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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION**

CARL and ELIZABETH FEARS, a married  
couple; and FEARS FITNESS, INC., d/b/a  
Got Muscle Health Club, a California  
corporation,

Plaintiffs,

v.

CITY OF SACRAMENTO, a California  
municipal corporation,

Defendant.

No. \_\_\_\_\_

**CIVIL RIGHTS COMPLAINT FOR  
DECLARATORY, INJUNCTIVE OR  
OTHER RELIEF**

Plaintiffs Carl and Elizabeth Fears (the “Fears”) and Fears Fitness, Inc., d/b/a the “Got Muscle Health Club,” (“Got Muscle” and together, the “Plaintiffs”) complain of Defendant City of Sacramento (the “City”) and allege:

**INTRODUCTION**

This is a civil rights lawsuit seeking to vindicate the free speech rights of the Fears, the owners of Got Muscle Health Club, a small business in Sacramento, California. For years, the Fears have used a

1 sandwich board and window signs to advertise outside of their gym. These inexpensive signs were  
2 effective and generated a steady stream of new clients every week. But the City is now using its strict  
3 Sign Code to threaten the Fears with hundreds of dollars in fines per day if they continue using their  
4 signs. After the City's repeated threats, the Fears had no choice but to stop using their sandwich board  
5 and have already witnessed a dramatic decrease in new clients.

6 The City's Sign Code prohibits Plaintiffs and other businesses from advertising with sandwich  
7 boards, banners, and portable signs—means of communication that small businesses are using across the  
8 country and have traditionally used throughout this nation's history. Under the City's code, Got Muscle  
9 may instead only use two signs displayed on its building as well as a third sign on its window that would  
10 be too small to be seen by passersby. These signs are poor substitutes and do not allow Got Muscle and  
11 other businesses to effectively advertise.

12 Unfortunately, the City's interference with free speech does not stop there. The City's Sign  
13 Code distinguishes among signs based on the content of their messages; signs with some messages are  
14 permitted, while the same signs with different messages are not. If Got Muscle displayed a sandwich  
15 board advertising its building for rent, for instance, that message would be permissible under the City's  
16 code. But the code bans the same exact sandwich board in the same exact location when it advertises  
17 Got Muscle's gym. Similarly, Got Muscle could have multiple signs on its building promoting a  
18 nonprofit event, political candidate, government flag, religious symbol, or the emblem of a historic  
19 organization, but only two such building signs when it wants to advertise its gym. This unequal  
20 treatment of signs based on their content is presumptively unconstitutional under the First Amendment.

21 For the reasons alleged below, the City's laws, policies, and actions deprive Plaintiffs of their  
22 rights guaranteed to them under the First Amendment to the United States Constitution. Plaintiffs  
23 therefore respectfully ask this Court to declare the ordinances at issue unconstitutional and immediately  
24 temporarily and permanently enjoin their enforcement.

**JURISDICTION AND VENUE**

1  
2 1. Plaintiffs bring this lawsuit pursuant to the First and Fourteenth Amendments to the  
3 United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory  
4 Judgments Act, 28 U.S.C. §§ 2201–02. Plaintiffs seek injunctive and declaratory relief against the  
5 enforcement of the challenged portions of the City’s Sign Code, which, facially and as applied, violate  
6 the Plaintiffs’ First Amendment rights.

7 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 2201.

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

9 **PARTIES**

10 4. Plaintiffs Carl and Elizabeth Fears are a married couple and adult residents of Sacramento  
11 County, California. Together, they are the sole shareholders of Fears Fitness Inc. (“Fears Fitness”).

12 5. Fears Fitness is an S Corporation incorporated under the laws of California in 2009.  
13 Fears Fitness operates a gym called Got Muscle Health Club, located in Sacramento, California. (“Got  
14 Muscle”). At Got Muscle, the Fears sell memberships to the gym as well as offer exercise classes and  
15 personal training services to the public.

16 6. Defendant City of Sacramento (the “City”) is a municipal corporation located in  
17 Sacramento County, California.

18 **STATEMENT OF FACTS**

19 7. The Fears’ ability to effectively advertise the existence and location of their gym is  
20 essential to the success of their business. However, the City’s Sign Code forbids them from using the  
21 signs they need to effectively do so. It bans them from using a sandwich board sign or any other sign  
22 facing the flow of traffic. Instead, they are limited to only two signs placed flat against their building,  
23 and a third window sign that is too small for passersby to see.

24 8. The Fears have dedicated their lives to their business’ success. They have framed Got  
25 Muscle as an “old school” gym that focuses on providing a supportive community and personalized

1 attention. Both Mr. and Mrs. Fears offer group exercise classes and individual training, and form close  
2 relationships with their students. They open the gym at 5:30 a.m. and work 15–16-hour days to keep it  
3 running.

4 9. In 2009, the Fears leased a building for their gym at 8280 Folsom Boulevard in  
5 Sacramento. The gym faces Folsom Boulevard, which is a four-lane highway that generates both  
6 vehicle and pedestrian traffic.

7 10. The building's access to Folsom Boulevard was a major reason the Fears selected this  
8 location.

9 11. But the front of the gym has tinted windows and the building's generic appearance  
10 conceals that a gym is located inside. The actual client entrance is in the back of the building facing a  
11 parking lot.

12 12. Without sufficient advertising in the front of the building, most passersby would likely  
13 never notice the health club within.

14 13. So for the last four years, the Fears have used signs in the front of their business to attract  
15 walk-ins.

16 14. The most effective of these signs was an A-frame sign, also known as a sandwich board,  
17 which they placed in front of the gym next to the sidewalk. The A-frame sign was positioned so that the  
18 text and images on both sides of the A-frame faced traffic on Folsom Boulevard.

19 15. As the A-frame sat next to the sidewalk on the grass, and not on the sidewalk itself, it did  
20 not interfere with pedestrian traffic.

21 16. During the times that the Fears displayed their A-frame sign, the Fears estimate that  
22 approximately five to six new people would walk into the gym a day.

23 17. Walk-ins would often comment that they didn't previously know the gym was there and  
24 that they only realized its existence when they saw the sign.

25 18. The Fears also display several signs along the multiple large windows that line the front

1 of their building. Some of these signs advertise the gym generally while others advertise time-limited  
2 summer deals at the gym.

3 19. In the past, the Fears have additionally used banners and window signs to advertise discounts  
4 for Christmas, New Year's, spring, and students, as well as to advertise special classes like kickboxing.

5 20. In November 2012, however, the Fears learned that, under the City's Sign Code, the  
6 majority of their signs were illegal and that they risked hundreds of dollars in fines per day.

7 21. They also learned that the Sign Code makes it practically impossible for businesses to  
8 legally use signs to advertise time-limited sales and offers.

9 **The City Threatens to Prosecute Got Muscle**

10 22. On November 15, 2012, the City gave a violation notice to Got Muscle. A City code  
11 enforcer from the City's Community Development Department, Pamela Maestas, handed the notice to  
12 Carl Fears while he was working at the gym. She told him that some of his signs violated the Sign  
13 Code,<sup>1</sup> including his A-frame sign.

14 23. Ms. Maestas told Mr. Fears the City would fine him \$900 a day if he failed to remove the  
15 signs.

16 24. The notice states that "The following violation(s) have been found to exist on your  
17 property" and checks off a box for "Signs/Banners: prohibited use unlawful display." The notice states  
18 that Got Muscle should remove the signs "Asap" [sic]. The notice itself does not state what the fine  
19 would be if the Fears do not comply.

20 25. In addition to discussing Got Muscle's signs, Ms. Maestas also told Carl Fears he should  
21 remove a nearby sign advertising a Taekwondo studio, as it violated the Sign Code. Mr. Fears told the  
22 official that this was not his sign and that it was instead owned by his neighbor, After School  
23 Taekwondo. Ms. Maestas then told Mr. Fears that she would not give a violation notice to the studio, as

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<sup>1</sup> At the time, the Fears also displayed a mannequin holding a sign and two signs posted in the ground with wooden stakes. The Fears do not challenge the City's restrictions on these signs.

1 she was only concerned about Got Muscle's signs.

2 26. Ms. Maestas told Mr. Fears she was giving him a violation notice because she had  
3 received a complaint about his signs.

4 27. Upon information and belief, the City was reacting to a citizen complaint. The Fears do  
5 not know the basis of the complaint.

6 28. A violation of the Sign Code constitutes an infraction. Sacramento City Code ("City  
7 Code") § 15.148.1160.<sup>2</sup> The City may, after issuing an order, impose a penalty of not less than \$100 and  
8 not more than \$999.99, as well as attorneys' fees and costs. City Code §§ 1.28.010(C)(3)(d) and  
9 .040(A). Each day a violation occurs is a separate violation. *Id.* at § 1.28.010(C)(3).

10 29. It is unclear how Ms. Maestas calculated the \$900 daily fine.

11 30. In November, the Fears asked a lawyer friend to speak to Ms. Maestas about the notice of  
12 violation. The friend convinced Ms. Maestas to drop the November 15<sup>th</sup> violation notice. But Ms.  
13 Maestas told the friend that the next time she caught Got Muscle displaying illegal signs, she would  
14 issue another violation that would be enforced.

15 31. Soon after, Ms. Maestas again called the Fears in November to warn them about their signs.

16 32. The Fears continued to display their A-frame sign although they did so less frequently  
17 than before the City served them with the notice of violation.

18 33. In late April and early May 2013, Ms. Maestas twice called the Fears' landlord and again  
19 threatened the \$900 daily fine unless the A-frame sign and all other illegal signs were removed from the  
20 outside of the gym.

21 34. The landlord mailed the Fears a letter on April 24, 2013, documenting his first  
22 conversation with Ms. Maestas. The Fears' landlord also called the Fears and told them about both of  
23 his phone conversations with Ms. Maestas.

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<sup>2</sup> Sacramento City Code section 15.148 et seq. is referred to herein as the "Sign Code."

1 35. On May 7, 2013, the Fears stopped displaying their A-frame sign in response to the  
2 City's threats.

3 36. Although Ms. Maestas never mentioned it in her dealings with the Fears or their landlord,  
4 most of Got Muscle's window signs are also not permitted under the Sign Code. Sign Code §  
5 15.148.160(A)(2).

6 37. The Fears are currently displaying their window signs at the risk of prosecution, as well  
7 as refraining from displaying additional window signs advertising their new dance classes.

8 38. Since the Fears stopped displaying their A-frame sign, the Fears estimate that they only  
9 receive approximately three walk-ins per week. This is a dramatic reduction from the five to six walk-  
10 ins per day that they estimate that they enjoyed previously.

11 39. The Fears are concerned that without the business generated by their A-frame sign, they  
12 may no longer be able to afford their current space and may have to move to a smaller location.

13 **The City's Sign Code**

14 40. Sacramento's Sign Code prohibits Got Muscle's A-frame sign, as well as the majority of  
15 their other signs.

16 41. The Sign Code defines signs as "every advertising message, announcement, declaration,  
17 demonstration, display, illustration, insignia, surface or space erected or maintained in view of the  
18 observer thereof for identification, advertisement or promotion of the interests of any person, entity,  
19 product or service." Sign Code §15.148.1170.

20 42. The Sign Code states its purpose is to protect City aesthetics, pedestrian safety, and  
21 traffic safety. Sign Code §15.148.010.

22 43. The Sign Code requires that all signs covered by its provisions must first receive a permit  
23 from the director of building inspections. Sign Code § 15.148.030.

24 44. The Sign Code does not require the director of building inspections to grant the permit  
25 within a specific time-frame.

**The Sign Code bans the gym's A-frame sign**

45. Sacramento's Sign Code bans several types of displays, including "A-frame and portable signs of any nature," "[c]anvas signs and banners," and "[f]lags." Sign Code § 15.148.670.

46. The Fears' A-frame sign is banned under Sign Code section 15.148.670.

47. The Fears' A-frame sign states "Carl Fears/Fears Fitness Inc./Got Muscle Health Club/It's Old School," and includes the gym's phone number. It is six square feet on both sides.

48. This A-frame sign contains information that is truthful, not misleading, and advertises a lawful product and activity.

49. This A-frame sign was professionally made.

50. This A-frame poses no health or safety risk.

51. Until November 2012, the Fears usually placed the A-frame sign outside whenever they were open for business and they took it in before they closed for the day. They placed it on the grass in front of their front entrance.

52. This sign was effective at attracting customers because the Fears placed it facing traffic on Folsom Boulevard, close to the road and sidewalk. Passing drivers and pedestrians could easily see the sign.

53. After the City official, Ms. Maestas, issued the Fears a notice of violation in November 2012, they displayed their A-frame sign less frequently.

54. After Ms. Maestas contacted the Fears' landlord in April and May 2013 and threatened another violation notice, the Fears stopped displaying their A-frame sign altogether.

**Other sign restrictions in Got Muscle's zoning district**

55. Got Muscle is located in the C-2 Commercial zoning district.

56. The Sign Code thus only allows Got Muscle two signs that would be visible to passersby. Sign Code § 15.148.160 (A)(2). These signs would have to be attached to the front of their building or front windows instead of facing the flow of traffic.



1 57. If the Fears use one of these signs to identify the name of their gym, as they currently do  
2 over its front entrance, the Fears may only use one other sign to advertise.

3 58. The Sign Code only allows one “detached” sign for the space that Got Muscle rents. A  
4 detached sign is one that sits on the ground instead of being hung on a building. Sign Code §  
5 15.148.1170. Because Got Muscle’s neighboring tenant is already using a detached sign, Got Muscle  
6 cannot have any detached signs.

7 59. Sign Code section 15.148.160(A)(1) allows “one detached sign for each developed parcel  
8 not exceeding one square foot of sign area for each linear foot of street frontage abutting the developed  
9 portion of such parcel, provided that: where a developed parcel has in excess of three hundred (300) feet  
10 of street frontage, one additional detached sign may be erected for each additional three hundred (300)  
11 feet of street frontage. . . .”

12 60. Because the building’s street frontage is under 600 feet, the Sign Code allows the  
13 property only one detached sign for all the occupants of the building. Sign Code § 15.148.160 (A).

14 61. Got Muscle’s neighboring tenant, After School Taekwondo, has already erected a 20-  
15 square foot permanent detached sign that takes advantage of this detached sign allocation.

16 62. On the same property there is also a 20-square foot real estate sign that would be  
17 considered a detached sign, as it far exceeds the Sign Code’s exemption for real estate signs. Sign Code  
18 § 15.148.600(E).

19 63. Accordingly, the Fears would not be able to legally have a detached sign on the property.

20 64. The Fears are thus unable to have any sign that faces the flow of traffic.

21 65. Even if the Fears were able to have a detached sign, it would not be an adequate  
22 alternative to their prohibited A-frame sign. A detached sign is burdensome to install as the Sign Code  
23 requires it to be permanently installed with a concrete foundation. Sign Code § 15.148.550. A detached  
24 sign also cannot easily change its message or advertise time-limited deals. A detached sign would thus  
25 be more expensive and less convenient than the Fears’ prohibited A-frame sign.

1           66.     The only signs visible to passersby that the Sign Code allows Got Muscle are two  
2 “attached signs.” Sign Code § 15.148.160(A)(2). These signs must be attached flat against their  
3 building, (id.), and cannot be portable, a banner, a flag, or made of canvas. Sign Code § 15.148.670.

4           67.     Attached signs require a permit. Sign Code § 15.148.030.

5           68.     A sign placed in a window may constitute an attached sign. Sign Code § 15.148.160(A)(2).

6           69.     The two attached signs cannot “exceed a total aggregate area of three square feet of sign  
7 area for each foot of building occupancy.” Sign Code § 15.148.160(A)(2).

8           70.     “Building occupancy” means the length of the building a business occupies that faces a  
9 public road. Sign Code § 15.148.1170. Got Muscle shares its building with two other tenants. The  
10 length of the building that Got Muscle itself occupies is 90 feet.

11          71.     Because Got Muscle occupies 90 feet of building frontage, Got Muscle’s attached signs  
12 could total a maximum of 270 square feet.

13          72.     Got Muscle currently has seven window signs that are visible to passersby. Some are  
14 made of corrugated plastic while some are made of laminated paper. These signs have a total maximum  
15 square footage of 153 feet, which is well under 270 square feet.

16          73.     Although Got Muscle’s current window signs have a much smaller aggregate square  
17 footage than Sign Code section 15.148.670(A)(2) allows, Got Muscle can only have two of their current  
18 window signs under Sign Code section 15.148.160(A)(2)’s two-sign quantity limit.

19          74.     If Got Muscle uses one attached sign to identify the gym, as Got Muscle currently does  
20 over its front entrance, then Got Muscle is only allowed one other sign to advertise.

21          75.     Under Sign Code section 15.148.160(A)(2)’s two-sign quantity limit, most of Got  
22 Muscle’s windows must remain empty.

23          76.     All of Got Muscle’s signs displayed in their windows contain information that is truthful,  
24 not misleading, and advertise a lawful product and activities.

25          77.     Some of the signs advertise the gym generally and some advertise time-limited offers.

1 78. Some are placed inside the window and some are placed on the outside of the window.

2 79. All are professionally made.

3 80. The Fears' largest sign identifies their gym. It says "Got Muscle Health Club," is 52  
4 square feet, and hangs over the front doorway of the building.

5 81. The Fears also hang a sign in their window that says "Entrance" with an arrow pointing  
6 to the back of the building, where the main entrance is. This sign is 15 square feet.

7 82. The Fears' third sign advertises their \$29 membership rate and no registration fees or  
8 down payment. It also says, "Space limited/Only this Summer." It is 32 square feet.

9 83. They additionally display a sign that states "Premier Personal Training Available/Got  
10 Muscle Health Club." It is 20 square feet.

11 84. Also on display is a sign that states "\$29 per month/ (916) 381-1221." It is 16 square feet.

12 85. Got Muscle additionally has a sign that states "Got Muscle Personal Training." It is nine  
13 square feet.

14 86. Got Muscle's last sign states "Got Muscle Health Club." It is nine square feet.

15 87. The Fears can only display two of these seven signs under the Sign Code.

16 88. Businesses are also allowed up to two "permanent window signs" that cannot "exceed a  
17 maximum sign area of four square feet." Sign Code § 15.148.910. These signs are inadequate for the  
18 Fears to attract clients.

19 89. Permanent window signs must be "painted on or otherwise displayed from the inside  
20 surface" of a window. Sign Code § 15.148.910.

21 90. Permanent window signs also require a permit. Sign Code § 15.148.030.

22 91. The Fears currently have a four-square foot sign displayed on the inside of one of their  
23 windows that advertises their Facebook page. It states, "Please join us on Facebook/Got Muscle Health  
24 Club/Sacto, Ca."

25 92. As Got Muscle's building is set back from the road and their windows are all tinted, the

1   aforementioned sign is too small to be visible through their window to drivers passing by. It is only  
2   visible to those standing directly in front of the window.

3           93.    Sign Code section 15.148.910 only allows permanent window signs to total an aggregate  
4   of four-square feet. Got Muscle's single four-square foot sign thus takes up the entire sign allotment  
5   allowed under this section and Got Muscle could not have another sign under this provision.

6           94.    Got Muscle could choose to remove its current four-square foot sign and replace it with,  
7   for instance, two smaller two-square foot signs, which would together total an aggregate of four-square  
8   feet. But as Got Muscle's four-square foot sign is not visible to passersby, two smaller signs would not  
9   be visible either.

10          95.    Sign Code section 15.148.910 thus does not allow the Fears any permanent window signs  
11   visible to passersby.

12          96.    Therefore, the Sign Code prevents the Fears from effectively advertising their location  
13   and existence.

14          97.    Additionally, the Sign Code's restrictions prevent Got Muscle and most other businesses  
15   from legally and practically using temporary signs to advertise time-sensitive sales and offers.

16          98.    Unless exempted, businesses must wait to receive a permit before they display a sign,  
17   which makes advertising last-minute sales nearly impossible. In fact, as stated in this Complaint's  
18   paragraph 44, there is no time limit on how quickly the City must approve sign permits. As a result,  
19   businesses must plan for sale advertising long in advance in order to legally comply with the Sign Code.

20          99.    Under Sign Code section 15.148.670, businesses also cannot legally display signs that are  
21   typically used to advertise sales, like A-frames and banners, which are inexpensive and convenient for  
22   temporary use.

23          100.   Also, as the Sign Code only allows two attached signs, businesses wishing to advertise a  
24   sale will often be forced to take down an existing sign to display a temporary sale or special-offer sign.

25          101.   If the Fears wished to legally advertise a temporary deal with a window sign under Sign

1 Code section 15.148.160(A)(2), this would be the only sign they could have in addition to the sign  
2 identifying their building. They could not have any additional signs advertising the gym's year-round  
3 services.

4 102. In the upcoming months, the Fears would like to use window signs and banners to  
5 advertise sales for Christmas, New Year's, spring, and students, as they have previously. The Fears  
6 would also like to use window signs and banners to advertise special classes, as they previously did with  
7 their kickboxing class, which they offered for a limited time. But the Fears are afraid to display any  
8 additional signs, as they would risk prosecution.

9 103. In August 2013, the Fears started offering Zumba dancing lessons at their gym and they  
10 would like to use signs to advertise these classes. But the Fears are afraid to purchase and display any  
11 additional signs, as they would risk prosecution.

12 **The City's Sign Code Is Content-Based**

13 104. The Fears could legally display all their signs if these signs carried different content.

14 105. That is because the Sign Code exempts 11 types of signs from all of the code's provisions.

15 106. Many of these exemptions are content-based.

16 107. The content-based exemptions include:

- 17
- 18 • “[o]ne real estate sign...located entirely within the property to which the sign applies...not  
19 exceed[ing] six square feet...and...removed within seven days after the sale, rental, or  
20 lease has been accomplished”;
  - 21 • The flags, emblems, or insignias of any nation or political subdivision;
  - 22 • “Religious symbols...or identification emblems of religious orders or historical  
23 agencies...[not exceeding] four square feet... placed flat against a building;”
  - 24 • “Temporary signs not exceeding four square feet in area pertaining to drives or events of  
25 civic, philanthropic, educational or religious organizations, provided that such signs are  
posted only during such drive or no more than thirty (30) days before such an event and  
are removed no more than fifteen (15) days after such an event”; and
  - “Political or campaign signs on behalf of candidates for public office or measures on  
election ballots provided that such signs” follow certain conditions. They cannot be  
erected earlier than 90 days prior to an election and shall be removed within 15 days after  
an election. In commercial zones, political signs can in the aggregate be up to 50 square  
feet and otherwise have no quantity limit.

*Id.* § 15.148.600.

1 108. The signs described in this Complaint’s paragraph 107 are all exempt from Sign Code  
2 section 15.148.670’s bans, including its bans on “A-frame and portable signs of any nature,” “[c]anvas  
3 signs and banners,” and “[f]lags.” See Sign Code § 15.148.590.

4 109. The signs listed in this Complaint’s paragraph 107 are also exempt from the sign permit  
5 requirement.

6 110. Additionally, several of the signs listed in this Complaint’s paragraph 107 are exempted  
7 from the quantity restrictions imposed by Sign Code section 15.148.670(A)(2). The exempted signs  
8 include flags, emblems, or insignias of any nation or political subdivision; religious symbols or  
9 identification emblems of religious orders or historical agencies; the temporary signs for nonprofit  
10 organizations; and political campaign signs on behalf of candidates for public office or measures on  
11 election ballots.

12 111. If Got Muscle displayed a sandwich board advertising its building for rent, for instance,  
13 that message would be permissible under the City’s code. Similarly, Got Muscle could legally display a  
14 sandwich board promoting a nonprofit event, political candidate, or government flag.

15 112. But when Got Muscle displays the same sandwich board sign in the same location  
16 advertising its gym, it is illegal.

17 113. Similarly, Got Muscle could have multiple attached signs on its building promoting a  
18 nonprofit event, political candidate, government flag, religious symbol, and/or emblem of a historic  
19 agency.

20 114. But Got Muscle can only have two attached signs when it wants to advertise its gym.

21 **The City Arbitrarily Enforces the Sign Code Against Other Signs in the City**

22 115. Although the City has aggressively enforced the Sign Code against the Fears’ A-frame  
23 sign, the City otherwise enforces its Sign Code rarely and arbitrarily.

24 116. As of the date of this Complaint, along Folsom Boulevard, there are numerous A-frames,  
25 portable signs, banners, flags, signs exceeding the code’s quantity limits, and other illegal signs.

1 117. Some of these illegal signs are even on the same parcel as Got Muscle gym.

2 118. There are also many large signs near Got Muscle. For instance, on the same parcel on  
3 which Got Muscle rents its building, a giant billboard advertises commercial products and services.

4 119. There are also many A-frames, portable signs, banners, flags, signs exceeding the code's  
5 quantity limits, and other illegal signs throughout the City.

6 120. In May 2013, Chief City Code Enforcement Manager Ron O'Connor told CBS News that  
7 the City is only enforcing the code against the Fears because the City received a complaint against their  
8 signs.

9 121. Mr. O'Connor stated to CBS News that "If we stopped at every A-frame sign, we  
10 wouldn't get 10 blocks from our office ever. We have other issues. We prioritize everything by health  
11 and safety issues, and A-frame signs are pretty low on the list."

12 **The City Has Injured Plaintiffs, and Continues to Do So.**

13 122. The City's Sign Code and the City's enforcement of its code have violated Plaintiffs'  
14 right to free speech.

15 123. The Fears wish to display their A-frame sign.

16 124. Because of the City's repeated threats against the Fears, the Fears stopped displaying  
17 their A-frame sign as frequently, and then stopped displaying it all together.

18 125. The Fears have noticed a visible decline in walk-in customers without their A-frame sign.

19 126. But for the City's repeated threats against the Fears, the Fears would resume displaying  
20 their A-frame sign every day during their business hours.

21 127. The Fears also wish to continue displaying their window signs.

22 128. Because the City repeatedly threatened to enforce the Sign Code against the Fears, the  
23 Fears fear prosecution for their window signs. Even though the City has not yet explicitly targeted these  
24 signs, they violate the Sign Code.

25 129. The Fears additionally wish to use banners and additional window signs to advertise

1 specials and time-limited deals at their gym, like they have in the past. Specifically, the Fears would  
2 like to use banners and window signs to advertise sales and specials for Christmas, New Year's, spring,  
3 and for students.

4 130. But for their fear of enforcement, the Fears would display these additional signs in the  
5 upcoming months.

6 131. In August 2013, the Fears also started offering Zumba dancing lessons at their gym, and  
7 they would like to immediately purchase and use banners, and/or window signs to advertise these  
8 classes. But for fear of enforcement, the Fears would buy these signs and immediately display them.

9 132. The Fears would be able to legally display all of their signs, however, if they contained  
10 different content.

## 11 **CLAIMS FOR RELIEF**

### 12 **Count I:**

#### 13 **Content-Based Restrictions on Speech in Violation of the First and Fourteenth Amendments.**

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

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

18 135. The First Amendment recognizes and protects commercial speech that is not false or  
19 misleading and that advertises a lawful activity.

20 136. The First Amendment also protects the right to advertise at the site of one's business  
21 through visual media such as A-frame signs, window signs, and other signs.

22 137. Got Muscle's A-frame sign and windows signs are truthful, not misleading, and protected  
23 by the First Amendment.

24 138. The Sacramento Sign Code, on its face and as-applied to the Plaintiffs, imposes greater  
25 burdens on some signs than others based on the signs' content.

139. Signs the City decides fit into Sign Code section 15.148.600 are exempt from Sign Code



1 section 15.148.670's ban on A-frames, banners, and portable signs. The exemptions include signs that  
2 fit Sign Code section 15.148.600's descriptions for real estate signs; flags, emblems, or insignias of any  
3 nation or political subdivision; temporary signs for nonprofit organizations; and political campaign signs  
4 on behalf of candidates for public office or measures on election ballots.

5 140. Plaintiffs could display an A-frame sign and other banned signs if the signs fit into Sign  
6 Code section 15.148.600's content-based exemptions.

7 141. The code also exempts the aforementioned signs from the need to obtain a sign permit.

8 142. Plaintiffs could display signs without obtaining a permit if the signs fit into Sign Code  
9 section 15.148.600's content-based exemptions.

10 143. Additionally, the code exempts several of the aforementioned signs from its two-attached  
11 sign limit that restricts Plaintiffs' window signs, imposed by Sign Code section 15.148.670(A)(2). The  
12 exempted signs include flags, emblems, or insignias of any nation or political subdivision; religious  
13 symbols or identification emblems of religious orders or historical agencies; temporary signs for  
14 nonprofit organizations; and political campaign signs on behalf of candidates for public office or  
15 measures on election ballots.

16 144. Plaintiffs could display more than two attached signs if the signs fit into Sign Code  
17 section 15.148.590's content-based exemptions.

18 145. Imposing different burdens on signs depending on their content is a content-based  
19 restriction on free speech and is unconstitutional.

20 146. Defendant cannot justify treating signs differently based on their content.

21 147. Defendant's content-based exemptions violate the First Amendment. This violation  
22 causes Plaintiffs irreparable harm. Plaintiffs have no adequate remedy at law for this violation of their  
23 constitutional rights.

24 148. Unless Defendant is preliminarily and then permanently enjoined from committing the  
25 above-described constitutional violations of the First Amendment to the United States Constitution,

1 Plaintiffs will continue to suffer great and irreparable harm.

2 **Count II:**

3 **The Sign Code Bans on Portable Signs and Banners Are Overbroad in Violation**  
4 **of the First and Fourteenth Amendments.**

5 149. Plaintiffs incorporate and re-allege each and every allegation contained in Paragraphs 1  
6 through 148 of this Complaint as if fully set forth herein.

7 150. Count Two is brought pursuant to the First and Fourteenth Amendments to the United  
8 States Constitution and 42 U.S.C. § 1983.

9 151. The First Amendment recognizes and protects commercial speech that is not false or  
10 misleading and that advertises a lawful activity.

11 152. The First Amendment also protects the right to advertise at the site of one's business  
12 through visual media such as A-frame signs, portable signs, banners, and other signs.

13 153. Got Muscle's A-frame sign is truthful, not misleading, and protected by the First  
14 Amendment.

15 154. A-frames, portable signs, and banners are more convenient and less expensive than other  
16 types of advertising, and uniquely able to advertise time-sensitive offers.

17 155. A-frames and other portable signs are also particularly effective in attracting clients  
18 because they can face traffic and sit close to the road and sidewalk.

19 156. Because Defendant City of Sacramento classifies Plaintiffs' A-frame sign as a non-  
20 exempt "sign," they must either remove this sign or risk prosecution pursuant to Sign Code section  
21 15.148.670.

22 157. Based on the City's repeated communications to both Plaintiffs and Plaintiffs' landlord,  
23 Plaintiffs have already stopping using their A-frame sign.

24 158. Based on the City's repeated communications to both Plaintiffs and Plaintiffs' landlord,  
25 Plaintiffs are also refraining from using banners that they have used in the past to advertise.

159. Sign Code section 15.148.670's general ban on A-frame signs, banners, portable signs,

1 and other temporary signage deprives Plaintiffs' from using the location of their business to  
2 conveniently and effectively speak about the services their business offers.

3 160. The City does not possess a compelling, important, or even legitimate justification for its  
4 infringement of Plaintiffs' right to display their signs.

5 161. Upon information and belief, the City possesses no evidence that Sign Code section  
6 15.148.670's general ban on A-frame signs, banners, portable signs, and flags advances public health  
7 and safety or enhances the City's appearance.

8 162. Upon information and belief, the City also has no evidence that prohibiting Got Muscle's  
9 particular A-frame sign advances public health and safety or enhances the City's appearance.

10 163. Upon information and belief, the City possesses no evidence that Sign Code section  
11 15.148.670's general ban on A-frame signs, banners, portable signs, and flags is no more extensive than  
12 necessary to advance its interests in public health and safety or enhancing the City's appearance.

13 164. Upon information and belief, the City also has no evidence that prohibiting Got Muscle's  
14 particular A-frame sign is no more extensive than necessary to advance its interests in public health and  
15 safety or enhancing the City's appearance

16 165. Sign Code section 15.148.670's general ban on A-frame signs, banners, portable signs,  
17 and flags, and the City's enforcement of Sign Code section 15.148.670, as applied and on its face,  
18 violate the First and Fourteenth Amendments.

19 166. These violations cause Plaintiffs irreparable harm. Plaintiffs have no adequate remedy at  
20 law for these violations of their constitutional rights.

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

24

**Count III:**

**The Sign Code's Restrictions on Attached Signs Are Overbroad in Violation of the First and Fourteenth Amendments**

168. Plaintiffs incorporate and re-allege each and every allegation contained in Paragraphs 1 through 167 of this Complaint as if fully set forth herein.

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

170. The First Amendment recognizes and protects commercial speech that is not false or misleading and that advertises a lawful activity.

171. The First Amendment also protects the right to advertise at the site of one's business through visual media such as signs.

172. Got Muscle's windows signs are truthful, not misleading, and protected by the First Amendment.

173. Under Sign Code section 15.148.160(A)(2), the City restricts businesses in the C-2 zone to two attached signs displayed on their building. The square footage of these signs is determined by how much street frontage a business has.

174. Under Sign Code section 15.148.160(A)(2), businesses can have two large signs, but they cannot have multiple small signs.

175. Upon information and belief, the City possesses no evidence that Sign Code section 15.148.160(A)(2)'s two-attached-signs limit advances public health and safety or enhances the City's appearance.

176. Upon information and belief, the City also possesses no evidence that restricting Plaintiffs' attached signs in particular advances public health and safety or enhances the City's appearance.

177. Upon information and belief, the City possesses no evidence that Sign Code section 15.148.160(A)(2)'s two-attached-signs limit is no more extensive than necessary to advance its interests

1 in public health and safety or enhancing the City's appearance.

2 178. Upon information and belief, the City also possesses no evidence that restricting  
3 Plaintiffs' attached signs in particular is no more extensive than necessary to advance its interests in  
4 public health and safety or enhancing the City's appearance.

5 179. Sign Code section 15.148.160(A)(2)'s two-attached-signs limit deprives Plaintiffs from  
6 using the location of their business to conveniently and effectively speak about the services their  
7 business offers.

8 180. Plaintiffs currently fear prosecution of their window signs under Sign Code section  
9 15.148.160(A)(2) and are currently refraining from displaying additional window signs. They plan to  
10 also refrain from using additional window signs in the upcoming months.

11 181. Defendant thus violates the Constitution through Sign Code section 15.148.160(A)(2)'s  
12 two-attached-signs limit, both as applied and on its face. This violation causes Plaintiffs' irreparable  
13 harm. Plaintiffs would have no adequate remedy at law for this violation of their constitutional rights.

14 182. Unless Defendants are permanently enjoined from committing the above-described  
15 constitutional violations of the First Amendment to the United States Constitution, Plaintiffs will  
16 continue to suffer great and irreparable harm.

17 **Count IV:**

18 **Entitlement to Injunctive Relief**

19 183. Plaintiffs incorporate and re-allege each and every allegation contained in Paragraphs 1  
20 through 182 of this Complaint as if fully set forth herein.

21 184. Plaintiffs have no plain, complete, speedy and adequate legal, administrative, or other  
22 remedy by which to prevent or minimize the continuing irreparable harm to their First Amendment  
23 rights.

24 185. Plaintiffs, therefore, are entitled to preliminary and permanent injunctions prohibiting Defendant  
25 from violating Plaintiffs' First Amendment rights, including preventing Defendant from enforcing Sign

1 Code sections 15.148.670, 15.148.030, and 15.148.160(A)(2), allowing Plaintiffs to display their A-  
2 frame sign and current window signs, and allowing Plaintiffs to display future portable signs, banners,  
3 and window signs, as well as granting such other and further relief as may follow from entry of such  
4 injunctive relief.

5 **Count V:**

6 **Entitlement to Declaratory Relief**

7 186. Plaintiffs incorporate and re-allege each and every allegation contained in Paragraphs 1  
8 through 185 of this Complaint as if fully set forth herein.

9 187. An actual dispute exists between Plaintiffs and Defendants within this Court's  
10 jurisdiction pertaining to the exercise of Plaintiffs' constitutional rights. Absent a declaration of  
11 Plaintiffs' constitutional rights, Defendant will continue to violate Plaintiffs' rights.

12 188. Therefore, Plaintiffs are entitled to a declaratory judgment that Sign Code sections  
13 15.148.670, 15.148.160(A)(2), and 15.148.030, on their face and as applied to Plaintiffs, violate the First  
14 Amendment, as well as such other and further relief as may follow from entry of such a declaratory  
15 judgment.

16 **REQUESTS FOR RELIEF**

17 Wherefore, Plaintiffs respectfully request the following relief:

18 A. A preliminary injunction prohibiting the City from enforcing Sign Code sections  
19 15.148.670, 15.148.160(A)(2), and 15.148.030 against Plaintiffs or otherwise taking enforcement action  
20 against Plaintiffs' signs until the Court decides this case on the merits;

21 B. A declaratory judgment that, on its face and as applied to Plaintiffs, Sign Code sections  
22 15.148.670, 15.148.160(A)(2), and 15.148.030 violate the First and Fourteenth Amendments to the  
23 United States Constitution;

24 C. A permanent injunction prohibiting the City from enforcing Sign Code sections  
25 15.148.670, 15.148.160(A)(2), and 15.148.030;

1 D. A permanent injunction prohibiting the City from enforcing Sign Code sections  
2 15.148.670, 15.148.160(A)(2), and 15.148.030 against Plaintiffs' A-frame sign and window signs;

3 E. An award of nominal damages in the amount of \$1.00 for the violation of Plaintiffs'  
4 constitutional rights;

5 F. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. §  
6 1988; and

7 G. Any other legal and equitable relief that this Court may deem appropriate and just.

8 DATED this 13th day of August, 2013.

9  
10 **INSTITUTE FOR JUSTICE**

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17  
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