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Superior Court of California
County of Fresno
By: I. Herrera, Deputy

6 Attorneys for Plaintiff
DAVID FANSLER, Individually,
7 and as Trustee of the David P.
Fansler Living Trust
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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF FRESNO

23CECG01259

12 DAVID FANSLER, Individually, and as)
Trustee of the David P. Fansler Living Trust,)
13)
Plaintiff,)
14)
vs.)
15)
CITY OF FRESNO; MIGUEL ARIAS; and)
16 DOES 1-100, inclusive.)
17 Defendants.)

Case No.

COMPLAINT FOR DAMAGES:

1. **INTENTIONAL INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE**
2. **NEGLIGENT INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE**
3. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
4. **FOURTEENTH AMENDMENT(Due Process)**
5. **CALIFORNIA CONST. Article 1 Sec. 7 (Due Process)**

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21 Plaintiff, DAVID FANSLER, Individually and as Trustee of the David P. Fansler Living Trust
22 (hereinafter “Plaintiff” or “Fansler”), by and through his attorneys of record, alleges claims against
23 Defendants, CITY OF FRESNO, MIGUEL ARIAS and DOES 1-100, inclusive (“Defendants”), as
24 follows:

25 **I.**

26 **NATURE OF THE ACTION**

27 1. This action arises out of a dispute that started in 2020 when the Governor and other State
28 health officials imposed state-wide orders commanding the partial closure of businesses deemed

1 “non-essential” as part of an attempt to limit the spread of COVID-19. Many restaurants and other
2 “non-essential” businesses brought claims against State and local governments for the unprecedented,
3 detrimental and unconstitutional actions which caused tremendous damage to, in particular, the restaurant
4 industry.

5 2. Plaintiff, too, challenged the constitutionality of Defendants’ unequal and selective
6 enforcement of COVID-related orders, their refusal to discharge their duties as State actors in evaluating
7 outdoor dining spaces, and their failure to provide any due process before unilaterally and arbitrarily
8 deeming Plaintiff’s dining spaces “indoor” dining in a civil suit in Fresno County Superior Court, Case
9 No. 20CECG03646, which is currently pending.

10 3. While Case No. 20CECG03646 has been pending, however, Defendant MIGUEL ARIAS
11 (“Defendant Arias”) has undertaken deliberate, illegal and wrongful conduct intended to harass Fansler,
12 cause him financial hardship, and prevent him from doing business in the City of Fresno. Specifically,
13 Defendant Arias unilaterally and unjustifiably caused Fansler’s Plan Amendment and Rezoning
14 Application to be removed from the City Council’s agenda for the purpose of holding that adoption and
15 approval hostage unless Fansler settled his pending lawsuit (Case No. 20CECG03646) against the City
16 of Fresno and Defendant Arias.

17 4. By engaging in this conduct, Defendant Arias intended to disrupt Fansler’s business
18 relationships, and cause him severe emotional distress and financial hardship unless Fansler resolved his
19 pending lawsuit against Defendant Arias for terms beneficial to Defendant Arias, including approval and
20 adoption of Fansler’s Plan Amendment and Rezoning Application (“Application”) that was already
21 recommended for approval by the Planning and Development Department. Defendant Arias’ conduct has
22 violated Fansler’s due process rights under the California and United States Constitutions.

23 5. In addition, Fansler brings tort claims for damages arising under the statutory and common
24 laws of the State of California for Defendant Arias’ attempted extortion by holding Fansler’s business
25 dealings hostage unless he settled Case No. 20CECG03646 with terms beneficial to Defendant Arias by
26 refusing to consider or approve Fansler’s projects within the City of Fresno. Fansler has complied with
27 the Government Tort Claims Act, filing claims consistent with the allegations made herein with the City
28 of Fresno on January 7, 2023, which were denied by operation of law.

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II.

PARTIES AND VENUE

6. Plaintiff, DAVID FANSLER, individually and as Trustee of the David P. Fansler Living Trust, is a citizen of the United States and a resident of Fresno County, California.

7. Defendant, CITY OF FRESNO (“City”), is, and all times mentioned herein has been a Charter City incorporated under the laws of the State of California.

8. Defendant, MIGUEL ARIAS, is and, at all times mentioned herein, has been a City Council Member of City.

9. The Fresno County Superior Court is the appropriate venue for this action because all of the events, orders, actions, and directives at issue in this Complaint occurred within Fresno County and Defendants and Plaintiff maintain offices and/or exercise their authority in their official capacities in Fresno County.

III.

FACTUAL ALLEGATIONS

10. As part of its response to the COVID-19 pandemic, the Governor of California, Gavin Newsom (“Newsom”) and certain public health officials issued various emergency orders related to the use and operation of restaurants and restaurant dining rooms. Plaintiff’s restaurants, in particular, were targeted and illegally and improperly shuttered by Defendants, giving rise to Fresno County Superior Court Case No. 20CECG03646, which is pending. The claims made in Case No. 20CECG03646 include claims for violations of the Fifth Amendment, Fourteenth Amendment, California Constitution Articles 1, section 7 and section 19, Intentional Interference with Prospective Business Advantage, Negligent Interference with Prospective Business Advantage, and Intentional Infliction of Emotional Distress.

11. The plaintiffs in Case No. 20CECG03646 have engaged in ongoing settlement efforts with Defendants in an effort to resolve the dispute between them, the gravamen of which is that Defendants wrongfully targeted the shuttering of Plaintiff restaurants in Case No. 20CECG03646, which were actually “outdoor” dining and operating in compliance with State and local COVID-19 orders, and by claiming Fansler was causing harm to the public and his employees, because of Fansler’s public, critical

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1 comments of Defendants in exercise of his First Amendment rights, including describing Defendants as
2 “completely inept” in how Defendants handled their response to the COVID-19 pandemic.

3 12. On information and belief and based on Defendant Arias’ subsequent conduct and
4 statements as set forth herein, Defendants used COVID-19 orders as a pretext to single out Plaintiff for
5 unfair and discriminatory “enforcement” action and cited Pismo’s owner, Fansler, for allegedly operating
6 “indoor” dining, when Newsom’s orders only allowed “outdoor” dining. Plaintiff is informed and
7 believes and thereon alleges that Defendants violated his State and federal rights and laws and had no
8 rational basis for this unequal, targeted treatment.

9 13. Both before and after filing Case No. 20CECG03646, Fansler made several attempts to
10 show Defendants that his restaurant’s patio dining rooms were, in fact, “outdoor” dining within the
11 meaning of all State guidelines; Plaintiff communicated consistently with Defendants the restaurant’s
12 specifications and the open air nature of their facilities but Defendants refused to even review the
13 information, visit the restaurants, or otherwise provide any mechanism by which Fansler could establish
14 the open air nature of the restaurants. Instead, Defendants singled Pismo’s restaurant out and issued
15 “code violation” citations/warnings against Pismo’s for its patio dining on July 2nd, 4th, 6th and 8th, and
16 issued such citations without any evidence that Pismo’s dining constituted “indoor” dining. Defendant
17 Arias’ subsequent bullying tactics in the form of attempted extortion have only served to highlight the
18 need for Fansler to ensure the ability to continue to operate in the face of future restrictions because their
19 facilities are as safe, or safer, than what Defendants apparently arbitrarily consider “outdoor” dining and
20 yet Defendants continue to target Fansler for unfair and illegal treatment.

21 14. As previously stated, Plaintiff is informed and believes and thereon alleges that Plaintiff
22 restaurants in Case No. 20CECG03646 were singled out for this unequal treatment because Fansler
23 exercised his free speech rights and spoke out against Defendants’ treatment of local businesses,
24 including restaurants, in response to the pandemic. Specifically, in or about March, April and May of
25 2020 Fansler was vocal on social media and to local news outlets about his dissatisfaction with
26 Defendants’ handling of COVID related-restrictions. For example, on May 8th, 2020, local news outlet
27 “GV Wire” published an article quoting Fansler as calling Defendants’ handling of COVID as
28 “completely inept.”

1 <https://gvwire.com/2020/05/08/city-warns-of-criminal-prosecution-for-defying-covid-orders-restaurant-owner-faults-mayor/>

3 15. Thereafter, Fansler received notices of violation and referrals to ABC when other, similar
4 or more enclosed patio restaurants, such as The Palms and The Elbow Room, were allowed by
5 Defendants to remain open. Defendants' targeting of Plaintiff restaurants in Case No. 20CECG03646
6 was then confirmed by Defendant Arias' subsequent attempts to block Fansler's zoning Application as
7 set forth above; such treatment has no possible rational basis since the stated basis for blocking Fansler's
8 zoning Application in or about December of 2022 was Defendants' desire to "gain leverage" in Case No.
9 20CECG03646.

10 16. Because of Defendant Arias' refusal to fairly allow Fansler access to a City Council vote
11 for the December planning department approved zoning Application in order for Defendants to attempt
12 to "get leverage" against Fansler in Case No. CECG03646, Fansler has been denied due process and
13 caused harm and suffered damages due to the delay in the zoning application.

14 **IV.**

15 **FIRST CLAIM FOR RELIEF**
16 **INTENTIONAL INTERFERENCE WITH**
17 **PROSPECTIVE ECONOMIC ADVANTAGE**
18 **(Against All Defendants)**

19 17. Plaintiff incorporates by reference and realleges each and every allegation set forth in the
20 preceding paragraphs herein.

21 18. Fansler has ongoing economic relationships with third parties which have the probability
22 of future economic benefit to Fansler based on the development of the property that is the subject of the
23 Application, which Defendant Arias wrongfully and illegally caused to be removed from the December
24 2022 City of Fresno City Council meeting.

25 19. The purpose of submitting a Plan Amendment and Rezoning Application is in furtherance
26 of development of property, and it was and is known to Defendants that Fansler has ongoing business
27 relationships dependent on City Council action related to planning and rezoning activity in the City of
28 Fresno.

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1 action involving Plaintiff, and asked another council member if “we can use this as leverage to get out
2 of Fansler’s suit” such that Fansler’s Application was actually pulled off of the December 2022 agenda
3 because Defendant Arias’ improper attempted extortion was feared to cause the failure of a favorable vote
4 on a routine rezone application that had already been approved by the Fresno Planning Department.
5 Later, when the matter was heard on the January Agenda, Defendant Arias asked the City Attorney in
6 open session if it was “legally sound” to vote on a matter based on whether the applicant had litigation
7 pending with the City, further evidence of Defendant Arias’ outrageous conduct and the intent to
8 intimidate and harass a constituent and to refuse to vote on Fansler’s Application. There can be no
9 discretionary immunity for the refusal to perform the mandatory duties of a governmental body. As a
10 result of Defendant Arias’ intention to disrupt the proceedings in order to “gain leverage” over pending
11 litigation, the Application was removed from the agenda in December, causing Fansler delay, harm,
12 stress, embarrassment, shock and extreme emotional distress.

13 28. The conduct of Defendant Arias in attempting to extort settlement of claims in Case No.
14 20CECG03646 in exchange for proceeding to hear a Fansler’s Application was targeted harassment of
15 Fansler, specifically intended to cause him personal severe emotional harm, embarrassment, distress,
16 shock and worry and has, in fact, caused him such severe emotional harm.

17 29. The conduct of Defendants, as alleged herein, represents extreme and outrageous conduct
18 and conduct which went beyond all bounds of decency so as to be regarded as atrocious and utterly
19 intolerable in a civilized society. This conduct would cause an average member of the community to react
20 with outrage, especially given that City Council members are elected to protect the public, and instead
21 abused this power and targeted Fansler specifically to cause Fansler harm, and doubled down on this
22 specific, targeted attack on Fansler after he pursued litigation to protect against these prior abuses of
23 power by trying to extort litigation settlement in exchange for having further projects heard before the
24 City Council.

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1 VII.

2 **FOURTH CLAIM FOR RELIEF**
3 **VIOLATION OF THE DUE PROCESS CLAUSE**
4 **OF THE FOURTEENTH AMENDMENT**

5 30. Plaintiff incorporates by reference and realleges each and every allegation set forth in the
6 preceding paragraphs herein.

7 31. The Due Process Clause of the Fourteenth Amendment provides that “[n]o State shall ...
8 deprive any person of life, liberty or property, without due process of law.”

9 32. The right to acquire, enjoy, own and dispose of property and the right to work are
10 fundamental rights protected by the due process clause of the Fourteenth Amendment. (*Sail'er Inn v.*
11 *Kirby* (1971) 5 Cal.3d 1, 17 [“right to work and the concomitant opportunity to achieve economic security
12 and stability are essential to the pursuit of life, liberty and happiness”; *Shelley v. Kraemer* (1948) 334
13 U.S. 1 [right to acquire, enjoy, own and dispose of property fundamental].) Where a government action
14 impinges on fundamental rights, including the right to due process, strict scrutiny is required. (*San*
15 *Antonio Indep. Sch. Dist. v. Rodriguez* (1973) 93 S. Ct. 1278, 1288.) As set forth herein, Defendants
16 have violated Fansler’s due process rights under the Fourteenth Amendment, thus requiring strict scrutiny
17 of their actions.

18 33. Here, Defendants refused to put forward for vote Fansler’s Application with no rational
19 basis; in fact, Defendants’ stated basis was for retaliation and attempted extortion to try to get Fansler to
20 settle pending litigation in a manner favorable to Defendants.

21 34. Defendants’ actions cannot pass scrutiny because the targeting of Fansler was motivated
22 by an unlawful purpose, and there can be no “compelling government interest” in taking unlawful actions
23 against a citizen. Unequal treatment if those engaged in the same or substantially the same type of
24 business is obviously suspect.

25 35. Fansler was economically harmed by Defendant Arias’ blocking of his Application to
26 “gain leverage” against him, as the stated basis for engaging in the discriminatory behavior. Attempting
27 extortion by a City Council member cannot be a rational basis for government action.

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1 VIII.

2 **FIFTH CLAIM FOR RELIEF**
3 **CALIFORNIA CONST. Article 1 Sec. 7 (Due Process)**

4 36. Plaintiff incorporates by reference and realleges each and every allegation set forth in the
5 preceding paragraphs herein.

6 37. Article 1, Section 7 provides that “[n]o State shall ... deprive any person of life, liberty
7 or property, without due process of law.”

8 38. The right to acquire, enjoy, own and dispose of property and the right to work are
9 fundamental rights protected by the State and federal constitutions. (*Sail'er Inn v. Kirby* (1971)
10 5 Cal.3d 1, 17 [“right to work and the concomitant opportunity to achieve economic security and stability
11 are essential to the pursuit of life, liberty and happiness”; *Shelley v. Kraemer* (1948) 334 U.S. 1 [right to
12 acquire, enjoy, own and dispose of property fundamental].) Where a government action impinges on
13 fundamental rights, including the right to due process, strict scrutiny is required. (*San Antonio Indep.*
14 *Sch. Dist. v. Rodriguez* (1973) 93 S. Ct. 1278, 1288.) As set forth herein, Defendants have violated
15 Fansler’s due process rights under the California Constitution, thus requiring strict scrutiny of their
16 actions.

17 39. Here, Defendants refused to put forward for vote Fansler’s Application with no rational
18 basis; in fact, Defendants’ stated basis was for retaliation and attempted extortion to try to get Plaintiff
19 to settle pending litigation in a manner favorable to Defendants.

20 40. Defendants’ actions cannot pass scrutiny because the targeting of Fansler was motivated
21 by an unlawful purpose, and there can be no “compelling government interest” in taking unlawful actions
22 against a citizen. Unequal treatment if those engaged in the same or substantially the same type of
23 business is obviously suspect.

24 41. Fansler was economically harmed by Defendant Arias’ blocking of his Application to
25 “gain leverage” against Plaintiff, as the stated basis for engaging in the discriminatory behavior.
26 Attempting extortion by a City Council member cannot be a rational basis for government action.

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IX.

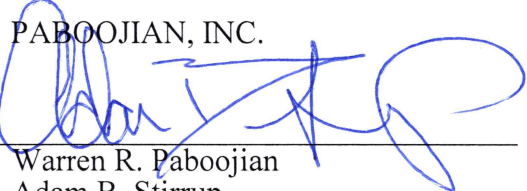
PRAYER FOR RELIEF

1. For all legal damages on Plaintiff's claims according to proof; and
2. For such other and further relief as this Court may deem just and proper.

Dated: March 29, 2023

PABOOJIAN, INC.

By: _____


Warren R. Paboojian
Adam B. Stirrup
Attorneys for Plaintiff
DAVID FANSLER, Individually,
and as Trustee of the David P.
Fansler Living Trust