutionally protected activity after 11:00 p.m. weekdays and after 12:00  
6 a.m. midnight on weekends. As a result of that fear, Plaintiffs have been deterred from and refrain from  
7 engaging in constitutionally protected activity.

8 **CAUSES OF ACTION**

9 **COUNT ONE**

10 16. Plaintiffs incorporate paragraphs 1 through 15 of their Complaint as though fully  
11 rewritten.

12 17. Sacramento City Code § 12.72.090 is unconstitutional on its face and as applied under the  
13 First and Fourteenth Amendment for each of the following reasons:

- 14 a. the law operates as an unconstitutional prior restraint on constitutionally protected  
15 expression;
- 16 b. the law abridges the right to freedom of speech and expression protected by the First  
17 Amendment;
- 18 c. the law abridges the right to freedom of assembly protected by the First Amendment;
- 19 d. the law abridges the right to petition the government for redress of grievances  
20 protected by the First Amendment;
- 21 e. the law confers standardless discretion on city officials to grant or deny permission to  
22 remain in Cesar Chavez Park after the hours stated in Sacramento City Code §  
23 12.72.090;
- 24 f. the law is impermissibly overbroad;
- 25 g. the law is unconstitutionally vague;
- 26 h. the law deprives Plaintiffs of equal protection of the laws;
- 27 i. the law deprives Plaintiffs of their right to due process by imposing strict liability for  
28 engaging in innocent conduct;
- j. the law is underinclusive;

1 k. the law is selectively and discriminatorily applied;

2 l. the law is overinclusive; and

3 m. the law operates to chill protected speech.

4 18. Plaintiffs are therefore entitled to a declaration that the law violates their rights secured by  
5 the First and Fourteenth Amendments to the Constitution, both on its face and as applied.

6 **COUNT TWO**

7 19. Plaintiffs incorporate paragraphs 1 through 18 of their Complaint as though fully  
8 rewritten.

9 20. Defendants' conduct and threatened conduct threatens to deprive Plaintiffs of their rights  
10 secured by the First and Fourteenth Amendments, and has caused and will cause in the future irreparable  
11 harm to Plaintiffs for which there is no adequate remedy of law.

12 21. By reason of Defendants' misconduct and threatened misconduct, and the irreparable  
13 harm Plaintiffs have suffered and will continue to suffer, Plaintiffs are entitled to a temporary restraining  
14 order, preliminary injunction and permanent injunction enjoining Defendants, their officers, agents,  
15 servants, attorneys, and any person acting in concert and participation with them, with actual notice of  
16 the injunction by personal service or otherwise, from enforcing Sacramento City Code § 12.72.090  
17 against them.

18 **COUNT THREE**

19 22. Plaintiffs incorporate paragraphs 1 through 21 of their Complaint as though fully  
20 rewritten.

21 23. As a direct and proximate result of the Defendants' actions, Plaintiffs have been arrested  
22 and have been deprived of their rights secured by the First and Fourteenth Amendments to the  
23 Constitution; they have been prohibited from engaging in constitutionally protected expression and have  
24 been deterred from doing so and will continue to be so deprived and deterred in the future, for all of  
25 which they are entitled to recover compensatory damages.

26 **COUNT FOUR**

27 24. Plaintiffs incorporate paragraphs 1 through 23 of their Complaint as though fully set forth  
28

1 herein.

2 25. Based on the conduct alleged above, all Defendants, and each of them, are liable to  
3 Plaintiffs for violation of their federal and California civil rights under the *Bane Act*, Cal. Civil Code  
4 §52.1, in that they interfered by threats, intimidation, or coercion with the Plaintiffs' rights to freely  
5 assemble and to engage in free speech in Cesar Chavez Park, in violation of the First and Fourteenth  
6 Amendments to the U.S. Constitution and in violation of Article 1, Sections 1 and 2 of the California  
7 State Constitution. As a direct and proximate result of Defendants' violations of Plaintiffs' civil and  
8 constitutional rights under the *Bane Act*, Plaintiffs have suffered harm. Under Civil Code §52. Plaintiffs  
9 are entitled to an award of up to three times their actual damages, to exemplary damages in an amount to  
10 be determined by the Jury, to a civil penalty of \$25,000 for each violation of their rights; and to  
11 attorneys' fees to be determined by the Court.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs seeks Judgment as follows:

14 1. Upon Count One of their Complaint, a declaration that Sacramento City Code § 12.72.090  
15 is unconstitutional under the First and Fourteenth Amendments to the United States Constitution, both on  
16 its face and as applied; and,

17 2. Upon Count Two of their Complaint, a temporary restraining order, preliminary  
18 injunction and permanent injunction enjoining the Defendants, their officers, agents, servants, employees  
19 and those acting in concert and participation with them, who receive actual notice of the injunction by  
20 personal service or otherwise, from enforcing Sacramento City Code § 12.72.090 against them; and,

21 3. Upon Count Three of the Complaint, compensatory damages in an amount to be  
22 determined at trial;

23 4. Upon Court Four of the Complaint, compensatory and exemplary damages in an amount  
24 to be determined at trial; and

25 5. Upon all counts of the Complaint, the costs and expenses in maintaining this action,  
26 including Plaintiffs' reasonable attorneys' fees, as well as any other relief, whether legal or equitable, to  
27 which Plaintiffs may be entitled.  
28

1 DATED: November 1, 2011

Respectfully Submitted,

2 /s/ "Mark E. Merin"

3 By: \_\_\_\_\_

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23 Attorneys for Plaintiffs

24 **VERIFICATION**

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

28 I declare under penalty of perjury that the foregoing is true and correct and that this Verification  
was executed on this 1<sup>st</sup> day of November, 2011, at Sacramento, California.

/s/ "Mark E. Merin"

\_\_\_\_\_  
Mark E. Merin