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OSCAR LEATHERMAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OSCAR LEATHERMAN,

Plaintiff,

vs.

CITY OF EUREKA, EUREKA POLICE
DEPARTMENT, and STEVE WATSON, in
his official capacity as Interim Chief of Police,

Defendants.

) CASE NO. 3:17-cv-5610

) **COMPLAINT FOR VIOLATION OF CIVIL**
) **AND CONSTITUTIONAL RIGHTS**

) **DEMAND FOR JURY TRIAL**

INTRODUCTION

1
2 1. On March 15, 2016, the City Council for the City of Eureka adopted Eureka City
3 Ordinance No. 907-C.S., codified as Eureka Municipal Code (“EMC”) Section 130.06 (the
4 “Ordinance”), purporting to prohibit “aggressive and intrusive solicitation” throughout the City
5 of Eureka. The Ordinance also prohibits all solicitation in specified areas throughout the City of
6 Eureka, including but not limited to on median strips; within 35 feet of driveways accessing
7 shopping centers, retail, and business establishments; within 50 feet of public transportation
8 vehicles and stops; and to any motor vehicle located within 200 feet of any intersection. On its
9 face, the Ordinance broadly and over-inclusively prohibits the expression of First Amendment
10 rights in violation of the United States Constitution.

11 **JURISDICTION & VENUE**

12 2. This Court has jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1331
13 because they arise under the United States Constitution. This Court also has jurisdiction over
14 Plaintiff’s claims pursuant to 28 U.S.C. § 1343(a)(3) because they are brought to address
15 deprivations, under color of state authority, of rights, privileges, and immunities secured by the
16 United States Constitution. Plaintiff also seeks relief under the Declaratory Judgment Act, 28 U.S.C.
17 §§ 2201(a) and 2202.

18 3. This Court has personal jurisdiction over Defendant City of Eureka because it is a
19 political subdivision of the State of California located in Humboldt County. The Court has personal
20 jurisdiction over Defendants Eureka Police Department and Interim Police Chief Steve Watson
21 because they operate and/or reside in Humboldt County and enforce the City of Eureka’s laws.

22 4. Venue is proper in the United States District Court for the Northern District of
23 California under 28 U.S.C. § 1391(b). Defendants are located in the Northern District of California,
24 and the acts and/or omissions complained of herein occurred or will occur in this District.

25 **PARTIES**

26 5. Plaintiff Oscar Leatherman (“Plaintiff” or “Mr. Leatherman”) is, and at all
27 relevant times hereto was, a homeless individual residing in the State of California, County of
28 Humboldt.

1 6. Defendant City of Eureka (“City”) is a “public entity” within the definition of
2 California Government Code Section 811.2. Public entities in the State of California are subject
3 to suit, pursuant to California Government Code Section 945. The City, through the Eureka City
4 Council, is responsible for enacting the Ordinance. The City is also the legal and political
5 governmental entity responsible for the actions of the Eureka Police Department and its officials,
6 agents, and employees. Defendant City of Eureka is sued in its own right and on the basis of the
7 acts of its officials, agents, and employees, including the EPD.

8 7. Defendant Eureka Police Department (“EPD”) is the municipal agency
9 responsible for policing the City and for enforcement of the EMC, including Sections 130.06 and
10 10.99. The EPD, through its officials, agents, and employees, began enforcing the amended
11 Ordinance within the City of Eureka beginning on April 14, 2016.

12 8. Defendant Steve Watson (“Watson”) has been the EPD’s Interim Chief of Police
13 since July 2017. In his official capacity as Interim Chief of Police, Interim Chief Watson directs
14 the EPD’s administration and operation pursuant to the Code and guidelines set by the City. As
15 such, he is responsible for the enforcement of EMC Sections 130.06 and 10.99. Under Interim
16 Chief Watson’s direction, EPD officials, agents, and employees have detained, cited, and issued
17 a citation to Plaintiff for violation of the Ordinance pursuant to EMC Sections 130.06 and/or
18 10.99. Interim Chief Watson is being sued in his official capacity.

19 9. Each of the acts complained of was undertaken and each violation of Plaintiff’s
20 rights occurred pursuant to the unlawful policies, practices, and customs of Defendants.

21 10. In connection with the acts complained of herein, each Defendant was acting on
22 behalf of the City of Eureka or at the direction of another Defendant on the City’s behalf.

23 11. The acts of each Defendant were authorized, ratified, and/or condoned by the
24 relevant policy makers for Defendants City of Eureka and/or the EPD.

25 12. Each of the violations of law complained of herein were intentionally committed
26 by Defendants, their officials, agents, and employees, acting under color of law.
27
28

FACTUAL ALLEGATIONS

1
2 13. The City's Ordinance prohibiting aggressive solicitation was first adopted by the
3 Eureka City Council in 1994.

4 14. In 2012, along with its adoption of an ordinance prohibiting sitting or lying on
5 public sidewalks within the City, the Eureka City Council unanimously voted to amend the
6 Ordinance to expand its scope and application. According to a report to the Eureka City Council
7 from a City staffer, the original Ordinance passed in 1994 was "insufficient to protect the
8 community from [aggressive panhandling]." The Eureka City Council's 2012 amendment to the
9 Ordinance expanded its coverage to prohibit solicitation that included following pedestrians,
10 using abusive language, and blocking pedestrian or vehicular traffic.

11 15. On January 9, 2015, an anonymous individual sent an email to all five members
12 of the Eureka City Council, along with Eureka Mayor Frank Jager and City Clerk Pam Powell.
13 The unsigned message, sent from the email address citizeneureka@gmail.com, urged the City
14 Council to "draft[] an ordinance to limit panhandling within the City of Eureka City Limits."
15 The anonymous email message stated further that "Eureka Citizens need the City Council to
16 show that the council is concerned for general public safety! Especially, since the council is
17 exploring ways to spend additional funds, directly on homeless issues, like housing, from the
18 funds provided, in part, from citizen taxes. . . . Citizens, and businesses, are asking why City
19 Council appears more concerned about providing for the homeless, rather than protecting
20 citizens' person, and business, safety." In a follow-up email sent to the *Lost Coast Outpost*
21 newspaper the same day, the anonymous emailer represented that the anti-panhandling proposal
22 suggested to the City was "the result of a group discussion, involving over 45 Eureka citizens.
23 We will soon make a formal request to the city council."

24 16. In the City's January e-newsletter, Eureka City Manager Greg Sparks urged
25 readers not to give money to panhandlers in Eureka, stating that "We have all seen the signs that
26 read, 'Homeless, Hungry, Anything Will Help, God Bless.' . . . However, there are a number of
27 free dining facilities in Eureka. . . . The City of Eureka and Humboldt County have been part of
28 an effort to educate the public that dollars given to panhandlers would be more effective going to

1 the three free dining providers.” Mr. Sparks pointed to studies that he claimed found that the
2 “vast majority” of money given to panhandlers is spent on drugs and alcohol.

3 17. On the regular meeting of the Eureka City Council on March 1, 2016, the City
4 Council considered, received public comment on, and ultimately voted to proceed to a vote on a
5 new amendment to the Ordinance. Eureka City Attorney Cyndy Day-Wilson, in her report and
6 recommendations to the City Council on the proposed amendment to the Ordinance, explained
7 that the 2012 amendment to the Ordinance “did not include a prohibition [on solicitation] with
8 regard to motor vehicles; parking lots; pedestrian footbridges; entrance to a supermarket, retail
9 store, restaurant or bar; or an intersection. . . .” Based on her analysis of legal challenges to
10 aggressive solicitation laws in other jurisdictions, Ms. Day-Wilson recommended that the City
11 Council adopt the proposed amendment to Eureka’s existing Ordinance “in order to address
12 ongoing issues regarding the safety and welfare of the public.” The amendment proposed to
13 expand the scope of the City’s existing anti-solicitation Ordinance to prohibit solicitation of any
14 kind while standing on a roadway median strip; from anyone inside a car within 200 feet of an
15 intersection with a traffic signal, stop sign, or yield sign; from anyone in a car within 35 feet of a
16 driveway to any business establishment or shopping center; from the driver or passengers of any
17 car stopped at a gas station; from anyone riding the bus; and within 50 feet of any “posted public
18 transportation vehicle stop.”

19 18. At the March 1, 2016 Eureka City Council meeting, Ms. Day-Wilson delivered a
20 verbal report to the City Council, stating that the City had received numerous complaints
21 regarding panhandling, which prompted the proposed amendment to expand the scope of the
22 existing anti-solicitation ordinance. Ms. Day-Wilson told the City Council that violations of the
23 amended Ordinance would be charged as misdemeanors that could be reduced to infractions at
24 the City Attorney’s discretion. Ms. Day-Wilson’s report was followed by a verbal report to the
25 City Council from then-Eureka Police Chief Andrew Mills, who stated that panhandling was a
26 significant complaint from citizens at every community meeting. Then-Chief Mills stated further
27 that if the proposed amendment to the Ordinance was approved, the EPD would notify
28

1 panhandlers within the City of Eureka that the amended Ordinance had passed and would soon
2 be enforced.

3 19. During public comment on the proposed amendment to the Ordinance at the
4 March 1, 2016 Eureka City Council meeting, eleven persons spoke to the proposed amendment –
5 nine against the proposal, and two in favor. Individuals who spoke against adoption of the
6 proposed amendment to the Ordinance expressed concerns that there was insufficient
7 justification for expanding the Ordinance’s existing scope, that anti-panhandling ordinances were
8 being struck down as unconstitutional by courts across the country, that the definition of
9 “aggressive and intrusive” was too subjective and open to interpretation, and that it was targeting
10 people with no ability to pay citations. Others who spoke against the proposed amendment to the
11 Ordinance expressed concerns that it was designed to target the City’s sizeable homeless
12 population, that the Ordinance would be unequally and discriminatorily enforced against the
13 homeless and the poor, that no data existed to support the City’s claims that the existing
14 Ordinance was insufficient to deal with legitimate problems surrounding panhandling, and that
15 the expanded Ordinance would unconstitutionally interfere with free speech.

16 20. Two people spoke in support of the proposed amendment to the Ordinance at the
17 March 1, 2016 Eureka City Council Meeting: Ray Marklin, the manager of Eureka Natural
18 Foods, who complained about panhandlers soliciting donations near his place of business, and
19 Eureka resident Minnie Wolfe, who complained about being approached by “aggressive
20 panhandlers” outside Eureka Natural Foods and said she reported such encounters to store
21 management “every single time.” In response to these comments, one opponent of the proposed
22 amendment stated that he shopped regularly at Eureka Natural Foods, was not offended by the
23 panhandlers there, and did not perceive their behavior as “aggressive.”

24 21. After hearing public comment on the proposed amendment to the Ordinance,
25 members of the Eureka City Council made their own public statements about the proposal.
26 Councilmember Marian Brady spoke first, pointing out that the provisions relating to “aggressive
27 and intrusive” solicitation were only part of the proposed amended Ordinance, and stating that
28 the amendment would also prohibit all solicitation of any kind in certain locations within the

1 City. Responding to concerns that the amended Ordinance would go so far as to bar Girl Scouts
2 from selling cookies in front of local business establishments, Councilmember Brady said that
3 Girl Scout cookies could still be sold because the amended Ordinance contained an exemption
4 for commercial solicitations conducted or authorized by business owners. Councilmember
5 Brady explained that “if Eureka Natural Foods wants to have the Girl Scout cookie sales in front
6 of their store, pretty much, they can do that. . . that, that is, that’s OK. ‘Cause they are
7 authorizing it. If Pearson’s wants to have it in front of their store, which they often do, it’s
8 authorized.” Councilmember Brady stated further that “the store owners and all that,
9 McDonald’s is hugely affected by the fact that people can stand there at their driveway or they
10 can sit and camp out in front of the Mexican restaurant there all day long, trying to panhandle
11 when people come up to the stop signs.”

12 22. Eureka City Councilmember Melinda Ciarabellini spoke next to the proposed
13 amended Ordinance, opening her remarks by saying “[w]ell, we heard from a lot of people who
14 are in support of panhandling, and its sort of unfortunate that there aren’t more business people
15 out here, but I can tell you right now that every business person that has contacted me is
16 frustrated and fed up with this.”

17 23. In her comments on the proposed amended Ordinance, Eureka City
18 Councilmember Kim Bergel said bluntly that “I really feel that panhandling is predatory . . .
19 because it preys on the goodness of people.” Councilmember Bergel complained that while
20 panhandlers were holding signs saying they were hungry, there were free meals available at
21 several locations in the City. “When you give money, it feels great,” Councilmember Bergel
22 continued, “but you’re exacerbating the problem. You’re exacerbating it. And so, you know,
23 give your money to a resource that’s actually gonna do some service, some good.” After again
24 citing free showers, free meals, and other services allegedly available in the City of Eureka,
25 Councilmember Bergel concluded by saying “[t]here are people out there that panhandle that
26 really do panhandle because they need the money. There are those people. But so, so many
27 more of them, that I’ve talked to, that is just not the case. And if it is the case that they do need
28 money, we get them connected with services.”

1 24. At the conclusion of the public comment session and comments from City
2 Council members, all of whom expressed their support for the proposed amendment to the
3 Ordinance, the Eureka City Council voted unanimously to move forward with the second reading
4 and a vote on adoption of the proposed amendment to the Ordinance at the Eureka City
5 Council's next regular meeting scheduled for March 15, 2016. Throughout the duration of the
6 City of Eureka staff reports, public comments and City Council member comments on the
7 proposed amended Ordinance, no category of persons subject to the scope of the amended
8 Ordinance was mentioned or discussed other than panhandlers.

9 25. On March 15, in an article by Ryan Burns entitled "Attorney Threatens Lawsuit
10 Over Eureka's Anti-Panhandling Ordinance Amendment," the *Lost Coast Outpost* newspaper
11 reported that the proposed amendment to the Ordinance would "effectively outlaw panhandling
12 in the City's most popular begging spots, including the driveways at Costco and the hillside
13 perch where West Henderson descends to Broadway."

14 26. At the March 15, 2016 regular meeting of the Eureka City Council, the City
15 Council again took up the proposed amendment to the City's anti-solicitation Ordinance. Eureka
16 City Attorney Cyndy Day-Wilson advised the City Council that no changes to the proposed
17 amendment had been made from the original version considered at the March 1, 2016 City
18 Council meeting. No staff questions or public comments directed to the proposed amended
19 Ordinance were made. After brief discussion by City Council members, the Eureka City Council
20 voted unanimously to adopt the proposed amended Ordinance, Eureka City Ordinance No. 907-
21 C.S., codified as EMC Section 130.06. The Ordinance took effect in full force on April 14,
22 2016. A true and correct copy of the Ordinance is attached hereto as **Exhibit A**, and the text of
23 the Ordinance is expressly incorporated herein.

24 27. As amended on March 15, 2016, the Ordinance was retitled "Aggressive and
25 Intrusive Solicitation," and included a new subsection (A) entitled "Findings" expressing the
26 City's "purpose and intent" in adopting the amended Ordinance. Specifically, new subsection
27 (A) of the Ordinance states that the Eureka "City Council finds that there has been an increase in
28 aggressive solicitation throughout the City of Eureka and that such behavior has become

1 disturbing and disruptive to residents and businesses. It has also contributed to the loss of access
2 to and enjoyment of places open to the public and has created an enhanced sense of fear,
3 intimidation and disorder.” EMC § 130.06(A)(2).

4 28. New subsection (A) of the Ordinance states further that “[t]he City Council finds
5 that solicitation from people in places where they are a ‘captive audience’ in which it is
6 impossible or difficult for them to exercise their own right to decline to listen to or to avoid
7 solicitation from others, is problematic and presents a risk to the health, safety and welfare of the
8 public. Such places include public transportation vehicles and their designated locations for
9 stops, as well as gasoline stations.” EMC § 130.06(A)(3). Although the same concerns about
10 forcing a “captive audience” to listen to unwanted speech also apply, for example, when
11 commercial solicitors whose presence is authorized by a business owner solicit to a “captive
12 audience,” or when individuals display political campaign or protest signs in front of a “captive
13 audience,” the Ordinance does not apply to them or restrict their activities.

14 29. New subsection (A) of the Ordinance states further that “[t]he City Council finds
15 that solicitation on roadway median strips, at traffic intersections, and in the public roadway is
16 unsafe and hazardous for solicitors, drivers, pedestrians and the general public. Soliciting on
17 roadway median strips, at traffic intersections, and in the public roadway increases the risk of
18 drivers becoming distracted from their primary duty to watch traffic which may result in
19 automobile accidents, congestion and blockage of streets, delay and obstruction of the free flow
20 of travel, all of which constitute substantial traffic safety problems.” EMC § 130.06(A)(4).
21 Although the same concerns about safety hazards and traffic obstruction caused by persons
22 standing on roadway median strips, at traffic intersections, and in the public roadway also apply,
23 for example, when commercial solicitors whose presence is authorized by a business owner are
24 present in such locations, or when individuals display political campaign or protest signs in those
25 same locations, the Ordinance does not apply to them or restrict their activities.

26 30. New subsection (A) of the Ordinance states further that “[t]he City Council finds
27 that the practice of solicitation near driveways accessing shopping centers, retail, and business
28 establishments is unsafe and hazardous for solicitors, drivers, pedestrians and the general public.

1 The location of the solicitor near the driveway compromises the solicitor's safety, impedes
2 visibility, and impairs a driver's ability to safely enter and exit. Drivers also become distracted
3 which may result in automobile accidents, congestion and blockage of streets, delay and
4 obstruction of the free flow of travel, all of which constitute substantial traffic safety problems.”
5 EMC § 130.06(A)(5). Although the same concerns about safety hazards and traffic obstruction
6 caused by persons standing near driveways accessing shopping centers, retail, and business
7 establishments also apply, for example, when commercial solicitors whose presence is
8 authorized by a business owner are present in such locations, or when individuals display
9 political campaign or protest signs in those same locations, the Ordinance does not apply to them
10 or restrict their activities.

11 31. New subsection (A) of the amended Ordinance concludes by stating that the “goal
12 of this law is to protect citizens from the fear and intimidation accompanying certain kinds of
13 solicitation that have become an unwelcome presence in the City of Eureka.” EMC §
14 130.06(A)(6).

15 32. Subsection (B) of the amended Ordinance provides that the term “solicit” means
16 “to ask, beg, request, and/or panhandle using the spoken, written, or printed word, or bodily
17 gestures, signs or other means with the purpose of obtaining an immediate donation of money or
18 other thing of value or soliciting the sale of goods or services.”

19 33. Subsection (B) of the amended Ordinance provides that the term “donation”
20 means “a gift of money or other item of value.”

21 34. Subsection (C) of the amended Ordinance, entitled “Aggressive solicitation
22 prohibited,” provides that “[n]o person shall solicit in an intrusive or aggressive manner in any
23 public place.” EMC § 130.06(C). The amended Ordinance defines “aggressive manner” in
24 subsection (B). Plaintiff does not challenge subsection (C) of the amended Ordinance.

25 35. The Ordinance also prohibits all forms of solicitation, not just “intrusive or
26 aggressive solicitation,” in a variety of other locations throughout the City. Specifically,
27 subsection (D) of the Ordinance prohibits solicitation of any kind at the following locations:
28

1 (1) *Banks and ATMs.* No person shall solicit within 15 feet of any entrance or
2 exit of any bank, savings and loan association, credit union, or check cashing
3 business during its business hours or within 15 feet of any automated teller
4 machine during the time it is available for customers' use. Provided, however,
5 that when an automated teller machine is located within an automated teller
6 machine facility, such distance shall be measured from the entrance or exit of the
7 automated teller machine facility. Provided further that no person shall solicit,
8 ask or beg within an automated teller machine facility where a reasonable person
9 would or should know that he or she does not have the permission to do so from
10 the owner or other person lawfully in possession of such facility. Nothing in this
11 division shall be construed to prohibit the lawful vending of goods and services
12 within such areas.

13 (a) *Exemptions.* The provisions of division (C)(1) shall not apply to any
14 unenclosed automated teller machine located within any building, structure or
15 space whose primary purpose or function is unrelated to banking activities,
16 including but not limited to supermarkets, airports and school buildings, provided
17 that such automated teller machine shall be available for use only during the
18 regular hours of operation of the building, structure or space in which such
19 machine is located.

20 (2) *Motor vehicles.* No person shall solicit from an operator or occupant
21 traveling in a motor vehicle while such vehicle is located within two hundred
22 (200) feet of any intersection in which at least one corner is controlled by an
23 official traffic signal of the type set forth in California Vehicle Code Section
24 21450 or by any sign regulating the flow of traffic, such as a stop sign or yield
25 sign.

26 (3) *Median strips.* No person shall solicit on a median strip or in any manner
27 or location that is inconsistent with the provisions of the California Vehicle Code.
28

1 (4) *Driveways accessing shopping centers, retail, and business*
2 *establishments.* No person shall solicit from an operator or occupant traveling in a
3 motor vehicle while such vehicle is located within 35 feet of a driveway providing
4 vehicular access to a shopping center, retail, or business establishment.

5 (5) *Public transportation vehicles and stops.* No person shall solicit in any
6 public transportation vehicle or within 50 feet of any designated or posted public
7 transportation vehicle stop.

8 (6) *Gasoline stations and fuel pumps.* No person shall solicit from an
9 operator or occupant of a motor vehicle while such vehicle is stopped in a
10 gasoline station or at a gasoline pump.

11 EMC § 130.06(D)(1)-(6). Subsection (D) concludes by providing that the foregoing “provisions
12 shall not apply to solicitations related to business authorized by and/or conducted by the property
13 owner, business owner, or employees thereof on the premises.” EMC § 130.06(D)(6).

14 36. Subsection (E) of the amended Ordinance, entitled “*Exemptions*,” provides that
15 “[n]othing in this section shall be construed or prohibit the lawful vending of goods and
16 services.” EMC § 130.06(E).

17 37. Subsection (F) of the amended Ordinance, entitled “*Penalty*,” provides that “each
18 act of solicitation is a violation of § 10.99 of the Eureka Municipal Code and shall constitute a
19 separate offense. A violation of this section is punishable as a misdemeanor or infraction,
20 chargeable at the City Attorney’s discretion.” EMC § 130.06(F). In pertinent part, Eureka
21 Municipal Code Section 10.99 provides as follows:

22 (A) It shall be unlawful for any person to violate any provision or to fail to
23 comply with any of the requirements of this code or the provisions of any code
24 adopted by reference by this code. Any person violating any of such provisions
25 or failing to comply with any of the mandatory requirements of this code shall be
26 guilty of a misdemeanor. Any person convicted of a misdemeanor under the
provisions of this code shall be punishable by a fine of not more than \$1,000 or by
imprisonment in the county jail for a period not exceeding six months, or by both
such fine and imprisonment. . . .

27 (B) In addition to the penalties provided by this section, any condition caused or
28 permitted to exist in violation of any of the provisions of this code, or the
provisions of any code adopted by reference by this code, shall be deemed a
public nuisance and may be summarily abated by this city, and each day such

condition continues shall be regarded as a new and separate offense.

(C) Each violation of this code expressly declared to be an infraction is punishable by:

(1) A fine not exceeding \$100 for the first violation;

(2) A fine not exceeding \$200 for the second violation of the same ordinance within one year;

(3) A fine not exceeding \$500 for each additional violation of the same ordinance within one year.

EMC § 10.99.

38. In the days immediately after the Eureka City Council's adoption of proposed amendments to the Ordinance on March 15, 2016, and continuing until the amended Ordinance became effective on April 14, 2016, EPD officers canvassed the City to inform panhandlers – and others who simply looked down on their luck – that the City's anti-solicitation Ordinance had been amended and would go into effect on April 14th. While canvassing to inform citizens of the passage of the amended Ordinance, EPD officers approached and spoke only to panhandlers or those they suspected of being panhandlers, not any other category of persons subject to the amended Ordinance's expanded provisions.

39. EPD officers also distributed fliers to panhandlers during the period between March 15, 2016 and April 14, 2016 which read as follows:

NOTICE

The City of Eureka will begin enforcing a new panhandling ordinance on **APRIL 14, 2016**. All panhandling will be prohibited at the following specified locations:

1. Within 15 feet of a Bank or ATMs;
2. To any motor vehicle that is located within two hundred (200) feet of any intersection;
3. Median Strips;
4. Within 35 feet of driveways accessing shopping centers, retail, and business establishments;
5. Within 50 feet of public transportation vehicles and stops; and
6. Gasoline stations and fuel pumps.

Violation of the ordinance is a misdemeanor. Call EPD at 441-4060 with any questions.

A true and correct copy of the flier distributed by EPD to panhandlers is attached hereto as

Exhibit B. After the amended Ordinance's adoption and before its effective date, the City also

1 recorded a verbal Public Service Announcement accessible by telephone to inform panhandlers
2 that the amended Ordinance would go into effect on April 14, 2016. Once the amended
3 Ordinance became effective, EPD officers handed out yellow cards listing the new provisions of
4 the amended Ordinance to panhandlers they encountered throughout the City.

5 40. Once the amended Ordinance became effective on April 14, 2016, EPD officers
6 immediately began enforcing it. The day after its effective date, EPD officers warned, then later
7 cited and arrested a panhandler under the amended Ordinance, and impounded the panhandler's
8 dog at the county animal shelter in McKinleyville (more than 13 miles north of Eureka). The
9 panhandler's dog could only be retrieved from the animal shelter upon payment of a fine and
10 proof of current vaccinations.

11 41. The Ordinance is facially invalid, content-based, and abridges the First
12 Amendment rights of persons who seek to panhandle or solicit for donations for their own needs
13 within the City of Eureka.

14 42. The Ordinance is facially invalid and content-based because it targets speech
15 based on its content and message of requesting donations for oneself.

16 43. The Ordinance is content-based and therefore facially invalid because it singles
17 out speech for restrictions when the speaker's message is to ask for financial assistance for
18 himself, but not if he is asking for something else, such as for a signature on a petition.

19 44. Mr. Leatherman has in the past, and continues today, to solicit for donations at
20 places where the Ordinance specifically prohibits such activity. Unless or until Defendants are
21 enjoined from enforcing the Ordinance, Plaintiff will be damaged and Plaintiff's rights to
22 freedom of speech and equal protection of the laws guaranteed by the First and Fourteenth
23 Amendments to the United States Constitution are being and will continue to be violated.

24 45. Mr. Leatherman is a 63-year-old songwriter and musician who has resided in the
25 City of Eureka since 2014. Mr. Leatherman has written and recorded many original pieces of
26 music, including songs entitled "Change It," "Leaping Lapdogs," and "A Good Chameleon's
27 Hard to Find." The day after he was cited for panhandling by EPD Officer Neil Hubbard, Mr.
28 Leatherman recorded a tribute version of this final song because of his interactions with EPD

1 officers attempting to enforce the amended Ordinance against him, and posted it on YouTube
2 after being cited again in September for violation of the Ordinance. Mr. Leatherman lives on an
3 income well below the federal poverty level, is currently unemployed, and has not been regularly
4 employed for approximately the last six (6) years. Aside from Social Security retirement
5 benefits and \$16.00 per month in food stamps, Mr. Leatherman's only other source of income
6 comes from the monetary donations he receives from passersby and regular supporters –
7 including many employees and customers of Eureka Natural Foods -- when busking in the City
8 of Eureka. Mr. Leatherman currently has no other prospects for regular employment. Mr.
9 Leatherman lives out of his van with his dog, a Chihuahua-Jack Russell mix named "Boots."

10 46. For the last two-and-a-half years -- since the beginning of 2015 -- Mr. Leatherman
11 has typically chosen to busk on the public sidewalk near a shopping center at the corner of
12 Broadway and W. Fifteenth Streets in Eureka, where Eureka Natural Foods, BevMo, and Jack in
13 the Box are located. This location has historically been a popular spot in the City to panhandle
14 or request donations from passersby. Mr. Leatherman usually stands at this location across from
15 Eureka Natural Foods, on the public sidewalk just alongside the BevMo sign and the exit
16 driveway from the shopping center out onto Broadway Street. A video recording of Mr.
17 Leatherman busking at this location can be viewed at
18 www.youtube.com/watch?v=vk2I2S9IT4M. He has also busked in the City of Eureka at
19 farmers' markets and community events such as Arts Alive.

20 47. When busking, without obstructing any sidewalk or thoroughfare, Mr.
21 Leatherman generally stands on a public sidewalk near an intersection or a street corner between
22 two (2) and four (4) days a week for three (3) to five (5) hours at a time, occasionally
23 accompanied by his dog Boots, and sings while playing songs on his guitar. Mr. Leatherman
24 typically plays his guitar, sometimes performing with a microphone, microphone stand and
25 portable amplifier, and places his open guitar case beside him on the ground with a large white
26 "Peace" sign made from artificial daisies and a handwritten placard reading "Good Karma \$1."
27 A true and correct copy of a photograph of Mr. Leatherman busking at this location is attached
28 hereto as **Exhibit C**. Mr. Leatherman's sign is meant to be fun and lighthearted, since karma is

1 not a commodity that can be bought or sold. Mr. Leatherman has found that busking on a public
2 sidewalk or street corner, such as the location he prefers outside Eureka Natural Foods and
3 BevMo, is most effective because of the increased exposure to the public available at these
4 locations. Soliciting, including busking with a sign suggesting donations, is prohibited under the
5 challenged Ordinance at all of these locations where Mr. Leatherman typically busks.

6 48. Mr. Leatherman never verbally requests a donation from passersby when busking.
7 Instead, Mr. Leatherman plays music for the public to enjoy while going about their business,
8 and props a sign on his guitar case that reads “Good Karma \$1.” Mr. Leatherman does not wave
9 at passersby or do anything else to attract their attention other than play his guitar and sing,
10 unless a passerby waves at him first and he responds in kind. Mr. Leatherman only approaches
11 vehicles when he has been summoned by their occupants.

12 49. When Mr. Leatherman busks at or near parking lot exits, he always stands on the
13 public sidewalk alongside the exit side of the street to best avoid any traffic disruption. Mr.
14 Leatherman recognizes that cars are typically proceeding at controlled speed while pulling out of
15 the shopping center parking lot, which is a safe point for them to stop to give money. Mr.
16 Leatherman has found that people generally do not stop to make donations as they are entering a
17 shopping center parking lot from the street, and Mr. Leatherman would not want them to do so
18 because it could cause street traffic to build up behind them.

19 50. Over time, Mr. Leatherman has frequented different locations throughout the City
20 to busk, most of them on public sidewalks. Since the amended Ordinance’s effective date on
21 April 14, 2016, while busking in these places, Mr. Leatherman has been approached more than a
22 dozen times by EPD officers warning him of and sometimes citing him under the amended
23 Ordinance.

24 51. On May 13, 2016, around 5:15 p.m., Mr. Leatherman was approached by EPD
25 Sgt. Rodrigo Reyna-Sanchez while busking on the public sidewalk across from Eureka Natural
26 Foods near the intersection of Broadway and W. Fifteenth Streets in Eureka. After leaving
27 Broadway Street and turning into the entrance driveway to the shopping center, Sgt. Reyna-
28 Sanchez drove at an accelerated rate of speed towards Mr. Leatherman, cutting across both lanes

1 of the entrance driveway and abruptly stopping just two to three feet away from where Mr.
2 Leatherman was standing. Sgt. Reyna-Sanchez parked his patrol car next to Mr. Leatherman in a
3 manner that blocked the exit driveway from the shopping center, and after getting out of the
4 vehicle and approaching Plaintiff, told Mr. Leatherman that “you can’t be here” because the
5 amended Ordinance said “no panhandling.” Sgt. Reyna-Sanchez then gave Mr. Leatherman one
6 of the EPD’s yellow cards listing the new additions to the City’s anti-solicitation ordinance
7 which went into effect on April 14, 2016. After giving him the card, Sgt. Reyna-Sanchez told
8 Mr. Leatherman that “I can cite you,” “I can have you arrested,” and “I can impound all your
9 property” (meaning Mr. Leatherman’s dog and the van in which he lives) for violating the
10 amended Ordinance. After speaking with Mr. Leatherman for approximately 15 minutes, Sgt.
11 Reyna-Sanchez returned to his patrol car, parked a short distance away, and continued to watch
12 Mr. Leatherman for nearly two hours. Mr. Leatherman was not cited on this occasion.

13 52. As a result of his interaction with Sgt. Reyna-Sanchez on May 13, 2016, because
14 Mr. Leatherman was so concerned that he would be cited, arrested and sent to jail, and that his
15 dog and all his personal property (including the van in which he lived) would be impounded by
16 the EPD, that he stopped busking – even though it put his ability to eat and feed his dog at risk.
17 He also went to the public library the next day to research the law governing busking as a form
18 of free speech and expression. After approximately a week, Mr. Leatherman resumed busking
19 on the public sidewalk by the BevMo sign near the intersection of Broadway and W. Fifteenth
20 Streets. Mr. Leatherman also called and spoke with EPD Capt. Brian Stephens to complain
21 about Sgt. Reyna-Sanchez’s behavior. In the course of that conversation, Capt. Stephens told
22 Mr. Leatherman that Sgt. Reyna-Sanchez was not responding to any complaint when he stopped
23 to warn Mr. Leatherman, but that both the Eureka Chief of Police and the City Attorney
24 considered busking to be the same as panhandling, and that the EPD could and would cite and
25 arrest him should he continue to busk at locations specified in the amended Ordinance.

26 53. On June 20, 2017, Mr. Leatherman was cited by EPD Officer Neil Hubbard for
27 violation of Section 130.06(D)(2) of the amended Ordinance while busking in the City of Eureka
28 at his preferred location on the public sidewalk by the BevMo sign near the intersection of

1 Broadway and W. Fifteenth Streets in Eureka. A true and correct copy of the citation issued by
2 Officer Hubbard to Mr. Leatherman on June 20, 2017 is attached hereto as **Exhibit D**. While
3 playing music and singing, Mr. Leatherman was approached by Officer Hubbard, who told
4 Plaintiff “you can’t do this” and to “stop [playing], turn it off.” Officer Hubbard then threatened
5 to cite and/or arrest Mr. Leatherman, while freely admitting that he was not responding to any
6 citizen complaint in detaining Plaintiff. In the location where he was standing and playing music
7 when approached by Officer Hubbard, Mr. Leatherman was not obstructing any sidewalk or
8 thoroughfare. A bench trial on Mr. Leatherman’s June 20, 2017 panhandling citation is currently
9 scheduled for October 2, 2017 in the Humboldt County Superior Court.

10 54. On August 31, 2017, the *North Coast Journal* weekly newspaper published an
11 article by Linda Stansberry entitled “Strumming Up a Case,” which described Mr. Leatherman’s
12 encounters with EPD officers while busking in the City and his intent to file a lawsuit
13 challenging the constitutionality of the City’s amended Ordinance.

14 55. Just six (6) days later on September 5, 2017, while busking at his preferred
15 location on the public sidewalk by the BevMo sign near the intersection of Broadway and W.
16 Fifteenth Streets, Mr. Leatherman again was cited by EPD officers for violation of the amended
17 Ordinance. This time, Mr. Leatherman was confronted by *six (6) EPD officers, including a*
18 *probation officer, and a police dog who arrived in five (5) separate police vehicles to give him*
19 *a misdemeanor citation* for panhandling in violation of the amended Ordinance. A true and
20 correct copy of the citation given to Mr. Leatherman by EPD Sgt. Lenny LaFrance on September
21 5, 2017 is attached hereto as **Exhibit E**.

22 56. Mr. Frederick Portigal, a Canadian tourist who was passing by when EPD officers
23 cited Mr. Leatherman on September 5, was harassed and intimidated, detained, and eventually
24 handcuffed, put into a patrol car, and detained by EPD officers after taking photographs of their
25 interaction with Mr. Leatherman and putting \$10.00 in Mr. Leatherman’s guitar case. True and
26 correct copies of photographs taken by Mr. Portigal of Mr. Leatherman’s encounter with EPD
27 officers on September 5, 2017 are attached hereto as **Exhibit F**. A video recording taken by Mr.
28 Leatherman of a portion of his encounter with EPD officers on September 5, including footage of

1 EPD officers handcuffing and putting Mr. Portigal in a patrol car, can be viewed online at
 2 https://drive.google.com/file/d/0ByuOdU5rl_oDQzIxM053M2dHeXc/view. As Mr.
 3 Leatherman's video recording documents, after Plaintiff objected to the EPD's treatment of Mr.
 4 Portigal, EPD Sgt. LaFrance told Mr. Leatherman "[n]ow, he might go to jail for you, Oscar, is
 5 that OK? He might go to jail for you now."

6 57. A nine-minute video recording of the same September 5, 2017 incident, taken by
 7 a bystander who happened to witness it and also including footage of EPD officers handcuffing
 8 Mr. Portigal, can be viewed online at <https://www.youtube.com/watch?v=h-EsH6RyxZg>. As
 9 this nine-minute video recording shows, EPD Sgt. Lenny LaFrance also approached and harassed
 10 the bystander who took video footage of this incident, giving him a verbal warning for "staring"
 11 at their police dog and telling him he could "go to jail for that for sure." Sgt. LaFrance also
 12 asked this bystander, without any apparent cause, "you're not a sex offender, right," and
 13 threatened to search him.

14 58. If the Ordinance limiting solicitation within the City of Eureka continues to be
 15 enforced, it will limit Mr. Leatherman's ability to busk at the locations he frequently uses for that
 16 purpose, and Mr. Leatherman will be unable to continue busking in the locations he has
 17 historically busked within the City of Eureka without reasonable fear of citation or arrest. This
 18 will not only limit Mr. Leatherman's ability to busk and play music in public, but it also deprive
 19 him of an important source of income, and will threaten his ability to sustain himself and his dog
 20 Boots with food and basic necessities. Mr. Leatherman fears that he will be driven out of the
 21 City of Eureka or thrown into jail due to enforcement of the Ordinance.

FIRST CLAIM FOR RELIEF

Freedom of Speech

(First & Fourteenth Amendments to the U.S. Constitution; 42 U.S.C. § 1983)

25 59. Plaintiff realleges and incorporates the allegations of each and every preceding
 26 paragraph of this Complaint as if fully set forth herein.

27 60. By enforcing the challenged Ordinance, Defendants, under color of state law,
 28 have caused and will continue to cause Plaintiff and others in the City of Eureka who wish to

1 busk, or simply to solicit for their own survival needs, to be subjected to the deprivation of their
2 constitutional rights, in violation of 42 U.S.C. § 1983.

3 61. The Ordinance, both on its face and as applied, denies Plaintiff's right to freedom
4 of speech guaranteed by the First Amendment to the United States Constitution.

5 62. As a direct and proximate result of Defendants' actions, Plaintiff has suffered and
6 will continue to suffer injuries entitling him to receive compensatory damages and injunctive
7 relief. Plaintiff therefore seeks relief as set forth below in his Prayer for Relief.

8 **SECOND CLAIM FOR RELIEF**

9 **Equal Protection**

10 **(Fourteenth Amendment to the U.S. Constitution; 42 U.S.C. § 1983)**

11 63. Plaintiff realleges and incorporates the allegations of each and every preceding
12 paragraph of this Complaint as if fully set forth herein.

13 64. By enforcing the challenged Ordinance, Defendants, under color of state law,
14 have caused and will continue to cause Plaintiff and others in the City of Eureka who wish to
15 busk, or simply to solicit for their own survival needs, to be subjected to the deprivation of their
16 constitutional rights, in violation of 42 U.S.C. § 1983.

17 65. The Ordinance, both on its face and as applied, denies Plaintiff's right to equal
18 protection under the law guaranteed by the Fourteenth Amendment to the United States
19 Constitution.

20 66. As a direct and proximate result of Defendants' actions, Plaintiff has suffered and
21 will continue to suffer injuries entitling him to receive compensatory damages and injunctive
22 relief. Plaintiff therefore seeks relief as set forth below in his Prayer for Relief.

23 **THIRD CLAIM FOR RELIEF**

24 **Declaratory Judgment**

25 **(28 U.S.C. § 2201)**

26 67. Plaintiff realleges and incorporates the allegations of each and every preceding
27 paragraph of this Complaint as if fully set forth herein.

28 68. There exists an actual, substantial controversy between the parties regarding the

1 constitutional of the Ordinance. Plaintiff is entitled to a declaration of his rights pursuant to
2 the First and Fourteenth Amendments to the U.S. Constitution, in light of the enactment of the
3 Ordinance. Plaintiff therefore seeks relief as set forth below in his Prayer for Relief.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff respectfully requests relief from the Court as follows:

- 6 1. For permanent injunctive relief;
- 7 2. For declaratory relief;
- 8 3. For compensatory, general, and special damages in an amount according to proof;
- 9 4. For attorneys' fees as provided by law, pursuant to 42 U.S.C. § 1988, and any
10 other statute as may be applicable;
- 11 5. For costs of suit; and
- 12 6. For such other and further relief as the Court may deem just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a jury trial on all issues triable to a jury.

15
16 Dated: September 28, 2017

Respectfully Submitted,

17 */s/ Shelley K. Mack*

18 _____
19 Peter E. Martin
20 Shelley K. Mack
21 Attorneys for Plaintiff
22 OSCAR LEATHERMAN
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