

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

SCOTT FISHER and NORTH FLORIDA  
QUALITY GOODS AND SERVICES LLC,  
D/B/A GONE BROKE GAMING,

Plaintiffs,

v.

Civil Action No.  
3:17-cv-00393-BJD-JBT

TOWN OF ORANGE PARK,

Defendant.

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**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

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Plaintiffs Scott Fisher and his business, North Florida Quality Goods and Services LLC, d/b/a “Gone Broke Gaming,” (“Plaintiffs”) bring this civil-rights lawsuit against the Defendant Town of Orange Park (“the Town”).

**INTRODUCTION**

This lawsuit seeks to vindicate the free-speech rights of a family-owned video-game store, called Gone Broke Gaming, in Orange Park, Florida. The Town has used—and continues to use—unconstitutional sign codes to stop Gone Broke Gaming from displaying an inflatable Mario, the classic video-game character, in front of its store.

Gone Broke Gaming had displayed a nine-foot inflatable Mario on its own private property last summer with great success. Not only did the inflatable help customers find the store, but Mario quickly became a local attraction. The Town of Orange Park, however, demanded that Mario come down. According to the Town, the display was an illegal “portable sign” under its sign code and subject to fines of \$100 a day. Gone Broke Gaming had no choice but to remove Mario. As a result, the community is deprived of this fun display and the store is suffering a significant decrease in customers.

The Town does not ban all inflatables, however. In fact, dozens of large inflatables have been displayed throughout the Town in just the last year alone. That is because the Town does not consider inflatables to be a “sign” if they lack a commercial message. Thus, inflatables that the Town considers to be holiday decorations, seasonal decorations, or artwork are unregulated.

Allowing some speech but not others based on what it says is “content based” discrimination under the First Amendment. Content-based discrimination is presumptively unconstitutional and Orange Park cannot justify this discrimination. Although the Town amended its sign code in October 2016, this unconstitutional deficiency remains.

Thus, the Town’s laws, policies, and actions violated—and continue to violate—Plaintiffs’ free-speech rights. Plaintiffs therefore respectfully request that this Court declare that the Town’s general ban on portable signs was—and continues to be—unconstitutional, both as applied to Plaintiffs’ inflatable Mario and on its face. Plaintiffs similarly request that this Court enjoin the Town from enforcing its portable-sign ban against Plaintiffs’ inflatable Mario and all other portable signs.

## **JURISDICTION**

1. Plaintiffs bring this civil-rights lawsuit pursuant to the First and Fourteenth Amendments to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. § 2201. Plaintiffs seek a declaration that the challenged portions of both the Town's former and amended sign codes violate the First Amendment. Plaintiffs also seek injunctive relief against the enforcement of the challenged portions of the amended sign code.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

## **VENUE**

3. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b).

## **PARTIES**

4. Plaintiff Scott Fisher is a United States citizen and resident of Clay County, Florida. He owns the company North Florida Quality Goods and Services LLC with his wife, Lori Fisher.

5. Plaintiff North Florida Quality Goods and Services LLC is a limited liability company that has been registered in the State of Florida since 2012.

6. North Florida Quality Goods and Services LLC operates a video-game store, called Gone Broke Gaming, located in the Town of Orange Park, Clay County, Florida. Scott runs Gone Broke Gaming, which sells both vintage and modern video games and video-game systems.

7. Defendant Town of Orange Park is a municipal corporation located in Clay County, Florida.

### **STATEMENT OF FACTS**

#### **Scott Opens Gone Broke Gaming**

8. Scott Fisher is a 33-year-old entrepreneur who has bought, sold, and traded video games and game systems for about five years. Scott sells classic, vintage, and rare games and game systems. He also sells new games and game systems.

9. Although Scott has customers from all over the world, almost all of his customers for new products are local.

10. Scott's company does business under the name "Gone Broke Gaming."

11. Gone Broke Gaming is the sole means that Scott uses to support his wife and two children.

12. At first, Scott did business online and at a flea market.

13. Encouraged by his success, Scott moved Gone Broke Gaming to a dedicated storefront in May 2015. The storefront is on Kingsley Avenue, a four-lane road in Orange Park, Florida—a small suburb of Jacksonville.

14. Scott runs the store while his wife, Lori, waitresses full time and attends college. Together, they take care of their children.

15. At first, there were few walk-in customers at Gone Broke Gaming, despite Scott's attempt to get the word out about its location. In fact, people remarked to Scott that they did not know that the store was there. Others said that they had difficulty finding it.

16. The store is in a small brick building with small windows, and it is set back from the road by approximately 44 feet. The store is lost in the long strip of shops, convenience stores, and gas stations on busy Kingsley Avenue.

17. A true and accurate representation of Gone Broke Gaming's storefront, as seen from Kingsley Avenue, is attached as Exhibit 1.

18. Even when people set out to look for the store, they can easily miss it.

19. Making matters worse, the small storefront has little space to hang signage. In any event, such signage would be difficult to see from the sidewalk or the road.

20. So, Scott acted to increase Gone Broke Gaming's visibility.

#### **Plaintiffs Display the Inflatable Mario**

21. In July 2016, after getting permission from his landlord and neighbors, Scott began to display a nine-foot inflatable on his property directly in front of the store. The inflatable depicted Mario, the classic video-game character.

22. A true and accurate representation of the inflatable Mario being displayed in front of Gone Broke Gaming is attached as Exhibit 2.

23. Scott always displayed Mario during business hours and always brought it inside for the night. The inflatable is made of cloth and, when it was displayed, it was always safely secured to the storefront.

24. Mario's effect was immediate. Gone Broke Gaming experienced a visible increase in foot traffic and even became a local attraction.

25. People who came in often commented to Scott that they never knew the store was there until they saw Mario. Others said that Mario made it much easier to find Gone Broke Gaming's small storefront on the otherwise busy road.

26. People also stopped to take photos with Mario and passing children would wave at Mario.

27. Despite the public's enjoyment of Mario, however, his days were numbered.  
**Mario Is Cited Under the Town's Former Sign Code as an Illegal "Portable" Sign.**

28. Scott received a notice of code violation for Mario from the Town on July 29, 2016. The notice was given by Orange Park Code Enforcement Officer Gary Cooper.

29. The notice stated that the inflatable Mario was an illegal "[p]ortable sign[]" under the Town's then-existing sign code.

30. The notice threatened fines of "\$250 per offense, per day and not to exceed \$500 per offense, per day in the case of a repeat violation" if Gone Broke Gaming continued to display Mario.

31. For the purpose of this lawsuit, Scott obtained a copy of this notice of violation from the Town on March 21, 2017. This copy contains handwritten notes that appear to be from Mr. Cooper. A true and accurate copy of the notice of violation Scott obtained is attached as Exhibit 3.

32. After Gone Broke Gaming received the notice of violation, dozens of supporters of Mario expressed outrage against the Town on social media. One loyal supporter and long-time customer, Brian Long, even marched outside of Town Hall holding two protest signs. The story was also covered in the local newspaper, Clay Today.

33. Like his supporters, Scott felt angry about the notice of violation. But he was also perplexed. Scott had seen other inflatables displayed in the Town. So Scott looked up the Town's sign code.

#### **The Town's Former Sign Code**

34. At the time Scott received the notice of violation, the Town's sign code contained serious constitutional deficiencies. Orange Park, Fla., Code of Ordinances, Land Development Regulations, art. VII (2016) ("former sign code"). As discussed below, the Town would later amend its sign code in October 2016. However, these constitutional deficiencies remain.

35. A true and accurate copy of Orange Park's former sign code is attached as Exhibit 4. This copy was retrieved from the Town's website, Orange Park, Fla., Code of Ordinances, Land Development Regulations, art. VII (2016), available at [https://www.municode.com/library/fl/orange\\_park/codes/code\\_of\\_ordinances?nodeId=PTIILADERE\\_ARTVIISIRE](https://www.municode.com/library/fl/orange_park/codes/code_of_ordinances?nodeId=PTIILADERE_ARTVIISIRE) (last visited April 14, 2017).

36. Orange Park's former sign code had a broad definition of "sign." "Sign" was defined as "any device, fixture, placard or structure which uses color, form, graphics, illumination, architectural style or design with text, or writing to advertise, attract attention, announce the purpose of, or identify the purpose of any person or entity or to communicate information of any kind to the public. The term 'sign' includes sign structure." Former sign code § 7.03.00 (definition section).

37. Under this definition, the Town considered the inflatable Mario to be a sign.

38. The former sign code generally required a sign permit and fee before a sign could be displayed. Former sign code § 7.12.00(a), (c) (sign permit); *id.* § 7.14.00 (fees).

39. The former sign code, however, prohibited some signs, and a permit could not be obtained for them.

40. One type of prohibited sign was a “[p]ortable sign[.]” Former sign code § 7.05.00(f).

41. Under the Town’s former sign code, a “portable sign” was “any sign, banner, or poster that is not permanently attached to the ground or structure,” including “a cold air inflatable sign.” Former sign code § 7.03.00 (definition section).

42. Cold-air inflatables use a small machine to blow air inside the inflatable in order to keep the inflatable standing tall.

43. Plaintiffs’ inflatable Mario is a cold-air inflatable.

44. The Town’s former sign code generally prohibited portable signs, including cold-air inflatables, in every zoning district, including in the commercial district in which Gone Broke Gaming is located.

#### **Orange Park’s Former Sign Code Had Exemptions to its Ban on Inflatables**

45. Not all inflatables were banned by the Town, however. It was Town law, policy, and/or practice to allow inflatables to be displayed that the Town considered to be holiday decorations, seasonal decorations, or artwork.

46. The former sign code explicitly allowed “[t]emporary holiday and seasonal decorations” and “artwork” to be allowed in all zoning districts. Former sign code §

7.27.00(q), (g). These displays could be displayed without obtaining a sign permit or paying a fee. *Id.* at § 7.27.00.

47. The Town freely allowed these displays because it was Town law, policy, and/or practice not to consider holiday decorations, seasonal decorations, or artwork to be “signs.”

48. Accordingly, it was Town law, policy, and/or practice not to consider *inflatable* holiday decorations, seasonal decorations, or artwork to be signs, and the Town freely allowed such inflatables.

***The Holiday and Seasonal Decoration Exemption under the Former Sign Code***

49. The Town’s former sign code defined “[h]oliday and seasonal decorations” as “decorations that pertain to legal or other recognized holidays or to a season of the year.” Former sign code § 7.03.00 (definition section).

50. Thus, under the former sign code, it was Town law, policy, and/or practice to allow any individual or business to erect an outdoor display of an inflatable Santa at Christmastime because it pertains to a “holiday.”

51. In fact, as discussed below, Town Attorney Sam Garrison publicly stated that, “if someone puts up an inflatable Santa on their roof during Christmastime, that does not meet the definition of portable sign under our town code.”

52. Likewise, it was Town law, policy, and/or practice to allow any individual or business to erect an outdoor display of an inflatable bunny at Eastertime because it pertains to a “holiday.”

53. Similarly, an inflatable dragon wearing sunglasses and holding a surf board would pertain to the “season” of summer. *See* former sign code § 7.03.00 (defining “seasonal decorations” as “decorations that pertain . . . to a season of the year”).

54. It was thus also Town law, policy, and/or practice to allow any individual or business to erect an outdoor display with an inflatable dragon wearing sunglasses and holding a surf board during the season of summer.

55. Thus, the only reason that the Town did not allow Plaintiffs to display the inflatable Mario in front of Gone Broke Gaming is because of its subject matter; the Town did not believe Mario’s subject matter qualified it as a holiday or seasonal decoration.

***The Artwork Exemption Under the Former Sign Code***

56. In addition to allowing the display of inflatable holiday and seasonal decorations, the Town’s former sign code also allowed inflatable “artwork.”

57. The former sign code defined “[a]rtwork” very broadly. It was defined as “a two-or three-dimensional representation of a creative idea that is expressed in a form and manner as to provide aesthetic enjoyment for the viewer rather than to specifically convey the name of the business or a commercial message about the products or services offered on the property upon which the artwork is displayed.” Former sign code § 7.03.00 (definition section).

58. The former sign code defined a “commercial message” as “any sign wording, logo, or other representation or image that directly or indirectly names, advertises, or calls attention to a product, service, sale or sales event or other commercial activity.” Former sign code § 7.03.00 (definition section).

59. Thus under the former sign code, it was Town law, policy, and/or practice to allow any individual or business in the Town to display an inflatable that the Town considered to represent a “creative idea,” but only if the Town did not think the inflatable’s subject matter conveyed a “commercial message.”

60. Under the artwork definition, for instance, Plaintiffs could have displayed a unicorn in front of Gone Broke Gaming. That is because unicorns are a “creative idea” and an inflatable unicorn in front of Gone Broke Gaming would not “directly or indirectly name[], advertise[], or call[] attention to a product, service, sale or sales event or other commercial activity” of Gone Broke Gaming.

61. In addition, any individual or business that is not selling Mario-related products would have been free to erect an outdoor display of an inflatable Mario—the identical Mario that Plaintiffs want to display—as the Town would have not considered it to be conveying a commercial message.

62. In fact, as discussed below, Town Attorney Sam Garrison publicly stated that a person could display the inflatable Mario in his front yard, as such a display would not convey a commercial message and would thus not be a sign.

63. The only reason the Town did not allow Plaintiffs to display the inflatable Mario in front of Gone Broke Gaming is because of its subject matter; the Town considers Mario’s message to be a “commercial message” when placed near the store, since Gone Broke Gaming sells Mario-related products.

**A Town Hearing Confirms That the Inflatable Mario Violates the Former Sign Code.**

64. Because the Town allowed other inflatables, and Scott had previously seen such inflatables throughout the Town, Plaintiffs contested that their inflatable Mario violated the former sign code.

65. As a result, the Town held a code enforcement hearing on this issue on September 15, 2016. The hearing was presided over by the Town's Code Enforcement Special Magistrate, and the Town was represented by Town Attorney Sam Garrison.

66. The sole issue at the hearing was whether Plaintiffs' inflatable Mario, when displayed in front of Gone Broke Gaming, was a prohibited portable sign under former sign code sections 7.05.00(f) (prohibiting portable signs) and 7.03.00 (defining portable signs).

67. A publicly available recording of this hearing ("Town Hearing") is available on the Town's website at <http://www.townoforange.com/wp-content/uploads/2016/11/Code-Enforcement-091516.mp3> (last visited April 17, 2017).

68. During this hearing, Scott argued that his inflatable Mario should not be considered a portable sign under the Town's former sign code because the Town did not consider the other inflatable displays he had seen to be portable signs. Town Hearing at 23:03–23:24.

69. Mr. Garrison responded by referencing the definitions and exemptions to the former sign code's ban on portable signs for holiday and seasonal decorations and artwork. Town Hearing at 23:43–24:10.

70. With respect to the Town's exemptions for holiday and seasonal decorations, Mr. Garrison stated that "if someone puts up an inflatable Santa on their roof during

Christmastime . . . that does not meet the definition of a portable sign under our town code.”

Town Hearing at 23:49–23:57.

71. Likewise, with respect to the artwork exemption, Mr. Garrison stated that “[i]f you put a Mario in your front yard, by all means, you are welcome to do it, you will never hear a word . . . from our code-enforcement officer. You have the ability to do that under our code.” Town Hearing at 23:59–24:09.

72. In contrast, Mr. Garrison stated that when the inflatable Mario was placed in front of Gone Broke Gaming, it was a prohibited portable sign because it communicated a “commercial message,” since Gone Broke Gaming is a video-game store that sells Mario-related products. Town Hearing at 24:35–24:51.

73. The fact that Mario is a video-game character and the fact that Gone Broke Gaming is a video-game store were the only reasons the Town stated for why it issued a notice of violation for the inflatable Mario. Town Hearing at 5:43–6:05; 23:43–26:06.

74. Indeed, Town Enforcement Officer Gary Cooper—the officer who had given Plaintiffs the notice of violation—testified that the inflatable Mario posed no “safety hazard in any way for any citizens of Orange Park.” Town Hearing at 30:34–30:40.

75. At the end of the hearing, the Code Enforcement Special Magistrate concluded that the inflatable Mario was a prohibited portable sign under section 7.05.00(f) of the former sign code, and ordered Scott to remove Mario. Town Hearing at 31:40–32:35.

76. The Magistrate further stated that the penalty for not removing Mario would be a \$100 fine per day. Town Hearing at 33:37–33:45.

77. As a result of the threatened daily fines, Scott stopped displaying the inflatable Mario.

**The Town Amends the Sign Code**

78. One month after the hearing, the Town amended its sign code on October 18, 2016. The amendments became effective immediately.

79. These amendments did not change anything relevant to this lawsuit. The Town still prohibits the inflatable Mario under the amended sign code. In addition, the Town still allows inflatables it considers to be holiday decorations, seasonal decorations, or artwork.

80. A true and accurate copy of Orange Park's amended sign code is attached as Exhibit 5 ("amended sign code").

***The Inflatable Mario Is Still Banned Under the Amended Sign Code***

81. The amended sign code defines "sign" in a way that is functionally identical to the former sign code. Amended sign code § 7.03.01.72 (defining "sign" as "any device, fixture, placard, structure, or object which uses color, form, graphics, illumination, architectural style or design with text, or writing to advertise, attract attention, announce, or identify the purpose of any person or entity, or communicate information of any kind to the public. For purposes of this definition, the term 'sign' shall include a sign's structure.>").

82. The amended sign code also still generally requires a sign permit and fee before a "sign" may be displayed. Amended sign code §§ 7.13.00, 7.14.00.

83. The Town still considers the inflatable Mario to be a "sign" under the amended sign code.

84. The amended sign code also still contains the identical general ban on portable signs, including inflatables, as the former sign code contained. Amended sign code §§ 7.03.01.59 (defining “portable sign” as “any sign, banner, or poster that is not permanently attached to the ground or structure. For purposes of this Article, a cold air inflatable sign shall be considered to be a portable sign.”), 7.05.00(f) (prohibiting “portable signs”).

85. Thus, the inflatable Mario is still banned under the amended sign code as an illegal portable sign.

86. In addition, it is still Town law, policy, and/or practice to allow inflatables if the Town considers them to meet the definition of holiday decorations, seasonal decorations, or artwork.

87. That is because it is still Town law, policy, and/or practice to consider holiday decorations, seasonal decorations, and artwork not to be “signs” under the amended sign code.

***The Holiday and Seasonal Decoration Exemption Under the Amended Sign Code***

88. The amended sign code continues to distinguish “holiday and seasonal decorations” from “signs.”

89. Holiday and seasonal decorations are defined the same way as in the former sign code. Amended sign code §§ 7.03.01.36 (defining “holiday and seasonal decorations” as “decorations that pertain to legal or other recognized holidays or to a season of the year.”).

90. This definition is still separate and distinct from the definition for “signs.” See amended sign code § 7.03.01.72 (defining “sign”).

91. Besides the code's definition of holiday and seasonal decorations, there is no other mention of these decorations anywhere in the amended sign code.

92. If the Town considers a display to meet the definition of "[h]oliday and seasonal decorations," then it is still Town law, policy, and/or practice to consider that display *not* to be a "sign" under the amended sign code.

93. Thus, if the Town considers a display to meet the definition of "[h]oliday and seasonal decorations," then it is Town law, policy, and/or practice not to regulate that display under the amended sign code. Instead, the display is freely allowed.

94. Thus, it is Town law, policy, and/or practice to allow inflatables if the Town considers these inflatables to be holiday or seasonal decorations.

95. In fact, two months after the sign code was amended, dozens of large inflatables were displayed outdoors in the Town under the holiday and seasonal decoration exemption.

96. There were over ten holiday inflatables displayed on the front lawn of the home at 2102 Hopkins Street, Orange Park during December 2016. These inflatables included a dragon and a rat that were both wearing a Santa hat, as well as Mickey and Minnie Mouse and other Disney characters.

97. A true and accurate photograph of this display, taken by Scott, is attached as Exhibit 6.

98. There was also an inflatable nativity scene displayed on the front lawn of the home at 2135 Hickory Lane, Orange Park during December 2016.

99. A true and accurate photograph of this display, taken by Scott, is attached as Exhibit 7.

100. There were also over 20 holiday inflatables displayed at the home of 3365 Doctors Lake Drive, Orange Park during December 2016. These inflatables included multiple Disney characters and other cartoon characters wearing Santa hats and other seasonal garb.

101. A true and accurate photograph of this display, taken by Scott, is attached as Exhibit 8.

102. Likewise, it is still Town law, policy, and/or practice to allow the inflatables described above in paragraphs 50 to 54 because they are holidays and seasonal decorations.

103. Therefore, the reason the Town still does not allow Plaintiffs to display the inflatable Mario in front of Gone Broke Gaming is because of its subject matter; the Town does not believe Mario qualifies as a holiday or seasonal decoration.

***The Artwork Exemption Under the Amended Sign Code***

104. The amended sign code also continues to distinguish “artwork” from “signs.”

105. Artwork has the identical definition as in the former sign code. Amended sign code § 7.03.01.04 (defining “artwork” as a “two-or three-dimensional representation of a creative idea that is expressed in a form and manner as to provide aesthetic enjoyment for the viewer rather than to specifically convey the name of the business or a commercial message about the products or services offered on the property upon which the artwork is displayed.”).

106. This definition is still separate and distinct from the definition for “signs.” See amended sign code § 7.03.01.72 (defining “sign”).

107. Besides the amended code's definition of artwork, there is no other mention of artwork anywhere in the amended sign code.

108. If the Town considers a display to meet the definition of "artwork," then it is Town law, policy, and/or practice to consider that display *not* to be a "sign" under the amended sign code.

109. Thus, if the Town considers a display to meet the definition of "artwork," then it is Town law, policy, and/or practice not to regulate that display under the amended sign code. Instead, the display is freely allowed.

110. It is thus Town law, policy, and/or practice to allow inflatables if the Town considers these inflatables to be artwork.

111. It is still Town law, policy, and/or practice to allow all the inflatables described above in paragraphs 60 to 62.

112. Therefore, the reason the Town still does not allow Plaintiffs to display the inflatable Mario in front of Gone Broke Gaming is because the Town considers Mario's message to be a "commercial message" when placed near the store, since Gone Broke Gaming sells Mario-related products.

113. In other words, the Town still does not allow Plaintiffs to display the inflatable Mario in front of Gone Broke Gaming because of Gone Broke Gaming's identity and because of the inflatable's subject matter.

**The Town Has Injured Plaintiffs and Continues to Do So**

114. The Town's former sign code, amended sign code, and its policies and/or practice regarding the enforcement of both codes have violated—and continue to violate—

Scott's and Gone Broke Gaming's right to free speech as guaranteed by the First Amendment to the United States Constitution.

115. Plaintiffs want to display their inflatable Mario in front of Gone Broke Gaming.

116. Because of the Town's enforcement of its former sign code against Scott and Gone Broke Gaming, Plaintiffs stopped displaying the inflatable Mario.

117. Plaintiffs continue to be unable to display the inflatable Mario under the Town's amended sign code because it is still a prohibited portable sign under this amended code.

118. Due to Plaintiffs' inability to display their inflatable Mario, they have observed a significant decline in walk-in customers.

119. But for the fear of enforcement of the amended sign code, Plaintiffs would resume displaying their inflatable Mario every day in front of Gone Broke Gaming during their business hours.

120. Plaintiffs would be able to display an inflatable in front of Gone Broke Gaming if the inflatable expressed different content. This is true pursuant to Town law, policy, and/or practice regarding both the former sign code and the amended sign code.

121. Plaintiffs would also be able to display an inflatable Mario in front of Gone Broke Gaming if Plaintiffs' business was not a video-game store or did not otherwise sell Mario products. This is true pursuant to Town law, policy, and/or practice regarding both the former sign code and the amended sign code.

122. Plaintiffs would also be able to display an inflatable Mario if Plaintiffs were not a business or otherwise selling Mario-related products. This is true pursuant to Town law, policy, and/or practice regarding both the former sign code and the amended sign code.

### **CLAIMS FOR RELIEF**

#### **Count I: Freedom of Speech**

123. Plaintiffs incorporate and re-allege each and every allegation contained in the previous paragraphs of this Complaint as if fully set forth herein.

124. Count One is brought pursuant to the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

125. The Free Speech Clause of the First Amendment protects the right of individuals and businesses to express themselves through the use of portable signs, including inflatable displays.

126. Plaintiffs' inflatable Mario is speech that is protected by the Free Speech Clause.

127. Plaintiffs want to display their inflatable Mario in front of Gone Broke Gaming.

128. Both the Town of Orange Park's former and amended sign codes, however, ban almost all portable signs, including inflatable displays. Former sign code §§ 7.05.00(f) (generally banning portable signs), 7.03.00 (defining portable signs, which include inflatable displays); amended sign code §§ 7.05.00(f) (generally banning portable signs), 7.03.01.59 (defining portable signs, which include inflatable displays).

129. This ban includes Plaintiffs' inflatable Mario when it is placed in front of Plaintiffs' store, Gone Broke Gaming.

130. Because of the Town's enforcement of its former sign code against Plaintiffs, Plaintiffs stopped displaying the inflatable Mario.

131. Plaintiffs are still prohibited from displaying the inflatable Mario under the amended sign code.

**Both the Former and Amended Sign Codes Are Unconstitutionally**

**Content Based**

132. The ban on portable signs by the Town of Orange Park's former and amended sign codes, both as applied to the Plaintiffs' inflatable Mario and on its face, is an unconstitutional content-based restriction on speech.

133. Despite the Town generally banning inflatables, including the inflatable Mario, the Town has allowed—and continues to allow—some inflatables, depending on their content.

134. Under both the Town's former and amended sign codes, it is Town law, policy, and/or practice to allow inflatable displays that the Town decides qualify as holiday decorations, seasonal decorations, or artwork.

135. That is because it has been—and continues to be—Town law, policy, and/or practice not to consider such inflatables to be "signs."

136. The sign code defines "[a]rtwork" as "a two-or three-dimensional representation of a creative idea that is expressed in a form and manner as to provide aesthetic enjoyment for the viewer rather than to specifically convey the name of the business

or a commercial message about the products or services offered on the property upon which the artwork is displayed.” Former sign code § 7.03.00; amended sign code § 7.03.01.04.

137. The sign code defines “[h]oliday and seasonal decorations” as “decorations that pertain to legal or other recognized holidays or to a season of the year.” Former sign code § 7.03.00; amended sign code § 7.03.01.36.

138. Under both the former and amended sign codes, individuals or businesses could display an inflatable if the Town viewed that inflatable’s subject matter as meeting these definitions for artwork, holiday decorations, or seasonal decorations.

139. Under both the Town’s former and amended sign codes, it is also Town law, policy, and/or practice to allow such inflatables without a permit or fee.

140. Whether an inflatable display meets the definitions of artwork, holiday decorations, or seasonal decorations turns on the subject matter or message of that inflatable display.

141. Imposing different burdens on speech depending on its subject matter or message is a content-based restriction on free speech.

142. Whether an inflatable display meets the definitions of artwork, holiday decorations, or seasonal decorations also turns on the identity of the speaker displaying that inflatable display.

143. Imposing different burdens on speech depending on its speaker is a content-based restriction on free speech.

144. Content-based restrictions on speech are subject to strict scrutiny. In order to survive this scrutiny, the Town must show that its content-based restriction is narrowly tailored to further a compelling government interest.

145. The Town cannot meet this burden.

146. The Town has no evidence that the ban on portable signs, as applied to the Plaintiffs' inflatable Mario, is narrowly tailored to further a compelling government interest.

147. The Town also has no evidence that the ban on portable signs, on its face, is narrowly tailored to further a compelling government interest.

148. Thus, the ban on portable signs contained in the former sign code section 7.05.00(f), as applied to the Plaintiffs' inflatable Mario, is an unconstitutional content-based restriction on speech under the First Amendment.

149. In addition, the ban on portable signs contained in amended sign code section 7.05.00(f), both as applied to the Plaintiffs' inflatable Mario, and on its face, is an unconstitutional content-based restriction on speech under the First Amendment.

**Even if the Former and Amended Sign Codes are Content-Neutral,  
They Are Still Unconstitutional**

150. Even if the Town's general ban on portable signs under its former and amended sign code section 7.05.00(f) is not content-based, it still violates the First Amendment.

151. The Town does not have sufficient justification for either its ban on Plaintiffs' inflatable Mario specifically, or portable signs generally.

152. Plaintiffs' inflatable Mario is not false or misleading speech.

153. Neither the Town's ban on Plaintiffs' inflatable Mario specifically, nor portable signs generally, directly advances a substantial, important, or compelling government interest.

154. The Town possesses no evidence that either its ban on Plaintiffs' inflatable Mario specifically, or portable signs generally, directly advances any substantial, important, or compelling government interest.

155. In fact, Town Enforcement Officer Gary Cooper testified that Plaintiffs' inflatable Mario never posed a safety hazard.

156. Both the ban on Plaintiffs' inflatable Mario specifically, and portable signs generally, is more extensive than necessary to serve any substantial, important, or compelling government interest.

157. Thus, the ban on portable signs in the former sign code, as applied to Plaintiffs' inflatable Mario, is an unconstitutional restriction of speech under the First Amendment.

158. In addition, the ban on portable signs in the amended sign code, as applied to Plaintiffs' inflatable Mario and on its face, is an unconstitutional restriction of speech under the First Amendment.

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159. The Town's violation of Plaintiffs' free-speech rights causes Plaintiffs irreparable harm. Plaintiffs have no adequate remedy at law for this violation of their constitutional rights.

160. Unless Defendant is enjoined from committing the above-described constitutional violations of the First Amendment to the United States Constitution, Plaintiffs will continue to suffer great and irreparable harm.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment as follows:

A. An entry of judgment declaring that the Town of Orange Park violated Plaintiffs' constitutional rights by enforcing its former sign code section 7.05.00(f) against Plaintiffs' inflatable Mario display;

B. An entry of judgment declaring that the Town of Orange Park's amended sign code section 7.05.00(f) is unconstitutional both as applied to Plaintiffs' inflatable Mario display and on its face;

C. A preliminary injunction prohibiting Defendant from enforcing its amended sign code against Plaintiffs' inflatable Mario when it is placed in front of Gone Broke Gaming specifically, or from enforcing amended sign code section 7.05.00(f) generally;

D. A permanent injunction prohibiting Defendant from taking any enforcement or other action against Plaintiffs for displaying their inflatable Mario in front of Gone Broke Gaming specifically, or from enforcing amended sign code section 7.05.00(f) generally;

E. An award of nominal damages in the amount of \$1.00 for the past violations of Plaintiffs' constitutional rights under the former sign code;

F. An award of nominal damages in the amount of \$1.00 for the continued violation of Plaintiffs' constitutional rights under the amended sign code;

G. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

H. All further legal and equitable relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED on April 17, 2017.

/s/ Erica J. Smith  
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*\*\*Trial Counsel*

CERTIFICATE OF SERVICE

I hereby certify that on this 17<sup>th</sup> day of April, 2017, a true and correct copy of the foregoing First Amended Complaint and the accompanying exhibits was filed with the Clerk of the Court using the CM/ECF system and served via process server on the following

Defendant:

Town of Orange Park through Mayor Eugene Nix  
2042 Park Avenue  
Orange Park, FL 32073

/s/ Erica J. Smith  
Erica J. Smith  
Counsel for Plaintiffs