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 9 CITIZENS FOR FREE SPEECH, LLC,
 10 MICHAEL SHAW

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 CITIZENS FOR FREE SPEECH,
 14 LLC; MICHAEL SHAW
 15 Plaintiffs,
 16 v.
 17 COUNTY OF ALAMEDA,
 18 Defendant.

19 **CASE NO.**
 20 **COMPLAINT FOR CIVIL RIGHTS**
 21 **VIOLATION AND INJUNCTIVE**
 22 **AND DECLARATORY RELIEF;**
 23 **Civil Rights Action (42 U.S.C. Section**
 24 **1983) and Pendant Claim under**
 25 **California Constitution for Damages,**
 26 **Declaratory Relief, and Injunctive**
 27 **Relief**
 28 **1. 42 U.S.C. § 1983 [Free Speech]**
2. 42 U.S.C. § 1983 [Equal Protection]
3. 42 U.S.C. § 1988 [Civil Rights]
4. California Constitution, Art. 1, § 2
[Free Speech]
5. California Constitution, Art. 1, § 7
[Equal Protection]
DEMAND FOR JURY TRIAL

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1 Plaintiff CITIZENS FOR FREE SPEECH, LLC alleges the following:

2 **PARTIES**

3 1. Plaintiff CITIZENS FOR FREE SPEECH, LLC (“Citizens”) is
4 Nevada limited liability company qualified to do business in California and with a
5 primary place of business in Jacksonville, Oregon.

6 2. Plaintiff MICHAEL SHAW (“Shaw”) is an individual residing
7 within this District.

8 3. Defendant COUNTY OF ALAMEDA (“County”) is a political
9 subdivision of the State of California, and is a “person” subject to suit within the
10 meaning of 42 U.S.C. § 1983. It is vested with the supervision of regulations and
11 approval of signs within its geographic limits. The County is within this District.

12 **JURISDICTION AND VENUE**

13 4. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
14 1331 & 1343. Pendant and supplemental jurisdiction is alleged under 28 U.S.C.
15 § 1367 and FRCP 18, for Plaintiffs’ claims under the California Constitution

16 5. Pursuant to Civil L.R. 3-2(c), this case shall be assigned to the San
17 Francisco or the Oakland Division because the action arises in Alameda County.
18 This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C.
19 1391(b)(1) and (b)(2). The actions complained of took place in this judicial
20 district, evidence is maintained in this judicial district, the signs erected are in this
21 district, and but for the unlawful regulations and practices of Defendant, Plaintiff
22 would not be subject to monetary fines and deprivation of property.

23 **FACTS COMMON TO ALL CAUSES OF ACTION**

24 6. Plaintiff Shaw is the owner of a parcel of land located at 8555 Dublin
25 Canyon Road within the County (the “Parcel”).

26 7. The Parcel is a located within a Scenic Corridor Combining District
27 (“SC”) designated by the County.

28 8. The Parcel is located within a Planned Development District within

1 the SC, and the present use of the Parcel is subject to a conditional use permit.

2 9. There is presently on the Parcel an operating self-storage business
3 with individual lockers to accommodate the storage of customers' property as well
4 as open storage for customers' recreational vehicles.

5 10. Plaintiff Citizens has entered into an agreement with Shaw for the
6 construction and display of signs on the Parcel. Under the terms of the agreement
7 between Citizens and Shaw, each will receive a portion of all proceeds earned
8 from the display of signs on the Parcel.

9 11. Citizens has constructed three signs on the Parcel per the agreement
10 with Shaw. Each sign has two faces. The messages on each face of the signs as
11 initially constructed consist wholly of noncommercial speech, and read as follows:
12 (i) "Huge Plans That Affect You! 'One Bay Area' aka 'Plan Bay Area'"; (ii)
13 "Stack and Parkprojects & Gridlock, Relocation of People: Rural to Urban, Cities
14 and Counties Dissolve into 'Region'"; (iii) "Plans dictated by non-elected councils
15 called 'ABAG' and 'ICLEI'"; (iv) "'ABAG' and 'ICLE' use 'environment' to
16 impose bogus agendas"; (v) "Intensely urbanizing transforming your way of life,
17 stop 'One Bay Area'"; (vi) "Inquiring Minds Invited!
18 GlobalizationOfCalifornia.com" (the "Signs").

19 12. Citizens intends to display both commercial and noncommercial
20 speech on the Signs in the future. Citizens intends to display both onsite and
21 offsite commercial speech on the Signs in the future.

22 13. The Signs were constructed in conformity with all applicable
23 building standards and engineering requirements as promulgated by the County
24 and the State of California.

25 14. Prior to the construction of the Signs, there was, and remains, another
26 sign on the Parcel displaying onsite commercial speech.

27 15. The County has promulgated certain ordinances, known as the
28 Alameda County Code of Ordinances (the "Code"). The Code regulates the

1 display of signs in unincorporated areas of the County.

2 16. Pursuant to section 17.04.010 of the Code, a “Billboard” is a
3 “permanent structure or sign used for the display of offsite commercial messages
4 and shall include and be synonymous with ‘advertising sign.’”

5 17. Pursuant to section 17.30.240 of the Code, within an SC District,
6 “[n]o advertising signs shall be permitted.” This prohibition is repeated at section
7 17.52.550.

8 18. Pursuant to section 17.52.515 of the Code: “... no person shall
9 install, move, alter expand, modify, replace or otherwise maintain or operate any
10 billboard or advertising sign in the unincorporated of Alameda County, except ...
11 (2) Those billboards or advertising signs for which a valid permit has been issued
12 and has not expired”

13 19. The Code does not include any stated purpose for the speech
14 restrictions set forth in sections 17.04.010, 17.30.240, and 17.52.515, or for the
15 distinction of commercial speech therein.

16 20. The Code includes multiple content-based exemptions and
17 exceptions from the speech restrictions set forth in sections 117.04.010,
18 17.30.240, and 17.52.515, many of which grant the County, or various entities
19 within and instrumentalities of, the County unfettered discretion to permit or deny
20 permission for displaying signs.

21 21. Pursuant to section 17.18.120 of the Code, any land use at issue must
22 “conform to the approved land use and development plan,” which is “adopted by
23 the board of supervisors” of the County (“Land and Development Plan”). Under
24 section 17.18.130, if in the “opinion of the [County] planning commission,” the
25 land use represents a “material change” to the Land and Development Plan, the
26 proposed land use will not be permitted. If the Planning Commission finds that
27 the each or all of the Signs is not a “material change,” then the Signs may be
28 permitted under a conditional use permit as provided in section 17.54.135 of the

1 Code.

2 22. The Code provides no standards to guide the County Planning
3 Commission in determining whether any given proposed land use constitutes a
4 “material change” to the Land and Development Plan. The Code provides no time
5 limit for the County Planning Commission to rule as to whether the proposed use
6 is a material change to the Land and Development Plan. Accordingly, the County
7 Planning Commission has been given unfettered discretion to rule whether or not
8 each or any of the Signs constitutes a material change to the Land and
9 Development Plan.

10 23. Pursuant to section 17.52.520 of the Code, some signs are exempt
11 from the speech restrictions set forth in sections 17.04.010, 17.30.240, and
12 17.52.515 based on the content of the speech displayed thereon. Such signs
13 include: official public signs, no trespass signs, warning signs, signs identifying a
14 benefactor, signs placed on or attached to bus stop benches or transit shelters in
15 the public right-of-way when approved by the director of the public works agency,
16 and, any sign which has been determined by the historical landmarks committee to
17 have “significant historical merit.”

18 24. The Code provides no standards to guide the historical landmarks
19 committee to determine whether a sign has “significant historical merit,” and
20 provides no standards to guide the director of the public works agency in
21 determining whether to approve a sign. The Code provides no time limit for the
22 historical landmarks committee to rule whether any given sign has “significant
23 historical merit.” The Code provides no time limit for the director of the public
24 works agency to approve a sign. Accordingly, the Code gives these County
25 officials unfettered discretion to approve or not approve any sign under section
26 17.52.520.

27 25. Pursuant to section 17.52.560 of the Code, no advertising sign shall
28 be located in any district in a scenic route corridor. As stated above, an

1 “advertising sign” is defined in Section 17.04.010, as offsite commercial speech.
2 Hence, a sign containing commercial speech advertising goods or services
3 available on the property is not an advertising sign, and is not banned in a scenic
4 route corridor.

5 26. Pursuant to section 17.54.080 of the Code, any terms of Title 17 of
6 the Code may be varied. Accordingly, any size sign with any content of speech is
7 available upon the granting of a variance. A variance may be granted under this
8 section if it is, *inter alia*, “not be detrimental” to the “public welfare.” The Code
9 does not provide for any time limit for deciding whether a variance shall be
10 issued. Thus, the County or instrumentality of the County hearing the application
11 for a variance has unfettered discretion to approve or disapprove a variance
12 application to display a sign of any size with any content of speech.

13 27. Pursuant to section 17.54.135 of the Code, any sign of any size is
14 available upon the granting of a conditional use permit. Accordingly, any size
15 sign with any content of speech is available upon the granting of a variance. A
16 conditional use permit may be granted under this section if it is “required by the
17 public need” and not “materially detrimental to the public welfare.” The Code
18 does not provide for any time limit for deciding whether a conditional use permit
19 shall be issued. Thus, the County or instrumentality of the County hearing the
20 application for a conditional use permit has unfettered discretion to approve or
21 disapprove a conditional use permit application to display a sign of any size with
22 any content of speech.

23 28. The Code contains no statement establishing that the regulation of
24 signs as herein described was enacted to implement a substantial government
25 interest, nor what that substantial government interest might be.

26 29. The speech restrictions set forth in the Code provide greater
27 protection to commercial speech than noncommercial speech based upon content
28 of the speech.

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SECOND CAUSE OF ACTION
FOR VIOLATION OF RIGHT OF EQUAL PROTECTION
UNDER THE UNITED STATES CONSTITUTION

37. Plaintiffs incorporate by reference paragraphs 1 through 33 of this Complaint as though set forth herein in their entirety.

38. The Code as set forth herein subjects Plaintiffs to the deprivation of equal protection rights secured by the Fourteenth Amendment to the United States Constitution.

39. The deprivation of Plaintiffs' equal protection rights is subject to action pursuant to 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION
FOR CIVIL RIGHTS VIOLATIONS

40. Plaintiffs incorporate by reference paragraphs 1 through 33 of this Complaint as though set forth herein in their entirety.

41. This action is brought to vindicate Plaintiffs' civil rights under the United States Constitution pursuant to 42 U.S.C. § 1983.

42. As such, Plaintiffs are entitled to attorneys' fees and costs, and expert fees pursuant to 42 U.S.C. § 1988.

FOURTH CAUSE OF ACTION
FOR VIOLATION OF RIGHT OF FREE SPEECH
UNDER THE CALIFORNIA CONSTITUTION

43. Plaintiffs incorporate by reference paragraphs 1 through 33 of this Complaint as though set forth herein in their entirety.

44. The Code infringes on Plaintiffs' rights of free speech guaranteed by the California Constitution.

45. Pursuant to California Civil Code section 52.1, Plaintiffs are entitled to injunctive relief barring the County from infringing on Plaintiffs' right of free speech, and attorneys' fees in bringing this action.

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FIFTH CAUSE OF ACTION
FOR VIOLATION OF RIGHT OF EQUAL PROTECTION
UNDER THE CALIFORNIA CONSTITUTION

46. Plaintiffs incorporate by reference paragraphs 1 through 33 of this Complaint as though set forth herein in their entirety.

47. The Code infringes on Plaintiffs’ rights of equal protection guaranteed by the California Constitution.

48. Pursuant to California Civil Code section 52.1, Plaintiffs are entitled to injunctive relief barring the County from infringing on Plaintiffs’ right of free speech, and attorneys’ fees in bringing this action.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully request judgment jointly and
3 severally and/or separately as appropriate against Defendants cumulatively and/or
4 alternatively, as appropriate, as follows:

- 5 1. For temporary, preliminary, and permanent injunctive relief barring
6 the County from any and all conduct enforcing the unconstitutional
7 Code to prohibit, encumber, or penalize Plaintiffs' signs;
8 2. For actual damages according to proof at trial;
9 3. For additional actual, consequential, and other special damages in an
10 amount according to proof at trial;
11 4. For reasonable attorneys' fees pursuant to statute(s);
12 5. For prejudgment interest from the date(s) of injury;
13 6. For costs of suit;
14 7. For such other and further relief as the Court deems just, equitable,
15 and proper.

16
17 DATED: June 1, 2014

JOSHUA R. FURMAN LAW CORP.

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19 By: /s/ Joshua R. Furman
20 JOSHUA R. FURMAN
21 *Attorney for Plaintiffs,*
22 Citizens for Free Speech, LLC &
23 Michael Shaw
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: June 1, 2014

JOSHUA R. FURMAN LAW CORP.

By: /s/ Joshua R. Furman
 JOSHUA R. FURMAN
 Attorney for Plaintiffs,
 Citizens for Free Speech, LLC &
 Michael Shaw