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21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 SAN FRANCISCO DIVISION

24 CTIA - THE WIRELESS ASSOCIATION®,

Case No. 3:10-cv-03224 WHA

25 Plaintiff,

26 v.

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

27 THE CITY AND COUNTY OF SAN
28 FRANCISCO, CALIFORNIA,

Defendant.

PRELIMINARY STATEMENT

1
2 1. This case involves two important principles of federal law. The first comes from
3 the Free Speech Clause of the First Amendment—that private parties have the right not to speak
4 contrary to their beliefs and, in particular, not to have the government force them to endorse a
5 controversial or false message. The second principle is found in the Supremacy Clause and
6 dictates that where a federal agency acts pursuant to statutory mandate to formulate an exclusive,
7 uniform, nationwide regulatory scheme that balances competing concerns, a locality may not pass
8 regulations that conflict with the federal regulatory scheme or upset that balance. Vindication of
9 both these principles requires this Court to permanently enjoin enforcement of the San Francisco
10 ordinance, regulations, and display materials that are the subject of this litigation.

11 2. The FCC, acting at the direction of Congress and in conjunction with expert
12 federal health and safety agencies, has established nationwide, comprehensive rules designed to
13 ensure that all cell phones sold in the United States are safe for consumer use. These rules
14 contain a substantial safety factor—as the FCC set them at 1/50th of the point at which RF energy
15 begins to cause *any* known biological effects.

16 3. The City and County of San Francisco (“City”) has determined that, in its opinion,
17 the federal rules governing RF emissions from cell phones are not adequate to protect public
18 health. As a result, it adopted the challenged ordinance, which is styled as the “Cell Phone Right-
19 to-Know Ordinance,” Ordinance No. 155-10, as amended by Ordinance No. 165-11 (attached as
20 Exhibits A and B) (“Ordinance”), a set of implementing regulations (attached as Exhibit C), and a
21 set of display materials (attached as Exhibits D (“Poster”), E (“Statement”), and F (“Factsheet”),
22 (collectively, the “Display Materials”). The Ordinance and Display Materials convey the City’s
23 opinion that cell phones are dangerous and recommend that consumers should take steps to
24 protect themselves from this danger, including reducing calls and calling time, keeping cell
25 phones away from their body, avoiding cell phones altogether in certain circumstances, and
26 turning them off when not in use.

27 4. The City has prescribed the precise content and formatting of these
28 communications, which it requires cell phone retailers to post and disseminate without

1 alteration—including the prominent display of an oversized 11 x 17 inch poster. These materials
2 convey to consumers and the public, among other things, advisories in large, often bolded
3 statements to “**limit exposure,**” “**Limit[] cell phone use by children,**” and “**Keep distance**
4 **between your phone and body**” because “**Cell Phones Emit Radio-frequency Energy,**” “**Your**
5 **head and body absorb RF Energy from cell phones,**” and RF energy is “**a possible**
6 **carcinogen.**” The Display Materials also show bright red, orange, and yellow circles emanating
7 from cell phones and penetrating into the head and pelvic regions of users, which convey the
8 intended and unmistakable message of danger.

9 5. This is not the City’s first attempt to require cell phone retailers to warn consumers
10 of the supposed dangers of cell phones. The Ordinance originally mandated that cell phone
11 retailers disclose the Specific Absorption Rates (“SAR”) for each wireless handset and advise
12 consumers that they could and should consider the relative safety of phones and decrease
13 exposure to RF emissions based on phones’ SAR values. In July 2010, Plaintiff CTIA–The
14 Wireless Association® (“CTIA”) challenged the City’s regime as preempted by federal law and
15 subsequently added a First Amendment claim. CTIA produced two expert reports. The first,
16 based upon a survey of consumers, demonstrated that consumers would perceive the City’s SAR
17 disclosure requirements as a strong warning. The second showed that, as a factual matter, the
18 City’s direction to compare SAR values was misleading. In particular, CTIA’s expert explained
19 that the maximum SAR values for a particular handset cannot be used as a proxy for determining
20 which handset will result in lower absorption in real-world usage.

21 6. The City produced an expert report that criticized certain aspects of the survey
22 methodology, but did not produce any expert to rebut or disagree with the report showing that
23 SAR comparisons would be misleading for consumers. Indeed, after reviewing the scientific
24 report prepared by CTIA’s expert on the misleading nature of SAR comparisons and taking the
25 deposition of its author, the City chose not to defend the original Ordinance in litigation. Instead,
26 the City amended the Ordinance, adopted new implementing regulations, and drastically
27 shortened the applicable deadlines for compliance. This case has been pending during the City’s
28 amendment process.

1 7. CTIA files this Second Amended Complaint because the City's amended
2 Ordinance and new Display Materials do not cure the core defects in its RF regime. Indeed, they
3 make the flaws even more severe. The City's Ordinance and Display Materials violate the First
4 Amendment and are preempted by federal law.

5 8. The Ordinance and Display Materials violate Plaintiff's members' rights under the
6 Free Speech Clause of the First Amendment of the U.S. Constitution by imposing a content-based
7 regulation of speech and by compelling them to communicate messages and in a manner that is
8 inaccurate and misleading, and that will harm consumers. The Display Materials also require
9 Plaintiff's members to endorse a controversial message that contradicts the federal regulatory
10 regime governing RF emissions by which they are bound and licensed, and conflicts with
11 Plaintiff's and its members' own viewpoints. *See* Count 1. The City bears the heavy burden of
12 justifying its infringement of CTIA members' First Amendment rights, and it cannot satisfy this
13 burden under any standard of review.

14 9. The loss of the freedom of speech protected by the First and Fourteenth
15 Amendments to the U.S. Constitution as alleged in Count 1 of this Complaint constitutes per se
16 irreparable injury and supports the entry of injunctive relief (including preliminary relief).

17 10. In addition to the First Amendment violation, the Ordinance and Display Materials
18 are preempted by federal law in several ways. *First*, the Ordinance and Display Materials are
19 preempted because they regulate in a field reserved exclusively to the federal government—
20 namely, the field of RF emissions and the health and safety impacts of those emissions. *See*
21 Count 2. *Second*, the Ordinance and Display Materials upset the balance struck by the FCC, at
22 the direction of Congress, between safeguarding against potential health effects from RF energy,
23 on the one hand, and promoting the deployment of a robust, efficient, nationwide, wireless
24 communications system. They upset this balance by, *inter alia*, directing consumers to use their
25 phones less and turn them off when not in use, which conflicts with the federal policy goals that
26 the FCC balanced when adopting the current, federal regime. *See* Count 3. *Third*, the Ordinance
27 and Display Materials are preempted because their obvious and intended effect is to warn
28 consumers that FCC-compliant cell phones are unsafe or potentially unsafe. This conflicts with

1 the FCC's determination that cell phones are safe and that the federal rules are adequate to protect
2 consumers from potentially harmful RF emissions. *See* Count 3. *Fourth*, the Ordinance and
3 Display Materials conflict with federal law because they challenge the FCC's determination that
4 cell phones can be sold without warnings. *See* Count 3.

5 11. Because of the violation of Plaintiff's members' constitutionally protected free
6 speech rights, enforcement of the Ordinance and regulations by the City under color of state law
7 will violate Plaintiff's members' federal rights in violation of 42 U.S.C. § 1983. *See* Count 4.

8 12. For these reasons, as more fully described below, Plaintiff seeks a declaration that
9 the Ordinance, implementing regulations, and Display Materials are preempted and
10 unconstitutional and thus, invalid, as well as a preliminary and/or permanent injunction
11 prohibiting any officer, employee, or agent of the City from enforcing or threatening to enforce
12 any part of the Ordinance, implementing regulations, and Display Materials against Plaintiff and
13 any of Plaintiff's members.

14 **PARTIES**

15 13. Plaintiff CTIA—The Wireless Association® (“CTIA”) is a District of Columbia
16 not for profit corporation with its principal place of business in Washington, D.C. CTIA
17 represents all sectors of the wireless industry, including but not limited to manufacturers of cell
18 phones and accessories, providers of wireless services, and sellers of wireless services, handsets
19 and accessories, which are affected by and subject to the challenged Ordinance, implementing
20 regulations, and Display Materials.

21 14. Numerous of Plaintiff's members are “cell phone retailers” under the Ordinance
22 and would otherwise be subject to all the requirements of the Ordinance, implementing
23 regulations, and Display Materials. For example, Verizon Wireless, AT&T, and T-Mobile USA
24 are members of CTIA and they operate many retail outlets in the City that will be subject to the
25 requirements of the Ordinance, implementing regulations, and Display Materials.

26 15. The City is a municipal corporation located in the State of California. It exercises
27 local government powers under state law.
28

JURISDICTION

1
2 16. This Court has subject matter jurisdiction over Plaintiff's claims for relief pursuant
3 to 28 U.S.C. § 1331 because they arise under the Constitution and laws of the United States.
4 Plaintiff seeks a declaration of its rights in this case of actual controversy pursuant to 28 U.S.C. §
5 2201 *et seq.*

6 17. This Court has subject matter jurisdiction over Plaintiff's claims for relief pursuant
7 to 28 U.S.C. § 1337 because they arise under an Act of Congress regulating commerce.

8 18. Plaintiff submits and is therefore subject to the personal jurisdiction of this Court
9 by virtue of commencing this civil action and filing this Complaint.

10 19. Plaintiff has associational standing to bring and maintain this action. One or more
11 of CTIA's members, as noted above, would have standing to sue in their own right. In addition,
12 the interests that CTIA seeks to protect are germane to CTIA's purpose, and neither the claims
13 asserted nor the relief requested require the participation of individual members in this lawsuit.
14 *See, e.g., Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977);
15 *Associated General Contractors of Cal., Inc. v. Coalition for Economic Equity*, 950 F.2d 1401
16 (9th Cir. 1991).

17 20. The City is subject to the personal jurisdiction of this Court pursuant to Federal
18 Rule of Civil Procedure 4(k)(1)(A) and California Code of Civil Procedure § 410.10 because the
19 City is located in the State of California and/or caused harm by acts or omissions that occurred in
20 the State of California.

21 **VENUE**

22 21. Venue is proper in the United States District Court for the Northern District of
23 California pursuant to 28 U.S.C. § 1391(b)(1), (b)(2) and (b)(3) because the City is located in and
24 can be found in this District and because a substantial part of the events or omissions giving rise
25 to Plaintiff's claims for relief occurred in this District.

26 **INTRADISTRICT ASSIGNMENT**

27 22. Pursuant to Civil Local Rule 3-2(c), this action should be assigned to the San
28 Francisco Division of this Court because a substantial part of the events or omissions which give

1 rise to Plaintiff's claims for relief occurred in San Francisco and a substantial part of the property
2 that is the subject of this action is situated in San Francisco.

3 **BACKGROUND COMMON TO ALL COUNTS**

4 **The Basic Physics of Cell Phone Communication and RF Emissions**

5 23. Cell phones are devices that send and receive radio signals to and from base
6 stations in order to allow voice, text, and other communications, including wireless Internet
7 access.

8 24. Cell phones use a form of electromagnetic energy, referred to as radio frequency
9 or RF energy, to enable wireless communications.

10 25. The RF energy used for communication by cell phones is a form of non-ionizing
11 radiation.

12 26. Non-ionizing radiation differs in significant respects from the other forms of
13 radiation, known as ionizing radiation.

14 27. Ionizing radiation, such as X-rays or nuclear radiation, has the capacity to break
15 chemical bonds in the body.

16 28. As a result, to protect against the adverse biological effects from ionizing
17 radiation, scientific organizations use a safety standards model that assumes that *any* exposure
18 can cause an adverse biological effect and that the effect of all exposures is cumulative. This is
19 known as a zero-threshold linear dose-response model.

20 29. Non-ionizing radiation is incapable of breaking chemical bonds in the body.

21 30. Scientific organizations do not use a zero-threshold linear dose-response model for
22 setting safety standards for exposure to non-ionizing radiation. Instead, the relevant standard-
23 setting bodies have concluded that the weight of the scientific evidence supports the existence of
24 a threshold for the adverse effects from non-ionizing radiation, below which such effects do not
25 occur. Thus, the standard-setting bodies have concluded that any variations in exposure below
26 that threshold are not biologically significant – *i.e.*, a higher level of exposure under the threshold
27 is not less safe than a lower level of exposure under the threshold because both are below the
28 threshold for potential adverse effects.

Federal Regulation of RF Emissions From Cell Phones

1
2 31. The federal government has exclusive jurisdiction to regulate the safety of the RF
3 emissions from cell phones.

4 32. For nearly 100 years, beginning with the Radio Acts of 1912 and 1927, wireless
5 communications and the RF energy used for such communications have been subject to
6 continuous, pervasive, and uniform regulation by the federal government. *See, e.g., Farina v.*
7 *Nokia Inc.*, 625 F.3d 97, 105-06 (3rd Cir. 2010), *cert. denied* (Oct. 3, 2011).

8 33. The comprehensive federal regulation of nearly all aspects of wireless
9 communications and associated devices has long been to the exclusion of state and local
10 regulation.

11 34. In 1934, Congress passed the Communications Act of 1934, *see* 47 U.S.C. § 151 *et*
12 *seq.*, which created the FCC and put it at the helm of “a unified and comprehensive regulatory
13 system for the industry,” *NBC v. United States*, 319 U.S. 190, 214 (1943) (internal quotation
14 marks omitted), and gave it exclusive regulatory authority over the “apparatus to be used” for
15 transmission and the “external effects” of the transmission of radio waves, 47 U.S.C. § 303(e).

16 35. Both Congress and the FCC have extended their long-standing control over
17 traditional radio transmissions and devices to modern wireless telecommunications service,
18 including cell phones.

19 36. In its first order relating to commercial cellular service, the FCC expressly
20 “assert[ed] Federal primacy in this area,” because it was concerned that state or local regulation
21 of this new technology “would . . . direct[ly] conflict with [the FCC’s] attempt . . . to establish a
22 nation-wide system of radio communications.” *Future Use of Frequency Band 806-960 MHz*, 46
23 F.C.C.2d 752, 766-67 (¶¶ 43-44) (1974).

24 37. The FCC made clear that its regulation of wireless telecommunications service is
25 to be exclusive of state or local regulation, stating that “the scheme of regulation we have devised
26 to implement . . . [is] to be carried out on a national basis . . . without regard to state boundaries or
27 varying local jurisdictions.” *Id.* at 766 (¶ 43).

28

1 38. In 1993, Congress ratified and reinforced the FCC’s assertion of federal primacy
2 over personal wireless communications.

3 39. At that time, Congress amended the Communications Act to further consolidate
4 wireless regulation at the federal level and thus “foster the growth and development of mobile
5 services that, by their nature, operate without regard to state lines as an integral part of the
6 national telecommunications infrastructure.” H.R. Rep. No. 103-111, at 260 (1993).

7 40. In the FCC’s own words, Congress’s purpose in amending the Act in 1993 was to
8 ensure a “national regulatory policy for [wireless telephony], *not a policy that is balkanized state-*
9 *by-state.*” *Petition on Behalf of the State of Conn.*, 10 F.C.C.R. 7025, 7034 (¶ 14) (1995)
10 (emphasis added); *see also Conn. Dep’t of Pub. Util. Control v. FCC*, 78 F.3d 842, 845 (2d Cir.
11 1996) (explaining that the 1993 amendments were enacted “to dramatically revise the regulation
12 of the wireless telecommunications industry, of which cellular telephone service is a part”).

13 41. In 1996, Congress acted to further ensure the federal government’s primacy over
14 wireless telecommunications, facilities, and devices – including their RF emissions.

15 42. In the Telecommunications Act of 1996, Congress charged the FCC with adopting
16 rules establishing a federal safety standard governing RF emissions from wireless handsets. *See*
17 *Pub. L. No. 104-204, § 704(b), 110 Stat. 56 (1996)* (“Within 180 days after the enactment of this
18 Act, the Commission shall complete action in ET Docket 93-62 to prescribe and make effective
19 rules regarding the environmental effects of radio frequency emissions.”).

20 43. In August 1996, pursuant to this Congressional directive, its authority under the
21 Communications Act, and in collaboration with the Food and Drug Administration (“FDA”),
22 Environmental Protection Agency (“EPA”), and the Occupational Safety and Health
23 Administration (“OSHA”), the FCC adopted the current RF exposure standards applicable to all
24 cell phones marketed, sold, or distributed in the United States. *In re Guidelines for Evaluating*
25 *the Environmental Effects of Radiofrequency Radiation*, Release No. 96-326, 11 F.C.C.R. 15123,
26 15184 (¶ 169) (1996) (“*RF Order P*”).

27 44. The FCC’s regulations applicable to portable devices, which include cell phones,
28 establish a maximum Specific Absorption Rate (“SAR”) of 1.6 watts per kilogram (1.6 W/kg) for

1 spatial peak SAR as averaged over any one gram of tissue. *See* 47 C.F.R. § 2.1093(d)(2). SAR is
2 a measure of the rate at which energy is deposited in an absorbing object

3 45. The FCC's current SAR standards for cell phones are based, in large part, on the
4 recommendations of the Institute of Electrical and Electronic Engineers ("IEEE"). The IEEE is a
5 non-profit scientific organization composed of representatives of university laboratories, non-
6 profit laboratories, military research laboratories, federal public health agencies, independent
7 consultants, and industry representatives. It is a recognized scientific standard-setting body,
8 whose recommendations have been followed by governmental agencies around the world.

9 46. To ensure compliance with the federal RF safety standards, the FCC has adopted
10 detailed testing, certification, and equipment authorization procedures that must be met before a
11 cell phone can be marketed, sold, or used in the United States.

12 47. All cell phones marketed, distributed, or sold in the United States must comply
13 with the FCC's SAR limits. *See* 47 C.F.R. § 2.803(a)(1); *see also id.* § 24.51(a).

14 48. Manufacturers and/or service providers applying for "equipment authorization"
15 from the FCC are required to submit "a statement affirming that the equipment complies" with
16 the applicable SAR standards, "as measured by an approved method," and "to maintain a record
17 showing the basis of the statement of compliance." 47 C.F.R. § 24.51(c); *see also id.*, § 24.52.

18 49. Technical information showing the basis for the statement of compliance "must be
19 submitted to the Commission upon request." 47 C.F.R. § 24.52.

20 50. In connection with the "equipment authorization" process, the FCC approves the
21 "operating instructions" provided to users. 47 C.F.R. § 2.1033(c)(3) (requiring applicants for
22 equipment authorization to submit "[a] copy of the installation and operating instructions to be
23 furnished to the user"); *see also* 47 C.F.R. § 2.915(a) (stating that the FCC will grant an
24 application if it makes certain findings based on "an examination of the application and
25 supporting data"); *see also* 47 C.F.R. § 2.919 (stating that the FCC will deny an application if it
26 cannot make the findings specified in 47 C.F.R. § 2.915(a)).

27 51. Under the FCC's rules, an equipment authorization may not be granted without an
28 affirmative finding based on an examination of all data and information submitted with the

1 application – including the operating instructions for consumers – that the public interest would
2 be served by granting the application. *See* 47 C.F.R. §§ 2.915(a), 2.919; *see also* 47 C.F.R. §
3 2.1033(c)(3).

4 52. In adopting the current RF standards, the FCC explained that it was relying
5 “substantially on the recommendations” of federal health and safety agencies, including the FDA,
6 the EPA, and other federal health and safety agencies. *RF Order I*, 11 F.C.C.R. at 15124 (¶ 2).

7 53. Federal health and safety agencies supported the use of SAR limits developed by
8 the IEEE, and the FCC based its RF rules on the IEEE’s standards. *RF Order I*, 11 F.C.C.R. at
9 15146-47 (¶ 62).

10 54. “The FCC has determined that wireless phones that do comply with its RF
11 standards are safe for use.” Brief of the United States and the FCC as Amicus Curiae in Support
12 of Appellees at 15-16, *Murray v. Motorola*, 982 A.2d 764 (D.C. 2009) (No. 07-cv-1074)
13 (available at 2008 WL 7825518) (“FCC *Murray* Br.”) (citing *RF Order I*, 11 F.C.C.R. at 15139-
14 40 (¶¶ 42-45)). Similarly, the FCC has determined that its rules “are sufficient to protect the
15 public and workers from exposure to potentially harmful RF fields,” *RF Order I*, 11 F.C.C.R. at
16 15124 (¶ 1), and that the “FCC does not endorse the need for” “measures to further reduce
17 exposure to RF energy.” FCC, *Wireless Devices and Health Concerns*, available at
18 <http://www.fcc.gov/cgb/consumerfacts/mobilephone.html> (emphasis removed).

19 55. The FCC concluded that its standards “represent the best scientific thought” on the
20 RF emissions limits necessary “to protect the public health,” *RF Order I*, 11 F.C.C.R. at 15184 (¶
21 168), and “provide a proper balance between the need to protect the public and workers from
22 exposure to potentially harmful RF electromagnetic fields and the requirement that industry be
23 allowed to provide telecommunications services to the public in the most efficient and practical
24 manner possible.” *In re Guidelines for Evaluating the Envtl. Effects of Radiofrequency*
25 *Radiation*, 12 F.C.C.R. 13494, 13505 (¶ 2) (1997) (“*RF Order IP*”).

26 56. The FCC has stated that “any cell phone at or below [FCC] SAR levels (that is,
27 any phone legally sold in the U.S.) is a ‘safe’ phone, as measured by these standards.” FCC,
28 *Cellular Telephone Specific Absorption Rate*, available at <http://www.fcc.gov/cgb/sar>.

1 57. The FCC’s SAR standard that applies to cell phones is designed to be sufficiently
2 protective of human health and safety such that there is no need for RF-related warnings or
3 disclosures that the FCC requires for certain other types of devices.

4 58. The FCC has adopted a two-tier standard for exposure to RF energy. The
5 “occupational/controlled” standard assumes that users have a level of knowledge and control over
6 exposure to RF emissions, and applies only to situations where persons are exposed as a
7 consequence of their employment, have been made fully aware of the potential for exposure, and
8 can exercise control over that exposure. *RF Order I*, 11 F.C.C.R. at 15139-140 (¶¶ 42-45). In
9 contrast, cell phones are governed by the “general population/uncontrolled” tier, a standard that
10 assumes that the users lack knowledge or control over potential exposure. Because of that
11 assumption, the safety standard is set at a level that eliminates the need for warnings. Thus, the
12 FCC did not mandate RF-related disclosures for cell phones, in contrast to its imposition of such
13 requirements for numerous other emissions sources. *See, e.g.*, 47 C.F.R. § 1.1307(b)(1) (table)
14 (requiring subscriber equipment, such as devices used in Part 25 satellite communication services,
15 to include RF-related warnings or disclosures but not imposing such a requirement on cell
16 phones).

17 59. In addition, the FCC specifically rejected the argument that particular classes of
18 persons, including children, are more sensitive to RF energy such that a more restrictive SAR
19 standard is necessary. *See RF Order II*, 12 F.C.C.R. at 13504-05 (¶¶ 26, 29).

20 60. Two federal Courts of Appeals have upheld the FCC’s RF standards on petition for
21 review, in both cases rejecting arguments that the standards were insufficiently protective of
22 public health. *See Cellular Phone Taskforce v. FCC*, 205 F.3d 82 (2d Cir. 2000); *EMR Network*
23 *v. FCC*, 391 F.3d 269 (D.C. Cir. 2004).

24 61. The FCC has also stated that it views its RF standard setting as an ongoing process
25 in which the RF emissions exposure standards for cell phones would be subject to future revision
26 if scientific research were to demonstrate that its standards were inadequate to protect the public.
27 *See RF Order II*, 12 F.C.C.R. at 13506 (¶ 32).

28

The Origins and Basis for the City's RF Regime

1
2 62. On December 14, 2009, the Policy Committee of the City's Commission on the
3 Environment ("COE") unanimously adopted Draft Resolution File 2009-06-COE (the "Draft
4 Resolution") for recommendation to the COE. *See* Resolution No. 002-10-COE (adopted by the
5 COE on January 26, 2010, and identifying the Policy Committee's findings and
6 recommendations) (attached hereto as Exhibit G).

7 63. In its Draft Resolution, the Policy Committee approved a number of findings that
8 are predicated on concerns about the safety of RF emissions from FCC-compliant cell phones and
9 explicitly question the adequacy of the FCC's RF standards. These include the COE's finding
10 that "[c]ell phone radiation safety levels accepted by the FCC do not take into account potential
11 vulnerabilities of children nor the cumulative effects of long-term use and do not provide
12 sufficient protection[,]” and that “[c]onsumers in San Francisco should be informed of any steps
13 that can be taken to minimize harm, such as the importance of using head-sets and texting as an
14 alternative to speaking directly into the phone” *Id.* Based on those findings, the Policy
15 Committee made a number of recommendations that are predicated on a belief or assumption that
16 the FCC's cell phone RF standards are inadequate to protect public health and that RF emissions
17 from FCC-compliant cell phones may be unsafe. These include a recommendation that “warning
18 labels be placed on all cell phone packaging regarding exposure to radiation, especially for
19 children.” *Id.*

20 64. Following the Policy Committee's adoption of the Draft Resolution, the Mayor of
21 San Francisco discussed the cell phone legislation and said that, if San Francisco “prevail[s],”
22 he hopes and expects that ““other cities will follow suit.”” Heather Knight, S.F. CHRONICLE,
23 *Newsom Backs Radiation Labels on Cell Phones* (Dec. 15, 2009), available at
24 http://articles.sfgate.com/2009-12-15/news/17224157_1_cell-phone-sar-level-phone-retailers.
25 The day after the Draft Resolution was adopted, the Mayor's spokesperson explained that “cell
26 phone radiation labeling is the next frontier in terms of consumer safety,”” and that ““this step will
27 allow the City to take a lead role in the United States in promoting labeling for cell phones at the
28 point of purchase.”” Katie Worth, S.F. EXAMINER, *Law Would Require Cell Phone Warnings*

1 (Dec. 15, 2009), available at [http://www.sfexaminer.com/local/Law-would-require-cell-phone-](http://www.sfexaminer.com/local/Law-would-require-cell-phone-warnings)
2 warnings.

3 65. On January 26, 2010, the COE considered and adopted the Policy Committee's
4 Draft Resolution. *See* Exhibit G.

5 66. The Draft Resolution became Resolution No. 002-10-COE (the "Resolution"),
6 titled "Resolution recommending measures for educating the public on and reducing exposure to
7 radiation from cell phones." *See* Exhibit G.

8 67. The Resolution contained the same findings and recommendations as the Draft
9 Resolution. *See* Exhibit G.

10 68. On January 26, 2010, the same day that the COE adopted the Resolution, the
11 City's Mayor introduced the Ordinance at a meeting of the San Francisco Board of Supervisors
12 (the "Board").

13 69. In a press release issued that day, the Mayor explained the Ordinance as follows:
14 "In addition to protecting the consumers' right to know, this legislation will encourage telephone
15 manufacturers to redesign their devices to function at lower radiation levels." Press Release,
16 *Mayor Newsom Introduces Cell-Phone Radiation Labeling Legislation* (Jan. 26, 2010) (Attached
17 hereto as Exhibit H).

18 70. The Mayor also stated that the Ordinance would likely cause manufacturers to
19 change the way they make their cell phones by reducing their SAR, and the Mayor drew a
20 comparison between the Ordinance and Proposition 65, which he said "dramatically reduced
21 public exposure to toxic materials because chemical companies removed toxic ingredients from
22 their products in order to avoid product warnings." *Id.*

23 71. The Mayor also asserted that "[t]here is no technological reason why a cell phone
24 needs to emit the maximum allowed levels of radiation. Phones that emit lower amounts of
25 radiation work just as well, and sport just as many features." *Id.*

26 72. The Mayor also asserted that "[w]ith the growing number of people using cell
27 phones on a daily basis and the increasing use by young children, the questions around the
28 potential health effects are significant enough to warrant precautionary action." *Id.*

1 73. On June 22, 2010, the Board voted to approve the Ordinance.

2 74. On July 1, 2010, the Mayor signed the Ordinance into law.

3 75. The Ordinance includes findings that challenge the sufficiency of the FCC's
4 regulations.

5 76. The "Findings" in the City's original, un-amended version of the Ordinance state
6 that "Government agencies and scientific bodies in the European Union (EU) and Israel have
7 recognized the potential harm of long-term exposure to radiation emitted from cell phones and, as
8 a result, have issued warnings about their use, especially by children." Ordinance, Findings, §
9 1(a). *See* Exhibit A.

10 77. The City does not consider the FCC's SAR limits contained in 47 C.F.R. §
11 2.1093(d) to be adequate to protect the public health.

12 **Requirements of the City's Original Ordinance, and Proceedings Thereon**

13 78. The City made clear from the outset that the purpose of its efforts was to address
14 perceived inadequacies in the federal regulatory regime, and to adopt protections for the citizens
15 of San Francisco that went beyond what the FCC determined was necessary and appropriate.

16 79. The Ordinance originally required that cell phone retailers (1) disclose at the point
17 of sale each cell phone's "SAR value," which is a measure of RF energy absorption, and (2)
18 provide certain "factsheets" and "display materials" to consumers regarding what the City
19 contends are possible risks associated with cell phones and ways to allegedly reduce those
20 possible risks. *See* Exhibit A.

21 80. The Ordinance also originally required the City's Department of the Environment
22 ("DOE") to adopt final implementing regulations by November 1, 2010. It gave "non-formula
23 cell phone retailers" (which, for ease of reference, shall be referred to herein as "small retailers")
24 15 months to comply (*i.e.*, until February 1, 2012) and gave "formula cell phone retailers"
25 (which, for ease of reference, shall be referred to herein as "large retailers") 3 months to comply
26 (*i.e.*, until February 1, 2011). The Ordinance also included a deferred enforcement regime,
27 providing small retailers 21 months between the DOE's adoption of final regulations and
28

1 enforcement (*i.e.*, until August 1, 2012), and large retailers six months (*i.e.*, until May 1, 2011).
2 *See* Exhibit A.

3 81. The City included the deferred enforcement regime to allow retailers a reasonable
4 period of time to come into compliance. *See* Exhibit A.

5 82. CTIA commenced this action on July 23, 2010, shortly after the City enacted the
6 Ordinance. Due to the City's decision, in response to CTIA's claims and its production of expert
7 reports, to completely revamp the approach in the Ordinance and issue new, implementing
8 regulations, the City's regime has been a moving target.

9 83. After filing its initial Complaint, CTIA sought a stay of the February 1, 2011
10 compliance date to allow for orderly litigation. The City initially was agreeable to a stipulation
11 that retailers would not have to comply until May 1, 2011, *see* Doc. 15 at 4, but in mid-October
12 2010, the City informed CTIA that it would not agree to stay the compliance date. The parties
13 filed a joint CMC statement on October 21, 2010, *id.*, with differing proposals for expedited
14 litigation. CTIA proposed a preliminary injunction schedule that would allow a hearing in
15 January 2011. *Id.* at 4-5. The City proposed a similar schedule for cross-motions on summary
16 judgment. *Id.* at 5.

17 84. Before the scheduled CMC, the City informed CTIA that it needed to make a
18 clarifying amendment to the Ordinance, necessitating changes in the proposed schedules. The
19 City's amendment would move the compliance date back three months to May 1, 2011 (*i.e.*, the
20 original enforcement date), so the parties and Court agreed to a modified schedule providing for
21 cross-motions for summary judgment and a hearing in late February. *See* Doc. 23.

22 85. That schedule became unworkable due to the City's delay in passing the
23 amendment, which was signed into law in January 2011 and contained a 3-month extension of the
24 compliance deadline. The parties jointly proposed—and the Court approved—a revised,
25 expedited schedule that included expert disclosures, depositions, and briefing. *See* Doc. 24; *see*
26 *also* Doc. 25. The parties conducted expert discovery pursuant to that schedule.

27 86. Under that schedule, CTIA produced two expert reports. The first was written by
28 Dr. David Stewart, Ph.D., then-Dean of the Graduate School of Management at U.C. Riverside.

1 Dr. Stewart reported the results of a survey of over 400 potential cell phone customers who were
2 shown the display materials and factsheet mandated by the original Ordinance and regulations.
3 Dr. Stewart concluded based on the responses of the surveyed consumers that those mandated
4 materials “convey a strong warning to consumers about the safety of cellular telephones.”

5 87. The second expert report was prepared by Ronald C. Petersen, a former Bell Labs
6 scientist and a member of IEEE with decades of experience with RF emissions and the
7 formulation of RF safety standards. Mr. Petersen’s report demonstrated that the use of the
8 maximum SAR number obtained during regulatory compliance testing as a consumer metric was
9 misleading, because actual consumer exposure depended on numerous variables that were not
10 reflected in the SAR numbers submitted for regulatory purposes.

11 88. The City deposed both of CTIA’s experts and produced a short rebuttal report to
12 Dr. Stewart’s report. The City was unable to name any expert or produce any expert report
13 impeaching any part of the scientific conclusions stated in Petersen’s report. A scheduled
14 deposition of the City’s rebuttal expert was cancelled when, in late January 2011, the City
15 informed CTIA that it intended to substantively revise the implementing regulations. *See* Doc.
16 43.

17 89. In light of the City’s consideration of revisions to the display materials and/or the
18 Ordinance itself, the City agreed to an extension of the compliance date, which was then May 1,
19 2011. On January 28, 2011, the Office of the City Attorney informed CTIA that the City would
20 delay enforcement of the Ordinance until June 15, 2011, three months after the City expected to
21 issue revised regulations, “to afford the retailers an opportunity to adjust to the new requirements
22 before having to comply.” Letter from Vince Chhabria, Deputy City Attorney, Office of the City
23 Attorney, to Craig Stewart, Counsel for CTIA (Jan. 28, 2011) (attached hereto as Exhibit I).

24 **The City’s Second Amendment of the Ordinance and Adoption of New Regulations**

25 90. On February 3, 2011, the parties informed the Court of the City’s intent to modify
26 the mandated disclosures and the accompanying regulations, which necessitated another change
27 in the briefing schedule. *See* Doc. 43. The City “advised CTIA that it believes these revisions
28 will be in place by no later than March 15.” *Id.* The parties (1) stipulated that the briefing

1 schedule be vacated, and (2) agreed to a stay of enforcement of the Ordinance and the
2 accompanying regulations until June 15, 2011, *i.e.*, the same three month period of delay
3 contemplated in the City's January 28 letter. The City agreed to "entertain in good faith any
4 request by CTIA to further delay enforcement should revised regulations become effective after
5 March 15, 2011." *Id.* at 3. The Court approved and set a CMC for June 16, 2011. Doc. 44.

6 91. Ultimately, the City did not change the implementing regulations or the content of
7 the original factsheet, poster, and display materials. Instead, a substantive amendment to the
8 Ordinance itself was introduced in May 2011. The amendment contemplated a different approach
9 to the Ordinance's disclosure requirements (eliminating all references to SAR and comparisons of
10 SAR), directed the DOE to adopt new implementing regulations and display materials on an
11 accelerated timeframe, and required all retailers to begin complying with the display requirements
12 within 15 and 30 days of DOE adopting the final regulations. *See* Doc. 46. In light of the
13 proposed amendment, the parties filed a Stipulation and Proposed Order Regarding Further Stay
14 and Briefing on June 7, 2011, in which the City stipulated to extend the stay of enforcement of
15 the existing Ordinance and regulations until further notice. *See id.* After a CMC on June 16, the
16 Court approved the parties' June 7 stipulation, which stayed enforcement of the then-existing
17 Ordinance and regulations until further notice and directed the parties to meet and confer
18 regarding a briefing schedule once amendments were enacted or new regulations adopted. *See*
19 Doc. 50. The Court also set a CMC for October 6, 2011. *Id.*

20 92. The Board enacted the amended Ordinance on July 26, 2011, and the City's Mayor
21 signed it on August 3, 2011.

22 93. The City's amendment includes a number of legislative findings that show the City
23 still believes that FCC-compliant phones pose a threat to health and safety. *See* Exhibit B. For
24 example, the City found that "it is in the interest of the public health to require cell phone retailers
25 to inform consumers about the potential health effects of cell phone use, and about measures they
26 can take to reduce their exposure to radiofrequency energy from cell phones." *Id.* § 1.8.

27
28

1 94. The Ordinance requires retailers to post and disseminate “informational
2 factsheets,” “informational posters,” and “informational statements” concerning cell phone safety,
3 *id.* § 1103; *see also* Exhibits D, E, and F.

4 95. While the Ordinance directs the DOE to specify the exact contents of the
5 “factsheet,” “poster,” and “statement,” the Ordinance itself requires the “statement” to warn
6 consumers that “cell phones emit radiofrequency energy that is absorbed by the head and body,”
7 and advise consumers how to “reduce exposure to radiofrequency energy from the use of a cell
8 phone.” *See* Exhibit B § 1103(c).

9 96. The Ordinance states that retailers have 15 days from DOE’s adoption of the
10 contents of the “poster” and “factsheet” to display and provide those materials to customers, and
11 they have 30 days to display the “statement.” *Id.* § 1103.

12 97. The Ordinance directs the DOE to adopt regulations specifying the contents of the
13 “poster,” “factsheet,” and “statement” “[w]ithin 15 days after the effective date of this ordinance
14 or as soon thereafter as possible.” *Id.* § 1104(d). The amendment to the Ordinance became
15 effective on September 6, 2011.

16 98. The City adopted new implementing regulations on September 30, 2011, and they
17 also have an effective date of September 30, 2011.

18 99. The regulations specify the size, form, and contents of the “poster.” The “poster”
19 must be “11 by 17 inches” and must be “identical” to the template provided by the City. The
20 poster must be displayed “in a prominent location visible to the public.” *Id.* § 1103(a). The
21 mandatory poster states in large bolded text that “**Cell Phones Emit Radio-frequency Energy**”
22 and that “**Studies continue to assess potential health effects of mobile phone use.**” It
23 “recommends” that consumers should: “Keep distance between your phone and body”; “Use a
24 headset, speaker phone, or text instead”; and “Ask for a free factsheet with more tips.” It has two
25 graphics depicting users with cell phones near their body and head, and the depicted cell phones
26 are surrounded by large red, orange, and yellow circles that are penetrating into the users’ head
27 and body. *See* Exhibit D.
28

1 100. The regulations specify the size, form, and contents of the “factsheet.” It must be
2 on 8.5 inch by 11 inch paper, and must be provided both to “any customer who requests it,
3 regardless of whether they purchase a cell phone or not” and “to every customer that purchases a
4 cell phone,” whether or not they request the “factsheet.” Ordinance § 1103(b). The “factsheet”
5 states in large bold text that “**You can limit exposure to Radio-frequency (RF) Energy from
6 your cell phone.**” It contains the same graphic of human forms, depicting users with cell phones
7 near their body and head, and the depicted cell phones are surrounded by large, red and orange
8 circles that are shown penetrating into the users’ head and body. Underneath that graphic, the
9 “factsheet” states “Although studies continue to asses potential health effects of mobile phone
10 use, the World Health Organization has classified RF Energy as a possible carcinogen.” The
11 factsheet recommends:

12 (a) “**Limiting cell phone use by children**” followed by a statement that
13 “Developing brains and thinner skulls lead to higher absorption in children”;

14 (b) “**Using a headset, speakerphone or text instead,**” followed by a
15 statement that “Exposure decreases rapidly with increasing distance from the phone”;

16 (c) “**Using belt clips and purses to keep distance between your phone and
17 body,**” followed by an instruction—“Do not carry on your body to at least meet the distance
18 specified in your phone’s user manual.”

19 (d) “**Avoiding cell phones in areas with weak signals (elevators, on transit,
20 etc.),**” followed by a statement that “Using a cell phone in areas of good reception decreases
21 exposure by allowing the phone to transmit at reduced power.”

22 (e) “**Reducing the number and length of calls,**” followed by an instruction to
23 “Turn off your cell phone when not in use.”

24 (f) The “factsheet” encourages the public to “Learn More” and provides
25 contact information for the City’s DOE, lists the FCC and a link to a webpage at the FCC’s
26 website (FCC.gov/cgb/consumerfacts/mobilephone/html), and lists the World Health
27 Organization with a link to a website on the WHO’s website
28 (WHO.int/mediacentre/factsheet/fs192/en/). See Exhibit F.

1 101. The regulations specify the size, form, and contents of the “informational
2 statement” to be included in all “display materials” for cell phones. The “statement” that must be
3 included in display materials in a specified size and font reads: “**Your head and body absorb**
4 **RF Energy from cell phones,**” “If you wish to reduce your exposure, ask for San Francisco’s
5 free factsheet.” Exhibit E.

6 102. The obvious and intended effect of the Display Materials is to force retailers to
7 convey the impression that there is a credible, scientifically-based question about the safety of
8 FCC-compliant cell phones and that there is a public health basis for consumers to reduce their
9 usage of FCC-compliant cell phones, and that the FCC implicitly or explicitly endorses these
10 positions and recommendations.

11 103. Other materials promulgated by the City’s DOE underscore the City’s view, in
12 contrast to the views of the FCC and of the wireless industry, that cell phones present a hazard to
13 public safety. For example, the DOE identifies “Cell Phone Radiation” as an “interest” in its
14 “Toxics Reduction” program, *see Toxics Reduction* (available at
15 http://www.sfenvironment.org/our_programs/interests.html?ssi=2), which it states “offers
16 information on environmentally friendly alternatives, safe and convenient disposal of toxic
17 products, and ideas on how to minimize the use of hazardous products and materials.” *Id.*
18 (available at http://www.sfenvironment.org/our_programs/overview.html?ssi=2).

19 104. The DOE provides a link to its page about “Cell Phone Radiation” on its page
20 describing “harmful” chemicals. *See Toxics Reduction: Home and Body Products*, available at
21 http://www.sfenvironment.org/our_programs/topics.html?ssi=2&ti=3. The “Cell Phone
22 Radiation” page states that “[t]here is currently a debate in the scientific community about the
23 effects of cell phone radiation on human health” and makes clear that the City adopted its
24 Ordinance “[i]n light of this debate.” *Cell Phone Radiation* (available at
25 http://www.sfenvironment.org/our_programs/interests.html?ssi=2&ti=3&ii=250).

26 105. The City states on its website that the compliance deadline will be October 25 for
27 the Poster and Factsheet and October 30 for the Statements.

28

1 (a) The Ordinance and Display Materials do not promote a public health
2 purpose because the FCC has adopted rules and determined that cell phones are safe. The
3 statements compelled by the City’s Ordinance and Display Materials do nothing to further the
4 public health.

5 (b) Any interest the City asserts in consumers’ “right to know” is an
6 insufficient basis for compelling speech. First Amendment law is clear that the government
7 cannot compel speech to further a “right to know” because, if it could, there would no end to the
8 information speakers could be forced to convey. *See, e.g., International Dairy Foods Ass’n v.*
9 *Amestoy*, 92 F.3d 67 (2d Cir. 1996); *see also Riley v. National Federation of the Blind of North*
10 *Carolina, Inc.*, 487 U.S. 781 (1988).

11 116. The Ordinance and Display Materials are not narrowly tailored to serve any lawful
12 governmental interest.

13 (a) The Ordinance and Display Materials are not narrowly tailored to any
14 interest the City may assert because it compels CTIA members to send false and misleading
15 messages to consumers and “the State has no legitimate reason to force retailers to affix false
16 information on their products.” *Schwarzenegger*, 556 F.3d at 967.

17 (b) The Ordinance and Display Materials are not narrowly tailored because
18 less restrictive alternatives are available to address whatever concern the City has. For example,
19 the City could publish (and, indeed, has published) materials on its websites, disseminate
20 “factsheets” to consumers itself, or use a variety of other means that do not implicate CTIA
21 members’ First Amendment rights. *See, e.g., Riley*, 487 U.S. at 800.

22 117. The Ordinance and Display Materials require Plaintiff’s members to use their
23 property to convey the City’s messages.

24 118. The Ordinance and Display Materials require Plaintiff’s members to convey the
25 City’s messages as if they were Plaintiff’s members’ own.

26 119. The Ordinance and Display Materials prescribe the precise font, size, method, and
27 location for delivery of the messages mandated by the City.

28

1 128. The FCC has expressly stated that its “exclusive jurisdiction over radio
2 communications . . . includes preemption of local jurisdictions in matters concerning RF safety.”
3 *Promotion of Competitive Networks in Local Telecommunications Markets*, 19 F.C.C.R 5637,
4 5642 (¶ 11) (2004) (quoting OET Bulletin No. 65).

5 129. The FCC and United States Department of Justice have asserted that state
6 regulations targeting RF emissions from cell phones as unsafe are preempted because they enter
7 the “federal government’s exclusive authority.” Brief of the United States and the FCC as
8 Amicus Curiae in Support of Appellees at 12-13, *Murray v. Motorola*, 982 A.2d 764 (D.C. 2009)
9 (No. 07-cv-1074) (available at 2008 WL 7825518).

10 130. Plaintiff is therefore entitled to a declaration, pursuant to 28 U.S.C. § 2201, that
11 the Ordinance and Display Materials violate the Supremacy Clause of the U.S. Constitution
12 because they are preempted by federal law.

13 131. Plaintiff is further entitled to preliminary and or permanent injunctive relief,
14 pursuant to 28 U.S.C. § 2202, prohibiting the City or any of its officers, employees, or agents
15 from enforcing or threatening to enforce the Ordinance and Display Materials against Plaintiff’s
16 members.

17 **COUNT THREE**

18 **VIOLATION OF THE SUPREMACY CLAUSE [Conflict Preemption]**

19 132. Plaintiff incorporates the preceding paragraphs by reference as though set forth
20 fully herein.

21 133. When there is a conflict between a state or local law and federal law, the federal
22 law preempts the state or local law.

23 134. The Ordinance and Display Materials are preempted because they conflict with
24 federal law in a number of significant ways.

25 135. The Ordinance and Display Materials upset the balance struck by the FCC
26 between two competing federal policies– safeguarding against potential health effects from RF
27 energy, on the one hand, and maintaining a robust and efficient nationwide, efficient wireless
28

1 communications system (which itself carries significant consumer, public safety, and Homeland
2 Security benefits).

3 136. The Ordinance and Display Materials are preempted because their obvious and
4 intended effect is to warn consumers that FCC-compliant cell phones are unsafe or potentially
5 unsafe. This conflicts with the FCC's determination that cell phones are safe and that the federal
6 rules are adequate to protect consumers from potentially harmful RF emissions.

7 137. The Ordinance and Display Materials conflict with federal law by challenging the
8 FCC's determination that FCC-compliant cell phones are safe.

9 138. The Ordinance and Display Materials conflict with federal law by challenging the
10 FCC's decision not to require RF emission warnings for RF exposure from cell phones. The
11 Ordinance and Display Materials conflict with federal law by disrupting Congress' goal of
12 creating and maintaining a uniform and national regulatory regime for wireless communications.

13 139. The Ordinance and Display Materials conflict with federal law by
14 mischaracterizing the nature of RF emissions from cell phones and inaccurately representing facts
15 and opinions related to RF emissions and the regulations promulgated by the federal government.

16 140. In addition, by requiring the compelled disclosures, the Ordinance and Display
17 Materials unlawfully conflict with the FCC's determination not to require such disclosures. The
18 FCC's decision to adopt a safety standard that assumes consumers have no knowledge or control
19 over exposure to RF from wireless phones, and its related affirmative decision not to require
20 disclosures necessary for other types of devices carries preemptive force. *See, e.g., Arkansas*
21 *Elec. Co-op. Corp. v. Arkansas Public Service Comm'n*, 461 U.S. 375, 384 (1983) (“[A] federal
22 decision to forgo regulation in a given area may imply an authoritative federal determination that
23 the area is best left *unregulated*, and in that event would have as much pre-emptive force as a
24 decision to regulate.”).

25 141. Plaintiff is therefore entitled to a declaration, pursuant to 28 U.S.C. § 2201, that
26 the Ordinance and Display Materials violate the Supremacy Clause of the U.S. Constitution
27 because they are preempted by federal law.
28

1 142. Plaintiff is further entitled to preliminary and or permanent injunctive relief,
2 pursuant to 28 U.S.C. § 2202, prohibiting the City or any of its officers, employees, or agents
3 from enforcing or threatening to enforce the Ordinance and Display Materials against Plaintiff's
4 members.

5 **COUNT FOUR**

6 **VIOLATION OF 42 U.S.C. § 1983**

7 143. Plaintiff incorporates the preceding paragraphs by reference as though set forth
8 fully herein.

9 144. 42 U.S.C. § 1983 provides a civil cause of action to any person who is deprived of
10 rights guaranteed by the U.S. Constitution or federal laws by another under color of State law.

11 145. The City, acting under color of state and local law, and through its enactment,
12 threatened enforcement and enforcement of the Ordinance and Display Materials as alleged
13 herein, has deprived Plaintiff's members of their rights under the First and Fourteenth
14 Amendments of the U.S. Constitution.

15 146. Pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983, Plaintiff's members are
16 therefore entitled to a declaration that the City, by its enactment, threatened enforcement and
17 enforcement of the Ordinance and Display Materials, has violated their rights under the First and
18 Fourteenth Amendments of the U.S. Constitution.

19 147. Pursuant to 42 U.S.C. § 1983, Plaintiff is further entitled to preliminary and or
20 permanent injunctive relief, prohibiting the City or any of its officers, employees, or agents from
21 enforcing or threatening to enforce the Ordinance and Display Materials against Plaintiff's
22 members.

23 148. As a further result of the City's violation of Plaintiff's rights as alleged herein,
24 Plaintiff is entitled to an award of their attorneys' fees pursuant to 42 U.S.C. § 1988.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff respectfully request that this Court enter judgment in favor of
27 Plaintiff and against the City and award Plaintiff the following relief:
28

1 (a) A declaration, pursuant to 28 U.S.C. § 2201, that the Ordinance,
2 implementing regulations, and Display Materials violate the Free Speech Clause of the First
3 Amendment of the U.S. Constitution;

4 (b) A declaration, pursuant to 28 U.S.C. § 2201, that the Ordinance,
5 implementing regulations, and Display Materials violate the Supremacy Clause of the U.S.
6 Constitution because they are preempted by federal law;

7 (c) An injunction prohibiting the City or any of its officers, employees, or
8 agents from enforcing or threatening to enforce the Ordinance, implementing regulations, and
9 Display Materials against Plaintiff's members;

10 (d) All costs, attorneys' fees, and other expenses that Plaintiff incurs; and

11 (e) Such further relief that the Court may deem just and proper.

12
13 Dated: October 4, 2011

JONES DAY

14
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