

CAUSE NO. _____

RAFAEL LOPEZ; REGINO SORIANO;
BERNARDO SORIANO; AND
RICARDO QUINTANILLA,

Plaintiffs,

v.

CITY OF SAN ANTONIO, TEXAS,

Defendant.

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IN THE DISTRICT COURT

BEXAR COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION,
APPLICATION FOR INJUNCTIVE RELIEF,
AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Rafael Lopez; Regino Soriano; Bernardo Soriano; and Ricardo Quintanilla, Plaintiffs herein, and file their Original Petition, Application for Injunctive Relief, and Request for Disclosure against the City of San Antonio, Texas, Defendant herein. In support of their Original Petition, Application for Injunctive Relief, and Request for Disclosure, Plaintiffs would show the Court the following:

I. INTRODUCTION

1. This lawsuit seeks to vindicate Plaintiffs' economic liberty rights under Article I, § 19 of the Texas Constitution, so that they may operate their businesses free from unreasonable and protectionist government interference. Plaintiffs challenge the constitutionality of a San Antonio law that bans mobile food vendors, colloquially known as "food trucks," from operating anywhere within 300 feet of a restaurant or brick-and-mortar business that sells food. To have any

chance of operating within 300 feet of their would-be competitors, San Antonio forces food trucks to get written and notarized permission slips from the very brick-and-mortar food businesses the law was designed to protect.

2. Plaintiffs operate traditional food trucks and serve their customers freshly cooked food using recipes inspired from different regions of Mexico. Their food truck businesses allow them to support their families and also employ others who seek to support theirs.
3. Mobile vending has long been an entry point to entrepreneurship in cities across America. This is especially true in San Antonio, Texas, where traditional food truck vendors support their communities by serving snacks, treats, and ethnic foods at low prices and convenient locations for busy customers. But through the adoption and enforcement of an anticompetitive restriction on where vendors can operate, the City of San Antonio has made it very difficult for mobile food vendors like Plaintiffs to operate and grow their businesses.
4. The City of San Antonio (“Defendant”) has banned Plaintiffs Rafael Lopez, Regino Soriano, Bernardo Soriano, and Ricardo Quintanilla (collectively, the “Plaintiffs”), from operating within 300 feet of the property line of any brick-and-mortar restaurants and other food establishments. The only way that Plaintiffs and other vendors can attempt to avoid this restriction is to ask their brick-and-mortar competitors for written and notarized permission slips allowing them to operate their food trucks. If even one restaurant, convenience store, grocery store, or other brick-and-mortar food establishment within 300 feet refuses, the food truck is prohibited from operating at that location.

5. The 300-foot proximity ban applies to all mobile food establishments regardless of whether they are located on private property with the owner's permission or legally parked on public property. Under the law, a food truck can operate if it is not within 300 feet of a restaurant or other food establishment; however, it must immediately stop vending if a new restaurant or other food establishment opens for business within 300 feet. To have any chance at reopening, the owner of the food truck must ask his new brick-and-mortar competitor for written and notarized permission stating the food truck can reopen at its vending location.
6. Defendant's 300-foot proximity ban against food trucks does not address any public health or safety concern; its actual purpose and effect are to protect restaurants and other brick-and-mortar food establishments from competition by food trucks.
7. Defendant's actions deprive Plaintiffs of their right to pursue a lawful occupation free from unreasonable government interference, and violate the guarantees afforded Plaintiffs by the Due Course of Law Clause of Article I, Section 19 of the Texas Constitution. Accordingly, Defendant's 300-foot proximity ban against mobile food vendors should be declared unconstitutional and permanently enjoined.

II. PARTIES AND SERVICE OF PROCESS

PLAINTIFFS

8. Plaintiff Rafael Lopez is a resident of Bexar County, Texas and owns the El Bandera Jalisco food truck, a permitted mobile food establishment that he is

prohibited from operating on the private commercial property he currently leases at 3610 Broadway, San Antonio, Bexar County, Texas. Defendant is barring Plaintiff Lopez from operating his food truck at this location because the property he is leasing is located within 300 feet of a restaurant.

9. Plaintiff Regino Soriano is a resident of Bexar County, Texas and operates the El Bandolero food truck, a permitted mobile food establishment from which he vends on private commercial property in the city of San Antonio, Bexar County, Texas. Defendant forced Plaintiff Regino Soriano to shut down his food truck shortly after opening for business because the vending location he leased was located within 300 feet of a restaurant. Plaintiff Regino Soriano's food truck can now only operate with permission from that restaurant, and he fears being shut down again by Defendant if that permission is revoked, or if a new restaurant or other food establishment opens within 300 feet of his food truck.

10. Plaintiff Bernardo Soriano is a resident of Bexar County, Texas and operates the El Bandolero II food truck, a permitted mobile food establishment from which he vends on private commercial property in the city of San Antonio, Bexar County, Texas. Plaintiff Bernardo Soriano is seeking to grow his business by operating his food truck at private events in San Antonio, but Defendant is prohibiting him from doing so if his customers are located within 300 feet of a restaurant or other food establishment.

11. Plaintiff Ricardo Quintanilla is a resident of Bexar County, Texas and operates the Tacos el Regio food truck, a permitted mobile food establishment from which he vends on private commercial property in the city of San Antonio,

Bexar County, Texas. Plaintiff Quintanilla seeks to expand Tacos el Regio by investing his time and resources into a new food truck location in northeast San Antonio. Plaintiff Quintanilla operates from his current vending location under the constant threat of Defendant shutting down his business if a new restaurant or other food establishment opens in the currently vacant commercial property located within 300 feet from his food truck.

DEFENDANT

12. Defendant City of San Antonio is a municipality organized under the laws of the State of Texas. Defendant is located at City Hall, 100 Military Plaza, San Antonio, Bexar County, Texas.

III. DISCOVERY CONTROL PLAN

13. Plaintiffs intend to conduct Level 2 discovery under Rule 190.3 of the Texas Rules of Civil Procedure.

IV. JURISDICTION AND VENUE

14. Plaintiffs bring this lawsuit pursuant to the Due Course of Law Clause contained in Article I, § 19 of the Texas Constitution, and the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code Ann. § 37.003.
15. Plaintiffs seek declaratory and injunctive relief against the enforcement of Defendant's 300-foot proximity ban against food trucks, contained in § 13-63(a)(10) of the San Antonio City Code (the "300-Foot Ban"), related implementing rules and regulations, and the practices and policies of Defendant, that unconstitutionally deny Plaintiffs the ability to operate their mobile food establishments free from unreasonable and protectionist government interference.

16. The Court has subject matter jurisdiction because Plaintiffs seek to vindicate their rights under the Texas Constitution, because Plaintiffs seek a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code Ann. § 37.003, and because Plaintiffs seek injunctive relief against a municipality organized under the laws of the State of Texas, *see* Tex. Civ. Prac. & Rem. Code Ann. § 65.021.
17. Venue is proper in Bexar County pursuant to Tex. Civ. Prac. & Rem. Code Ann. §§ 15.002(a)(1), (a)(3).

V. FACTS

THE FOOD TRUCK INDUSTRY IN THE UNITED STATES

18. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.
19. Mobile food establishments, such as the food trucks operated by Plaintiffs, are commercial vehicles that allow entrepreneurs to travel from place to place, or remain at a fixed location, in order to sell and serve food to customers.
20. Food trucks can take many different forms. Some only serve food that is prepared and prepackaged in a licensed commercial kitchen. Other food trucks, like those Plaintiffs operate, are self-sufficient mobile kitchens that let those working on board prepare and serve food directly from the food truck.
21. Food trucks provide a number of benefits to their communities, including a greater number of food choices for consumers, and they also create jobs.

22. Food trucks also serve as complements to brick-and-mortar restaurants. Many mobile vending entrepreneurs later open restaurants, and like Plaintiff Rafael Lopez, restaurant entrepreneurs may later open food trucks.

SAN ANTONIO’S 300-FOOT PROXIMITY BAN AGAINST FOOD TRUCKS

23. Defendant severely restricts the marketplace for mobile food vending in the city of San Antonio.
24. A permitted mobile food establishment (referred to herein as a “food truck” or “food trucks”) is subject to Chapter 13 of the San Antonio City Code, including the operation requirements and restrictions contained in § 13-63.
25. According to Defendant’s 300-Foot Ban, “[m]obile food vending operations shall not be carried on within three hundred (300) feet of the property line of any permitted food establishment[.]” San Antonio, Tex., Code § 13-63(a)(10).
26. For food trucks to have any chance at vending within 300 feet of a restaurant or other food establishment, Defendant requires that “written, notarized permission is given by the food establishment owner with regards to a mobile food establishment operating within three hundred (300) feet of his establishment[.]” (referred to herein as the “Permission Slip Exception”). San Antonio, Tex., Code § 13-63(a)(10).
27. San Antonio’s Code defines “food establishment” as “an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption[.]” (referred to herein as “food establishment” or “food establishments”). San Antonio, Tex., Code § 13-3.

28. The definition of “food establishment” includes a “restaurant,” a “retail food store,” a “market,” and a “food bank.” San Antonio, Tex., Code § 13-3.
29. A “retail food store” under San Antonio, Tex., Code § 13-3 includes food establishments such as grocery stores and convenience stores.
30. All food trucks, including those operated by Plaintiffs, are subject to Defendant’s 300-Foot Ban regardless of whether they are vending on private property or vending while legally parked on a public street.
31. A violation of the 300-Foot Ban is punishable by a fine of up to \$2,000 per day. *See* San Antonio, Tex., Code § 13-11.
32. In 2014, the 300-Foot Ban became even more burdensome when the San Antonio City Council passed an ordinance adding the words “of the property line” to the existing restriction. *See* San Antonio, Tex., Ordinance 2014-08-07-0539 (Aug. 7, 2014); San Antonio, Tex., Code § 13-63(a)(10).
33. Because the words “of the property line” were added to the 300-Foot Ban in 2014, the restricted area no longer needs to extend to a restaurant’s building to force a food truck to shut down its vending operations; instead, if a food truck is 300 feet away from the edge of a restaurant’s property line it is prohibited from operating.
34. The addition of the words “of the property line” to § 13-63(a)(10) of the San Antonio City Code in 2014 resulted in more land area in the city of San Antonio being subject to the 300-Foot Ban.

IMPACT OF 300-FOOT BAN ON SAN ANTONIO'S FOOD TRUCKS

35. The 300-Foot Ban creates many significant burdens on food truck businesses in San Antonio. Food trucks are prohibited from vending in large swaths of San Antonio. The San Antonio Business Journal reported that in 2012 there were 4,826 restaurants in San Antonio, a 4 percent increase from the year prior. Tricia Lynn Silva, *San Antonio sees rise in restaurant scene, NPD reports*, San Antonio Business Journal (Jan. 25, 2013, 11:00AM), www.bizjournals.com/sanantonio/blog/2013/01/san-antonio-sees-rise-in-restaurant.html. This means that Defendant's 300-Foot Ban prohibits food trucks from vending in literally thousands of 300-foot "no-vending" zones surrounding every restaurant, convenience store, and grocery store throughout the city of San Antonio.
36. The 300-Foot Ban also significantly burdens food truck owners who seek to vend on private property that they own or lease; they are prohibited from doing so if that property is located within 300 feet of a property line belonging to a restaurant or other food establishment.
37. The 300-Foot Ban also creates significant business risk for existing and aspiring food truck entrepreneurs. There are many fixed and variable costs involved with starting a new food truck or growing an existing food truck business. This investment can be lost if Defendant's 300-Foot Ban forces a food truck to shut down solely because the property line of a restaurant or other food establishment is located within 300 feet of their food truck.

38. Opening a food truck requires an initial investment of at least \$20,000, and up to \$100,000, for the equipped food truck itself. Another \$2,500 to \$5,000 for product inventory, insurance, and permits is also necessary. Food truck owners often also hire employees and sign leases for vending locations on private property.
39. In San Antonio, food truck entrepreneurs are forced to weigh their business investment against the prospect of Defendant shutting down their food truck under the 300-Foot Ban solely due to the proximity of their vending location to a brick-and-mortar competitor such as a restaurant. Even worse, if a food truck is operating by way of the Permission Slip Exception to the 300-Foot Ban, its investment is at risk and can be lost if the owner of a restaurant or other food establishment granting it permission to operate simply changes his mind.
40. The Permission Slip Exception highlights the protectionist purpose and effect of the 300-Foot Ban. For any possibility at vending from a location that is within 300 feet of a restaurant or other food establishment, the owner of a food truck must: (1) approach the owners of every restaurant and food establishment with property lines located within 300 feet of the food truck's proposed vending location; (2) ask each of these would-be competitors for permission to operate a food truck within 300 feet of their property lines; (3) obtain permission in writing and have it notarized; and (4) keep the signed and notarized permission forms in their food truck "at all times" in accordance with § 13-63(a)(10) of San Antonio's City Code.

41. Owners of restaurants and other food establishments may refuse to grant food trucks permission to operate within 300 feet of their property line for any reason, and need not provide a reason for denying such permission.
42. If the owner of a restaurant or other food establishment grants a food truck permission to operate within 300 feet of their property, they may legally revoke that permission at any time without providing any notice to the food truck owner.
43. If the owner of a restaurant or other food establishment revokes the permission they previously granted to a food truck owner, the affected food truck must immediately cease all vending operations at the previously-approved vending location.
44. Upon information and belief, owners of restaurants or other food establishments sometimes refuse to grant food trucks permission to operate within 300 feet of their property line.
45. If a new restaurant or other food establishment opens for business within 300 feet of a food truck's existing vending location, the food truck must cease vending operations immediately, even if its vending location pre-existed the arrival of the new restaurant or other food establishment. To have any chance at reopening, Defendant first requires that owners of food trucks obtain written and notarized permission from the owner of a new restaurant allowing them to reopen their food truck at their existing vending location.
46. Defendant's 300-Foot Ban does not prohibit restaurants or other food establishments from demanding compensation for the permission food trucks are required to have under the Permission Slip Exception.

47. Upon information and belief, restaurants or other food establishments have sometimes demanded compensation from a food truck owner who is seeking their permission in order to comply with the Permission Slip Exception.

48. Upon information and belief, food truck owners have sometimes been forced to pay monthly compensation to a restaurant or other food establishment in exchange for permission to operate within 300 feet of their property line under the Permission Slip Exception.

**THE 300-FOOT BAN’S FAILURE TO ADVANCE
A LEGITIMATE GOVERNMENTAL INTEREST**

49. The 300-Foot Ban advances no public health or safety purpose, nor any other legitimate governmental interest.

50. Defendant has no evidence that the 300-Foot Ban advances any public health or safety purpose.

51. Defendant has no evidence that the 300-Foot Ban advances any legitimate governmental interest.

52. The purpose and effect of the 300-Foot Ban is to protect restaurants and other food establishments from competition by food trucks.

PLAINTIFFS AND THEIR VENDING BUSINESSES

RAFAEL LOPEZ

53. Plaintiff Rafael Lopez owns and operates El Bandera Jalisco, a restaurant located at 14320 Nacogdoches Avenue in San Antonio, Texas. Rafael’s restaurant serves a full menu of Mexican cuisine and offers customers the option of dining in or purchasing food through a drive-thru window.

54. In 2014, Rafael decided to expand his El Bandera Jalisco business by adding a second location, investing in a food truck, and combining the interior seating and amenities of a restaurant alongside a food truck parked on the same property. His customers could order food prepared in the food truck and sit inside the building's dining area to eat, where he would also sell desserts, ice cream, and other refreshments. They could also order and eat food inside the restaurant.
55. Rafael signed a lease for property at 3610 Broadway in San Antonio that included both the building and parking space for his food truck, invested \$40,000 in a food truck, obtained a permit to operate his food truck, and opened for business in the spring of 2015.
56. On May 4, 2015, Defendant's inspectors visited Rafael's food truck at his new location at 3610 Broadway and forced him to cease all vending operations on the property he leased. Rafael was told his El Bandera Jalisco food truck was within 300 feet of a restaurant and that he was prohibited from operating it because of the 300-Foot Ban.
57. The Hung Fong Chinese Restaurant (located at 3624 Broadway), is located next door and within 300 feet of Rafael's El Bandera Jalisco location at 3610 Broadway, including the food truck Rafael operates on the same property.
58. After telling him to shut down his food truck, Defendant's inspector told Rafael that he needed to get permission from the owner of the Hung Fong Chinese Restaurant to have any chance of reopening his food truck at 3610 Broadway.
59. Rafael tried to get permission from the Hung Fong Chinese Restaurant in order to have a chance to reopen his food truck at 3610 Broadway using the

Permission Slip Exception. The Hung Fong Chinese Restaurant did not give Rafael permission to operate his food truck. The El Bandera Jalisco food truck now sits in storage.

60. It is legal for Rafael to sell food from the building he leases at 3610 Broadway, but the 300-Foot Ban makes it illegal for him to sell food from his food truck at 3610 Broadway.

REGINO SORIANO

61. Plaintiff Regino Soriano owns and operates El Bandolero, a permitted food truck in San Antonio. Vending is the primary source of income for Regino and his family. Each evening and night, El Bandolero opens for business and offers customers Zacatecas cuisine including tortas, burritos, quesadillas, and tacos.
62. For the past eight years, Regino has operated El Bandolero from a vending location in the parking lot leased from the HEB grocery store at Nacogdoches Village (located at 14087 O'Connor Road, San Antonio, Texas). This vending location is on private property and within 300 feet of two food establishments: the above-referenced HEB grocery store and a McDonald's restaurant (located at 13919 Nacogdoches Road).
63. Soon after opening for business, one of Defendant's inspectors visited El Bandolero and forced Regino to cease vending operations because he was violating the 300-Foot Ban. To have any chance of reopening, Regino was told to obtain written and notarized permission slips from the McDonald's restaurant and

even the HEB grocery store that he already had a signed lease with, because both were within 300 feet of Regino's vending location.

64. Regino was able to obtain the signed permission slips he needed under the Permission Slip Exception and has been operating El Bandolero under the 300-Foot Ban's long shadow ever since. If just one of the permission slips is revoked, or if a restaurant or other food establishment opens within 300 feet of Regino's food truck, he will be in violation of the 300-Foot Ban and have to shut down.

65. The 300-Foot Ban also makes it difficult for Regino to expand his vending business. Regino discussed the possibility of operating El Bandolero during the daytime hours with a second HEB grocery store (located at 2929 Thousand Oaks Drive, San Antonio, Texas). He had to abandon his efforts, however, after learning that at least three restaurants were located within 300 feet of the HEB grocery store's parking lot.

66. To operate a new vending location at the HEB grocery store on Thousand Oaks Drive, Plaintiff Regino Soriano would need permission to operate his food truck from at least three restaurants in order to have any chance at operating under the Permission Slip Exception. The business risk created by the 300-Foot Ban on an investment into a second food truck location is too great for Regino. Even if all three restaurants within 300 feet gave him permission to operate, Defendant could shut down his new food truck location immediately if even one of the three restaurants revoked its permission. The 300-Foot Ban would also force Regino to shut down if a new restaurant or other food establishment opens within 300 feet of his second food truck location.

BERNARDO SORIANO

67. Plaintiff Bernardo Soriano owns and operates El Bandolero II, a permitted food truck in San Antonio. Bernardo is Plaintiff Regino Soriano's 24-year-old son. Vending is his primary source of income. Bernardo began learning how to run a successful vending business eight years ago, at the age of sixteen, when his father started El Bandolero.
68. Two years ago, when Bernardo was 22 years old, he purchased his own food truck and opened El Bandolero II. He vends on private property at 25390 U.S. Highway 281 North and opens at 7am Monday through Saturday. From his food truck, Bernardo offers customers Zacatecas cuisine including tortas, burritos, quesadillas, and tacos. In his first two years, Bernardo has been able to pay off his food truck and now owns it outright.
69. Bernardo's current vending location at 25390 U.S. Highway 281 North is near an area of the highway just north of Loop 1604 that has experienced significant commercial development activity, including the opening of several retail shopping developments and food establishments. Bernardo reasonably fears that a restaurant or other new food establishment may eventually open within 300 feet of his vending location and force him to shut down pursuant to Defendant's 300-Foot Ban.
70. Bernardo has attempted to expand his business by taking on private vending engagements for customers at various locations in San Antonio. The 300-Foot Ban has made this difficult for Bernardo. Because the 300-Foot Ban prohibits Bernardo from vending within 300 feet of every restaurant and other

food establishments throughout the city, it is a practical impossibility for Bernardo to accept offers from customers in these areas because he is barred from operating his food truck there.

71. Like many food truck owners Bernardo is the sole operator of his food truck business. Obtaining written and notarized permission slips from every restaurant and other food establishment within 300 feet of a potential private vending customer does not make business sense for Bernardo; the logistical complexity involved, along with time away from his food truck business, is too great for the chance at landing a single private vending engagement. Even worse, if Bernardo satisfies the Permission Slip Exception, his ability to work the private vending engagement can be revoked without notice under the 300-Foot Ban if permission is withdrawn, even if Bernardo has agreed to take on the vending engagement.

72. For similar reasons, the 300-Foot Ban makes it difficult for Bernardo to grow his business by moving his food truck to a new vending location that is closer to more potential customers and retail shopping. Bernardo is interested in vending in the Stone Oak area just south of his current location along U.S. Highway 281 North (and just north of Loop 1604). However, there are many restaurants and other food establishments in the retail shopping areas along the highway, and the 300-Foot Ban prohibits Bernardo from vending within 300 feet of each one.

73. The business risk involved with operating under the 300-Foot Ban's Permission Slip Exception is too great for Bernardo, considering the expense of

opening his food truck at a new location on private property and the prospect of losing that investment if the 300-Foot Ban forces him to shut down after signing a lease. If the owner of a restaurant or other food establishment within 300 feet changes his mind and revokes his permission for Bernardo to operate, or if a new restaurant or other food establishment opens for business within 300 feet of his vending location, the 300-Foot Ban gets triggered and Bernardo would be forced to shut down his food truck.

RICARDO QUINTANILLA

74. Plaintiff Ricardo Quintanilla operates Tacos el Regio, a permitted food truck in San Antonio. Vending is his primary source of income and it is how he supports his family. Ricardo operates Tacos el Regio on private property located at 12761 Nacogdoches Road in San Antonio, Texas. Tacos el Regio offers customers Mexican cuisine inspired by recipes from Monterrey, Mexico.
75. In May 2015, Ricardo signed a new lease agreement under a cloud of uncertainty in order to remain at his existing vending location. There is a vacant commercial property located across the street and within 300 feet of Ricardo's Tacos el Regio food truck. The 300-Foot Ban will force him to shut down if a restaurant or other food establishment moves into that vacant commercial property. Ricardo would have signed a longer term lease to secure his popular vending location and continue building his customer base there; instead, he signed a shorter lease because the 300-Foot Ban is subjecting him to the risk of possibly being shut down if a restaurant or other food establishment opens for business within 300 feet of his food truck.

76. Ricardo would also like to expand his business by adding a new Tacos el Regio location in or near the areas of Wetmore Road and Thousand Oaks Drive in northeast San Antonio, something he has found very difficult to do because the 300-Foot Ban prevents him from operating a food truck anywhere within 300 feet of every restaurant and brick-and-mortar food establishment. Several food establishments are located in the area in and around the intersection of Wetmore Road and Thousand Oaks Drive including a barbecue restaurant, a Mexican restaurant, a deli, and a convenience store.
77. In addition, the business risk involved with Ricardo operating under the Permission Slip Exception is too great, considering the expense of opening a new food truck and the prospect of losing that investment if the 300-Foot Ban forces him to shut down after signing a lease for a new vending location. If the owner of a restaurant or other food establishment within 300 feet changes his mind and revokes his permission for Ricardo to operate, or if a new restaurant or other food establishment opens for business within 300 feet of a new vending location, the 300-Foot Ban gets triggered and Ricardo would be forced to shut down his food truck.

VI. INJURY TO PLAINTIFFS

78. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.
79. The 300-Foot Ban prohibits Plaintiffs' food trucks from operating within 300 feet of the property line of a fixed location where food establishments are

located, including restaurants, retail food stores, grocery stores, and convenience stores.

80. Due to the ubiquity of restaurants and other brick-and-mortar food establishments across the city of San Antonio, the 300-Foot Ban prohibits Plaintiffs from vending in large swaths of the city.

81. The 300-Foot Ban creates thousands of “no-vending” zones—shaped like a circle having a 300-foot radius—surrounding every restaurant and other brick-and-mortar food establishments in the city, within which no food trucks may vend.

82. To have any chance at vending within an area restricted by the 300-Foot Ban, a food truck owner must first ask the very brick-and-mortar competitors the law is designed to protect—every restaurant and other food establishment within 300 feet of their vending location—to give them written, notarized permission slips allowing them to operate a food truck within 300 feet of their property line.

83. Restaurants and other food establishments are free to revoke permission previously granted to food trucks at any time, and without giving the owner of a food truck any notice that permission is being revoked.

84. The 300-Foot Ban also subjects all food trucks in San Antonio, including those operated by Plaintiffs, to a constant threat of having their food trucks shut down by Defendant in the event a new restaurant or other food establishment opens up within 300 feet of their food truck.

PLAINTIFF RAFAEL LOPEZ

85. Plaintiff Rafael Lopez seeks to resume operating his food truck, El Bandera Jalisco, on the property he leases at 3610 Broadway, without being shut down by Defendant pursuant to the 300-Foot Ban because it is located within 300 feet of the Hung Fong Chinese Restaurant next door (located at 3624 Broadway).

86. But for the specific application of the 300-Foot Ban to Plaintiff Lopez, he would immediately resume operating his El Bandera Jalisco food truck at 3610 Broadway, and no longer be forced to shut down his vending operations or face daily fines of up to \$2,000 per day.

87. But for the specific application of the 300-Foot Ban against Plaintiff Lopez, his El Bandera Jalisco food truck would continue generating between \$600–\$800 in daily revenue for his business, which constituted the average daily revenue prior to Defendant forcing Plaintiff Lopez to shut down his food truck pursuant to the 300-Foot Ban.

88. But for the specific application of the 300-Foot Ban against Plaintiff Lopez, the \$40,000 investment he made into his El Bandera Jalisco food truck would generate revenue for his business; instead, his food truck is in storage.

PLAINTIFF REGINO SORIANO

89. Plaintiff Regino Soriano seeks to continue operating his food truck, El Bandolero, at his current vending location in the parking lot of the HEB grocery store at Nacogdoches Village (located at 14087 O'Connor Road).

90. But for the specific application of the 300-Foot Ban against Plaintiff Regino Soriano, he would not have been forced by Defendant to shut down all vending operations from his El Bandolero food truck, under threat of daily fines of up to \$2,000 per day, when he first opened for business at his current vending location in the parking lot of the HEB grocery store located at 14087 O'Connor Road.

91. But for the specific application of the 300-Foot Ban against Plaintiff Regino Soriano, he would operate his El Bandolero food truck at his current vending location, in the parking lot of the HEB grocery store located at 14087 O'Connor Road, free from the constant threat of being shut down by Defendant if he loses permission to operate his food truck from the McDonald's restaurant located at 13919 Nacogdoches Road, a restaurant located within 300 feet of Plaintiff Regino Soriano's current vending location.

92. But for the specific application of the 300-Foot Ban against Plaintiff Regino Soriano, he would be able to operate his El Bandolero food truck at his current vending location free from the constant threat of being shut down by Defendant if a new food establishment opens for business in the Nacogdoches Village shopping center or anywhere else within 300 feet of his current vending location, located in the parking lot of the HEB grocery store located at 14087 O'Connor Road.

93. But for the specific application of the 300-Foot Ban against Plaintiff Regino Soriano, he would seek to expand his business by resuming the negotiations he previously abandoned approximately two years ago with a second

HEB grocery store, located at 2929 Thousand Oaks Drive (and within 300 feet of three restaurants), in order to operate his El Bandolero food truck business during the daytime hours (when he is not vending at his current location each evening and night).

94. But for the specific application of the 300-Foot Ban, Plaintiff Regino Soriano would be able to pursue new vending locations for his food truck free from the significant business risk created by the 300-Foot Ban.

PLAINTIFF BERNARDO SORIANO

95. Plaintiff Bernardo Soriano seeks to continue operating his food truck, El Bandolero II, at his current vending location at 25390 U.S. Highway 281 North.

96. But for the specific application of the 300-Foot Ban against Plaintiff Bernardo Soriano, he would be able to operate his El Bandolero II food truck free from the constant threat of being shut down by Defendant pursuant to the 300-Foot Ban if a new food establishment opens for business within 300 feet of his current vending location, located on private property at 25390 U.S. Highway 281 North, an area that has experienced significant commercial development activity along the highway just north of Loop 1604, including the opening of several restaurants and other food establishments.

97. But for the specific application of the 300-Foot Ban against Plaintiff Bernardo Soriano, he would continue growing his food truck business by taking on new customers for private food truck vending engagements without avoiding customers located within 300 feet of restaurants and other food establishments,

from which he is currently prohibited from vending from due to Defendant's 300-Foot Ban.

98. But for the specific application of the 300-Foot Ban against Plaintiff Bernardo Soriano, he would seek to expand his food truck business in the Stone Oak area along U.S. Highway 281 in the city of San Antonio, something he has found very difficult to do because the 300-Foot Ban prevents him from operating a food truck anywhere within 300 feet of every restaurant and brick-and-mortar food establishment.

99. But for the specific application of the 300-Foot Ban, Plaintiff Bernardo Soriano would be able to pursue new vending locations and also invest in a second food truck free from the significant business risk created by the 300-Foot Ban.

PLAINTIFF RICARDO QUINTANILLA

100. Plaintiff Ricardo Quintanilla seeks to continue operating his food truck, Tacos el Regio, at his current vending location on private property (located at 12761 Nacogdoches Road).

101. But for the specific application of the 300-Foot Ban against Plaintiff Quintanilla, he would have secured his current vending location for a term lasting longer than the two-year lease agreement he entered into in May 2015 with the owner of 12761 Nacogdoches Road, something he was unable to do because of the significant business risk created by the 300-Foot Ban, including being forced to shut down his Tacos el Regio food truck if a restaurant or other food

establishment opens for business in the vacant commercial property located across the street, and within 300 feet, from his current vending location.

102. But for the specific application of the 300-Foot Ban against Plaintiff Ricardo Quintanilla, he would be able to operate his Tacos el Regio food truck free from the constant threat of being shut down by Defendant pursuant to the 300-Foot Ban whenever a new food establishment opens for business within 300 feet of his current vending location, located on private property at 12761 Nacogdoches Road.

103. But for the specific application of the 300-Foot Ban against Plaintiff Quintanilla, he would immediately seek to expand his food truck business by adding a second vending location in the city of San Antonio, in or near the areas of Wetmore Road and Thousand Oaks Drive, something he has found very difficult to do because the 300-Foot Ban prevents him from operating a food truck anywhere within 300 feet of every restaurant and brick-and-mortar food establishment, including three restaurants and the convenience store located near the intersection of Wetmore Road and Thousand Oaks Drive.

104. But for the specific application of the 300-Foot Ban, Plaintiff Quintanilla would be able to pursue new vending locations and invest in a second food truck free from the significant business risk created by the 300-Foot Ban.

VII. CAUSES OF ACTION

(TEX. CONST. ART. I, § 19—DEPRIVATION OF LIBERTY; DUE COURSE OF THE LAW OF THE LAND)

105. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.

106. Article I, § 19 of the Texas Constitution provides that:
- No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law of the land.
107. Among the rights secured by the due course of the law of the land guarantee of the Texas Constitution, commonly known as the constitution’s “substantive due course of law” guarantee, is the right to earn an honest living in the occupation of one’s choice free from unreasonable governmental interference.
108. Defendant has violated the substantive due course of law guarantee in Article I, § 19 of the Texas Constitution by enacting and enforcing the 300-Foot Ban, which prohibits Plaintiffs from conducting vending operations from their food trucks within 300 feet of the property line of any restaurant or other food establishment.
109. Defendant has no legitimate governmental interest for enacting or enforcing the 300-Foot Ban against Plaintiffs, or other mobile food establishments.
110. The purpose of Defendant’s 300-Foot Ban cannot arguably be rationally related to a legitimate governmental interest.
111. When considered as a whole, the 300-Foot Ban’s actual, real-world effect as applied to Plaintiffs cannot arguably be rationally related to a legitimate governmental interest.
112. When considered as a whole, the 300-Foot Ban’s actual, real-world effect as applied to Plaintiffs is so burdensome as to be oppressive in light of a legitimate governmental interest.

113. Defendant's police power does not extend to engaging in economic protectionism benefitting restaurants and other food establishments at the expense of food trucks and other mobile food establishments, for no reason other than to protect one from competition by the other.

114. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code Ann. §§ 37.001–37.011, Plaintiffs respectfully request the Court enter a judgment declaring that the 300-Foot Ban, contained in § 13-63(a)(10) of the San Antonio City Code, violates the Due Course of Law Clause of Article I, § 19 of the Texas Constitution.

VIII. APPLICATION FOR PERMANENT INJUNCTION

115. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.

116. Plaintiffs respectfully ask the Court to set their application for permanent injunction for a hearing and, following the hearing, to issue a permanent injunction against Defendant.

IX. ATTORNEYS' FEES

117. Plaintiffs hereby request all costs and reasonable attorneys' fees, as permitted by section 37.009 of the Texas Civil Practices and Remedies Code.

X. REQUEST FOR DISCLOSURE

118. Plaintiffs request that Defendant disclose to Plaintiffs, within 50 days of the service of this request, the information and materials described in Rule 194.2(a), (b), (c), (e), (f), (i), and (l) of the Texas Rules of Civil Procedure.

XI. PRAYER AND RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. For a permanent injunction barring Defendant from enforcing San Antonio City Code § 13-63(a)(10) against Plaintiffs;
- C. For a declaratory judgment that Defendant's enforcement of San Antonio City Code § 13-63(a)(10) against Plaintiffs violates the Due Course of Law Clause contained in Article I, § 19 of the Texas Constitution, by unreasonably interfering with Plaintiffs' right to earn a living free from unreasonable government interference;
- D. For an award of one dollar in nominal damages;
- E. For an award of attorneys' fees and court costs; and
- F. For all other legal and equitable relief to which Plaintiffs may be entitled.

RESPECTFULLY SUBMITTED this 6th day of October, 2015.

INSTITUTE FOR JUSTICE

By: /s/ Arif Panju
Arif Panju (TX Bar No. 24070380)
Matthew R. Miller (TX Bar No. 24046444)
Institute for Justice
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Austin, TX 78701
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apanju@ij.org
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ATTORNEYS FOR PLAINTIFFS

CAUSE NO. _____

RAFAEL LOPEZ; REGINO SORIANO;
BERNARDO SORIANO; AND
RICARDO QUINTANILLA,

Plaintiffs,

v.

CITY OF SAN ANTONIO, TEXAS,

Defendant.

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IN THE DISTRICT COURT

BEXAR COUNTY, TEXAS

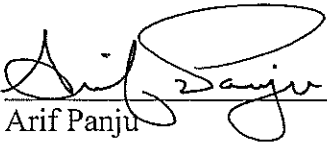
_____ JUDICIAL DISTRICT

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

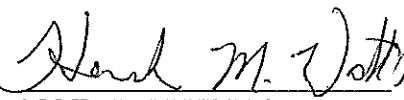
BEFORE ME, the undersigned authority, on this day personally appeared affiant Arif Panju, and stated that this affidavit is made pursuant to Texas Rule of Civil Procedure 14 in his capacity as attorney for Rafael Lopez, Regino Soriano, Bernardo Soriano, and Ricardo Quintanilla, in the above-captioned case. Affiant swears that he has carefully read the factual allegations in the foregoing Plaintiffs' Original Petition, Application for Injunctive Relief, and Request for Disclosure, and has reason to believe that each and all said factual allegations are true and correct; and affiant signs this Verification pursuant to Rule 682 of the Texas Rules of Civil Procedure.

Executed on October 5, 2015.


Arif Panju
Attorney for Plaintiffs

SUBSCRIBED AND SWORN TO before me on the 5th day of October, 2015.




NOTARY PUBLIC
STATE OF TEXAS