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11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14

15 SUSAN PORTER,

16 Plaintiff,

17 vs.

18 WILLIAM D. GORE, Sheriff of San
Diego County, in his official capacity;
19 WARREN STANLEY, Commissioner of
California Highway Patrol, in his official
20 capacity,

21 Defendants.
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Case No. '18CV1221 GPC JMA

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
Case No.

1 Plaintiff Susan Porter (“Ms. Porter”) brings this free speech case against Sheriff
2 William D. Gore (“Sheriff Gore”) and California Highway Patrol Commissioner Warren
3 Stanley (“Commissioner Stanley”) in their official capacities, and alleges as follows.

4 INTRODUCTION

5 1. This Complaint seeks declaratory and injunctive relief to protect and
6 vindicate the rights of the concerned citizens of the City of Vista and other communities
7 within California against unconstitutional enforcement of California Vehicle Code §
8 27001 to silence expression in support of political protests and otherwise. By prohibiting
9 numerous uses of a vehicle horn for expressive purposes, regardless of noise level or
10 impact on traffic safety, the statute violates the First Amendment of the United States
11 Constitution and Article I, § 2 of the California Constitution.

12 JURISDICTION AND VENUE

13 2. The Court has original jurisdiction over Plaintiff’s federal claim under 28
14 U.S.C. §§ 1331 and 1343(a)(3).

15 3. The Court has supplemental jurisdiction over Plaintiff’s state law claim
16 under 28 U.S.C. § 1367 because the state law claim is so related to the claim over which
17 the Court has original jurisdiction that it forms part of the same case or controversy under
18 Article III of the United States Constitution.

19 4. The Court may grant declaratory and injunctive relief pursuant to 42 U.S.C.
20 § 1983, 28 U.S.C. § 2201, and/or Federal Rules of Civil Procedure 57 and 65.

21 5. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because
22 the events that give rise to this action occurred within this district.

23 6. The Court has personal jurisdiction over Sheriff Gore and Commissioner
24 Stanley, who on information and belief are residents of the state of California.

25 PARTIES

26 7. Plaintiff Susan Porter is a resident of the State of California and County of
27 San Diego.

1 8. Upon information and belief, Defendant Sheriff Gore is the Sheriff of San
2 Diego County, responsible for direction, control, management, and oversight of the San
3 Diego County Sheriff's Department, including its enforcement of traffic laws in
4 unincorporated areas of San Diego County and the cities of Del Mar, Encinitas, Imperial
5 Beach, Lemon Grove, Poway, San Marcos, Santee, Solana Beach and Vista. He is sued
6 in his official capacity.

7 9. Upon information and belief, Defendant Commissioner Stanley is
8 Commissioner of the California Highway Patrol ("CHP"). CHP is under the direction
9 and control of the commissioner. Cal. Veh. Code § 2107. The CHP commissioner "shall
10 perform all duties, exercise all powers and jurisdiction, assume and discharge all
11 responsibilities, and carry out and effect all purposes vested by law in the department,"
12 including but not limited to direction and control of traffic enforcement by all CHP
13 officers. Cal. Veh. Code § 2108. He is sued in his official capacity.

14 10. The CHP "commissioner shall enforce all laws regulating the operation of
15 vehicles and the use of the highways," Cal. Veh. Code § 2400(b), and "make adequate
16 provision for patrol of the highways at all times of the day and night," Cal. Veh. Code
17 § 2401. Under California law, a "highway" is "a way or place of whatever nature,
18 publicly maintained and open to the use of the public for purposes of vehicular travel.
19 Highway includes street." Cal. Veh. Code § 360.

20 11. "All members of the California Highway Patrol have the powers of a peace
21 officer." Cal. Veh. Code § 2409. As a result, the authority of CHP officers under the
22 direction and control of Commissioner Stanley "extends to any place in the state." Cal.
23 Penal Code § 830.2.

24 **FACTUAL BACKGROUND**

25 12. Ms. Porter lives in Oceanside and has participated in weekly protests at the
26 district office of Representative Darrell Issa in Vista, which occurred on Tuesdays from
27 10:00 a.m. to 11:00 a.m., beginning soon after the November 2016 election and
28 concluding in April 2018. The protests generated noise from both opponents and

1 supporters of Representative Issa. For example, a supporter of the Representative often
2 employed a sound system with loud speakers across the street from the office.

3 13. Representative Issa's Vista office is located in an office building at 1800
4 Thibodo Road, Vista, California, 92081. The building faces Thibodo Road, a main
5 arterial road, with no buildings immediately adjacent to it. Across from the building is a
6 wooded slope with houses at the top. Behind the building is California Route 78, a six-
7 lane freeway.

8 14. On October 17, 2017, Ms. Porter participated in the weekly protest at
9 Representative Issa's office, and parked her car nearby.

10 15. On that date, while she was participating in the protest, a number of deputy
11 sheriffs arrived at the location of the protest, and issued citations to various individuals.

12 16. While deputies were present during the protest, Ms. Porter moved her car.
13 As she did so, she drove past the protest, and sounded her vehicle horn to express her
14 support of the protest.

15 17. Other drivers often sounded their vehicle horns in support of the protest, and
16 were doing so on that day.

17 18. In a multitude of circumstances, drivers routinely sound vehicle horns to
18 express support or approval of parades, protests, rallies, demonstrations, or fundraising or
19 for other expressive purposes such as greeting a relative, friend, or acquaintance.

20 19. Such uses of vehicle horns are expressive because they are intended to
21 convey a message unrelated to a safety related warning and are so understood by the
22 general public.

23 20. Ms. Porter's use of a vehicle horn to show support for the weekly protest at
24 Representative Issa's office was expressive, because it was intended to convey a message
25 of support for the protest, and was so understood by others.

26 21. After Ms. Porter sounded her horn in support of the protest, Sheriff's Deputy
27 K. Klein ("Deputy Klein"), I.D. Number 7275, directed Ms. Porter to pull over.
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1 22. Deputy Klein told Ms. Porter she was pulled over for sounding her vehicle
2 horn, and issued her a citation for alleged violation of Vehicle Code § 27001, which
3 states that “[t]he driver of a motor vehicle when reasonably necessary to insure safe
4 operation shall give audible warning with his horn,” but “[t]he *horn shall not otherwise*
5 *be used, except as a theft alarm system*” (emphasis added). Cal. Veh. Code § 27001.

6 23. Section 27001 does not require that the use of a horn meet any specified
7 noise level, disturb the peace, distract drivers or pedestrians, or endanger safety.

8 24. Upon information and belief, Deputy Klein was acting within the course and
9 scope of his duties as a Sheriff’s Deputy, and at the direction and under the control of
10 Sheriff Gore at all relevant times.

11 25. Ms. Porter’s citation, copy of which is attached hereto as Exhibit A, states
12 that the citation was for violation of “27001(A) cvc [sic] – unreasonable use of horn” and
13 contains no allegations as to noise level, disturbing the peace, distracting drivers or
14 pedestrians, or endangering safety.

15 26. The citation had an appearance date of December 12, 2017, which Ms.
16 Porter attended. Her hearing to contest the citation was scheduled for February 5, 2018,
17 but when Deputy Klein did not appear, the citation was dismissed.

18 27. Ms. Porter regularly drives her vehicle in areas of San Diego County and the
19 State of California where the Sheriff’s Department or California Highway Patrol is
20 responsible for traffic enforcement.

21 28. In driving her vehicle in those areas, Ms. Porter observes rallies, protests,
22 demonstrations, or other events for which she would like to express her support through
23 use of her vehicle horn.

24 29. Given the citation issued to her and her knowledge of the statute, Ms. Porter
25 reasonably fears that the Sheriff’s Department or California Highway Patrol will enforce
26 section 27001 against her if she uses her vehicle horn for such expressive purposes.

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1 30. As a result, Ms. Porter is censoring herself by refraining from using her
2 vehicle horn for expressive purposes, including but not limited to expressing support for
3 political protests, rallies, or demonstrations.

4 31. Upon information and belief, in issuing the citation Deputy Klein was acting
5 pursuant to official Sheriff's Department policy or direction issued, promulgated, or
6 approved by Sheriff Gore as a policymaker for law enforcement matters.

7 32. Upon information and belief, pursuant to said policy or direction, the
8 Sheriff's Department continues or will continue to enforce section 27001 against the use
9 of a vehicle horn for expressive purposes.

10 33. By letter dated November 9, 2017, counsel for Ms. Porter asked Sheriff Gore
11 "to refrain from enforcing section 27001 against protected speech."

12 34. By letter dated November 29, 2017, Sheriff Gore's chief legal adviser,
13 speaking on behalf of and with the authority of Sheriff Gore, declined to do so,
14 contending "Ms. Porter's citation was not issued as a content-based regulation of speech,
15 but rather a straight forward violation of the Vehicle Code," and "Whether your legal
16 theory is valid or not is something that is best left for a court to decide."

17 35. The actions of Sheriff Gore and Commissioner Stanley, in their official
18 capacities, have chilled, deterred, and infringed and are continuing to chill, deter, and
19 infringe Ms. Porter's right to engage in protected speech.

20 36. The acts, omissions, policies, customs, and/or practices of Sheriff Gore and
21 Commissioner Stanley in their official capacities, and their employed personnel, as
22 alleged herein, are causing irreparable harm to Ms. Porter due to interference with her
23 constitutional right to freedom of speech and expression, for which she has no adequate
24 remedy at law.

25 37. An actual controversy has arisen and now exists between Ms. Porter and
26 Defendants in their official capacities regarding Ms. Porter's ability to exercise her right
27 to use her vehicle horn for expressive purposes, including but not limited to showing
28 support for political protests, rallies, or demonstrations.

1 **FIRST CLAIM**

2 **VIOLATION OF 42 U.S.C. § 1983 (First Amendment, Against All Defendants)**

3 38. Ms. Porter hereby alleges and incorporates by reference each and every
4 allegation contained in paragraphs 1 through 37 above, inclusive.

5 39. On its face or as applied, Vehicle Code § 27001 violates the First
6 Amendment because it constitutes an overbroad restriction on the use of a vehicle horn
7 for speech or expression.

8 40. On its face or as applied, Vehicle Code § 27001 violates the First
9 Amendment because it constitutes a content-based restriction on the use of a vehicle horn
10 for speech or expression that is not narrowly tailored to a compelling governmental
11 interest.

12 41. On its face or as applied, even if it is considered content-neutral, Vehicle
13 Code § 27001 violates the First Amendment because it prohibits numerous uses of a
14 vehicle horn for speech or expression and burdens substantially more speech or
15 expression than necessary to protect legitimate governmental interests.

16 42. In their official capacities, Defendants are violating or imminently will
17 violate the First Amendment by enforcing section 27001 against protected speech or
18 expression.

19 **SECOND CLAIM**

20 **VIOLATION OF Article I, § 2 of the California Constitution (Against Sheriff Gore)**

21 43. Ms. Porter hereby alleges and incorporates by reference each and every
22 allegation contained in paragraphs 1 through 37 above, inclusive.

23 44. On its face or as applied, Vehicle Code § 27001 violates Article I, § 2 of the
24 California Constitution because it constitutes an overbroad restriction on the use of a
25 vehicle horn for speech or expression.

26 45. On its face or as applied, Vehicle Code § 27001 violates Article I, § 2 of the
27 California Constitution because it constitutes a content-based restriction on the use of a
28

1 vehicle horn for speech or expression that is not narrowly tailored to a compelling
2 governmental interest.

3 46. On its face or as applied, even if it is considered content-neutral, Vehicle
4 Code § 27001 violates Article I, § 2 of the California Constitution because it prohibits
5 numerous uses of a vehicle horn for speech or expression and burdens substantially more
6 speech or expression than necessary to protect legitimate governmental interests.

7 47. In his official capacity, Sheriff Gore is violating or imminently will violate
8 Article I, Section 2 of the California Constitution by enforcing section 27001 against
9 protected speech or expression.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully requests the Court to enter judgment against
12 Defendants as follows:

13 1. Preliminarily and permanently enjoining Defendants and Defendants'
14 officers, agents, servants, and employees and any other persons who are in active concert
15 or participation with any of the foregoing persons from enforcing Vehicle Code § 27001
16 against protected speech or expression;

17 2. Declaring the enforcement of Vehicle Code § 27001 against protected
18 expression to be unlawful.

19 3. Awarding Plaintiff costs and attorney fees as authorized by Fed. R. Civ. P.
20 54, 42 U.S.C. § 1988, and/or any other applicable law; and

21 4. Awarding other such relief as the Court deems just and proper.

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23 DATED: June 11, 2018

Respectfully submitted,

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26 By: s/ Mikle S. Jew

J. Mark Waxman

Mikle S. Jew

Foley & Lardner LLP

Attorneys for Plaintiff Susan Porter

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