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12 *San Diego Puppy, a business entity*

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

15 SAN DIEGO PUPPY, INC., a California
16 corporation; DAVID SALINAS and
17 VERONICA SALINAS, husband and
18 wife;

19 Plaintiffs,

20 v.

21 THE CITY OF SAN DIEGO, a
22 California municipality; SAN DIEGO
23 ANIMAL DEFENSE TEAM, business
24 entity of unknown form; ANIMAL
25 PROTECTION AND RESCUE
26 LEAGUE, a California 501(c)(3)
27 corporation; COMPANION ANIMAL
28 PROTECTION SOCIETY, Delaware
non-profit corporation; BRYAN
PEASE, a California resident; SAN
DIEGO HUMANE SOCIETY, a
California corporation; BLACK
CORPORATIONS 1 -100, inclusive;
WHITE PARTNERSHIPS, 1 – 100,
inclusive; and DOES 1-300, inclusive,

Defendants.

Case No. '13CV2783 BTM DHB

VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT;
INJUNCTIVE RELIEF; AND
DAMAGES



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28



1 Plaintiffs San Diego Puppy, Inc. and David and Veronica Salinas
2 (collectively, “San Diego Puppy”) hereby submit the following claims against
3 Defendant City of San Diego, Defendants San Diego Animal Defense Team,
4 Animal Protection And Rescue League, Companion Animal Protection
5 Society, Bryan Pease, San Diego Humane Society, and fictitiously named
6 Defendants:

7 **Preliminary Statement and Background of Events.**

8 1. San Diego Puppy has been operating in the City of San Diego
9 (“City”) as a pet store selling healthy, regulated puppies since late 2011.

10 2. San Diego Puppy is the only pet store in the City that is/was
11 selling purebred and other high-quality puppies that are not purported to be
12 from a rescue or shelter retail facility.

13 3. The puppies at San Diego Puppy came from licensed and
14 regulated breeders throughout the country, and were selected for their
15 quality and health.

16 4. The new ordinance, San Diego Municipal Code, Health & Safety
17 Code Section 42.0706 (“Ordinance”) was enacted after Salinas was quoted
18 in the media as standing up for the freedom to choose a pet. The Ordinance
19 purports to regulate the source of dogs offered to the public for purchase,
20 and blatantly favors California non-profits over for-profit businesses.¹

21 5. The Ordinance deprives Plaintiffs of the right to sell dogs from
22 any sources not preferred in the Ordinance, thus effectively depriving
23 Plaintiffs the right to continue their business, and depriving Plaintiffs of
24 their right to be treated equally under the law.

25
26
27 ¹ The City of San Diego tendered a draft complaint to Plaintiffs shortly after the
28 Ordinance was in force. That complaint was premised on unfair competition under
Business and Professions Code § 17200, *et seq.* There was no criminal or other cause of
action for violation of the Ordinance, *per se.*

1 6. Until September 5, 2013, selling dogs at a pet store was legal
2 under all applicable federal, state, county and San Diego city laws.

3 7. The Ordinance was the result of animus that was fostered by
4 activist organizations and coupled with the pre-existing antipathy on the
5 party of certain City councilmembers.

6 8. Activists manipulated the pre-existing animus on the part of the
7 City councilmembers by providing exaggerated statistics and promoting
8 sham rationales for the Ordinance in order to gain a market advantage.

9 9. The bill was named the Companion Animal Protection
10 Ordinance, despite the fact that the bill does not in any way purport to
11 protect animals, but only bans the sale at pet stores with the purpose of
12 encouraging sales at rescue and shelter retail facilities. See Comments by
13 Dr. Weitzman, at ¶ 20, above.²

14 10. Indeed, according to Alex Bell, a member of Ms. Zapf's staff who
15 gave the introductory remarks at the July 9, 2013 council meeting:

16 The goal of this ordinance is to make San Diego a
17 humane city, by joining the twelve California cities,
18 including Los Angeles and Chula Vista, who have
19 already adopted similar ordinances. **While this
20 originated from a desire to stop the
21 inhumane importation of puppy mill
22 puppies, cats and rabbits, the City's role in
23 this is really consumer protection for San
24 Diegans.** It is aimed at stopping unsuspecting
25 customers from buying animals that are poorly bred,
26 have genetic health problems and behavioral
27 problems. As you will see in the working group
28 presentation, **puppy mill puppies have higher
instances of health and behavioral problems**
which can often add up to unforeseen costs for
customers.³

26 _____
27 ² The statements were made at the July 9, 2013 public hearing which can be accessed at
http://granicus.sandiego.gov/MediaPlayer.php?view_id=3&clip_id=5847.

28 ³ http://granicus.sandiego.gov/MediaPlayer.php?view_id=3&clip_id=5847 (2:26:32-39) (emphasis added).

1 11. This ignores well-established California law, and the guarantees
2 to purchasers from pet stores. Moreover, Carlsbad City Council recently
3 concluded after conducting an investigation independent from the Activists
4 canned assertions, only a small number of breeders appear to be unethical,
5 and pet stores are not the problem.

6 12. In addition to the puppy lemon laws in place, pet store puppies –
7 unlike shelter dogs – come with guarantees of health. See Lockyer-Polanco-
8 Farr Pet Protection Act. A true and correct copy of the San Diego Puppy
9 Guarantee is attached hereto as Exhibit 1 and made a part of this Complaint.

10 13. Animal activists have been around at least since 1933, when the
11 Tierschutzgesetz, or animal protection law, was introduced in Germany. In
12 the 1970's writers and activists formed the Animal Liberation Front, which
13 came to the attention of Homeland Security as recently as 2005.

14 14. By 2006, the Humane Society of United States' ("HSUS")
15 lobbyist Wayne Pacelle was so deeply entrenched in governmental affairs
16 that the bulk of HSUS funds – at least 98% – raised under the guise of
17 helping homeless pets, were actually retained in the central HSUS
18 organization in Washington.⁴ Out of the \$133,577,658 in total annual
19 revenue⁵ reflected on the 2011 HSUS Form 990, HSUS paid salaries and
20 "other compensation" of \$37,788,110, professional fund raising of
21 \$4,343,746 and over \$11,000,000 on advertising.

22 15. While the name "Humane Society" is attached to numerous
23 shelters, upon information and belief, HSUS gave exactly zero (\$0.00) to
24 any affiliate.⁶

25 ⁴ <http://www.humanewatch.org/images/uploads/DeceptiveFundraisingPracticesofHSUS.pdf>
26 (visited 10/31/2013)

27 ⁵ \$122,743,278 of that from "contributions and grants", and \$2,735,672 from "program
28 service revenue". <http://www.guidestar.org/FinDocuments/2011/530/225/2011-530225390-08c39a19-9.pdf> (visited 10/23/2013).

⁶ HSUS Washington DC's 2011 990 Form

1 16. HSUS had total reported net assets and fund balances of
2 \$183,215,830 in 2011.⁷

3 17. Many shelters and/or rescues purchase dogs from “puppy mill
4 auctions”.⁸ Others import dogs from Mexico or Romania.⁹ Indeed, as many
5 as 300,000 puppies a year are being imported, based on early estimates
6 from 2007, according to G. Gale Galland, veterinarian in the Center for
7 Disease Control’s Division of Global Migration and Quarantine.¹⁰

8 18. The Border Puppy Task Force in California estimates that
9 10,000 puppies entered San Diego County from Mexico in just one year.
10 Upon information and belief, some of these were only a few weeks old. *Id.*

11 19. Purchases by retail shelter or retail rescue organizations are
12 made with funds collected from, *inter alia*, donations and “rehomeing” fees.

13 20. Dogs in retail shelter or retail rescue facilities are frequently
14 misidentified as one breed or another, with little idea what the lines or
15 breeding behind the dog actually might be.¹¹

16 21. Many shelters, including San Diego County Animal Control
17 shelters have a surplus of Pit Bulls and Chihuahuas, the latter likely are the
18 result of importation from Mexico. According to the San Diego Animal
19 Welfare Coalition statistics for 2012-2013, the number of dogs at the County

20
21 <http://www.guidestar.org/FinDocuments/2011/530/225/2011-530225390-08c39a19-9.pdf> (visited 10/23/2013).

22 ⁷ <http://www.guidestar.org/FinDocuments/2011/530/225/2011-530225390-08c39a19-9.pdf>

23
24 ⁸ <http://www.petfinder.com/shelters/IN390.html> ;
<http://www.petfinder.com/shelters/mi542.html>

25 ⁹ <http://www.bajadogrescue.org/about-us/> ; *see also*
26 <http://www.allcitydogs.com/indexmain.php?city=Salinas&state=ca&sname= California>

27 ¹⁰ <http://abcnews.go.com/Health/Story?id=3765973&page=1> (visited 11/5/2013).

28 ¹¹ “Even though we’re calling them German shepherd mixes, they’re probably not,” said Lisa Czarniak, lead animal care technician at Helen Woodward.
<http://legacy.utsandiego.com/news/northcounty/20070627-9999-1mc27pups.html>

1 of San Diego Animal Shelters included 111 transferred in from other cities,
2 and 44 that died or were “lost” in shelter custody.

3 22. In either the county or retail shelter/rescue scenario, puppies
4 tend to be more expensive than older dogs, and title to dogs is transferred
5 only after payment by the purchaser.

6 23. Upon information and belief, the City does not track the number
7 of dogs returned to shelters by prior purchasers. However, at least one
8 study reports that 50% of all dogs relinquished for behavioral problems
9 were adopted from a shelter.¹² In California, 38% of the dogs relinquished
10 to shelters are released for behavioral reasons. *Id.*

11 24. Typically, owners that return dogs do so within three months of
12 “rescuing” them from shelters. Of course, raising a puppy allows an owner
13 to train it and modify its behavior more easily than is often possible with an
14 older dog that has been mistreated previously. As stated by Salmon, *et al.*
15 *supra* at fn. 8, dogs relinquished for behavioral reasons tend to be older.

16 25. San Diego Puppy does not buy dogs at auction or import dogs
17 from other countries.

18 26. San Diego Puppy handles only puppies from licensed, regulated
19 and inspected U.S. breeders.

20 27. No evidence exists that puppies from San Diego Puppy end up in
21 shelters.

22 28. The dogs from San Diego Puppy are microchipped, so should
23 one be picked up by a shelter, it can be identified and returned to its owner.

24 _____
25 ¹² JOURNAL OF APPLIED ANIMAL WELFARE SCIENCE, 3(2), 93–106, Salman, Mo, et
26 al. Copyright © 2000, Lawrence Erlbaum Associates, Inc. (“Owners relinquishing a dog
27 for behavioral reasons only were more likely to report having acquired a dog from a
28 shelter (50%) There is a strong association between the addition of a dog from a
shelter and the relinquishment of a dog to a shelter for behavioral reasons. Therefore, an
intervention strategy for educating owners and training dogs in a shelter environment
may contribute to the reduction of relinquishment.”)

1 29. Should an owner choose not to keep a puppy purchased from
2 San Diego Puppy, the company will assist with re-homing so that there is no
3 need to release the puppy to a shelter. There is no requirement that San
4 Diego Puppy take these extra steps, but they do.

5 30. San Diego Puppy, along with a sister store operating legally in
6 Oceanside, California, is the primary source of income for Plaintiffs David
7 and Veronica Salinas, as well as the employees of San Diego Puppy. San
8 Diego Puppy is a registered California corporation and all business and
9 other licenses for San Diego Puppy are current.

10 **An Improper Collusion Between Councilmembers and Activists**
11 **was Behind the Promulgation of the Ordinance.**

12 31. At least as early as 2012, unbeknownst to Plaintiffs, CAPS began
13 a concerted scheme to obtain a ban on pet stores in San Diego. To do so,
14 upon information and belief, CAPS worked in concert with Animal
15 Protection and Rescue League (“APRL”), Bryan Pease, San Diego Humane
16 Society and SPCA and San Diego Animal Defense Team (collectively
17 “Activist Defendants”), and with a “playbook” put out by HSUS. That
18 playbook is formally captioned “A Guide to Using Local Ordinances to
19 Combat Puppy Mills”.

20 32. Among the tactics recommended by the HSUS playbook is that
21 the group trying to change legislation “find a friend in office.”

22 33. Consistent with that directive by HSUS, upon information and
23 belief, CAPS and other Activist Defendants selected two council members
24 with known antipathy toward pet sales, Marti Emerald and Lori Zpaf.

25 34. Upon information and belief, at the Activist Defendants’ urging,
26 Marti Emerald and Lori Zapf as chair and vice-chair, respectively, used their
27 Public Safety and Neighborhood Services Committee as a base to create a
28 “working group”. Upon information and belief, the working group was
comprised solely of Defendant Activists, and headed by Emerald and Zapf.

1 Upon information and belief, the sole purpose of the working committee
2 was to formulate a plan to shut down San Diego Puppy, the only pet store
3 selling dogs that did not work with the Activist Defendants, or any of them.

4 35. On or about May 1, 2013, Emerald introduced the proposal to
5 ban the transfer of dog ownership of any dog that was not from a non-profit,
6 the county or a “humane society.”

7 36. The Ordinance as proposed is part of the City’s Health and
8 Safety Code, and facially and actually acts as a market regulator in that it
9 prohibits sales of dogs from any out-of-state breeder by any for-profit
10 corporation, while giving *carte blanche* to California non-profits, humane
11 societies or county shelters to obtain dogs from anywhere without the City of
12 San Diego asking any questions regarding the origin or source of the dog.

13 37. Councilwoman Emerald is quoted in the news as stating
14 erroneously and inappropriately that “unsuspecting consumers here in San
15 Diego and in other places also pay the price” of purchasing offspring of
16 unhealthy, inbred dogs from substandard breeding facilities, dubbed “puppy
17 mills” by activists. She also stated without any basis in fact as applied to San
18 Diego Puppy that “[c]onsumers are coming in, they’re paying top dollar for
19 these animals,” said Emerald. “Then they get the dogs home and they get
20 sick, and the vet bills start rolling in.”¹³ She cited no authority, facts or
21 statistics for her incorrect assertions.

22 38. As pointed out by Mike Canning, president and CEO of the Pet
23 Industry Advisory Council, puppies in a retail setting are regulated from the
24 time they are bred until they are sold. According to Mr. Canning, the San
25 Diego proposal would have the “unintended consequence” of making pet
26 transactions fully unregulated. This is true because purebred dogs are rarely

27
28 ¹³ <http://fox5sandiego.com/local-news/stories/city-considers-pet-store-ban-on-dog-cat-rabbit-sales/#ixzz2ggSOMKeK> (visited 11.22.2013).

1 available through the shelter retail facilities mandated by the Ordinance,
2 and purebred puppies are essentially non-existent in such facilities.
3 Accordingly, prospective pet purchasers would be forced to look at
4 potentially unregulated sources.

5 39. San Diego Puppy offers a return guarantee if any puppy is found
6 to be ill. As a separate service, San Diego Puppy also offers assistance in re-
7 homing the puppy if the purchaser decides they do not want to keep the
8 puppy for any reason. All of San Diego Puppy's dogs are microchipped and,
9 thus, identifiable should they ever become lost and picked up by animal
10 control or taken to the county. While California law and the Uniform
11 Commercial Code mandate the full warranty and other guarantees, there is
12 no requirement that San Diego Puppy assist with re-homing or
13 microchipping the puppies.

14 40. California's Lemon Law and the Uniform Commercial Code
15 ("UCC") and other state laws apply to retail sales such as those by San Diego
16 Puppy. These laws do not apply to county or non-profit retail sales.

17 41. Upon information and belief, sellers claiming to be non-profit
18 organizations do not pay sales tax on the money they collect from
19 purchasers.

20 42. At the initial hearing on this matter on or about May 1, 2013,
21 there was a prepared presentation by those in favor of the ban, *i.e.*, those in
22 the working group. That presentation was originally to run for only ten (10)
23 minutes.¹⁴ However, Emerald, acting for the City Council, permitted the
24 pro-ban contingent to go on for an additional ten minutes.

25 43. Opponents were only permitted to speak after providing their
26 names, and then were given three minutes. At the end of that time,
27 regardless of how many interruptions resulted from the proponents' shouts,

28 ¹⁴ http://granicus.sandiego.gov/MediaPlayer.php?view_id=15&clip_id=5752

1 claps, boos and taunts, speakers in opposition were abruptly cut off at the
2 close of that three minutes.

3 44. Conversely, upon information and belief, numerous speakers in
4 favor of the ban were permitted more than the allotted three minutes.

5 45. Councilwoman Emerald announced the May 1, 2013 meeting by
6 stating that there was a “working group looking at our municipal code and a
7 possible amendment that would prohibit the sale of dogs, cats, rabbits and
8 so forth in pet shops, retail business or other commercial establishments
9 that come from puppy mills.”¹⁵

10 46. The working group included Councilwoman Zapf and Gary
11 Weitzman, president and CEO of the San Diego Humane Society. The
12 balance of the working group was comprised of representatives from
13 Companion Animal Protection Society, Animal Defense Team, Animal
14 Protection and Rescue League (collectively “Working Group”).

15 47. Upon information and belief, the Working Group did not include
16 any individuals or groups opposed to such a ban. Upon information and
17 belief, the opponents of the ban were not apprised of nor invited to join this
18 Working Group.

19 48. Weitzman stated that the point of the ban is to prohibit the sale
20 of dogs and puppies, cats and kittens in “commercial retail establishments.”
21 He acknowledged that purebred dogs are often not found in shelter or
22 rescue environments. (“sometimes you can get them there, but not always”).
23 The stated purpose, according to Weitzman, was also to discourage the
24 transport and import of dogs from unregulated sources, including
25 importation from Mexico. Weitzman stated that the point was “not to
26 decrease euthanasia necessarily or to increase adoptions.” He described

27
28 ¹⁵ http://granicus.sandiego.gov/MediaPlayer.php?view_id=15&clip_id=5752 (at
1:06:25, et seq.)

1 these goals as “side benefits”. The proponents of the ban stated explicitly
2 that these retail shelter or retail rescue businesses represent a “viable
3 business model.”

4 49. According to publically filed documents, some of these non-
5 profit operations realize proceeds in excess of \$499,000 annually. The San
6 Diego Humane Society and SPCA, for example, had net assets in 2011 of
7 \$60,092,035, with \$17,776,734 in revenue for that year alone.

8 50. Humane Society of the United States acknowledged revenue in
9 2011 in excess of \$183,000.¹⁶

10 51. Even a small non-profit such as “Homeward Bound CSP, Inc.”
11 had net assets at the beginning of 2011 of \$72,988. Upon information and
12 belief, these figures come from contributions and “program services” such as
13 the transfer of dogs to purchasers.

14 52. With more than 750 “rescue” operations listed on the IRS.gov
15 site in California alone,¹⁷ and more than 300 believed to be operating in San
16 Diego, these corporations -- with names like “Animal Rescuers Without
17 Borders Inc.”, “Baja Animal Sanctuary”, “No Wagging Tail Left Behind”,
18 “Heart Bandits American Eskimo Dog Rescue”, “Saving Pets One at a Time”
19 and “Pacific Animal Rescue and Sanctuary” -- are big business.¹⁸

20 53. Upon information and belief, many of the retail shelter or retail
21 rescue organizations, including “Pacific Animal Rescue and Sanctuary”, or

22 _____
23 ¹⁶ <http://www.humanewatch.org/hsus-sheds-crocodile-tears-while-rescues-close/>; See
24 also Form 990 filed by HSUS for 2001
(<http://www.guidestar.org/FinDocuments/2011/530/225/2011-530225390-08c39a19-9.pdf>)

25 ¹⁷ These are just the 501(c)(3) corporations with “rescue” in their names.
26 <http://apps.irs.gov/app/eos/pub78Search.do?ein1=&names=rescue+&city=&state=CA&country=US&deductibility=NONE&dispatchMethod=searchCharities&submitName=Search>
27 [rch](#) (visited 10/23/2013).

28 ¹⁸ <http://www.guidestar.org/FinDocuments/2012/951/661/2012-951661688-08e3e4f5-9.pdf>

1 “Small Paws Rescue, Inc.”, are not even California corporations or
2 authorized to do business in California. Small Paws Rescue, Inc., for
3 example, is an Oklahoma corporation.

4 54. The California Department of Corporations links Small Paws
5 Rescue, Inc., to an entity called “Frosty Paws and Friends, Small And
6 Medium Breed Dog Rescue, Inc.”, a suspended corporation. Small Paws
7 Rescue, Inc. is listed as a non-profit out of Tennessee.

8 55. “UCARE Rescue Group” asks people to send money to an Elk
9 Grove, California address, but it is not registered as a California corporation.
10 Rather, they are a Texas corporation.

11 56. The ironically titled “Heart Bandits” is not a California
12 corporation, despite a website that asks people to send money to a post
13 office box in Fresno, California. Heart Bandit’s website asserts the company
14 is an Ohio Corporation, complete with articles of incorporation posted on
15 their website.

16 57. The Ohio Secretary of State does not list “Heart Bandits” as an
17 Ohio corporation, non-profit or otherwise. Indeed, the articles of
18 incorporation state that Mr. Ronald K. Nims is the sole incorporator. Nims
19 is an attorney in Ohio with dozens of for-profit corporations, but Heart
20 Bandits is not among them. This is particularly curious since the IRS
21 apparently believes that Heart Bandits is in Fresno, California. Despite the
22 many questions regarding their status, each of these corporations and
23 entities are included as rescue “partners” with the City of San Diego. See
24 Exhibit 2, attached hereto and made a part of this Complaint.

25 58. None of the dogs at San Diego Puppy come from “puppy mills”
26 or from substandard breeders of any type.

27 59. There is no statutory definition of “puppy mill”. Upon
28 information and belief, the term is one that was coined by activists. It is

1 applied indiscriminately to any breeding program. It is consistently used as
2 a pejorative term for any breeder – regardless of number of breedings or
3 quality or care – and applied with special venom to breeders located in the
4 Midwest.

5 60. At the July 9, 2013 reading of the proposed Ordinance,
6 opponents were again restricted in their ability to present coherent
7 arguments against the ban.

8 61. Following presentations by the working group of activists,
9 opponents of the ban were given one (1) minute to speak.

10 62. During this brief time, the comments of opponents to the ban
11 were frequently interrupted by vocal proponents of the ban. These unruly
12 proponents were not controlled or asked to leave by the council. It was in
13 that climate that San Diego adopted the ordinance currently known as San
14 Diego Municipal Code 42.0706, a Health and Sanitation Ordinance in the
15 San Diego Municipal Code. A true and correct copy of the SD Municipal
16 Ordinance is attached hereto as Exhibit 3 is attached hereto and made a part
17 of this Complaint.

18 63. Upon information and belief, and consistent with the City's
19 policy and/or custom, prior to the adoption of the Ordinance, neither the
20 City nor the City Council had completed an independent study regarding
21 either the number of purebred dogs in the local shelters, the number of
22 independent breeders or number of breeder sales, or the percentage of
23 microchipped purebred dogs in the local shelters.

24 64. Upon further information and belief, and consistent with the
25 City's policy and/or custom, prior to the adoption of the Ordinance, neither
26 the City nor the City Council had conducted an independent investigation
27 into the conditions in shelters, the handling and/or maintenance of dogs in
28

1 such shelters, the re-relinquishment rates of shelter dogs, or the source of
2 the shelter dogs.¹⁹

3 65. Upon information and belief, and consistent with the City's
4 policies and/or custom, prior to the adoption of the Ordinance, neither the
5 City nor the City Council had looked at the profit being made by retail
6 shelter and rescue groups in the San Diego area from the importation and
7 sale of dogs.

8 66. Although various activist groups claim that puppies are available
9 from shelters for between \$35 to \$65, in reality the prices are frequently
10 between \$175 to \$225, per dog, with puppies being most expensive. True
11 and correct copies of photographs with signs by protesters asserting \$35
12 puppies and exemplar listings from actual San Diego County shelters
13 showing higher prices are attached hereto as Exhibit 4, and made a part of
14 this Complaint.

15 67. The activist groups indiscriminately mingle these cheap puppy
16 signs with disparaging and erroneous assertions that San Diego Puppy sells
17 puppies from substandard breeders or, in activist parlance, "puppy mills."²⁰

18 68. Upon information and belief, there are more than 300 different
19 retail shelter or retail rescue facilities already selling pets in the San Diego
20 area. Upon further information and belief these organizations are not

21 ¹⁹ While some statistics exist as to the number of dogs in the county shelters from the
22 public, there are dogs that are brought into county shelters from "San Diego Animal
23 Welfare Coalition", but it is not clear exactly who is in the "coalition." The term "San
24 Diego Animal Welfare Coalition" leads directly back to the San Diego Humane Society
25 and SPCA ("SDHumane") website. That entity's principal officer is Gary Weitzman, who
26 was part of the Working Group. SDHumane had revenue in 2011 of \$17,776,734, and
27 paid salaries and benefits in the amount of \$12,607,438 during that same year.

28 ²⁰ Apparently, the activists feel that price is the determinative factor in selecting a pet, an
animal that should be a life-long commitment for the purchaser, and one that will entail
various significant costs over its life. They apparently fail to consider how someone who
can only afford \$35 for the purchase of a pet can afford to care for the pet properly, and
fail to consider the costs associated with the high rate of re-relinquishment of shelter
pets.

1 inspected regularly and are neither licensed nor regulated as breeders or pet
2 stores.

3 69. In San Diego County, retail shelter or retail rescue facilities
4 import dogs from foreign countries such as Mexico and/or Romania. *See*
5 Publications by Baja Rescue and ABC Chanel 10 News. A true and correct
6 copy of the Channel 10 news item is attached hereto as Exhibit 5, and made
7 a part of this complaint. A true and correct copy of the Baja Rescue “About
8 Baja Dog Rescue” is attached hereto as Exhibit 6 and made a part hereof.

9 70. Although California has one of the strictest “Lemon Laws” in the
10 country (Cal. Health & Saf. C. § 122160), the law does not apply to dogs from
11 retail shelter or retail rescue organizations. *See* Cal Health & Saf. C. §
12 122125(d) (“This article shall not apply to publicly operated pounds and
13 humane society”).

14 71. The California Health and Safety Code, §§ 122125-122220
15 regulating the care and handling of dogs for sale (Lockyer-Polanco-Farr Pet
16 Protection Act) does not apply to retail shelter or retail rescue facilities. Cal
17 Health & Saf. C. § 122125(d).²¹ Conversely, these laws do apply to San Diego
18 Puppy.

19 72. Prior to the passage of the Ordinance, pet stores were highly
20 regulated. The retail shelter or retail rescue facilities in San Diego are, to a
21 large degree, unregulated.²²

22 73. Upon information and belief, San Diego Puppy was the only pet
23 store regularly selling purebred puppies that are under six months of age in
24 the City of San Diego.

25
26 _____
27 ²¹ The primary mandate appears to be that shelter dogs be spayed or neutered. *See* Food
& Agr. Code, § 30503.

28 ²² The primary exception to this seems to be the mandatory spay and neuter
requirements. *See* Food and Agriculture Code § 30501.

1 74. The puppies at San Diego Puppy came from licensed breeders,
2 and such puppies are regulated from the time they are bred through the date
3 of sale. Even after they are sold, laws are in place to both prevent strays and
4 prevent inhumane treatment of dogs. *See, e.g.*, Cal. Pen. C. 597; licensing
5 laws relating to dogs owned by San Diego residents.

6 75. Further, and based upon the statements at the City Council
7 meeting when the Ordinance was finally introduced to the public, it is clear
8 that a significant number of the City Councilmembers have considerable
9 animus against any puppy sales and purebred dogs. That animus was
10 particularly directed at San Diego Puppy.

11 76. At the July 9, 2013 meeting, Zapf stated that in March the
12 council heard a presentation from the Companion Animal Protection Society
13 (“CAPS”) about banning pet stores. She then stated that this was an “issue
14 that is near and dear to me” because she had recently adopted a rescue dog,
15 and had two staff members that had adopted a dog—one from an “out of
16 state puppy mill”—that had health problems. It was on this basis that she
17 agreed to form the Working Group. According to Zapf, that group was made
18 up of the City Attorney’s Office, CAPS, the San Diego Humane Society,
19 Animal Defense Team, as well as the Animal Protection and Rescue League,
20 all came together to draft an Ordinance. It was then presented to the
21 committee.

22 77. According to Zapf, it was Emerald who “kicked off the discussion
23 in her committee.” Zapf stated that Emerald is “a very strong supporter of
24 this issue.”

25 78. The failure to listen to or include any representative that was not
26 associated with an activist agenda shows the City’s disdain for any opposing
27 views and further demonstrates the general animus of the City toward pet
28 stores.

1 79. Later media reports indicate that “The San Diego Animal
2 Defense Team” (“ADT”) had been “meeting with Mayor Bob Filner and the
3 San Diego City Council to enact an ordinance that will ban the retail sales of
4 puppies, kittens and rabbits.”²³

5 80. Upon information and belief, the retail shelter or retail rescue
6 organizations are well aware that not all pet stores sell dogs from
7 substandard breeders, and further that their actions to ban pet stores yield a
8 significant economic advantage for any retailer doing business as an alleged
9 retail shelter or retail rescue facility. These facilities, in turn, are believed to
10 contribute back to SDHumane and HSUS. It is this economic advantage,
11 also realized through public contributions, donations and “rehoming fees”
12 that motivates the ban on pet stores.

13 81. This economic advantage is reflected in the comments of
14 Weitzman in San Diego and another HSUS representative in Oceanside,
15 when they stated that: (1) the “humane” model is a viable business model;
16 and (2) the San Diego Ordinance’s primary goal was to increase sales at
17 commercial establishments using the business model that is tied into and
18 promoted by the activist groups. *See* Weitzman’s comments, *supra*, at ¶ 20.

19 **The Ordinance**

20
21 82. The City Council ultimately passed an Ordinance on August 5,
22 2013 (“Accepted Ordinance”), Ordinance No. O-20280, in pertinent part:

23 WHEREAS, the **Companion Animal Protection**
24 **Society presented a report to the Committee**
25 on Public Safety and Neighborhood Services
(PS&NS) on March 13, 2013; and

26 . . .

27
28 ²³ <http://www.examiner.com/article/san-diego-may-be-next-city-to-ban-retail-sales-of-animals-endorsements-needed> (visited 10/8/13)

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WHEREAS, the need exists to regulate pet shops, retail businesses, and other commercial establishments that sell companion animals; and . . .

WHEREAS, **according to the Humane Society** of the United States, hundreds of thousands of dogs and cats in the United States have been housed and bred at substandard breeding facilities known as "puppy mills" or "kitten factories" that mass-produce animals for sale to the public, and **many of these animals are sold at retail in pet shops;** and

WHEREAS, because of the lack of proper animal husbandry practices at these facilities, animals born and raised at these "puppy mills" and "kitten factories" are more likely to have genetic disorders and lack adequate socialization, while breeding animals utilized there are subject to inhumane housing conditions and are indiscriminately disposed of when they reach the end of their profitable breeding cycle; and

WHEREAS, **prohibiting the unregulated sale of companion animals in pet shops,** retail businesses, or other commercial establishments **may lower the sale of dogs and cats from inhumane "puppy mills" and "kitten factories,"** **may lower the shelter animal euthanasia rate,** and lead to a greater adoption rate of shelter animals; . . .

WHEREAS, the City seeks to prohibit the sale of companion animals in pet shops, retail businesses, and commercial establishments unless the animals are obtained from a city or county animal shelter or animal control agency, humane society, or non-profit rescue organization; and

WHEREAS, the **PS&NS Committee**, after hearing the testimony and evidence presented, **directed a working group of animal organizations,** City staff, and the City Attorney's Office to draft an ordinance regulating the sale of companion animals in pet shops, retail businesses, and commercial establishments; and

§42.0706 Pet Shops - Prohibition of the Sale of Dogs, Cats, and Rabbits

(a) It is unlawful for any person to display, offer for sale, deliver, barter, auction, give away, transfer, or sell any live dog, cat, or rabbit in any pet shop, retail business, or other commercial establishment located in the City of San Diego, unless the dog, cat, or rabbit was obtained from a city or county animal shelter or



1 animal control agency, **a humane society**, or a
 2 **non-profit rescue organization**. All pet shops,
 3 retail businesses, or other commercial
 4 establishments selling dogs, cats, or rabbits shall
 5 maintain a certificate of source for each of the
 6 animals and make it available upon request to
 7 animal control officers, law enforcement, code
 8 compliance officials, or any other City employee
 9 charged with enforcing the provisions of this section.

10 (1) For purposes of this section, a *commercial*
 11 *establishment* is defined **as any for-profit**
 12 **business enterprise, including a sole**
 13 **proprietorship** engaged in retail or wholesale
 14 commerce related to dogs, cats, and rabbits,
 15 including grooming parlors, canine day
 16 care, and boarding facilities.

17 (2) For purposes of this section, a *non-profit rescue*
 18 *organization* is defined as any **California non-**
 19 **profit** corporation that is exempt from taxation
 20 under Internal Revenue Code section 501(c)(3),
 21 whose mission and practice is, **in whole or in**
 22 **significant part**, the **rescue and placement** of
 23 dogs, cats, or rabbits; or **any non-profit**
 24 **organization that is not exempt from taxation**
 25 **under Internal Revenue Code section 501**
 26 **(c)(3)** but is currently an active **rescue partner**
 27 with a City or County of San Diego shelter or
 28 **humane society, whose mission is, in whole**
or in significant part, the rescue and
placement of dogs, cats, or rabbits.

(3) For purposes of this section, a *certificate of*
source is defined as any document from the source
 city or county animal shelter or animal control
 agency, **humane society**, or *non-profit* rescue
 organization declaring the source of the dog, cat, or
 rabbit on the premises of the pet shop, retail
 business, or other *commercial establishment*. (bold
 and underline emphasis added; italics original). See
 Exhibit 7 (Ordinance as Passed on August 5, 2013,
 attached hereto and made a part of this Complaint as
 though fully set forth.)

83. Thus, the Ordinance looks to the form of the seller first. If it is a
 non-profit with its “mission and practice is, in whole **or in significant**
part, the rescue and placement of dogs, cats, or rabbits”, the source of the
 pet is never considered. The Ordinance states that this is equally true if the
 “*commercial establishment*”—defined so as to include anyone selling a dog

///

1 for profit—is not, in fact, a non-profit, so long as it is partnered with the City
2 or County of San Diego shelter or humane society.

3 84. Despite the language in the Ordinance, in order to become a City
4 partner, the organization must be a 501(c)(3) status or state nonprofit
5 corporation status. This option is not available to a for-profit pet store,
6 regardless of the benefits the pet store may offer, or the degree of
7 compliance with the City’s stated goals.

8 85. A for-profit pet store could not, under this Ordinance, become a
9 City Partner, even if it was willing to devote 90% of its retail space to selling
10 shelter dogs. Attached hereto as Exhibit 8 and incorporated by reference is
11 a true and correct copy of the County of San Diego Department of Animal
12 Services Rescue Partner Information and Application, which clearly states
13 that only 501(c) that “[t]he Department of Animal Services partners with
14 only those organizations that have a 501(c)(3) status or state nonprofit
15 corporation status.” Thus, the Department of Animal Services looks first to
16 the corporate form, and considers it a determinative factor in forming
17 partnerships related to animals.

18 86. The Ordinance is internally inconsistent and vague. First, it
19 states the source must be from a non-profit (“a *non-profit rescue*
20 *organization* is defined as any **California non-profit** corporation that **is**
21 **exempt** from taxation under Internal Revenue Code section 501(c)(3)”).
22 Next it states that the source could be from a “non-profit” that is “not
23 exempt” from paying taxes. It is not clear if the corporation must be a
24 California corporation or one that is registered in California as a foreign
25 corporation, or merely one that is operating in California.

26 87. Further, the Ordinance permits the sale of dogs from a “humane
27 society, whose mission is, in whole or in significant part, the rescue and
28 placement of dogs, cats or rabbits.” The Ordinance states the “rescue” must

1 engage “in whole or significant part, [in] the rescue or placement of dogs,
 2 cats, or rabbits”. But the phrase “significant part” is not defined. The
 3 definition conflicts with Food and Agriculture Code § 30503’s definition of
 4 “rescue” in that § 30503 requires only “at least one of [the organization’s
 5 purpose] being the sale or placement of dogs that have been removed from a
 6 public animal control agency or shelter . . . or that have been previously
 7 owned by any person other than the original breeder of that dog”. Under
 8 the Ordinance definition, therefore, the term “rescue” remains ambiguous.
 9 If we presume we are to use the definition in the Food and Agriculture Code,
 10 anyone that resells a previously owned dog would qualify. Without any
 11 specific definition as to the terms “significant part” or “rescue”, the
 12 Ordinance is unclear and overly subjective.

13 88. According to a press release on the CAPS website, CAPS is the
 14 entity that proposed the Ordinance, and the group had worked with the City
 15 for a year before the Ordinance was passed. This means that the City failed
 16 to disclose its intentions until the Ordinance was drafted and, essentially, a
 17 *fait accompli*. Specifically, the CAPS website states:

18 CAPS formally introduced the ordinance on March
 19 13, but talks between the **City of San Diego and**
 20 **the non-profit began back in June 2012**. Other
 21 animal welfare organizations joined forces later on to
 22 assist in the effort. This will be CAPS’ fifth
 23 successfully introduced and passed ordinance of its
 24 kind and the 32nd city in the US with anti-puppy
 25 mill legislation.

26 ‘We got the ordinance we wanted. Getting it passed
 27 has been hard work but when I come home and look
 28 in the eyes of my little puppy mill dog, it makes me
 happy to have participated in making the sale of
 puppy mill dogs illegal in my city,’ said Sydney
 Cicourel, San Diego campaign coordinator for CAPS,
 who’s been working on the ordinance for more than
 a year with the committee.²⁴ (underlining original;
 bold emphasis added).

²⁴ <http://www.caps-web.org/outreach/press-releases>

1 89. As adopted, the Ordinance states:

2
3 (a) It is unlawful for any person to display, offer for
4 sale, deliver, barter, auction, give away, transfer, or
5 sell any live dog . . . in any pet shop, retail business,
6 or other *commercial establishment* located in San
7 Diego, unless the dog . . . was obtained from a city or
8 county animal shelter or animal control agency, a
9 **humane society**, or a *non-profit rescue*
10 *organization*.

11 1. For purposes of this section, a *commercial*
12 *establishment* is defined as **any for-profit**
13 **business** enterprise, including a sole proprietorship
14 engaged in retail or wholesale commerce related to
15 dogs

16 See Exhibit 2, attached hereto and incorporated by reference.

17 **The City has Demonstrated it Plans to Enforce the Ordinance.**

18 90. On September 19, 2013, the City Attorney's office sent San Diego
19 Puppy's landlord, Daniel Smith, a letter asserting he was subject to charges
20 for "aiding and abetting" should Mr. Smith continue to honor the three year
21 contract with San Diego Puppy. A true and correct copy of that letter is
22 attached hereto as Exhibit 9 and made a part of this Complaint.

23 91. On October 1, 2013, Plaintiffs and counsel met with the City
24 Attorney's office to discuss this matter. During that meeting, a San Diego
25 Deputy City Attorney specifically stated that there was no health or safety
26 issue with San Diego Puppy's dogs. Nevertheless, Plaintiffs were provided
27 draft copies of: (1) Complaint for Injunction, Civil Penalties and Other
28 Equitable Relief; (2) Stipulation for Issuance of Preliminary Injunction; and
(3) Stipulated Preliminary Injunction. In subsequent conversations, the
Deputy City Attorney stated that the City Attorney's office will file a version
of that complaint as soon as all evidence has been assembled. The tenor of
these comments was that the filing was imminent.²⁵ True and correct

²⁵ In an abundance of caution, Mr. Salinas moved his puppies to his Oceanside store. The San Diego Puppy store is still under lease. However, because Oceanside recently

1 copies of the Draft Complaint for Injunction, Civil Penalties and Other
 2 Equitable Relief; Draft Stipulated Preliminary Injunction; and Draft
 3 Stipulation for Preliminary Injunction are attached collectively hereto as
 4 Exhibit 10, and made a part of this complaint.

5 92. The initial claim for relief asserted by the City in the Draft
 6 Complaint is not that San Diego Puppy is violating the Ordinance. Rather, it
 7 is that San Diego Puppy is allegedly engaged in unfair competition pursuant
 8 to Business & Professions Code § 17200, and more particularly § 17203 and
 9 § 17206. This claim by the City is strong evidence that the activists are, in
 10 truth, seeking a monopoly.²⁶ Further, it is strong evidence that the City
 11 regards San Diego Puppy and the retail shelter or retail rescue organizations
 12 as competing in the same market.²⁷ The simplest explanation, particularly

13 declined to enact a ban on pet stores and there was a real fear that animal control would
 14 try to take the puppies from San Diego Puppy, they were moved. Plaintiff understands
 15 that if he moves his puppies back to the San Diego Puppy store in San Diego, prosecution
 16 will follow immediately thereafter.

17 ²⁶ Indeed, a neighboring city council for Carlsbad, California, recently enacted and then
 18 repealed a very similar ordinance. Councilwoman Farrah Douglas specifically stated she
 19 was “frustrated the activists had trumped up claims against the [existing Carlsbad pet
 20 store] to further their own mission.” She is also quoted as stating “It’s not the pet stores
 21 who are troublemakers, it’s the breeders.” Douglas is also reported as noting that only a
 22 small number of breeders appeared to be unethical.

19 <http://www.utsandiego.com/news/2013/nov/06/carlsbad-puppy-mill-ordinance-repealed/>
 20 (visited 11/6/2013). San Clemente determined that no pet store ban was
 21 appropriate as pet stores are not a problem. As San Clemente Councilman Bob Baker
 22 stated: “Perfectly acceptable dogs come from pet stores.” Councilman Jim Evert is
 23 quoted as saying: “How can we establish things to force people to go to the pet shelter?”
 24 . . . It just doesn't seem American to me. A puppy mill is a breeder that puts out a lot of
 25 puppies. It could be any breeder.” <http://www.ocregister.com/articles/san-349802-clemente-pet.html>

24 ²⁷ Oceanside and San Clemente determined that no pet store bans were appropriate as
 25 pet stores are not a problem. As San Clemente Councilman Bob Baker stated: “Perfectly
 26 acceptable dogs come from pet stores.” Councilman Jim Evert is quoted as saying: “How
 27 can we establish things to force people to go to the pet shelter? . . . It just doesn't seem
 28 American to me. A puppy mill is a breeder that puts out a lot of puppies. It could be any
 breeder.” <http://www.ocregister.com/articles/san-349802-clemente-pet.html>. In New
 Mexico, “rescues” are even setting up “boutique” stores to provide a retail environment
 for people to purchase dogs. *See, e.g.*, NBCNews.com, Article by Rebeca Dube (“No pups
 for sale? Cities ban pet shops”) dateline 5/27/10.

1 when coupled with the Working Group that is so closely intertwined with
2 the City Council and the Ordinance, is that the City, by and through its
3 council members has a significant animus toward San Diego Puppy, and is
4 doing the bidding of the retail shelter or retail rescue organizations.

5 93. In addition to shutting down his store, the filing of any action by
6 the City will further damage Mr. Salinas' reputation, impact his ability to
7 obtain puppies for sale, force the relinquishment of the San Diego store,
8 force layoffs of twelve employees, and cause David Salinas and his wife
9 additional damages and emotional distress according to proof at trial. As it
10 is, in order to avoid unwarranted prosecution, San Diego Puppy has stopped
11 selling dogs in San Diego. This drastic step is causing significant damages to
12 Plaintiffs and Plaintiffs' employees.

13 **Parties**

14 94. Plaintiff David Salinas is a small businessman, and a resident of
15 the City of San Diego, California. Salinas is the director and Chief Executive
16 Officer for the San Diego Puppy, Inc., Oceanside Puppy and National City
17 Puppy.

18 95. Plaintiff Veronica Salinas is David Salinas' wife, and is a resident
19 of the City of San Diego, California.

20 96. San Diego Puppy is a California corporation in good standing,
21 with its principal place of business at 5827 Mission Gorge Road, San Diego,
22 California 92120. San Diego Puppy was first incorporated on November 11,
23 2011, and has operated in as a pet-related business, including pet sales,
24 continuously until the passage of this Ordinance forced San Diego Puppy to
25 remove the puppies from its store causing a loss of revenue. San Diego
26 Puppy is, and at all times relevant was, the only pet store in the City of San
27 Diego selling purebred puppies eligible for registration with AKC and other

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1 canine registries. Mr. Salinas has purchased purebred and designer hybrid
2 puppies from a legal distributor handling puppies from licensed and
3 regulated breeders across the county. The distributor, Hunte Kennel
4 Systems and Animal Care, Inc., is a Missouri corporation in good standing.
5 But for this Ordinance and the threatened enforcement, Plaintiffs intend to
6 continue to purchase puppies from the distributor, and to obtain healthy,
7 inspected and regulated purebred puppies for sale at San Diego Puppy.

8 97. Defendant City of San Diego is a municipal corporation
9 operating under a Charter in Southern California. It covers 342.4 square
10 miles with a diverse population of exceeding 1,316,837 people. San Diego
11 hosts more than 32 million visitors each year, and these visitors spend
12 nearly \$8 billion annually in the local economy. The existing City Charter
13 was established in 1931 and currently calls for governance by nine city
14 councilmembers and a mayor. It permits the City to “exercise any and all
15 rights, powers, and privileges heretofore or hereafter granted or prescribed
16 by the General Laws of the State.” *See* City Charter, Article I, Section 2.
17 Defendant City of San Diego (“City”) and has an interest in, among other
18 things, ensuring open, transparent, and accountable government decision-
19 making, and protecting the region’s environment and economy. At the time
20 that the Ordinance was passed, the Mayor of San Diego was Bob Filner, and
21 he signed the Ordinance on behalf of the City of San Diego shortly before
22 stepping down as mayor.

23 98. Animal Protection and Rescue League (“APRL”) is a California
24 corporation that purports to be a 501(c)(3) tax exempt charity,²⁸ with a
25

26 ²⁸ It appears that APRL was formerly a New York corporation that filed with the State of
27 California in 2004, with Bryan W. Pease as the agent for service of process. The entity
28 appears to have been operating out of a thrift store on Clairemont Mesa Road in San
Diego. Although the store still bears the name of the corporation, the California
Secretary of State records indicate that the corporation has been surrendered.

1 stated mission of “exposing and eliminating animal cruelty”. According to
 2 GuideStar, APRL is one of 23,008 alleged charities using the “animal
 3 protection, welfare and services” description. GuideStar notes that the
 4 organization frequently works behind the scenes and is not inclusive.
 5 According to the Form 990 filed by APRL, the organization took in
 6 \$1,280,173 in contributions between 2007 through 2011. That same form
 7 asserts that the corporation did not engage in any lobbying activities or have
 8 a 501(h) on file for 2012.

9 99. On information and belief, APRL has, in fact, engaged in
 10 influencing political and legislative outcomes. The description of its
 11 activities confirms that the organization engages in significant activities to
 12 influence both public opinion and the City. For example, the corporation
 13 states that it “Recruited participants and held events during San Diego Veg
 14 Week, which the San Diego County Board of Supervisors supported with a
 15 resolution. . . .” Moreover, according to APRL’s websites, the corporation
 16 asserts that:

17 Since forming in 2003, APRL has garnered the
 18 attention of national and international media,
 19 **influenced animal protection legislation,**
 20 conducted numerous rescues of abused factory
 21 farmed animals, **influenced cities to adopt
 humane solutions to wildlife management,**
 22 and created a network of grassroots outreach
 23 volunteers. (emphasis added).

24 100. Bryan Pease is a California attorney. Defendant Pease formed
 25 APRL in approximately 2003, and currently serves as director and chairman
 26 for the corporation. Pease asserted during the San Diego City Council
 27 meeting that *he* is the drafter of the Ordinance. Further, Councilwoman
 28 Emerald stated that Pease and Emerald “go back” many years and she has
 “worked with him” for a long time.

1 101. The San Diego Animal Defense Team is a California business
2 entity of unknown form. It was a part of the Working Committee along with
3 Emerald and Zapf, San Diego City Council members, and states:

4
5 The San Diego Animal Defense Team has been on
6 the formal working committee for this ordinance for
7 months. We started alone, creating a printed and
8 bound information packet with puppy mill and pet
9 store facts and the San Diego connection. **We
provided a packet to each City Council
member in September 2012** and gave them our
petition asking for the ordinance, with 40 pages of
signatures. **We met with staffs of several
Council members.**

10 We eventually joined with the San Diego Humane
11 Society and APRL to work together toward our
12 common goal. As part of that working committee,
13 the Animal Defense Team has gathered
14 endorsements for a ban from more than 75 animal
15 related businesses and animal welfare groups.²⁹
16 (emphasis added).

17 Plaintiffs reserve the right to amend the form of this entity once the
18 true form is discovered.

19 102. Defendant Companion Animal Protection Society (“CAPS”), is a
20 Delaware corporation conducting political and other activities in San Diego,
21 California.

22 103. San Diego Humane Society and S.P.C.A. (“SDHumane”) is a
23 California corporation and was a part of the working group that was
24 instrumental in promulgating the Ordinance. Further, upon information
25 and belief, SDHumane acts as an enforcement arm with regard to animal
26 control issues in San Diego County.

27 104. Collectively, APRL, Pease, ADT, CAPS and fictitious defendants
28 1 – 100, inclusive, may be referred to as “Activist Defendants” as the context
may dictate.

²⁹ <http://www.sdanimaldefenseteam.blogspot.com/> (visited 10/8/13).

Jurisdiction and Venue

1 105. The Court has subject matter jurisdiction over this case pursuant
2 to 28 U.S.C. §§ 1331, 1343(a)(3), 1367(a), and 2201. The Court can assert
3 personal jurisdiction over Defendants because they are located in this
4 judicial District. Venue is proper in this District pursuant to 28 U.S.C. §
5 1391(b)(1) and (2) because Defendants reside in this District and a
6 substantial part of the relevant events underlying this action occurred in this
7 District.

8 106. This Court supplemental jurisdiction over the state law claims
9 pursuant to 28 U.S. C. § 1367. As will be demonstrated, the claims all arise
10 out of illegal and unwarranted, deliberate targeting of San Diego Puppy for
11 elimination.

12 107. Plaintiffs are submitting a claim with the City of San Diego based
13 upon the City's violation of, *inter alia*, Equal Protection, 42 U.S.C. §§ 1983
14 and 1985, and Business and Professions Code § 17200. Plaintiffs
15 specifically reserve the right to amend and/or supplement this Complaint to
16 include such causes of action in the event that the City denies or fails to act
17 upon such claim.

FIRST CAUSE OF ACTION

(Declaratory Relief – Violation of Equal Protection)

(Against the City of San Diego and DOES)

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22 108. Plaintiffs re-allege and hereby incorporate Paragraphs 1 through
23 107 and each allegation asserted therein as though fully set forth here.

24 109. Plaintiffs seek a judgment from this Court that the Ordinance,
25 generally and/or as applied is unconstitutional and unenforceable against
26 Plaintiffs including San Diego Puppy.

27 110. San Diego Puppy and the retail shelter or retail rescue
28 organizations are similarly situated with respect to the alleged goal of

1 limiting the market for substandard breeders from out-of-state, encouraging
2 long-term and loving homes for animals, and ensuring the humane
3 treatment of animals. Both transfer the ownership of dogs to members of
4 the general public. Unlike the retail shelter or retail rescue organizations,
5 however, San Diego Puppy: (1) does not buy from substandard breeders; (2)
6 uses only humane methods of housing and care of all dogs in its custody and
7 control; (3) provides appropriate veterinarian care for all dogs in its custody
8 and control; (4) has only microchipped dogs to ensure that they can be
9 identified and returned to their owners; (5) assists in rehoming should an
10 owner decline to keep the dog for any reason; and (6) provides strong
11 guarantees that each dog is healthy and free from hereditary and other
12 diseases.

13 111. Plaintiffs are a vilified group in that any “pet store” or its owner
14 is the subject of vehemently disparaging comments, censure, animus and
15 threats. Plaintiffs have suffered invidiously discriminatory animus at the
16 hands of the public, the Activists and, now, by the City.

17 112. In the alternative, San Diego Puppy is a “class of one” in that the
18 City, by and through the councilmembers and the Ordinance, has acted to
19 deprive Plaintiffs of their unique but cognizable constitutional rights. These
20 actions were intentional, against a similarly situated party, and there was no
21 rational basis for the difference in treatment or the distinction because,
22 *inter alia*, both the retail shelter or retail rescue organizations and San
23 Diego Puppy transfer title to dogs to third parties, and the only real
24 distinction turns on the form of the entity and the medical soundness and
25 social history of the dogs. . .

26 113. There is no goal set forth by the Ordinance, or the Accepted
27 Ordinance, that reflects a legitimate state interest that is furthered by
28 prohibiting the transfer of dog ownership only by retail pet stores, while

1 allowing alleged shelter or rescue organizations to continue to transfer
2 ownership of dogs with questionable or unknown social histories, unknown
3 dams and sires, unknowable health histories, and questionable breeding.³⁰
4 This is particularly true since a member of the general public acquiring
5 ownership of a dog from a retail shelter or retail rescue organization that
6 finds a problem with the animal and declines to keep it will necessarily have
7 no option other than returning that animal to a shelter. Further, there is no
8 rationale for allowing the dubious “partner organizations” that are not
9 admitted as California corporations and/or not legal tax-exempt
10 corporations to continue to transfer ownership of dogs, while denying such
11 right to San Diego Puppy. Likewise, it is both unclear and of no benefit to
12 allow the transfer of title to an animal by a “humane society” where such a
13 term is undefined, and the activities of such an organization are “in whole or
14 significant part” the rescue of dogs, but the terms “significant part” and
15 “rescue” also are undefined.

16 114. The care and handling of dogs from licensed and regulated
17 breeders is under the oversight of the United States Department of
18 Agriculture (“USDA”) and Animal and Plant Health Inspection Service
19 (“APHIS”). These agencies determine if a breeder is substandard; it is not
20 for the City of San Diego to create classifications between profit and non-
21 profit corporations in an attempt to circumvent the determinations of the
22 USDA and APHIS.

23

24

25 ³⁰ Carlsbad Mayor Matt Hall, who voted against a similar ban that was briefly enacted in
26 Carlsbad, California, stated that the campaign by animal rights groups is off target. He
27 said they should instead lobby for greater scrutiny of breeders. “I don’t think this
28 ordinance touches the problem,” he said. “It’s your federal government that is
shortchanging you.” <http://www.utsandiego.com/news/2013/Oct/08/council-bans-retail-pet-sales-at-carlsbad-stores/> (visited 11/6/2013). The City of Carlsbad has since repealed its ordinance after investigating the assertions by the Activists and finding them to be exaggerated and misguided.

1 115. The Ordinance and Accepted Ordinance are not rationally --
2 much less substantially -- related to any legitimate goal because the right to
3 transfer ownership of dogs turns on whether the entity is a non-profit or for-
4 profit. As to non-profits, the Ordinance does not inquire into the origin of
5 the animals to be transferred. That query is limited to for-profit enterprises.
6 Both enterprises transfer animal ownership, *i.e.*, sell dogs. By prohibiting
7 the transfer of ownership of dogs by pet stores while permitting the transfer
8 of such ownership only by or in conjunction with non-profit organizations,
9 the Ordinance treats two similarly situated groups differently in violation of
10 the Equal Protection clause of the 14th Amendment of the United States
11 Constitution. The Ordinance wrongfully penalizes a legitimate and
12 otherwise legal business without a rational basis for doing so.

13 116. The stated rationales for the Ordinance are not supported by
14 facts, and no independent study confirms the validity of the assertions made
15 by the activists that were involved in the working group.

16 117. The assertions that conclude public policy is furthered by
17 banning the transfer of dog ownership except by retail shelter or retail
18 rescue organizations is, upon information and belief, a sham to create a
19 monopoly on dog sales in the retail shelter or retail rescue organizations and
20 control the market.

21 118. The advocacy of the Ordinance by alleged shelter and rescue
22 organizations was a sham to further the goal of increased sales at a profit by
23 the retail shelter or retail rescue organizations, and create a monopoly on
24 dog sales. Many of the activist groups obtain dogs for little or nothing and
25 sell those same dogs from \$175, \$250 or even as much as \$500. *See Exhibit*
26 *4(b), supra.*

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1 policemen, judges, and juries for resolution on an *ad hoc* and subjective
2 basis, with the attendant dangers of arbitrary and discriminatory
3 application. The Ordinance cannot pass either test.

4 125. The Ordinance fails the first test because it does not reasonably
5 inform individuals or businesses whether it prohibits the sale, *etc.*, of dogs
6 that come from a non-California retail shelter or retail rescue organization.
7 Moreover, the Ordinance does not inform a reasonable person of whether it
8 is acceptable to sell a dog from an Oklahoma non-profit corporation
9 admitted to California, where such corporation engages in “rescue” in
10 “significant part” of animals.

11 126. The Ordinance purports to ban the “display” of any live dog,
12 regardless of whether the display is for sale, by any “*commercial*
13 *establishment*”. “Commercial establishment” is defined to include any sole
14 proprietor selling for profit. Thus, under the relevant definitions, the
15 Ordinance purports to ban an individual breeder from “displaying” any dog,
16 even at their own home, much less selling one from their own home. This is
17 contrary to the new USDA/APHIS ruling that requires a face-to-face
18 transfer of dogs by any breeder with more than four intact bitches. A true
19 and correct copy of the relevant pages from the USDA/APHIS ruling is
20 attached hereto as Exhibit 11, and is incorporated by reference. Thus, the
21 Ordinance is vague, overly-inclusive and violates the First Amendment of
22 the United States Constitution guaranteed right of free speech, including
23 commercial speech. It is also pre-empted by the USDA/APHIS ruling that
24 clearly seeks to occupy the field.

25 127. The Ordinance does not define the terms “rescue” or “significant
26 part”, so reasonably it would be legal to sell dogs that were “sourced” from
27 an Oklahoma non-profit corporation, even if that corporation paid hundreds
28 of thousands of dollars to its directors and had tens of thousands of

1 deductions for advertising, thereby retaining its “non-profit” status in
2 Oklahoma, and continued to be admitted in California as a foreign
3 corporation. If an Oklahoma non-profit purchased from a Missouri “puppy
4 mill” (deeming them to be “rescued” from the puppy mill) and then resold
5 them in San Diego, this would apparently be legal under the Ordinance. It
6 would, apparently, still be legal if the non-profit did this only once a year,
7 but in its assessment considered this to be a “significant part” of its
8 operations. Because the law is overly vague, it can lead to absurd results.

9 128. The Ordinance also does not reasonably inform a person as to
10 whether its prohibition on offering “for sale, deliver, barter, auction, give
11 away, transfer, or sell any live dog, cat, or rabbit in any pet shop, retail
12 business, or other commercial establishment located in the City of San
13 Diego” applies to a transaction that is consummated online and shipped to a
14 place outside of San Diego or in which the purchaser is located outside of
15 the City.

16 129. These vague aspects of the Ordinance necessarily leave it to the
17 persons who enforce the Ordinance, and persons who decide whether the
18 Ordinance has been violated (such as jury members) to determine these
19 vagaries of the Ordinance on an *ad hoc* and subjective basis; as a result, the
20 Ordinance also fails the second test for vagueness.

21 130. The Ordinance also fails because there is no indication of who is
22 to enforce these vague terms, or what recourse any individual would have to
23 dispute arbitrary or discriminatory enforcement.

24 131. Accordingly, Plaintiffs seek a judgment pursuant to 28 U.S.C. §§
25 2201, *et seq.*, that declares the Ordinance to be unlawful and void; and
26 further seek a temporary restraining order and/or temporary injunction to
27 enjoin the City from enforcing, or threatening to enforce the Ordinance
28 pending this Court’s ruling on the merits; attorney’s fees and cost of suit,

1 and such other and further equitable and other relief as the Court deems to
2 be just and proper.

3 **THIRD CAUSE OF ACTION**

4 (Declaratory Relief – Violation of Commerce Clause)

5 (Against the City of San Diego)

6 132. Plaintiffs re-allege and hereby incorporate Paragraphs 1 through
7 131 and each allegation asserted therein as though fully set forth here.

8 133. San Diego Puppy engaged in interstate commerce in that it
9 purchased puppies from breeders across the United States. The puppies
10 were shipped to San Diego Puppy in climate-controlled, safe, regulated and
11 licensed trucks operated by licensed brokers from Missouri and other
12 locations in the country.

13 134. The Ordinance purports to restrict the sale of dogs in California
14 to those dogs that are sourced from California corporations or those
15 associated with a humane society (as opposed to for-profit) in violation of
16 the Commerce clause. The Ordinance protects and exempts the Activist
17 Defendants and non-profit corporations that “in significant part” are
18 engaged in “rescue.”

19 135. The Ordinance treats for-profit and non-profit corporations in
20 the stream of commerce throughout the United States differently in
21 violation of the commerce clause.

22 136. Under the Ordinance, the sole sources of animals that Plaintiff
23 can obtain for sale may not be those from any reputable breeder, or any
24 breeder, trader or owner or wholesaler. This is true whether Plaintiff opted
25 to trade, barter or sell the animal.

26 137. The Ordinance is clearly and unequivocally disparate and
27 arbitrary in nature, while also regulating the Plaintiff’s power and ability to
28 purchase and sell animals other than those from locations dominated and

1 determined by Defendants and comparable third-parties and/or fictitious
2 defendants.

3 138. Plaintiffs contend that the Ordinance discriminates against
4 interstate and foreign commerce by impeding the free flow of non-California
5 animals into San Diego, and prohibiting the importation and sale of dogs to
6 San Diego visitors from other states and other countries.

7 139. Further, the Ordinance prohibits the sale of dogs in California
8 pet stores of dogs from out-of-state for-profit corporations, but could be
9 interpreted to permit the sale of dogs from out-of-state non-profits.

10 140. The Commerce Clause empowers Congress "to regulate
11 commerce with foreign nations, and among the several states." U.S. CONST.
12 art. I, § 8, cl. 3. While the Commerce Clause affirmatively grants Congress
13 the power to regulate interstate and foreign commerce, it also implicitly
14 restrains the ability of the several states to discriminate against or impose
15 substantial burdens upon interstate commerce.

16 141. The Ordinance imposes a substantial burden on interstate
17 commerce by impeding the importation of any dogs for sale in San Diego
18 from for-profit breeders in other states, much less other countries. The
19 Activists and third-parties are, in fact, promoting this very model in a city-
20 by-city agenda throughout California. They boast that San Diego is the 33nd
21 city to ban pet stores. Such cities as South Lake Tahoe, Glendale, Irvine,
22 West Hollywood, Dana Point, Chula Vista, Laguna Beach, Huntington
23 Beach, Los Angeles, Burbank, and Hermosa Beach, California all currently
24 have bans similar to the one at issue here. A series of additional bans would
25 prohibit all importation of dogs from out-of-state for-profit breeders and
26 clearly impose substantial burdens on interstate commerce. The number of
27 anti-pet store bans already creates an unreasonable burden on interstate
28 commerce.

1 142. To the degree that out-of-state for-profit breeders are a problem
2 –a proposition that Plaintiffs do not endorse—then it is beyond the
3 authority of the local government or even the state government to try to
4 insulate itself from the problem by instituting an Ordinance that creates a
5 barrier to the free flow of interstate trade from for-profit breeders. The
6 Ordinance effectively deprives out-of-state puppy producers the right to sell
7 to San Diego, California markets. It simultaneously deprives San Diego
8 Puppy of purchasing from out-of-state producers.

9 143. The Ordinance is discriminatory on its face as preferring
10 California non-profits and San Diego “rescue partners.”

11 144. The City, by and through the Ordinance and its preference for
12 California non-profits or City-approved partners, is improperly acting as a
13 market regulator, in excess of its authority granted under its Charter and is
14 contrary to general laws. The non-profit character of an enterprise does not
15 place it beyond the purview of federal laws regulating commerce, and no
16 state or local ordinance may distinguish between non-profit and for-profit
17 enterprises. Yet, that is exactly what this Ordinance does by allowing non-
18 profits to sell any dog without regard to its source, while burdening a for-
19 profit business by prohibiting the purchase of dogs from interstate brokers
20 or producers for sale in San Diego. The Ordinance, therefore, violates the
21 dormant commerce clause. It is without any legal weight or authority.

22 145. Accordingly, Plaintiffs seek a judgment pursuant to 28 U.S.C. §§
23 2201, *et seq.*, that declares the Ordinance to be unlawful and void; and
24 further seek a temporary restraining order and/or temporary injunction to
25 enjoin the City from enforcing, or threatening to enforce the Ordinance
26 pending this Court’s ruling on the merits; attorney’s fees and cost of suit,

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1 and such other and further equitable and other relief as the Court deems to
2 be just and proper.

3 **FOURTH CAUSE OF ACTION**

4 (Violation of Business and Professions Code § 16700, *et seq.*)

5 (Against Activist Defendants: Animal Protection and Rescue League, Bryan
6 Pease, San Diego Humane Society and SPCA; San Diego Animal Defense
7 Team and Fictitiously Named Defendants)

8 146. Plaintiffs re-allege and hereby incorporate Paragraphs 1 through
9 145 and each allegation asserted therein as though fully set forth here.

10 147. Plaintiffs allege that the Activist Defendants and fictitiously
11 named defendants, and each of them, have entered into an agreement that
12 has as its purpose the elimination of the supply of puppies to California,
13 generally, and specifically to Plaintiff San Diego Puppy.

14 148. This agreement is in violation of, *inter alia*, Business and
15 Professions Code § 16720(b) and (e)(4), in that its intent is to limit and
16 eliminate the availability of commercially bred puppies and prohibit the sale
17 of such puppies.

18 149. Upon information and belief, a central purpose in this
19 combination and agreement is to eliminate competition from pet stores.

20 150. Plaintiffs were contacted by SDHumane and/or fictitious
21 defendants who offered that Plaintiff could remain in business if Plaintiffs
22 agreed to adopt the business model that placed the retail shelter or retail
23 rescue organizations including fictitiously named defendants at the center of
24 the supply chain. The Ordinance was designed to put Plaintiffs out of
25 business if they did not adopt the model promoted by Defendants.

26 151. The conduct by the Activist Defendants and fictitiously named
27 defendants has, in fact, eliminated competition in violation of Business and

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1 Professions Code § 16720, in that it has eliminated the San Diego market for
2 San Diego Puppy's puppies.

3 152. Further, by their participation in drafting and furthering the
4 Ordinance, the Activist Defendants discriminated in favor of California non-
5 profits, humane societies and rescues. The Activist Defendants are closely
6 aligned with and, upon information and belief, have working agreements
7 with these fictitiously named defendant organizations to further the goals of
8 eliminating production and competition.

9 153. Defendants, and each of them, had a conscious commitment to a
10 common scheme, with the stated purpose to eliminate the availability of a
11 legal commodity and shutting down San Diego Puppy.

12 154. As a direct and proximate result of the acts alleged, Plaintiffs
13 have been damaged in an amount to be proven at trial. Further, and
14 pursuant to Business and Professions Code § 16750, Plaintiffs are entitled to
15 treble damages.

16 155. In addition, Plaintiffs are entitled to costs of suit and attorney's
17 fees.

18 **FIFTH CAUSE OF ACTION**

19 (Violation of 42 U.S.C. § 1983)

20 (Against Defendant the City of San Diego, and DOES 1-100)

21 156. Plaintiffs re-allege and hereby incorporate Paragraphs 1 through
22 155 and each allegation asserted therein as though fully set forth here.

23 157. Title 42 U.S.C. Section 1983 provides a civil cause of action
24 against any person acting under color of law who has wrongfully deprived
25 the plaintiff of personal rights or liberties secured by the United States
26 Constitution, the California Constitution or other valid law.

27 158. City councilmembers Marti Emerald and Lori Zapf had a long-
28 standing animus against pet stores that sell puppies. This is evidenced by,

1 *inter alia*, these councilmembers' comments prior to the hearing in March
 2 and again in July. *See, e.g.*, ¶¶ 17 and 36, *supra*. It is further demonstrated
 3 by the failure to seek or accept any input from stakeholders, groups or
 4 individuals with information that contradicts and/or discredits the Activists'
 5 erroneous and sham assertions, *e.g.*, that pet stores sell puppies from
 6 substandard breeders and that the ongoing sale of puppies at pet stores
 7 leads to overcrowding of shelters and increased euthanasia of pets.

8 159. Plaintiff has a fundamental right to engage in an occupation
 9 commonly held within communities. Such right has been said to be "the
 10 very essence of the personal freedom and opportunity that is was the
 11 purpose of the Fourteenth Amendment to secure." *Truax v. Raich*, 239 U.S.
 12 33 (U.S. 1915) (questioned and criticized on other grounds). This right is
 13 also guaranteed under the California Constitution, Article I, Section 1, which
 14 states:

15 All men are by nature free and independent, and
 16 have certain inalienable rights, among which are
 17 those of enjoying and defending life and liberty;
 acquiring, possessing, and protecting property; and
 pursuing and obtaining happiness.

18 160. City and Councilmembers Emerald and Zapf conspired with
 19 Defendant Activists and fictitiously named defendants to promote and draft
 20 the Ordinance with calculated indifference to Plaintiff's rights. Specifically,
 21 but without limitation, Plaintiff alleges that through the actions of
 22 Councilmembers, working in concert with the Activists, the City Council
 23 adopted a deliberate policy to close Plaintiffs' business and thereby deprive
 24 Plaintiffs of their business interests and personal occupational liberty.

25 161. The actions of Emerald and Zapf, acting under color of law and
 26 as City Councilmembers, in concert with Activist Defendants, resulted in the
 27 destruction of Salinas' business and his right of occupational liberty. This
 28 was based upon Emerald and Zapf's personal bias and animus toward the

1 sale of pets in a commercial setting, and the intentional incorporation of this
 2 bias in the Ordinance, an ordinance that specifically targets San Diego
 3 Puppy as the only City pet store then in existence, and favors Activist
 4 Defendants' interests.³¹ This animus was directed at San Diego Puppy
 5 despite the fact that that the so-called shelters and rescues also transfer title
 6 of pets, *i.e.* sell pets, and upon information and belief make money from
 7 such sales.

8 162. Plaintiffs have and will continue to suffer irreparable harm as a
 9 result of the deprivation of Salinas' personal liberties. Specifically, but
 10 without limitation, Salinas has been deprived of his right to practice his
 11 profession, he has suffered emotional distress, loss of reputation, loss of
 12 business, and loss of esteem. Plaintiffs reserve the right to include a claim
 13 for monetary damages should the City deny the pending claim by Plaintiffs
 14 against the City for monetary damages. In that event, the value of such
 15 damages shall be proven at trial, but are alleged to be not less than the
 16 jurisdictional minimums of this Court.

17 163. Based upon the comments and actions of Emerald and Zapf in
 18 pushing through the Ordinance without any real input from stakeholders
 19 such as Plaintiffs, and the back-room meetings with only Activist
 20 Defendants, the lack of substantial, rational or even legitimate basis for the
 21 Ordinance, the failure of the Defendants to do any independent research
 22 into the Activists' claims, along with the very real harm and deprivation

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24 ³¹ One example is seen by comparing California Senate Bill 917's language with the
 25 Ordinance. While SB 917 defines "rescue" as an organization whose "primary purpose" is
 26 rehoming dogs, *etc.*, San Diego's Ordinance seeks to protect the Activist Defendants who
 27 cannot lay claim to meeting this definition of "rescue." Accordingly, the Ordinance
 28 substitutes SB 917's definition with the broader and vague phrase that a "rescue" is one
 that places dogs as a "substantial part" of its organization. Under this vague and
 undefined term, even an organization whose primary purpose is lobbying can claim to be
 a "rescue."

1 caused by the Ordinance, Plaintiffs have a high likelihood of prevailing on
2 this cause of action, and of prevailing on the constitutional and other claims.

3 164. Accordingly, Plaintiffs seek a judgment pursuant to 28 U.S.C. §§
4 2201, *et seq.*, that declares the Ordinance to be unlawful and void. Plaintiffs
5 also seek a judgment pursuant to 28 U.S.C. §§ 2201, *et seq.*, and 42 U.S.C. §
6 1983 that declares that the City by its enactment and threatened
7 enforcement of the Ordinance has deprived Plaintiff of its rights secured by,
8 *inter alia*, Equal Protection and the Due Process Clause of the Fourteenth
9 Amendment to the United States Constitution. Plaintiffs further seek a
10 temporary restraining order and/or temporary injunction prohibiting the
11 enforcement of the Ordinance pending this Court's ruling on the merits.
12 Plaintiffs also pray for damages the City and for damages including punitive
13 damages against Activist Defendants, and each of them, and such other and
14 further relief as the Court deems to be just and proper, including judgment
15 for costs of suit and attorney's fees pursuant to 42 U.S.C. § 1988 on this
16 claim for relief.

17 165. Further, pursuant to 42 U.S.C. § 1983, and 28 U.S.C. § 2201, *et*
18 *seq.*, Plaintiffs reserve the right to seek an injunction should the City
19 attempt to enforce the Ordinance following judgment of this Court, and ask
20 that this Court retain jurisdiction for such purpose.

21 **SIXTH CAUSE OF ACTION**

22 (Violation of 42 U.S.C. § 1985)

23 (Against all Defendants)

24 166. Plaintiffs re-allege and hereby incorporate Paragraphs 1 through
25 165 and each allegation asserted therein as though fully set forth here.

26 167. Marti Emerald and Lori Zapf were, and are, councilmembers for
27 the City of San Diego. They were, therefore, public employees acting in their
28 official capacity and/or exercising their responsibilities pursuant to law at

1 the time they met with the Working Group of Defendant Activists and
2 contrived to push through the Ordinance.

3 168. Upon information and belief, Emerald and Zapf, orally and/or
4 by implication, conspired with the Activist Defendants and fictitiously
5 named defendants in drafting and promoting the Ordinance.

6 169. The Activist Defendants, and each of them, approached *inter*
7 *alia*, Zapf and Emerald and obtained their approval to draft and promote
8 the Ordinance, traditionally state or municipal functions. Accordingly, the
9 Activist Defendants, including but not limited to ADPL, Pease and CAPS,
10 acted in a manner that would be fairly attributable to the State in that they
11 exercised power in formulating the Ordinance.

12 170. Title 42 of the United States Code Section 1985 prohibits any
13 two or more persons in any State from conspiring to deprive any person the
14 equal protection of the laws, or to injure any citizen in person or property on
15 account of such support or advocacy.

16 171. Upon information and belief, there are more than 11,500 pet
17 stores that sell pets in the United States.

18 172. In recent years, the Humane Society and others have targeted
19 and vilified such pet store owners and all breeders supplying pets to them.
20 Through this campaign, in concert with city councils members and activists,
21 Pet Store Owners are depicted as amoral profiteers, willing to torture
22 animals without regard to humane standards of any sort. Breeders and
23 owners are now typically hesitant to state their residences or their
24 occupations publically for fear of being attacked and harassed.

25 173. In addition to being targeted by the City as the only pet store
26 owner left in town, Salinas was the target of a threatening and harassing
27 phone call just before this Complaint is being filed. This call was from a
28

1 “wireless” caller and stated, *inter alia*, “don't worry we'll get you I will give
2 you a one way ticket” and accused Salinas of eating Chihuahuas.

3 174. Salinas also got a call from someone identifying herself as
4 Christine Cabanaro on October 10, 2013. Ms. Cabanaro made racist slurs,
5 asserted that Salinas was “an illegal” (he is a U.S. citizen) and that she did
6 not care if he ate his own children but when it came to dogs, it was her
7 business. She stated specifically that Salinas was going to “get shut down.”

8 175. For example, one visitor to San Diego Animal Defense Team,
9 Shawna Sanders, recently posted a message regarding David Salinas that
10 stated: “He's such a loser!!!! May he get testicular cancer soon!!!!”³²

11 176. Animal Defense Team also posted the complaint form on their
12 Facebook site and encouraged everyone to download it and file a complaint
13 against David Salinas and San Diego Puppy.

14 177. Other calls included explicit threats such as “You know I would
15 like to slit your throat and let the blood run all over” and “I bet if I open your
16 stomach and find out you have been eating those puppies, I know you don't
17 seem to care about that you piece of crack head mother but don't worry
18 about it, we will get you”. These calls were reported to the FBI who stated
19 there was nothing they could do as the caller used a throw-away phone.

20 178. Based upon the animus shown by the public and by members of
21 the City Council, including comments by the City Council that San Diego
22 Puppy – as the only pet store in existence -- was a “problem”, Plaintiffs are
23 members of a class subjected to invidiously discriminatory animus.

24 179. The City, by and through Emerald and Zapf, worked in concert
25 with Activists Defendants in creating the Ordinance. Additionally, upon
26 information and belief, Emerald and Zapf encouraged the animus against

27 _____
28 ³² [https://www.facebook.com/pages/San-Diego-Animal-Defense-
Team/191702047564450?ref=br_tf](https://www.facebook.com/pages/San-Diego-Animal-Defense-Team/191702047564450?ref=br_tf) (visited on 10/16/2013).

1 Plaintiffs by creating the working group comprised solely of animal activist
2 organizations.

3 180. The right to engage in a lawful enterprise, and to pursue one's
4 chosen profession, is a right guaranteed to citizens pursuant to the United
5 States Constitution (14th Amendment) and the California State Constitution
6 (Art. I, Sec. 1). Salinas has a right to occupational liberty as his chosen
7 profession is a lawful retail store engaged in selling animals that are under
8 the jurisdiction of United States Department of Agriculture ("USDA").

9 181. The conspiracy had as its central purpose the deprivation of
10 Plaintiffs' protected rights in that it was aimed at forcing the closure of
11 Plaintiff's business and depriving him of his occupational liberty and equal
12 protection of law contrary to most other cities and states in the country.

13 182. As a result of the concerted action between the Emerald and
14 Zapf, acting under color of law as councilmembers for the City, and in
15 concert with the Activist Defendants, David Salinas and his wife, as well as
16 his store, have suffered financially and emotionally because he is unable to
17 conduct his profession in the City, and because he has been picketed,
18 harassed and had his individual privacy invaded including through racial
19 and other slurs.

20 183. The conspiracy between the activists and the City is a violation of
21 42 U.S.C. § 1985, and Plaintiff prays relief in the form of a temporary
22 injunction and/or temporary restraining order against enforcement of the
23 Ordinance, pending trial on the merits; a declaratory judgment finding that
24 the City and Activists have conspired to violate 42 U.S.C. § 1985(c);
25 damages, costs of suit and attorney's fees, and such further and other
26 equitable or other relief as this Court may deem just and proper.

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SEVENTH CAUSE OF ACTION

(Temporary Injunction and/or Temporary Restraining Order/Permanent Injunction)

(Against City of San Diego and DOES)

184. Plaintiffs re-allege and hereby incorporate Paragraphs 1 through 183 and each allegation asserted therein as though fully set forth here.

185. The Ordinance is an unconstitutional attempt to: (a) regulate the market of dogs; (b) provide a monopoly to non-profits in preference over for-profit corporations; (c) force the pre-existing bias of councilmembers on Plaintiffs; (d) deprive Plaintiffs of their constitutionally protected occupational liberties; (e) deprive Plaintiffs of their constitutionally guaranteed equal protection under the law; (f) represents a violation of 42 U.S.C. § 1983; and (g) is the result of a wrongful conspiracy between council members and Activists to the detriment of Plaintiffs all in violation of the United States and California Constitutions.

186. Under the Ordinance, San Diego Puppy and individual Plaintiffs will suffer irreparable harm in that:

- a) Plaintiffs will be forced to close their business;
- b) Plaintiffs will be forced to either pay on a lease it cannot support or, in the alternative, breach the current lease and be exposed to damages;
- c) Plaintiffs will be forced to terminate employment of 12 key employees;
- d) Plaintiffs will suffer loss to reputation and buying power;
- e) San Diego Puppy will be destroyed, the lease lost and the loyalty of customers – many of whom are repeat customers – will be destroyed, including loss of good will associated with the business;
- f) Plaintiffs will suffer loss of the individual right to pursue a legitimate profession; and

1 g) Plaintiffs will be diminished in their personal and public
2 status as a legitimate business owner, including but not limited to a
3 diminution of credit rating for both Salinas individually and for San Diego
4 Puppy;

5 187. Conversely, the City will not be harmed by an injunction
6 prohibiting the enforcement of the Ordinance during the pending litigation
7 because:

8 a) The practice of selling dogs in pet stores has been going on
9 for decades;

10 b) The Assistant City Attorney noted that there are no health and
11 safety issues raised by the sale of puppies at San Diego Puppy;

12 c) A sister store as close as Oceanside, California is legal and
13 operating;

14 d) All puppies sold by San Diego Puppy are health checked,
15 vaccinated, microchipped and appropriately housed and handled;

16 e) The City permitted this store from 2011 until September 4,
17 2013; and

18 f) Should any violation be found, the City has alternative means
19 of ensuring the safety of dogs and consumers.

20 188. Damages will not be a complete or satisfactory remedy, as
21 Plaintiffs will lose reputation, buying power, and esteem in the general
22 community in the time before trial on the matter can be had.

23 189. Plaintiffs will likely prevail on the merits because the Ordinance
24 pointedly differentiates between two-similarly situated groups, *i.e.*,
25 transferors of dogs, and/or because Plaintiff as a class of one is being singled
26 out for inequitable treatment under the law.

27 190. The Ordinance improperly distinguishes between non-profit and
28 for-profit for the transfer of title to dogs.

1 196. Activist Defendants have engaged in consistent and unrelenting
2 harassment at San Diego Puppy and Oceanside Puppy.

3 197. Such conduct by Defendants includes but is not limited to:

- 4 • Gathering and shouting at customers both outside the stores and
5 inside the stores;³³
- 6 • Screaming at customers in the parking lot that Plaintiff is an
7 animal abuser;
- 8 • Blocking the doorways to the stores to prevent customers from
9 entering;
- 10 • Following or attempting to follow customers inside the store to
11 thrust literature at them and dissuade them from purchasing at
12 San Diego Puppy and/or Oceanside Puppy;
- 13 • Obstructed the free flow of pedestrian and auto traffic in and
14 through the store area.

15 198. Plaintiffs allege that they have the exclusive right of control of
16 the property by virtue of their lease, and they did not – and do not—
17 authorize entry onto the premises.

18 199. Plaintiffs have been harmed by this conduct including, but not
19 limited to, diminution of business, loss of foot traffic, loss of good will,
20 emotional distress and peaceful enjoyment.

21 200. Accordingly, Plaintiffs seek damages in an amount to be
22 determined at trial but not less than the jurisdictional minimums of this
23 Court, *i.e.*, \$75,000.

24 201. Further, this was a campaign that was undertaken specifically to
25 injure Plaintiffs and destroy their reputation and business. The actions
26 alleged herein were done by an evil hand guided by an evil mind such that

27 _____
28 ³³ An allegation that would be a violation of California Penal Code § 597, *et seq.*, but is not true.

1 Plaintiffs are entitled to punitive damages against all Activist Defendants
2 and DOES who are identified through discovery as participating in or
3 directing such a campaign of destruction.

4 202. Plaintiffs further pray for attorney's fees and cost of suit and
5 such further equitable and other relief as this Court may deem just and
6 proper.

7 **NINTH CAUSE OF ACTION**
8 (Injunctive Relief/Temporary Restraining Order/
9 Permanent Injunction Order)

10 (Against Animal Protection and Rescue League, Bryan Pease, San Diego
11 Animal Defense Team, Companion Animal Protection Society, San Diego
12 Humane and SPCA and all fictitiously named defendants)

13 203. Plaintiffs re-allege and hereby incorporate Paragraphs 1 through
14 202 and each allegation asserted therein as though fully set forth here.

15 204. Despite efforts to move the Activist Defendants and as yet
16 unidentified third parties away from the store entrance, including calling the
17 police and filing complaints, upon information and belief, the Activist
18 Defendants and third parties have continued to harass and disparage
19 Plaintiffs.

20 205. For example, upon information and belief Activist Defendants
21 and third parties interfered with a ribbon cutting ceremony by inserting
22 themselves in photos and even hitting an employee with a protest sign. No
23 action was taken by the police in that instance, and upon information and
24 belief, the police asserted that the victim should take no action because "it
25 was just a sign."

26 206. Despite a warning that the location was private property, the
27 Activists, including upon information and belief but not limited to, APRL
28 and San Diego Animal Defense Team, held a "victory" party in the parking

1 lot where San Diego Puppy is located and advertised that party through
2 Facebook and, upon information and belief, on websites.

3 207. At various times, including but not limited to, Activist
4 Defendants have blocked the doorway to San Diego Puppy during business
5 hours, and have hung their signs on the physical building to which Plaintiffs
6 have the sole legal right of occupation and use.

7 208. San Diego Animal Defense Team stated recently on their
8 website:

9 HUMANE ALERT! Look who is trying to sneak in
10 another puppy store. Yes, Mr. Oceanside and San
11 Diego Puppy himself! South Bay, are you ready to
12 say NO to cruelty!

13 These pics are at his new location that is currently
14 being renovated. We posted a message for his
15 patrons to beware, that he was banned in the City of
16 San Diego! We also left some information to Adopt,
17 don't Shop! I am sure he will get the message soon
18 enough that we are now watching him there too!³⁴

19 209. The location at which San Diego Puppy is located is a small strip
20 mall that invites the public to attend as customers, only. It does not
21 willingly open its property to third-parties for any purpose other than
22 shopping at the businesses located therein.

23 210. The location has no areas dedicated to relaxation or dining, and
24 is not designed for public gatherings. There is a small parking area for use
25 of customers only.

26 211. Oceanside Puppy is, like San Diego Puppy, located in a small
27 strip mall, where the property is for customers of the stores, only. It is not
28 designed nor commonly used as a public forum and is not open or intended
for such use.

///

³⁴ <https://www.facebook.com/pages/San-Diego-Animal-Defense-Team/191702047564450>

1 212. While the National City store is located near an outdoor seating
2 area, upon information and belief the area is not for the general public; but
3 is for customers shopping in the small strip mall. Moreover, the property
4 where the store is located has large signs at each entrance that state “No
5 Trespassing.”

6 213. The Activists are creating irreparable harm, a threatening and
7 tense environment for Plaintiffs employees, causing emotional distress,
8 interfering with business at San Diego Puppy, Oceanside Puppy, and
9 National City Puppy, and such disruption is continuing even though Plaintiff
10 has sought police intervention and filed police reports.

11 214. The Plaintiff’s business and personal reputation and character is
12 being ruined and decimated and Plaintiff’s customers are being harassed
13 both inside and outside, as well as the Plaintiff’s employees. The fact that a
14 protestor had the audacity to attack Plaintiff’s employee during a public
15 meeting at the Oceanside City Council hearing with police becoming
16 involved and paramedic intervention makes the irreparable harm very
17 apparent.

18 215. Additional examples of the harmful nature of the Activist
19 Defendants’ conduct include, but are not limited to:

- 20 • The blocking of the entryway door or doors of the Plaintiff’s
21 business, both in San Diego and Oceanside;
- 22 • Posting notices on the doors of the National City store stating
23 that customers should “open your eyes to their pain” – referring
24 presumably to dogs in pet stores – and “Don’t be fooled by their
25 lies”, referring to the pet store owners.
- 26 • Purposely and knowingly scaring children who are with their
27 parents inside the store;

28

- 1 • Intentionally placing themselves between the main door to the
- 2 store and shoving their literature up in the face of those
- 3 approaching or exiting;
- 4 • Shouting profanities to the store’s employees;
- 5 • Engaging in this derogatory and abusive behavior outside of the
- 6 Plaintiff’s place of worship;
- 7 • Following patrons into the Plaintiff’s stores, and trying to even
- 8 accost them inside by badgering them with their ‘protest’
- 9 literature;
- 10 • Shouting to the employees as they enter the building or exit the
- 11 building before, during or after work, calling them derogatory
- 12 names, and placing Plaintiff’s employees under duress when
- 13 they have not done anything but go to work;
- 14 • Engaging in assault and battery against Plaintiff San Diego
- 15 Puppy’s employee during a public hearing in Oceanside by
- 16 grabbing the employee, scratching her and twisting her wrist.³⁵
- 17 The victim employee was treated by medics following the attack;
- 18 • Continuing their harassment at the Oceanside Puppy store, even
- 19 though such store is open legally, following the closure of San
- 20 Diego Puppy by the instant Ordinance.

21 216. As a direct and proximate cause of Defendants’ conduct,
22 Plaintiffs have been damaged and continue to be damaged.

23 217. The conduct does not come within any First Amendment right,
24 as it occurs in a non-public forum.

25 218. Accordingly, Plaintiffs seek a judgment pursuant to 28 U.S.C. §§
26 2201, *et seq.*, that declares the conduct by Activist Defendants to be
27 unlawful; and further seek a temporary restraining order and/or temporary

28 _____
³⁵ Oceanside rejected the proposed ban.

1 injunction to enjoin the Activists from coming onto private property or
2 within 1000 feet of David Salinas, his family or his businesses, or any of
3 them, and/or any store employee pending this Court’s ruling on the merits;
4 a permanent injunction; attorney’s fees and cost of suit, and such other and
5 further relief as the Court deems to be just and proper.

6
7 **TENTH CAUSE OF ACTION**

8 (Violation of Business and Professions Code § 17200, *et seq.*)

9 (Against all Activist Defendants and DOES 121 – 130)

10 219. Plaintiffs re-allege and hereby incorporate Paragraphs 1 through
11 218 and each allegation asserted therein as though fully set forth here.

12 220. “Non-profit” retail shelter or retail rescue organizations in the
13 City are not required to disclose the origin of their animals. They are not
14 subjected to inspections or regulation as are retail pet stores.

15 221. The result is that the Activist Defendants are at liberty to make
16 disparaging comments that are untrue, and gain an unfair advantage by
17 convincing the public without any evidence that they alone provide dogs
18 that do not come from “puppy mills”.

19 222. In fact, it is not true that retail shelter or retail rescue
20 organizations do not resell dogs from puppy mills, as many do buy dogs at
21 auctions specifically set up to transfer such dogs to third parties.³⁶

22 223. Further, the acts of Activist Defendants in conspiring with the
23 pre-disposed councilmembers in misrepresenting and exaggerating the facts
24 resulted in the Ordinance, thereby giving the Activist Defendants an unfair
25
26

27 ³⁶ Additionally, because the origin of the dogs at shelters are – almost by definition –
28 unknown, the retail shelter or retail rescue organizations cannot state that their dogs do
not come from puppy mills originally.

1 competitive advantage in violation of each relevant cause of action stated
2 above.³⁷

3 224. Plaintiffs have been damaged as a result of this unfair
4 competition, both as a member of the class that is the subject of the unfair
5 and untruthful advertising by the Activist Defendants, and as an individual
6 pet store and owner that has lost money as a proximate result of the Activist
7 Defendants' actions and unfair business practices. Thus, Plaintiff is entitled
8 to bring this claim individually and as a private attorney general on behalf of
9 pet store owners and consumers.

10 225. Defendants' unfair business practices include not only
11 assertions that only they provide dogs that do not come from puppy mills,
12 an assertion that is frequently untrue, but that Plaintiffs' puppies do come
13 from such substandard breeders, also an untrue statement.

14 226. Further, the Activist Defendants assert without any factual
15 support that purchasing a puppy from San Diego Puppy or other class pet
16 store will cause a shelter puppy to be euthanized. This statement is untrue,
17 but has enormous persuasive weight among the general public, with the
18 result being a diminution of sales by San Diego Puppy and Oceanside
19 Puppy.

20 227. The statements were intended to and did funnel business from
21 San Diego Puppy and Plaintiffs' other store, to the retail shelter or retail
22 rescue organizations, where such organizations made a greater profit
23 through increased sales.

24 ³⁷ It is worth noting that the Chapter incorporating Business and Professions Code §
25 17200 is Chapter 4. Chapter 4, § 17001 states:
§ 17001. Legislative purpose

26 The Legislature declares that the purpose of this chapter is to
27 safeguard the public against the creation or perpetuation of
28 monopolies and to foster and encourage competition, by
prohibiting unfair, dishonest, deceptive, destructive,
fraudulent and discriminatory practices by which fair and
honest competition is destroyed or prevented.

1 228. As stated above, the retail shelter or retail rescue organizations
2 are charging more for puppies than for older dogs, but, on information and
3 belief, are nevertheless able to make a profit on the sale of dogs by charging
4 anywhere from \$175 to \$250 or even up to a \$1000 for dogs that have been
5 obtained at little to no cost by the retail shelter or retail rescue
6 organizations.

7 229. Among the goals of these competing retail shelter or retail rescue
8 organizations is to completely remove any choice from the public as to
9 where they obtain a companion pet, leaving the retail shelter or retail rescue
10 organizations as the only choice. The goal is long-term, and being staged
11 incrementally, but the unfair competitive tactics have singled out pet stores
12 as a first step in the ultimate goal. The oft-heard battle cry is “Don’t Breed
13 or Shop While Homeless Dogs Die”. However, this catch-phrase is not
14 backed by fact; rather many of these retail shelter or retail rescue
15 organizations are importing dogs to fill the need for pets in San Diego. This
16 is a concerted campaign of trespass, nuisance and violation of 42 U.S.C. §
17 1985 that constitutes an unfair business practice based as defined in
18 Business and Professions Code § 17200, *et seq.*

19 230. Accordingly, Plaintiffs seek damages and/or restitution in an
20 amount to be determined at trial but not less than the jurisdictional
21 minimums of this Court, *i.e.*, \$75,000.

22 231. Further, this campaign of unfair business practices was done
23 specifically to injure Plaintiffs and destroy their reputation and business.
24 The practices were done by an evil hand guided by an evil mind such that
25 Plaintiffs are entitled to punitive damages against all Activist Defendants
26 and DOES who are identified through discovery as participating in or
27 directing such a campaign of destruction.

28

ELEVENTH CAUSE OF ACTION

(Nuisance)

(Against Activist Defendants San Diego Animal Defense Team, Animal Protection And Rescue League, Companion Animal Protection Society, Bryan Pease, San Diego Humane Society, and Fictitiously Named Defendants)

232. Plaintiffs re-allege and hereby incorporate Paragraphs 1 through 231 and each allegation asserted therein as though fully set forth here.

233. Through the ongoing actions of gathering in front of the places of business controlled by Plaintiffs, the Activists Defendants have interfered and continue to interfere with the use of the business property that Plaintiffs have the right to use and hold.

234. Plaintiffs' employees have been, and continue to be, harassed and annoyed. As an example, employee Nancy Clem has received threatening phone calls at the store. For example, in Early September, Ms. Clem answered the store phone, and was told "you are disgusting, why don't you die." On another occasion, she was told to simply "die". Another recent caller stated that the caller was a good shot and Ms. Clem should watch herself when she leaves the store.

235. These actions interfere with the free use of the property that is legally in the custody and control of Plaintiffs, and which has not been opened to any group or individual for any purpose other than shopping and/or purchasing from San Diego Puppy and/or Oceanside Puppy.

236. Plaintiffs are reasonably annoyed and harmed by such activities, specifically in that such activities create a tense atmosphere, appear threatening and have in fact threatened employees and customers, causing Plaintiff to lose business, in addition to the emotional distress, the loss of good will and loss of reputation.

1 237. In light of the Facebook page and blog pages announcing
2 additional protests by, *e.g.*, San Diego Defense Team, the actions by Activist
3 Defendants are ongoing with more demonstrations planned for the stores
4 owned by Plaintiffs.

5 238. The harm caused by such activities far outweighs any public
6 benefit as the averments by the Activist Defendants are not true, and cannot
7 be supported. Therefore no public benefit can be derived by the Activist
8 Defendants' actions.

9 239. As the protests and trespass were regular events at San Diego
10 Puppy, and are now regular events in Oceanside, with more planned for
11 National City, it is clear that the events will not abate or change substantially
12 in character without a ruling from this Court.

13 240. Although the police have been called when the protestors
14 became particularly vicious or invasive, the police have done little to stop it,
15 even telling San Diego Puppy employees not to proceed with a complaint
16 when the protestors hit someone in the head with a sign. Upon information
17 and belief, a ruling from this Court would be sufficient to end the nuisance
18 and ensure police help should the Activist Defendants violate the Court's
19 order.

20 241. As a direct and proximate result of the ongoing and persistent
21 actions by Activist Defendants, and each of them, Plaintiffs have been
22 harmed in a diminution of business, reputation and good will, as well as
23 suffering emotional distress from being subjected to such activities on an
24 ongoing basis. Due to the unwarranted protests, "victory parades" and other
25 threatening and disparaging activities and publications Plaintiffs have, in
26 fact, been harmed.

27 242. Accordingly, Plaintiffs seek a temporary injunction and/or
28 restraining order, a permanent injunction, and damages in an amount to be

1 determined at trial but not less than the jurisdictional minimums of this
2 Court, *i.e.*, \$75,000.

3 **TWELFTH CAUSE OF ACTION**

4 (Injunctive Relief – Violation of California Civil Code § 52, *et seq.*

5 “Ralph Act”)

6 (Against All Activist Defendants)

7
8 243. Plaintiffs re-allege and hereby incorporate Paragraphs 1 through
9 242 and each allegation asserted therein as though fully set forth here.

10 244. Plaintiffs allege that the Activist Defendants, and each of them,
11 acted against Plaintiff specifically because of animus against him and his
12 businesses. In so doing, they incited and encouraged radical and
13 threatening conduct, including death threats and racial and other slurs.

14 245. This conduct was based upon the Activist Defendants’ inaccurate
15 perception that anyone dealing in companion animals on a commercial basis
16 is an animal abuser and worse.

17 246. Plaintiffs had cause to believe, and did believe based upon being
18 hit in the head with a sign, as well as the numerous vicious acts by various
19 animal activist groups, and the recent naming of at least one animal activist
20 group to the terrorism Watch List, that the Activist Defendants and/or their
21 agents or members were capable of and would carry out the threats of
22 physical harm against Plaintiffs.

23 247. As a direct and proximate result of the Activist Defendants’
24 actions, including targeting Plaintiffs for action by their groups and
25 followers, Plaintiffs have a reasonable belief that the actions will escalate if
26 not enjoined by this Court.

27 248. Accordingly, Plaintiffs respectfully request that this Court issue a
28 temporary injunction and/or restraining order prohibiting any contact

1 between Plaintiffs and the Activist Defendants, and/or anyone associated
2 with them, or any of them, pending a final resolution on the merits.

3 249. Plaintiffs further are entitled to damages and cost of suit,
4 including attorney's fees.

5 **PRAYER**

6 **FIRST CAUSE OF ACTION**

7 1. For a judgment declaring that the Ordinance is unlawful and
8 void as it violates Equal Protection, is overly vague and overly susceptible to
9 arbitrary and discriminatory enforcement;

10 2. For a temporary injunction or temporary restraining order
11 prohibiting the City of San Diego from enforcing or attempting to enforce
12 the Ordinance until trial may be had on the merits and permitting San Diego
13 Puppy to carry on business at the San Diego location until that time.

14 **SECOND CAUSE OF ACTION**

15 1. For a judgment declaring that the Ordinance violates the Due
16 Process Clause of the Fourteenth Amendment to the United States
17 Constitution and that the Ordinance is therefore unlawful and void;

18 2. Plaintiff prays for a temporary restraining order and/or
19 temporary injunction to enjoin the City from enforcing, or threatening to
20 enforce the Ordinance pending this Court's ruling on the merits such that
21 San Diego Puppy is free to move back into the store located in San Diego;
22 attorney's fees and cost of suit, and such other and further equitable and
23 other relief as the Court deems to be just and proper.

24 **THIRD CAUSE OF ACTION**

25 1. For a judgment declaring that the Ordinance violates the
26 Commerce Clause of the United States Constitution and, as such, is void and
27 unlawful;

28 ///

1 3. Damages in an amount to be determined at trial, costs of suit
2 and attorney's fees. .

3 **ON ALL CLAIMS FOR RELIEF**

4 1. For a judgment permanently enjoining the Defendant, the City
5 of San Diego, California, from enforcing, or threatening to enforce, the
6 Ordinance;

7 2. For a judgment permanently enjoining San Diego Animal
8 Defense Team, Animal Protection and Rescue League, Companion Animal
9 Protection Society, Bryan Pease, and San Diego Humane Society, their
10 officers, agents or assigns from annoying, harassing, trespassing,
11 threatening or otherwise violating the peaceful operation of the business
12 owned by Plaintiff David Salinas, and from threatening, harassing or
13 annoying any employee or officer of such businesses.

14 3. For an award of reasonable attorney's fees and costs incurred in
15 this action; and

16 3. For such further equitable and other relief as the Court deems
17 just and proper.

18 Dated: November 22, 2013

SCHLESINGER CONRAD LAW FIRM

19
20 By: /s/ Kira A. Schlesinger
Kira A. Schlesinger
21 Attorneys for Plaintiffs

22 Dated: November 25, 2013

CAROLYN CHAN, ESQ.

23 By: /s/ Carolyn Chan (signed with permission)
24 Carolyn Chan
25 Attorney for Plaintiffs
26
27
28



1 A PDF copy of the foregoing was E-filed Filed Mailed Faxed
2 Hand Delivered E-Mailed Mailed via Overnight Mail to the following
3 on November 25, 2013:
4 Clerk of the Court
5 United States District Court, Southern District of California
6 ECF System
7 Plaintiffs believe that all interested parties who have appeared in this action
8 will be provided with a copy of this pleading and supporting documents
9 through the ECF system. The appearing parties are represented by the
10 following and a PDF copy of the foregoing was E-filed Filed Mailed
11 Faxed Hand Delivered E-Mailed Mailed via Overnight Mail to
12 the following on November 22, 2013:
13 TBD

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By /s/Kira A. Schlesinger



VERIFICATION


I, David Salinas, declare as follows:

1. I am the principal for San Diego Puppy, Inc. and an individual plaintiff in the above-captioned action.

2. I am over eighteen years of age. Except where sworn on information and belief, I have personal knowledge of the facts stated in the complaint. As to those matters sworn on information and belief, I have a reasonable basis to believe such facts are true. Should I discover otherwise during the course of litigation, I reserve the right to amend and/or supplement the Complaint at any time up to and including to conform to proof at trial.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on

NOVEMBER 15, 2013, at SAN DIEGO, California.



David Salinas,
individually and for
San Diego Puppy Inc.

TABLE OF EXHIBITS

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Exhibit 1: A true and correct copy of the San Diego Puppy Guarantee

Exhibit 2: A true and correct copy of the San Diego Partner List

Exhibit 3: A true and correct copy of the SD Mun. C. § 42.0706

Exhibit 4: A true and correct copy of the Photo of Sign and examples of notices from shelters.

Exhibit 5: A true and correct copy of the report from Chanel 10 News reflecting the importation Exhibit dogs from Romania by Helen Woodward Center, a San Diego City Partner (<http://www.10news.com/news/orphaned-puppies-from-romania-up-for-adoption>)

Exhibit 6: A true and correct copy of the website from Baja Rescue reflecting importation of dogs from Mexico (<http://www.bajadogrescue.org/about-us/>)

Exhibit 7: A true and correct copy of the Ordinance as Passed on August 5, 2013.

Exhibit 8: A true and correct copy of the San Diego Partner Information and Application.

Exhibit 9: A true and correct copy of the Letter from City Attorney’s Office to Dan Smith threatening Mr. Smith with “aiding and abetting” violation of the Ordinance.

Exhibit 10: A true and correct copy of; (1) the Draft Complaint by City of San Diego; (2) Stipulation for Issuance; and (3) Stipulated Injunction.

Exhibit 11: A true and correct copy of the relevant pages from the USDA/APHIS Blue Book requiring face-to-face meetings before transfer of animal.