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14 UNITED STATES DISTRICT COURT

15 SOUTHERN DISTRICT OF CALIFORNIA

16 WILLIAM J. DORSETT,

17 Plaintiff,

18 vs.

19 CITY OF SAN DIEGO,

20 Defendant.

Case No.: '24CV1172 BTM SBC

COMPLAINT FOR
DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND
DAMAGES AND
DEMAND FOR JURY TRIAL.

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1 **INTRODUCTION**

- 2 1. This lawsuit concerns San Diego Municipal Code § 56.27, a vague,
3 overbroad, and anachronistic law that criminally penalizes
4 protected speech in the City of San Diego, in violation of the First
5 and Fourteenth Amendments of the United States Constitution.
6
7 2. It seeks declaratory and injunctive relief to protect the First
8 Amendment and Due Process rights of individuals within the City
9 of San Diego.
10
11 3. It also seeks to recover damages relating to the defense of a
12 criminal charge, trial, conviction, and appeal stemming from this
13 unconstitutional ordinance.
14
15

16 **THE PARTIES**

- 17 4. Plaintiff William J. Dorsett is a resident of the City of San Diego.
18
19 5. Mr. Dorsett brings this challenge to San Diego Municipal Code
20 § 56.27 both on his own behalf (having been charged and convicted
21 of a violation of this section and having his own speech now chilled
22 as a result), but also because he believes the ordinance chills the
23 speech of others within the City of San Diego and is selectively
24 enforced.
25
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1 6. Defendant City of San Diego is a municipality located in San
2 Diego County, within the Southern District of California.

3
4 **JURISDICTION AND VENUE**

5 7. This Court has jurisdiction to hear this matter pursuant to
6 28 U.S.C. §§ 1331, 1343(a)(3) & (4).

7 8. Venue is appropriate in this Court because all the events that give
8 rise to this suit occurred in San Diego County, California.
9
10 28 U.S.C. § 1391.

11 9. This Court has authority to grant the requested declaratory and
12 injunctive relief under 28 U.S.C. §§ 2201, 2202, and 1343; Fed. R.
13 Civ. P. 57 and 65; and the general legal and equitable powers of
14 the court.
15

16
17 10. Prior to filing this complaint, Mr. Dorsett filed a claim for
18 damages pursuant to California Gov't Code § 900.4, *et seq.* with
19 the City of San Diego on December 17, 2023, the City confirmed
20 receipt of his claim on December 26, 2023.¹
21

22
23

¹ In March 2023, Mr. Dorsett requested that the City of San Diego
24 voluntarily repeal this outdated ordinance and compensate him for his
25 costs associated with defending against this unconstitutional
26 ordinance. The City never responded to Mr. Dorsett.
27

1 11. This suit is timely filed.

2 **RELEVANT STATUTORY PROVISION & HISTORY**

3 12. San Diego Municipal Code § 56.27 states:

4 **Disorderly or Offensive Conduct in Public Places**
5 **— Prohibited**

6
7 That is [sic] shall be and is hereby declared to be
8 unlawful for any person to be guilty of any
9 offensive or disorderly conduct in or upon any of
10 the streets, alleys, sidewalks, squares, parks, or in
11 any store, or other public place in said City, and it
12 shall be unlawful for any person to make any loud
13 noise, or disturbance, or use any loud, noisy,
14 boisterous, vulgar, or indecent language on any of
15 the streets, alleys, sidewalks, square, park, or in
16 any store or other public place in said City.²

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23
24 ² See City of San Diego, Municipal Code, Chapter 5: Public Safety,
25 *Morals and Welfare, available at*
26 [http://docs.sandiego.gov/municode/MuniCodeChapter05/Ch05Art06Div](http://docs.sandiego.gov/municode/MuniCodeChapter05/Ch05Art06Division00.pdf)
27 [ision00.pdf](http://docs.sandiego.gov/municode/MuniCodeChapter05/Ch05Art06Division00.pdf).

1 13. The first iteration of this ordinance was passed in 1895 and was
2 included with an ordinance prohibiting “drunkenness.”³

3
4 14. Despite significant developments in First Amendment
5 jurisprudence over the last 100 years, the language of the
6 ordinance has remained substantially unchanged since 1903.

7
8 15. The only substantive difference between the current version of the
9 ordinance and that passed in 1903 is the removal of the word
10 “saloon” from the described locales where such speech is
11 prohibited:⁴
12

13
14
15 ³ See City of San Diego, Ordinance Books, “Ordinance Book 3
16 September 10, 1889 – April 9, 1897,” available at
17 <https://www.sandiego.gov/sites/default/files/legacy/digitalarchives/pdf/historicalocd/ordinances/ordinancebook3.pdf>.

18 ⁴ There appears to be a scrivener’s error in the current version of the
19 ordinance (i.e., it should read “That it shall be” and not “That is shall
20 be”). This error appears in the current version of the code but not in
21 the versions passed in 1903, 1934, or 1952. See City of San Diego,
22 Ordinance Books, “Ordinance Book 6 June 16, 1902 – September 21,
23 1903,” available at
24 <https://www.sandiego.gov/sites/default/files/legacy/digitalarchives/pdf/historicalocd/ordinances/ordinancebook6.pdf>; City of San Diego,
25 Ordinance Books, “Ordinance Book 45 October 9, 1934 – September 22,
26 1936,” available at
27 <https://www.sandiego.gov/sites/default/files/legacy/digitalarchives/pdf/historicalocd/ordinances/ordinancebook45.pdf>; City of San Diego,
28 Ordinance Books, “Ordinance New Series 5041-5050”, available at

1 Section 2. That it shall be and is here-
 2 by declared to be unlawful for any per-
 3 son to be guilty of any offensive or dis-
 4 orderly conduct in or upon any of the
 5 streets, alleys, sidewalks, squares, parks,
 6 or in any saloon or store, or other public
 7 place in said City, and it shall be unlaw-
 8 ful for any person to make any loud
 9 noise, or disturbance, or use any loud,
 10 noisy, bolsterous, vulgar, or indecent
 11 language on any of the streets, alleys,
 12 sidewalks, square, park, or in any saloon
 13 or store or other public place in said
 14 City.

16.

11 **DEFENDANT CITY OF SAN DIEGO KNOWS IT HAS**
 12 **ANACHRONISTIC, UNCONSTITUTIONAL ORDINANCES ON**
 13 **ITS BOOKS BUT TAKES NO STEPS TO PROTECT THE**
 14 **CITIZENRY**

14 17. This is not the only municipal ordinance that the City of San
 15 Diego has left on the books despite its questionable
 16 constitutionality.

18 18. It wasn't until September 2020 that the San Diego City
 19 Council finally repealed San Diego Municipal Code § 56.30

24 _____
 25 <https://webdocs.sandiego.gov/Digital+Archives/Ordinances/ORD%20NS%205041-5050.pdf>.

1 which prohibited “seditious language” and had “been
2 disproportionately used . . . to punish Black San Diegans.”⁵

3
4 19. Section 56.30 had also been in San Diego’s Municipal Code
5 for over 100 years before being repealed.

6 20. The City of San Diego knows that these anachronistic and
7 unconstitutional laws remain on the books but has chosen to
8 do nothing about them.

9
10 21. According to the San Diego City Attorney’s Office, the San
11 Diego City Council and Mayor have a process in place to
12 review the City’s Charter to recommend amendments and
13

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18 _____
19 ⁵ City News Service, *City Council Repeals 102-Year-Old Seditious Law*
20 *Used To Punish Speech*, KPBS MIDDAY EDITION, (Sept. 30, 2020),
21 available at [https://www.kpbs.org/news/midday-](https://www.kpbs.org/news/midday-edition/2020/09/30/city-council-repeals-sedition-law)
22 [edition/2020/09/30/city-council-repeals-sedition-law](https://www.kpbs.org/news/midday-edition/2020/09/30/city-council-repeals-sedition-law); see also
23 Georgetown University, THE FREE SPEECH PROJECT, “SAN DIEGO
24 POLICE ISSUED TICKETS FOR ‘SEDITIONOUS LANGUAGE’ FOR
25 YEARS, LOCAL NEWS SOURCE REPORTS,” (first published Sept.
26 29, 2020), available at
27 [https://freespeechproject.georgetown.edu/tracker-entries/san-diego-](https://freespeechproject.georgetown.edu/tracker-entries/san-diego-police-issued-tickets-for-seditious-language-for-years-local-news-source-reports/)
28 [police-issued-tickets-for-seditious-language-for-years-local-news-](https://freespeechproject.georgetown.edu/tracker-entries/san-diego-police-issued-tickets-for-seditious-language-for-years-local-news-source-reports/)
[source-reports/](https://freespeechproject.georgetown.edu/tracker-entries/san-diego-police-issued-tickets-for-seditious-language-for-years-local-news-source-reports/).

1 additions, though they have not utilized that process in over
2 17 years.⁶

3
4 22. According to the San Diego Attorney’s Office, no similar
5 process even exists for reviewing the San Diego Municipal
6 Code.⁷

7
8 **BACKGROUND FACTS**

9 23. Plaintiff William J. Dorsett is a full-time artist,⁸ specializing in
10 spray paintings, palm leaf, and acrylic art as well as digital
11

12
13 ⁶ Dorian Hargrove & Ariana Cohen, *Strange and antiquated laws you*
14 *won’t believe exist in San Diego*, CBS8, (Mar. 6, 2024) (featuring the
15 following statement by the San Diego City Attorney’s Office: “The City
16 Council and Mayor have created Charter Review Commissions over
17 the last few decades that are tasked with reviewing the Charter and
18 recommending amendments and additions. Regrettably, the City has
19 not convened a Charter Review Commission since 2007 – something
the City Attorney’s Office has suggested for many years now.”),
available at <https://www.cbs8.com/article/news/investigations/san-diegos-weird-laws/509-09e44806-6a02-4aa8-9b28-cba10fff9c04>.

20 ⁷ *Id.* (“The City does not have a similar process for reviewing the entire
21 San Diego Municipal Code, which is a massive document. The City
22 Attorney’s Office will bring requests to the Council to amend the
23 Municipal Code when we become aware of new cases or laws that
contradict local laws or could benefit from updates.”).

24 ⁸ Mr. Dorsett makes his living as an artist. He regularly goes to public
25 forums throughout the City of San Diego to show his art to the public
26 and to sell his art to interested patrons.

1 logos/graphics and music. He is also a self-described First
2 Amendment Rights Activist.

3
4 24. On June 25, 2023, Mr. Dorsett went to Balboa Park⁹ as “a
5 busker¹⁰ and an artist” but also because other buskers and artists
6 told him that “park rangers had been violating rights” so he went
7 “there to witness and observe to see if this was true or not.”¹¹
8

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13
14 ⁹ Balboa Park is a traditional public forum “held in trust” for the use of
15 the public in San Diego. *See Hague v. Comm. for Indus. Org.*, 307 U.S.
16 496, 515 (1939) (“Wherever the title of streets and parks may rest,
17 they have immemorially been held in trust for the use of the public
18 and, time out of mind, have been used for purposes of assembly,
19 communicating thoughts between citizens, and discussing public
20 questions. Such use of the streets and public places has, from ancient
21 times, been a part of the privileges, immunities, rights, and liberties of
22 citizens.”).

23 ¹⁰ A busker “is a form of self-expression that is street performing.” *See*
24 *Transcript of Court Trial, The People of the State of California v.*
25 *William Dorsett*, Superior Court of California, County of San Diego,
26 Central Division, Dept. KM-A, San Diego, California, Hon. Peter W.
27 Singer, Commissioner Presiding (Sept.7, 2023) at Exhibit A - 28,
28 attached as Exhibit A.

¹¹ *Id.*

1 25. That afternoon, Mr. Dorsett observed Park Ranger Zadok Othniel
2 issuing a citation to an individual, Stephen Valenzuela, “doing a
3 bubble show.”¹²
4

5 26. Mr. Valenzuela “makes large bubbles” out of water and “Dawn
6 soap” to entertain children.¹³
7

8 27. According to Ranger Othniel, Mr. Valenzuela was creating an
9 “environmental impact issue” by using the “Dawn soap.”¹⁴

10 28. Such bubble-making, according to the Park Ranger, requires the
11 use of “protective equipment.”¹⁵
12

13 29. Ranger Othniel cited Mr. Valenzuela because, according to the
14 ranger, making “large bubbles” for children “is in violation of [the]
15 Public Health and Safety Statute.”¹⁶
16
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18
19

20 ¹² Exhibit A - 7.

21 ¹³ Exhibit A - 8.

22 ¹⁴ *Id.*

23 ¹⁵ *Id.*

24 ¹⁶ Exhibit A - 9.

1 30. But in the last several months (since the time Mr. Dorsett was
2 cited), the same agency which oversees the Park Rangers—the
3 City of San Diego Parks and Recreation Department—continues to
4 showcase imagery of an individual doing “bubble shows” for
5 children with no protective equipment and—one would imagine
6 since it is being used in their own promotional materials¹⁷—not
7 creating a violation of the City’s public health and safety laws:
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22 31.

23
24 ¹⁷ City of San Diego Parks and Recreation Department Email, “**BID**
25 **OPPORTUNITY: Recreation Program Community Needs Assessment**
26 **Consultant**” (Feb. 16, 2024).
27
28

1 32. And again within the last few weeks, the same City of San Diego
2 agency continues to promote “community events for the whole
3 family” using giant bubble imagery for children:¹⁸
4



24 ¹⁸ City of San Diego Parks and Recreation Department Email, “Enjoy an
25 Afternoon at the Park! Parks After Dark is back this Summer!” (June 21,
26 2024).

1 34. On that June afternoon last summer, Mr. Dorsett filmed the
2 interaction between the Park Ranger and Mr. Valenzuela.

3
4 35. During the filming, Mr. Dorsett advocated for Mr. Valenzuela's
5 rights to put on bubble shows for children.

6 36. Mr. Valenzuela declared, in response to the ticket he was
7 receiving, that "this isn't going to stop me from coming out here
8 and doing it."¹⁹

9
10 37. Mr. Dorsett responded, "good. Don't let them intimidate you.
11 They're being bullies."²⁰
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23 ¹⁹ Video recording of encounter at approx. 8:20, *available at*
24 <https://www.youtube.com/watch?v=P3aX7YMjTYs&t=484s>.

25 ²⁰ *Id.* at approx. 8:24.
26
27
28

1 38. Upon hearing the word “bullies,”²¹ Ranger Othniel turned to
2 Mr. Dorsett, pointed at him, and informed him: “you’re being cited
3 for 56.27 disorderly conduct . . . you’re being detained right now.”²²
4

5 39. At no point during the encounter did Mr. Dorsett use fighting
6 words or try to incite others to violence.
7

8 **CONVICTION AT TRIAL FOR “TAUNT[ING]” AND**
9 **“ANNOY[ING]” LAW ENFORCEMENT**

10 40. Mr. Dorsett took his infraction case to trial on September 7, 2023.

11 41. He argued to the trial court that his conduct and speech were
12 constitutionally-protected First Amendment activities.²³
13

14 42. In a bench trial, the court focused on whether Mr. Dorsett had
15 created a “disturbance” under § 56.27.²⁴
16

17 ²¹ In *City of Houston, Texas v. Hill*, the U.S. Supreme Court noted that
18 it has “repeatedly invalidated laws that provide the police with
19 unfettered discretion to arrest individuals for words or conduct that
20 annoy or offend them.” 482 U.S. 451, 465 (1987). Like the Houston
21 municipal ordinance at issue in *Hill*, § 56.27 “criminalizes a
22 substantial amount of constitutionally protected speech, and accords
the police unconstitutional discretion in enforcement.” *Id.* at 466.

23 ²² Video recording of encounter at approx. 8:28, available at
<https://www.youtube.com/watch?v=P3aX7YMjTYs&t=484s>.

24 ²³ Exhibit A - 33.
25

26 ²⁴ Exhibit A - 36.
27

1 43. Since this was an infraction trial, Mr. Dorsett was not entitled to
2 trial by jury.

3
4 44. Nor was Mr. Dorsett entitled to appointed counsel.

5 45. The absence of appointed counsel in infraction matters has likely
6 aided this unconstitutional ordinance from evading judicial review
7 for so long. There do not appear to be any previous cases in the
8 100+ years history of this municipal ordinance interpreting the
9 constitutionality of § 56.27.
10

11 46. The court looked to the California Penal Code and jury
12 instructions for violations of Cal. Penal Code § 415²⁵ (“Fighting;
13 noise; offensive words”) in an attempt to seek to understand the
14 meaning of “disturbance.”²⁶
15
16

17
18 ²⁵California Penal Code § 415 provides: “Any of the following persons
19 shall be punished by imprisonment in the county jail for a period of not
20 more than 90 days, a fine of not more than four hundred dollars
21 (\$400), or both such imprisonment and fine: (1) Any person who
22 unlawfully fights in a public place or challenges another person in a
23 public place to fight. (2) Any person who maliciously and willfully
24 disturbs another person by loud and unreasonable noise. (3) Any
25 person who uses offensive words in a public place which are inherently
26 likely to provoke an immediate violent reaction.”

27 ²⁶ Exhibit A – 36-37.
28

1 47. Both the Code and the jury instructions addressed conduct that
2 the court found “really do not apply in this case.”²⁷

3
4 48. The court then consulted Black’s Law Dictionary for additional
5 guidance on whether the speech here could be said to have created
6 a “disturbance.”²⁸

7
8 49. Here, the court found an expansive definition of “disturbance” that
9 included “any act causing annoyance, disquiet, agitation, or
10 derangement to another or interrupting his peace or interfering
11 with him in the pursuit of a lawful and an appropriate occupation
12 or contrary to the usages of a sort of meeting and class of persons
13 assembled that interferes with its due progress or irritates the
14 assembly in whole or in part.”²⁹

15
16
17 50. Under the Black’s Law definition of “disturbance,” the court
18 proceeded to find Mr. Dorsett guilty of “interfer[ing] with or
19 disturb[ing], taunt[ing], and annoy[ing]” the park ranger.³⁰
20

21
22 ²⁷ Exhibit A - 36.

23 ²⁸ Exhibit A – 38.

24 ²⁹ Exhibit A – 38-39.

25
26 ³⁰ Exhibit A – 39.

1 51. The court ordered Mr. Dorsett to pay a fine.³¹

2 52. Mr. Dorsett paid his fine in full through monthly installments.

3
4 **CONVICTION REVERSED ON APPEAL AS VIOLATIVE OF THE**
5 **FIRST AMENDMENT . . . BUT OVERBROAD AND VAGUE**
6 **ORDINANCE STILL STANDS**

7 53. Mr. Dorsett timely appealed his conviction asserting that—facially
8 and as-applied—§ 56.27 is unconstitutional.

9 54. After Mr. Dorsett filed his opening brief, the City of San Diego
10 conceded the as-applied challenge: Mr. Dorsett should never have
11 been cited nor convicted of a violation of § 56.27 because the First
12 Amendment protected his speech and conduct that day.³²

13
14 55. The City did not concede that the ordinance was facially invalid.

15 56. Oral argument was held on March 27, 2024.
16
17
18

19 ³¹ In addition to the expense of paying for a lawyer and paying his fine
20 in the criminal matter, Mr. Dorsett spent a substantial amount of time
21 researching his rights. He missed opportunities to work because of
22 this and because of his need to attend court proceedings related to this
23 matter, resulting in lost income. Mr. Dorsett experienced significant
24 stress and anxiety because of this citation, trial, conviction, fine, and
25 appeal.

26 ³² See Respondent’s Waiver of Briefing and Oral Argument, Office of the
27 City Attorney, *People v. Dorsett*, attached as Exhibit B.
28

1 57. On May 24, 2024, the Superior Court of the State of California,
2 County of San Diego, Appellate Division reversed Mr. Dorsett’s
3 conviction and remanded his case to the trial court with directions
4 to “dismission the conviction.”³³

6 58. The appellate court found that Mr. Dorsett’s conduct on the day of
7 his citation “was protected by the First Amendment of the
8 Constitution.”³⁴

10 59. It found that Mr. Dorsett’s “freedom to speak without risking
11 arrest is ‘one of the principal characteristics by which we
12 distinguish a free nation.’”³⁵

17 ³³ Decision/Statement of Reasons (CCP § 77(d)) by the Court, Superior
18 Court of California, County of San Diego, Appellate Division, *People v.*
19 *Dorsett* (May 24, 2024), attached as Exhibit C.

20 ³⁴ Exhibit C – 47.

21 ³⁵ *Id.*, citing *City of Houston, Texas v. Hill*, 482 U.S. 451, 463 (1987).
22 The Supreme Court in *Hill* also spoke specifically to those whose
23 speech is critical of police action, as Mr. Dorsett’s was here: “The
24 freedom of individuals verbally to oppose or challenge police action
25 without thereby risking arrest is one of the principal characteristics by
26 which we distinguish a free nation from a police state.” *Hill*, 482 U.S.
27 at 462-463.

1 60. But, the majority opinion did not address the facial
2 constitutionality of § 56.27, instead leaving it as an enforceable
3 law in the City of San Diego.
4

5 61. In a concurring opinion, Judge Birchak found § 56.27 to be “very
6 broad—arguably significantly broader than in *City of Houston*.”³⁶
7

8 62. The concurrence also noted that § 56.27 “is not narrowly tailored
9 to prohibit only disorderly conduct or fighting words” and thus it
10 “criminalizes a substantial amount of protected speech.”³⁷
11

12 63. Judge Birchak also argued that because any “potentially
13 unprotected speech and conduct” prohibited by § 56.27 is already
14 prohibited in existing California penal code provisions (Cal. Penal
15 Code §§ 415 and 647³⁸), the ordinance is also preempted.³⁹
16
17

18 ³⁶ Exhibit C – 48 (Birchak, J. concurring). In *Hill*, the Supreme Court
19 also noted that criminal statutes—like § 56.27—“must be scrutinized
20 with particular care . . .; those that make unlawful a substantial
21 amount of constitutionally protected conduct may be held facially
22 invalid even if they also have legitimate application.” 482 U.S. at 459.

23 ³⁷ *Id.*

24 ³⁸ California Penal Code § 647 prohibits “Disorderly conduct.”

25 ³⁹ Exhibit C – 48-49 (Birchak, J. concurring).
26
27

1 64. Finally, Judge Birchak stated that because of its “extreme
2 overbreadth and issues of preemption, Municipal Code section
3 56.27 is unconstitutional on its face.”⁴⁰
4

5 65. On June 7, 2024, the appellate court certified the opinion for
6 publication.⁴¹
7

8 66. The opinion became final on July 7, 2024.⁴²

9 **PAST, PRESENT, AND FUTURE CHILLING OF SPEECH**

10 67. Before his citation on June 25, 2023, Mr. Dorsett was threatened
11 with citations by law enforcement for advocating for the First
12 Amendment rights of himself and others in traditional public
13 forums within the City of San Diego.
14

15 68. Since his citation, trial, conviction, and fine for a violation of
16 § 56.27,⁴³ Mr. Dorsett has refrained from criticizing law
17
18

19 ⁴⁰ Exhibit C – 49 (Birchak, J. concurring) (emphasis added).
20

21 ⁴¹ Order, Superior Court of California, County of San Diego, Appellate
22 Division, *People v. Dorsett* (June 7, 2024), attached as Exhibit D.

23 ⁴² Exhibit D – 53.

24 ⁴³ Mr. Dorsett has standing to bring this challenge: he has suffered an
25 injury-in-fact from the threat of enforcement and the actual
26 enforcement of this unconstitutional ordinance against him (i.e., chilling
27 of his speech, the time and expense of finding and hiring a lawyer as
28

1 enforcement in the City of San Diego on a number of occasions out
2 of fear of suffering another citation and its related emotional and
3 financial consequences.
4

5 69. Even though Mr. Dorsett is pleased that his conviction arising
6 from his June 2023 citation has been overturned on appeal, he
7 continues to experience stress and anxiety that he will be ticketed
8 again under § 56.27 because it remains a valid ordinance in San
9 Diego’s Municipal Code available for use—and abuse—by law
10 enforcement.
11

12
13 70. This stress and anxiety causes Mr. Dorsett to refrain from
14 engaging in protected First Amendment speech and conduct in
15 traditional public forums within the City of San Diego to this day.
16

17
18
19 well as taking time off work to defend against this violation, the stress
20 of the prosecution, trial, and appeal).

21 A declaration by this Court of § 56.27’s unconstitutionality and a
22 permanent injunction prohibiting its enforcement would allow
23 Mr. Dorsett to resume his protected First Amendment activities in
24 public forums throughout the City of San Diego. *See LSO, Ltd. v. Stroh*,
25 205 F.3d 1146, 1152-1153 (9th Cir. 2000) (discussing standing
26 requirements). Additionally, “when the threatened enforcement effort
27 implicates First Amendment rights, the inquiry tilts dramatically
28 toward a finding of standing.” *Id.* at 1155.

1 71. Other buskers and artists have also been cited for violations of
2 § 56.27.

3
4 72. On information and belief, other buskers and artists also refrain
5 from exercising their First Amendment rights in public forums of
6 this City for fear of being cited for violations of § 56.27.

7
8 **FIRST CLAIM – Violation of 42 U.S.C. § 1983 (Unconstitutional
9 Statute Under First and Fourteenth Amendments)**

10 73. Mr. Dorsett hereby alleges and incorporates by reference each and
11 every allegation contained in paragraphs 1 through 72 above,
12 inclusive.

13 74. Defendant’s Municipal Code § 56.27 is a viewpoint-based
14 restriction on speech which is presumptively unconstitutional.⁴⁴

15
16 75. Section 56.27 is also an overbroad restriction on speech and
17 expression rendering it unconstitutional.
18

19
20
21 ⁴⁴ Section 56.27 prohibits speech that is “vulgar” or “indecent.” This
22 type of governmental regulation is presumptively impermissible. *See*
23 *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019) (“The government may not
24 discriminate against speech based on the ideas or opinions it conveys.
25 *See Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819,
26 829–830, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995) (explaining that
27 viewpoint discrimination is an ‘egregious form of content
28 discrimination’ and is ‘presumptively unconstitutional’).”).

1 76. Section 56.27 provides law enforcement in San Diego “with
2 unfettered discretion to [cite] individuals for words or conduct that
3 annoy or offend them.”⁴⁵
4

5 77. Criminal statutes should be “scrutinized with particular care . . .
6 those that make unlawful a substantial amount of constitutionally
7 protected conduct may be held facially invalid even if they also
8 have legitimate application.”⁴⁶
9

10 78. Section 56.27 “criminalizes a substantial amount of
11 constitutionally protected speech, and accords the police
12 unconstitutional discretion in enforcement.”⁴⁷
13

14 79. Section 56.27 is “susceptible of application to speech, although
15 vulgar and offensive, that is protected by the First and Fourteenth
16
17
18
19

20 ⁴⁵ *Hill*, 482 U.S. at 465 (holding city ordinance that made it “unlawful
21 for any person to assault, strike or in any manner oppose, molest,
22 abuse or interrupt any policeman in the execution of his duty, or any
23 person summoned to aid in making an arrest” substantially overbroad
and facially invalid).

24 ⁴⁶ *Id.* at 459 (internal citation omitted).

25 ⁴⁷ *Id.* at 466.
26
27
28

1 Amendments”⁴⁸ and is therefore unconstitutional and should be
2 declared to be so.

3
4 80. Defendant “can be sued directly under § 1983 for monetary,
5 declaratory, or injunctive relief where . . . the action that is alleged
6 to be unconstitutional implements or executes a[n] . . .
7 ordinance.”⁴⁹

8
9 81. Defendant is violating or imminently will violate the First
10 Amendment by enforcing Section 56.27 against protected speech
11 or expression.
12

13 **SECOND CLAIM – Violation of 42 U.S.C. § 1983**
14 **(Unconstitutional Statute Under the Fourteenth**
15 **Amendment/Due Process Clause)**

16 82. Mr. Dorsett hereby alleges and incorporates by reference each and
17 every allegation contained in paragraphs 1 through 72 above,
18 inclusive.
19

20
21 ⁴⁸ *Lewis v. City of New Orleans*, 415 U.S. 130, 134 (1974) (holding city
22 ordinance that punished only spoken words “constitutionally
23 overbroad” and “facially invalid” because it was “susceptible of
24 application to speech, although vulgar and offensive, that is protected
25 by the First and Fourteenth Amendments.”).

26
27 ⁴⁹ *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690
28 (1978).

1 83. Defendant’s Municipal Code § 56.27 reaches a substantial amount
2 of constitutionally protected expressive conduct.

3
4 84. It also specifically targets pure speech which is constitutionally
5 protected.

6 85. Section 56.27’s prohibition of “offensive” conduct and “loud⁵⁰,
7 noisy, boisterous” speech as well as the prohibition on
8 “disturbances”⁵¹ subjects the exercise of the right to Free Speech
9 within the City of San Diego to an unascertainable standard.
10

11 86. A person of common intelligence, reading § 56.27, would not be
12 provided fair notice of what is prohibited by the ordinance.
13

14 87. Section 56.27 also invites arbitrary or discriminatory enforcement
15 because it is so indefinite.
16

17
18 ⁵⁰ The problematic nature of a blanket prohibition on “loud” speech has
19 long been acknowledged by California courts. *See In re Brown*, 9 Cal.3d
20 612 (1973) (“As early as 1927, the California courts recognized that
loud shouting is not in itself unlawful.”).

21 ⁵¹ In considering similar, though not identical, language in a city
22 ordinance in *Coates v. City of Cincinnati*, the Supreme Court noted
23 that “[c]onduct that annoys some people does not annoy others. Thus,
24 the ordinance is vague, not in the sense that it requires a person to
25 conform his conduct to an imprecise but comprehensible normative
standard, but rather in the sense that no standard of conduct is
26 specified at all.” 402 U.S. 611, 614 (1971).
27
28

1 88. San Diego Municipal Code § 56.27 is unconstitutionally vague⁵²
2 and thereby violates the Due Process Clause of the U.S.
3 Constitution.
4

5 89. Defendant “can be sued directly under § 1983 for monetary,
6 declaratory, or injunctive relief where . . . the action that is alleged
7 to be unconstitutional implements or executes a[n] . . .
8 ordinance.”⁵³
9

10 90. Defendant is violating or imminently will violate the Fourteenth
11 Amendment by enforcing Section 56.27 against protected speech
12 or expression.
13

14 **THIRD CLAIM – Violation of 42 U.S.C. § 1983 (First and**
15 **Fourteenth Amendments – Retaliation)**

16 91. Mr. Dorsett hereby alleges and incorporates by reference each and
17 every allegation contained in paragraphs 1 through 72 above,
18 inclusive.
19

22 ⁵² See also *Butcher v. Knudsen*, 38 F.4th 1163, 1169 (9th Cir. 2022)
23 (“When a law implicating free speech is impermissibly vague, it risks
24 repressing the very discourse that the First Amendment protects and
encourages.”) (citation omitted).

25 ⁵³ *Monell*, 436 U.S. at 690.
26
27

1 92. Mr. Dorsett was engaging in a First Amendment protected
2 activity when he was filming and criticizing law enforcement in a
3 traditional public forum.
4

5 93. Park Ranger Othniel’s decision to cite Mr. Dorsett for a violation
6 of § 56.27 as a result of that criticism would “chill a person of
7 ordinary firmness” from engaging in this protected First
8 Amendment activity.
9

10 94. It was Mr. Dorsett’s criticism of the Park Ranger that was a
11 substantial or motivating factor in Ranger Othniel’s decision to
12 issue him a citation for a violation of § 56.27.
13

14 95. Defendant “can be sued directly under § 1983 for monetary,
15 declaratory, or injunctive relief where . . . the action that is alleged
16 to be unconstitutional implements or executes a[n] . . .
17 ordinance.”⁵⁴
18

19 96. Mr. Dorsett suffered damages directly resulting from his citation
20 and conviction under this unconstitutional statute in an amount
21 to be proven at trial.
22
23
24

25 ⁵⁴ *Monell*, 436 U.S. at 690.
26
27
28

1 97. Mr. Dorsett’s damages include, but are not limited to, lost income
2 due to preparing for and attending court proceedings, attorneys’
3 fees as well as emotional damages including stress and anxiety.
4

5 **FOURTH CLAIM – Violation of 42 U.S.C. § 1983 (First and**
6 **Fourteenth Amendments – Selective Enforcement)**

7 98. Mr. Dorsett hereby alleges and incorporates by reference each and
8 every allegation contained in paragraphs 1 through 72 above,
9 inclusive.
10

11 99. Section 56.27 (which outlaws “offensive,” “loud,” “noisy,” and
12 “vulgar” speech) is undoubtably violated hundreds of times a day
13 within the public spaces in the City of San Diego.⁵⁵
14

15 100. Mr. Dorsett—as a busker/artist and First Amendment activist—
16 was targeted for a violation of § 56.27 because of the exercise of a
17 protected constitutional right, that is: criticism of law enforcement
18 in a public forum.
19
20
21
22

23 ⁵⁵ Any San Diego playground is likely to (rightfully and joyfully) have
24 “noisy” activity and any city baseball field in use by a Little League
25 team is likely to have “loud” parental fans enthusiastically cheering on
26 their teams.
27
28

1 101. Defendant “can be sued directly under § 1983 for monetary,
2 declaratory, or injunctive relief where . . . the action that is alleged
3 to be unconstitutional implements or executes a[n] . . .
4 ordinance.”⁵⁶

6 102. Mr. Dorsett suffered damages directly resulting from his citation
7 and conviction under this unconstitutional statute in an amount
8 to be proven at trial.

10 103. Mr. Dorsett’s damages include, but are not limited to, lost income
11 due to preparing for and attending court proceedings, attorneys’
12 fees as well as emotional damages including stress and anxiety.

14 **FIFTH CLAIM – Violation of 42 U.S.C. § 1983 (Unlawful Official
15 Policy)**

16 104. Mr. Dorsett hereby alleges and incorporates by reference each and
17 every allegation contained in paragraphs 1 through 72 above,
18 inclusive.

20 105. Park Ranger Othniel, who cited Mr. Dorsett, acted under color of
21 law.

25 ⁵⁶ *Monell*, 436 U.S. at 690.

1 106. The Park Ranger deprived Mr. Dorsett of particular rights under
2 the U.S. Constitution.

3
4 107. Ranger Othniel acted pursuant to an expressly adopted municipal
5 ordinance of the Defendant City of San Diego.

6 108. The Defendant City of San Diego's unconstitutional municipal
7 ordinance caused the deprivation of Mr. Dorsett's rights by
8 Ranger Othniel that is the Defendant City of San Diego's
9 unconstitutional municipal ordinance is so closely related to the
10 deprivation of Mr. Dorsett's rights as to be the moving force that
11 caused the ultimate injury.
12

13
14 109. Defendant "can be sued directly under § 1983 for monetary,
15 declaratory, or injunctive relief where . . . the action that is alleged
16 to be unconstitutional implements or executes a[n] . . .
17 ordinance."⁵⁷
18

19
20 110. Mr. Dorsett suffered damages directly resulting from his citation
21 and conviction under this unconstitutional statute in an amount
22 to be proven at trial.
23

24
25

⁵⁷ *Monell*, 436 U.S. at 690.
26

1 **SIXTH CLAIM – Violation of 42 U.S.C. § 1983 (Failure to Prevent**
2 **Violations of Law)**

3 111. Mr. Dorsett hereby alleges and incorporates by reference each and
4 every allegation contained in paragraphs 1 through 72 above,
5 inclusive.

6
7 112. The acts of Ranger Othniel deprived Mr. Dorsett of his particular
8 rights under the U.S. Constitution.

9 113. Ranger Othniel acted under color of law.

10
11 114. The Defendant City of San Diego was deliberately indifferent to
12 the substantial risk that its policies were inadequate to prevent
13 violations of law by its employees.

14
15 115. The failure of the Defendant City of San Diego to prevent
16 violations of law by its employees caused the deprivation of
17 Mr. Dorsett’s rights by Ranger Othniel; that is, the Defendant
18 City of San Diego’s failure to prevent violations of law by its
19 employees played a substantial part in bringing about or actually
20 causing the injury or damage to Mr. Dorsett.

21
22
23 116. Defendant “can be sued directly under § 1983 for monetary,
24 declaratory, or injunctive relief where . . . the action that is alleged

1 to be unconstitutional implements or executes a[n] . . .
2 ordinance.”⁵⁸

3
4 117. Mr. Dorsett suffered damages directly resulting from his citation
5 and conviction under this unconstitutional statute in an amount
6 to be proven at trial.

7
8 **DEMAND FOR JURY TRIAL**

9 118. Mr. Dorsett hereby demands a jury trial for all applicable causes
10 of action.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Mr. Dorsett prays that the Court enter judgment in
13 his favor and against the Defendant, and grant the following relief:

14 119. Declare San Diego Municipal Code § 56.27 an unconstitutional
15 viewpoint-based restriction on speech and unconstitutionally
16 overbroad under the First and Fourteenth Amendments;

17
18 120. Declare San Diego Municipal Code § 56.27 unconstitutionally
19 vague under the Fourteenth Amendment;

20
21 121. Issue preliminary and permanent injunctive relief restraining
22 Defendant City of San Diego and its officers, agents, servants,
23

24
25

⁵⁸ *Monell*, 436 U.S. at 690.

1 employees, and attorneys from enforcing San Diego Municipal
2 Code § 56.27;

3
4 And award Mr. Dorsett:

5 122. Compensatory damages, including for emotional harm, in an
6 amount to be proven at trial;

7
8 123. Special damages;

9 124. Reasonable attorneys' fees, expert witness fees, and costs
10 pursuant to, among other things, 42 U.S.C. § 1988 and Fed. R.
11 Civ. P. 54;

12
13 125. Pre- and post-judgment interest at the maximum rate allowed by
14 law;

15
16 126. Damages to make up for any adverse tax consequences for any
17 award to Mr. Dorsett; and

18 127. Such other relief as this Court may deem appropriate.

19
20 Respectfully submitted,

21 DATED: July 8, 2024

s/Michele Akemi McKenzie

MICHELE AKEMI MCKENZIE

TIMOTHY A. SCOTT

NICOLAS JIMENEZ

MCKENZIE SCOTT PC

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CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

William J. Dorsett

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

(c) Attorneys (Firm Name, Address, and Telephone Number) McKenzie Scott PC 1350 Columbia Street, Suite 600, San Diego, CA 92101 T: (619) 794-0451 F: (619) 202-7461

DEFENDANTS

City of San Diego

County of Residence of First Listed Defendant San Diego (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'24CV1172 BTM SBC

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, Intellectual Property Rights, etc.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

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: Action seeking declaratory/injunctive relief and damages for City's municipal code section which violates the 1st and 14th Amendments

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

Jul 8, 2024 /s/ Michele Akemi McKenzie

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE