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5 Tiffany Garcia

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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION  
11

12	TIFFANY GARCIA,	)	Case No.
13	Plaintiff,	)	
14	vs.	)	COMPLAINT FOR
15	CITY OF TORRANCE, a California	)	DECLARATORY AND
16	Municipal Corporation,	)	INJUNCTIVE RELIEF AND
17	Defendant.	)	DAMAGES
		)	DEMAND FOR JURY TRIAL

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20 INTRODUCTION

21 1. This is an action for declaratory and injunctive relief and damages brought  
22 on behalf of Tiffany Garcia, an individual who desires to practice tattooing in the  
23 City of Torrance, California. Plaintiff seeks a declaration that certain sections of  
24 the Torrance Municipal Code prohibiting tattoo businesses violate the First and  
25 Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983,  
26 and Article 1, Section 2 of the California Constitution. Plaintiff also seeks  
27 injunctive relief to prevent the City of Torrance from enforcing its anti-tattooing  
28 ordinance during the pendency of this action. Finally, Plaintiff seeks damages for

1 the fact that she has been deprived of her constitutional rights and suffered  
2 monetary losses by virtue of the denial of her right to engage in her constitutionally  
3 protected occupation.

4 2. While the degree of constitutional protection afforded tattooing was in  
5 some doubt in the past, that uncertainty was laid to rest by the decision of the Ninth  
6 Circuit in *Anderson v. City of Hermosa Beach*, 621 F.3d 1051 (9th Cir. 2010). In a  
7 case of first impression for the federal circuit courts, the Ninth Circuit in *Anderson*  
8 ruled that, “The tattoo *itself*, the *process* of tattooing, and even the *business* of  
9 tattooing are not expressive conduct but purely expressive activity fully protected  
10 by the First Amendment.” *Id.* at 1060 (emphasis in original).

11 3. Despite *Anderson*, a case now more than three years old, Torrance has  
12 maintained its ban on tattooing, even after being confronted with *Anderson* by both  
13 plaintiff.

#### 14 PARTIES

15 4. Plaintiff Tiffany Garcia is an individual resident of the County of Los  
16 Angeles, State of California.

17 5. The City of Torrance is a California municipal corporation organized in  
18 accordance with the laws of California and the Torrance Municipal Code. The  
19 actions of the City of Torrance in promulgating and enforcing its ordinances  
20 restricting the right to engage in tattooing are done under color of state law within  
21 the meaning of 42 U.S.C. § 1983 and the Fourteenth Amendment.

#### 22 JURISDICTION AND VENUE

23 6. This Court has jurisdiction over the subject matter of this action under 28  
24 U.S.C. §1331 (federal question) and under 28 U.S.C. §1343 (civil rights).

25 7. Venue lies in this judicial district under 28 U.S.C. §1391 because the  
26 defendant City of Torrance is located in the Central District of California, Western  
27 Division.

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FACTS

8. Section 45.6.2 of the Torrance Municipal Code provides as follows:

a) It shall be unlawful for any person to own, maintain or conduct a place of business where tattooing is practiced. Provided, however, that this section shall not apply to the application of permanent make-up or cosmetic reconstruction if the same is applied by a licensed practitioner of the healing arts in the course of his practice, or a licensed cosmetician or licensed electrologist as defined in the California Business and Professions Code who has received additional training in the procedures, practices and techniques of permanent make-up application and cosmetic reconstruction.

b) Nothing in this section shall allow the tattooing of any person under the age of eighteen (18) unless applied by a licensed practitioner of the healing arts in the course of his practice.

c) The term tattooing shall mean the act or process of marking or coloring the skin of any person by insertion of pigment under or in the skin or by the production of scars.

9. Torrance Municipal Code § 11.2.1 makes violation of any provision of the code a misdemeanor, punishable by up to six months in jail and a fine of \$500. If plaintiff were to operate a tattoo shop in Torrance under the current provisions of law, each day's operation would be a separate misdemeanor. While section 11.2.6 permits any one of a number of Torrance employees to issue citations, plaintiff would face the possibility not only of misdemeanor prosecution (either for a single violation or for multiple violations), as well as civil code enforcement actions.

10. In early 2015, plaintiff located an appropriate site for a tattoo studio, located at 24401 Hawthorne Blvd., Torrance, California. [Describe potential rental] Hawthorne Boulevard is one of the major north-south streets in Torrance, indeed one of the major commercial thoroughfares in Los Angeles County, with

1 considerable automobile and truck traffic. The area where plaintiff wished to locate  
2 is in a general commercial zone.

3 11. Plaintiff made inquiry at the Planning Department, and spoke at length  
4 with Kevin. He was told that tattoo businesses are flatly prohibited anywhere in  
5 Torrance, and that the ban had been recently reconsidered and left unmodified.

6 12. Because of the ban on tattoo businesses in the City of Torrance, plaintiff  
7 has suffered the loss of rights guaranteed by the Free Speech Clause of the First  
8 Amendment and by Article 1, section 2 of the California constitution. In addition,  
9 she has suffered loss of income because she has not been able to practice tattooing  
10 in the City of Torrance.

11 CLAIMS FOR RELIEF

12 FIRST CLAIM FOR RELIEF–VIOLATION OF 42 U.S.C. § 1983

13 13. Plaintiff incorporates paragraphs 1 through 15 by reference.

14 14. By virtue of the ban on tattoo businesses in the City of Torrance,  
15 plaintiff has been deprived of rights under the First and Fourteenth Amendments,  
16 in violation of 42 U.S.C. § 1983.

17 SECOND CLAIM FOR RELIEF–VIOLATION OF

18 ARTICLE 1, SECTION 2, OF THE CALIFORNIA CONSTITUTION

19 15. Plaintiff incorporates paragraphs 1 through 15 by reference.

20 16. Article 1, section 2 of the California Constitution provides, “Every  
21 person may freely speak, write and publish her or her sentiments on all subjects,  
22 being responsible for the abuse of this right. A law may not restrain or abridge  
23 liberty of speech or press.”

24 17. The ban on tattoo business in the City of Torrance violates article 1,  
25 section 2.

26 IRREPARABLE INJURY/ACTUAL CONTROVERSY

27 18. There is between the parties an actual controversy as set forth herein.  
28 The plaintiff is suffering irreparable injury and is threatened with irreparable harm

1 in the future by reason of the acts alleged herein, inasmuch as a substantial loss or  
2 impairment of freedom of expression has occurred and will continue to occur so  
3 long as the cited Torrance Municipal Code sections remain in force. Plaintiff will  
4 be harassed, intimidated, cited, arrested, or prosecuted by the defendant, or its  
5 agents, if she attempts to exercise constitutional rights concerning tattooing in the  
6 City of Torrance.

7 19. Plaintiff has no plain, adequate, or complete remedy to speedily redress  
8 the wrongs complained of herein other than this action. Any other remedy to  
9 which plaintiff could be remitted would be attended by such uncertainties and  
10 delays that it would cause further irreparable injury, damage, and inconvenience to  
11 him. Damages are not adequate to protect plaintiff from the continuing effects of  
12 abridgment of the exercise of her First and Fourteenth Amendment rights, and free  
13 speech rights protected by the California constitution.

14 PRAYER

15 WHEREFORE, Plaintiff prays:

16 1. That Torrance Code Chapter be declared unconstitutional under the  
17 federal and California constitutions insofar as it is applied to prohibit plaintiff from  
18 operating a tattoo business in the City of Torrance.

19 2. That the City of Torrance be preliminarily and permanently enjoined from  
20 enforcing Chapter insofar as it prohibits plaintiff from operating a tattoo business  
21 in the City of Torrance.

22 3. That plaintiff be awarded damages for loss of her rights under the Free  
23 Speech Clause of the First Amendment.

24 4. That plaintiff be awarded damages for loss of her rights under Article 1,  
25 section 2 of the California constitution.

26 5. That plaintiff be awarded damages for being deprived of the opportunity  
27 to conduct a tattoo establishment in the City of Torrance

28 6. That plaintiff be awarded reasonable attorney's fees and expenses of

1 counsel pursuant to 42 U.S.C. §1988;

2 7. That plaintiff be awarded reasonable attorney's fees and expenses of  
3 counsel pursuant to Cal. Code Civ. Proc. 1021.5.

4 8. For costs of suit; and

5 9. For such other and further relief as the court may deem just and proper.

6 Dated: April 30, 2015

RESPECTFULLY SUBMITTED

7 LAW OFFICES OF ROBERT C. MOEST  
8 Robert C. Moest

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10 By: \_\_\_\_\_  
11 Robert C. Moest  
12 Attorneys for Plaintiff  
13 Tiffany Garcia  
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DEMAND FOR JURY TRIAL

Plaintiff Tiffany Garcia demands a jury trial as provided by Fed. R. Civ. P. 38.

Dated: April 30, 2015

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Robert C. Moest

By: \_\_\_\_\_  
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Tiffany Garcia