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15 Attorneys for Plaintiffs

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA (San Jose Division)

18 TERESITA AUBIN, DAVID BROWNFIELD, and
19 WYNETTE SILLS,

20 Plaintiffs,

21 v.

22 ROB BONTA, in his official capacity as Attorney
23 General of the State of California,

24 Defendant.

25 NO.: 21-CV-07938

26 **COMPLAINT FOR CIVIL RIGHTS
VIOLATION AND INJUNCTIVE
AND DECLARATORY RELIEF;**

27 **1. 42 U.S.C. § 1983
2. California Civil Code §52.1**

28 Plaintiffs allege as follows:

29 1. Plaintiffs Teresita Aubin, David Brownfield, and Wynette Sills are natural persons.
30 Motivated by their moral, religious, and political beliefs, Plaintiffs regularly engage in pro-life,
31 anti-abortion speech activities in California. These speech activities include hand-to-hand
32 leafleting, education about abortion, and holding signs with a pro-life, anti-abortion message. All
33 of these activities occur on public sidewalks or other public fora, where they can convey their
34 message to the public.

1 2. Defendant Rob Bonta is the Attorney General of California and as such is the chief law
 2 enforcement officer of the state of California and is named herein in his official capacity.

3 According to Cal. Const. Article V, §13, the Attorney General's duties include the following:

4 It shall be the duty of the Attorney General to see that the laws of the State are
 5 uniformly and adequately enforced. The Attorney General shall have direct
 6 supervision over every district attorney and sheriff and over such other law
 7 enforcement officers as may be designated by law, in all matters pertaining to the
 8 duties of their respective offices, and may require any of said officers to make reports
 9 concerning the investigation, detection, prosecution, and punishment of crime in their
 10 respective jurisdictions as to the Attorney General may seem advisable.

11 3. **JURISDICTION:** This Court has jurisdiction over this action pursuant to Title 28
 12 U.S.C. §§1331 and 1343(3) in that the controversy arises under the United States Constitution and
 13 under 42 U.S.C. §1983 and 28 U.S.C. §§2201 and 2202. This Court has authority to award
 14 attorney fees pursuant to 42 U.S.C. §1988. Plaintiffs further invoke the supplemental jurisdiction
 15 of this Court under 28 U.S.C. §1367(a) to hear and adjudicate state law claims. Each and all of the
 16 acts (or threats of acts) alleged herein were done by Defendant, or his officers, agents, and
 17 employees, under color and pretense of the statutes, ordinances, regulations, customs and usages of
 18 the State of California.

19 4. **INTRADISTRICT ASSIGNMENT:** Venue is proper in this district under 28 U.S.C.
 20 §1391(b) because a substantial part of the events giving rise to the claims in this action occurred in
 21 Santa Clara County and Monterey County, California which is within this district and division.

22 5. On or about October 8, 2021, the State of California enrolled and chaptered Senate Bill
 23 742 (“SB742”), with the short title: “Vaccination sites: unlawful activities: obstructing,
 24 intimidating, or harassing.” Section 2 of SB742 adds section 594.39 to the Penal Code. Section
 25 594.39(a) provides:

26 It is unlawful to knowingly approach within 30 feet of any person while a
 27 person is within 100 feet of the entrance or exit of a vaccination site and is
 28 seeking to enter or exit a vaccination site, or any occupied motor vehicle
 29 seeking entry or exit to a vaccination site, for the purpose of obstructing,
 30 injuring, harassing, intimidating, or interfering with that person or vehicle
 31 occupant.

32 Section 594.39(c)(1) defines “harassing” as:

knowingly approaching, without consent, within 30 feet of another person or occupied vehicle for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with, that other person in a public way or on a sidewalk area.

Section 594.39(c)(6) defines “vaccination site” as:

the physical location where vaccination services are provided, including, but not limited to, a hospital, physician's office, clinic, or any retail space or pop-up location made available for vaccination services.

Section 594.39(d) provides:

It is not a violation of this section to engage in lawful picketing arising out of a labor dispute, as provided in Section 527.3 of the Code of Civil Procedure.

6. Violation of SB742 is a criminal misdemeanor under section 594.39(b), punishable by fine or imprisonment or both.

7. Plaintiffs regularly exercise their free speech rights to display signs to, distribute literature to, and engage in oral protest, education, and counseling with other persons, in or out of vehicles, within 100 feet of the entrance or exits of “vaccination sites” as defined under SB742. Plaintiffs do not seek, nor could they reasonably be expected to seek or to gain, from 30 feet away, permission to approach other persons in order to engage in these activities.

8. SB742 is content- and viewpoint on its face, as it exempts speech activity “arising out of a labor dispute” from the restrictions imposed on other speech and speakers. It is also content-based in that it restricts only those oral communications that consist of “protest, education, or counseling.”

9. SB742 on its face burdens and denies free speech in a traditional public forum, does not further any important or substantial government interest, and is not narrowly tailored to further any government interest asserted, and fails to leave open ample alternative channels of communication.

10. Any interest advanced by Defendant to support SB742 is related to the suppression of constitutional free speech rights and is also minor compared to the infringement of rights worked by SB742.

11. Unless and until Defendant is restrained by order of this Court, defendant, acting through his officers, servants, agents and employees, will enforce SB742.

12. Unless and until this Court declares SB742 unconstitutional, Defendant, acting through his officers, servants, agents and employees, will enforce SB742.

13. All of the acts of the Defendant, his officers, agents, servants, and employees, as alleged herein, were done or are threatened to be done under color and pretense of the statutes, ordinances, regulations, customs, official policies, official procedures, and usages of the State of California.

14. Plaintiffs are suffering irreparable injury from the enforcement and threat of enforcement of SB742, and will continue to suffer irreparable injury until the threat of enforcement is lifted.

FIRST CAUSE OF ACTION

(VIOLATION OF 42 U.S.C. § 1983)

15. Plaintiffs incorporate by reference all preceding paragraphs as if fully restated here.

16. SB742 is an unconstitutional abridgment on its face, and as applied or threatened to be applied, of the Plaintiffs' affirmative rights to freedom of speech under the United States Constitution, First and Fourteenth Amendments.

17. SB742, on its face and as applied or threatened to be applied, is an unconstitutionally overbroad restriction on expressive activity.

18. SB742, on its face and as applied or threatened to be applied, is an unconstitutionally vague restriction on expressive activity.

19. SB742 on its face and as applied or threatened to be applied, is a content-based and viewpoint-based restriction on speech.

20. SB742, on its face and as applied or threatened to be applied, does not serve a significant governmental interest.

21. SB742, on its face and as applied or threatened to be applied, does not leave open ample alternative channels of communication.

22. SB742, on its face and as applied or threatened to be applied, is neither narrowly tailored nor the least restrictive means to accomplish any permissible governmental purpose sought to be served by the legislation.

23. SB742 fails to adequately advise, notify, or inform persons threatened with possible prosecution for violation of their requirements. Therefore, the Ordinance is unconstitutionally vague, on its face and as applied or threatened to be applied, in violation of the due process guarantee of the Fourteenth Amendment to the United States Constitution.

24. SB742 is an irrational and unreasonable statute, imposing unjustifiable restrictions on the exercise of protected constitutional rights. Because the Ordinance is irrational and unreasonable, its application violates the due process guarantee of the Fourteenth Amendment to the United States Constitution

25. SB742, on its face and as applied or threatened to be applied, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and similar guarantees in the California State Constitution by denying to Plaintiffs free speech rights allowed to others in similar situations and other protections of state and federal law

SECOND CAUSE OF ACTION

(VIOLATION OF CALIFORNIA CIVIL CODE §52.1)

26. Plaintiff incorporates paragraphs 1-25 as if fully set forth herein.

27. SB742, on its face and as applied or threatened to be applied, interferes with Plaintiffs' exercise of the right to free speech and to assembly guaranteed by the First Amendment of the United States Constitution and Article I, §2 of the California Constitution, their right to be free from unlawful search and seizure guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §13 of the California Constitution, their rights under California's Unruh Act to be free from unlawful discrimination, and his equal protection rights under the 14th Amendment to the United States Constitution. This was and is a violation of California Civil Code §52.1.

1 28. Unless enjoined by this Court, Defendant will continue to infringe Plaintiffs'
2 constitutionally protected rights and thereby cause irreparable injury, as damages alone cannot fully
3 compensate Plaintiffs for the ensuing harm. This threat of injury from continuing violations
4 requires injunctive relief.

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7 WHEREFORE, Plaintiffs pray that this Court:

8 (a) Enter judgment against the Defendant;

9 (b) Enter a declaratory judgment declaring the acts of the Defendant to be a violation of
10 Plaintiffs' constitutional rights to freedom of speech and due process;

11 (c) Issue a declaratory judgment declaring that SB742 is unconstitutional on its face;

12 (d) Issue a declaratory judgment declaring that SB742 is unconstitutional as enforced and
13 as applied;

14 (e) Issue a temporary restraining order, and a preliminary and permanent injunction
15 enjoining defendants, their agents, servants, employees, officers from enforcing SB742;

16 (f) Award Plaintiffs costs, interest and reasonable attorneys' fees for this action pursuant to
17 42 U.S.C. §1988, Code of Civil Procedure §1021.5, and/or Civil Code §§ 52 and 52.1; and,

18 (g) Order such other and further relief as the Court deems just and proper under the
19 circumstances.

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22 Dated: October 10, 2021



23 MICHAEL MILLEN, ESQ.
24 ATTORNEY FOR PLAINTIFF

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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Teresita Aubin, David Brownfield, Wynette Sills

(b) County of Residence of First Listed Plaintiff Santa Clara County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael Millen, Esq., 119 Calle Marguerita, Los Gatos, CA 95032, (408) 871-2777; Catherine Short, Esq., LLDF, PO Box 1313, Ojai, CA 93024, (707) 337-6880

DEFENDANTS

ROB BONTA, in his official capacity as Attorney General of the State of California

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

PTF	DEF	PTF	DEF
<input type="checkbox"/> 1 Citizen of This State	<input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2 Citizen of Another State	<input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC § 881	375 False Claims Act
120 Marine	310 Airplane	365 Personal Injury – Product Liability	422 Appeal 28 USC § 158	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	367 Health Care/ Pharmaceutical Personal Injury Product Liability	423 Withdrawal 28 USC § 157	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	368 Asbestos Personal Injury Product Liability		410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	PERSONAL PROPERTY	820 Copyrights	430 Banks and Banking
151 Medicare Act	340 Marine	370 Other Fraud	830 Patent	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	371 Truth in Lending	835 Patent—Abbreviated New Drug Application	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	380 Other Personal Property Damage	840 Trademark	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	385 Property Damage Product Liability	880 Defend Trade Secrets Act of 2016	480 Consumer Credit
190 Other Contract	360 Other Personal Injury			485 Telephone Consumer Protection Act
195 Contract Product Liability	362 Personal Injury -Medical Malpractice		SOCIAL SECURITY	490 Cable/Sat TV
196 Franchise			861 HIA (1395ff)	850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	HABEAS CORPUS	862 Black Lung (923)	890 Other Statutory Actions
210 Land Condemnation	440 Other Civil Rights	463 Alien Detainee	863 DIWC/DIWW (405(g))	891 Agricultural Acts
220 Foreclosure	441 Voting	510 Motions to Vacate Sentence	864 SSID Title XVI	893 Environmental Matters
230 Rent Lease & Ejectment	442 Employment	530 General	865 RSI (405(g))	895 Freedom of Information Act
240 Torts to Land	443 Housing/ Accommodations	535 Death Penalty	FEDERAL TAX SUITS	896 Arbitration
245 Tort Product Liability	445 Amer. w/Disabilities- Employment	540 Mandamus & Other	870 Taxes (U.S. Plaintiff or Defendant)	899 Administrative Procedure Act/Review or Appeal of Agency Decision
290 All Other Real Property	446 Amer. w/Disabilities-Other	550 Civil Rights	871 IRS—Third Party 26 USC § 7609	950 Constitutionality of State Statutes
	448 Education	555 Prison Condition		
		560 Civil Detainee— Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation—Transfer	<input type="checkbox"/> 8 Multidistrict Litigation—Direct File
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VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. §1983

Brief description of cause:

Lawsuit seeking declaration that state law SB742 (Penal Code §594.39) is unconstitutional

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 10/10/2021

SIGNATURE OF ATTORNEY OF RECORD



UNITED STATES DISTRICT COURT
for the

Northern District of California

TERESITA AUBIN, DAVID BROWNFIELD, and
WYNETTE SILLS

))))

Plaintiff(s)

V.

ROB BONTA, in his capacity as Attorney General of
the State of California,

Civil Action No. 21-CV-7938

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ROB BONTA, in his capacity as Attorney General of the State of California,
1300 "I" Street
Sacramento, CA 95814-2919

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)*

on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: