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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF STANISLAUS**

12 PACIFIC MEDIA WORKERS GUILD;
ANGEL JOSE FLORES; JULISSA RUIZ
13 RAMIREZ; and ALYSSA LEIVA;

14 Plaintiffs,

15 vs.

16 CITY OF MODESTO and BRANDON
GILLESPIE, in his official capacity as
Modesto Chief of Police,

17 Defendants.
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Case No.

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

**[Cal. Code Civ. Proc. §§ 526, 526a, 1060;
Cal. Pen. Code § 409.7; Cal. Const. Art. I,
§§ 2, 3, 7; U.S. Const., 1st and 14th Amends.
42 U.S.C. § 1983]**

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1 Plaintiffs PACIFIC MEDIA WORKERS GUILD, ANGEL JOSE FLORES, JULISSA RUIZ
2 RAMIREZ, and ALYSSA LEIVA (collectively, “Plaintiffs”) bring this case against the CITY OF
3 MODESTO and BRANDON GILLESPIE, in his official capacity as the Modesto Police Chief
4 (together, “the City” or “Modesto”) for deprivation of rights enshrined in federal and state law.
5 Plaintiffs hereby allege as follows.

6 **INTRODUCTION**

7 1. This action challenges unconstitutional provisions in Title 4, Chapter 23, of the Modesto
8 Municipal Code, entitled “Restrictions on Use of Specified Items During Public Assembly,” as
9 amended by Ordinance Nos. 3804-C.S. & 3805-C.S. (collectively, “the Ordinance”). Plaintiffs are
10 a group of concerned individuals who seek to peacefully assemble and protest in Modesto, and a
11 reporters’ union whose members seek to safely report on such demonstrations. Modesto’s
12 Ordinance thwarts each plaintiff’s aims by imposing, at *any* public assembly, an overbroad and
13 unworkably vague ban on face coverings and other basic personal safety gear. Because these
14 restrictions infringe Plaintiffs’ rights under the Federal Constitution, the California Constitution,
15 and state statutory protections for journalists, they should be invalidated either on their face or as
16 applied to Plaintiffs’ protected activities.

17 2. As amended, the Ordinance makes it a misdemeanor—punishable up to six months in
18 jail—for any person to “utilize, carry, or possess” nineteen categories of items at “any
19 demonstration, rally, protest, counter-protest, picket line, march, or public assembly.” (City of
20 Modesto Ordinance § 4-23.02 (2026) [“Ord.”].) This lawsuit targets only the Ordinance’s
21 provisions that prohibit personal items and basic safety gear like face coverings, scarves, eyewear,
22 sports equipment, impact-resistant clothing, helmets, gas masks, and padded vests. (*Id.*, §§ 4-
23 23.02(a)(13)-(15), (18)-(19).) Based on the City’s own interpretation, the challenged provisions
24 permit people to dress up as “dancing ninjas” and in “inflatable frog suits” that hide their
25 identities, but criminalize the protester who wears a bandana across their nose and the reporter
26 who brings basic safety gear along to a protest.

27 3. Many of the personal items banned by the Ordinance are important to Plaintiffs and other
28 members of the public when attending a protest or engaging in other protected activities. People,

1 like plaintiffs Angel Jose Flores, Julissa Ruiz Ramirez, and Alyssa Leiva, often carry some of
2 these items for expressive reasons or to keep themselves safe. Members of the press, including
3 those in the plaintiff Pacific Media Workers Guild (“the NewsGuild”), similarly carry safety
4 gear—helmets, vests, respirator masks, shatterproof goggles—while reporting on public
5 demonstrations. In fact, most journalist organizations now recommend that reporters carry exactly
6 this gear with them to a protest. Banning the gear leaves journalists especially vulnerable when—
7 as authorized by Penal Code section 409.7—they remain at an assembly after a dispersal order to
8 continue reporting on public events and official actions.

9 4. In addition to infringing these free speech rights, the Ordinance’s overbroad ban on
10 personal items also violates federal and state constitutional guarantees for due process. (*See* U.S.
11 Const. 5th Am; Cal. Const., Art. I, § 7.) Courts examine any government restriction on our
12 fundamental freedoms “for definiteness or certainty of expression.” (*Kolender v. Lawson* (1983)
13 461 U.S. 352, 357.) A law like the Ordinance violates due process guarantees because it does not
14 include “objective factors” to govern enforcement and gives rise to the likelihood that disfavored
15 speech will be targeted. (*Forsyth County v. Nationalist Movement* (1992) 505 U.S. 123, 133.)

16 5. Here, a number of the Ordinance’s provisions are confusingly drafted, making it unclear
17 *what* exactly the Ordinance applies to and *when*. The Ordinance does not contain any definition of
18 “public assembly,” implying that it governs any time two or more people gather in public. And the
19 vague ban on “wearing” any “accessory or item that covers or partially covers the face” includes a
20 labyrinth of confounding exceptions for medical necessity, religious beliefs, and “costumes which
21 obscure the face as part of the expressive function of the costume.” (Ord. § 4-23.02(a)13(i)-(iii).)
22 These exceptions create a hodgepodge of absurd contradictions—medical masks are allowed,
23 while bandanas are banned. Costumes that obscure identity are permitted. But wearing a keffiyeh
24 around the face to express support for Palestine could land someone in jail. Sunglasses might be
25 acceptable, but clear goggles are probably forbidden. It all depends on how a police officer views
26 the “accessory.”

27 6. Taken together, the Ordinance’s unclear scheme gives rise to absurd results and the kind
28 of rudderless discretion and selective enforcement that the Constitution abhors. A law cannot

1 “entrust lawmaking to the moment-to-moment judgment of the policeman on his beat,” or
2 “confer[] on police a virtually unrestrained power to arrest and charge persons with a violation.”
3 (*Kolender, supra*, 461 U.S. at p. 357; *see also Williams v. Garcetti* (1993) 5 Cal.4th 561, 575.)

4 7. Moreover, the Ordinance runs afoul of longstanding, and binding, California law. (*See*
5 *Auto Equity Sales, Inc. v. Superior Court of Santa Clara* (1962) 57 Cal.2d 450, 455.) Almost fifty
6 years ago, the California Court of Appeal in *Ghafari v. Municipal Court* (1978) 87 Cal.App.3d
7 255 struck down a criminal statute similar to the Ordinance that had banned public face coverings
8 except when worn “for the purposes of amusement, entertainment, or in compliance with any
9 public health order.” (87 Cal.App.3d at p. 260.) The court held that, “in flatly prohibiting
10 anonymous public appearances by persons exercising their First Amendment rights, [the statute]
11 sweeps too broadly.” (*Id.* at p. 261.) The court further reasoned that the “very existence” of the
12 overbroad statute was chilling, adding that “where a vague statute ‘abuts upon sensitive areas of
13 basic First Amendment freedoms, uncertain meanings inevitably lead citizens to steer far wider of
14 the unlawful zone than if the boundaries of the forbidden areas were clearly marked.’” (*Id.* at p.
15 263 [quoting *Braxton v. Municipal Court* (1973) 10 Cal.3d 138, 151].)

16 8. The present moment teaches that the act of protesting is more important, but also more
17 imperiled, than ever. In the last year, federal and state law enforcement have intensified their
18 surveillance of and crackdowns on public demonstrations. Peaceful protesters and journalists have
19 been subjected to invasive facial recognition technology, tear gas, rubber bullets, and, on repeated
20 occasions in cities around the country including in California, violent force. The surveillance can
21 upend one’s life, employment, and even immigration status. And the crowd control measures can
22 have wide-ranging impacts too. They do not just target a single individual who might be failing to
23 comply with a lawful order. They affect all those in the vicinity of their use, leading to severe
24 injuries, such as broken eye sockets, fractured skulls, and other lasting health issues. Members of
25 the public and press are essential to documenting these interactions and abuses. But the Ordinance
26 threatens to undermine their safety as they do so.

27 9. The rights of free speech, free association, free assembly, free press, and due process are
28 central to upholding our democracy. Democracy is, however, messy. Some measure of “unrest”

1 must be tolerated. (*Terminello v. Chicago* (1949) 337 U.S. 1, 4.) Modesto’s interest in addressing
2 such unrest is governed by constitutional limits. And at a protest, “the proper response to potential
3 and actual violence is for the government to ensure an adequate police presence” so that it may
4 arrest “those who actually engage in [unlawful] conduct, rather than [] suppress legitimate First
5 Amendment conduct as a prophylactic measure.” (*Collins v. Jordan* (9th Cir. 1996) 110 F.3d
6 1363, 1372 [discussing *Cox v. Louisiana* (1965) 379 U.S. 536, 551 and *Kunz v. New York* (1951)
7 340 U.S. 290, 294-95].)

8 10. Modesto exceeds constitutional limits in overlooking that it already has the tools to
9 address the unlawful conduct that it worries about. Among other things, California has long
10 criminalized disturbing the peace, destroying property, and disobeying police orders. Should any
11 person engage in such activity while wearing a “mask, false whiskers, or any personal disguise
12 (whether complete or partial) for the purpose of . . . evading or escaping discovery, recognition, or
13 identification,” they can be punished under Penal Code section 185. This law has been on the
14 books since 1872.

15 11. Officials in Modesto misapprehend the weight of these legal authorities at the expense of
16 their own residents, including Plaintiffs. In 2019, the City Council started with an unconstitutional
17 anti-protest law that targeted specific groups and imposed overbroad restrictions. Subsequent
18 amendments have only made the law more unclear and more unwieldy. Modesto police officers
19 have many lawful tools at their disposal to address unruly behavior at public assemblies; they do
20 not need this unconstitutional one. Plaintiffs therefore respectfully request that the Court declare
21 the challenged provisions unlawful and enjoin the City from chilling their rights, and the rights of
22 the general public, to due process, free speech, free association, free assembly, and a free press.

23 **JURISDICTION AND VENUE**

24 12. The Court has jurisdiction over Plaintiffs’ claims for declaratory and injunctive relief
25 under Article VI section 10 of the California Constitution and under Code of Civil Procedure
26 sections 410.10, 526, 526a, and 1060.

27 13. Venue is proper in this Court pursuant to Code of Civil Procedure section 393 and 395
28 because the conduct complained of occurred in Stanislaus and because this action proceeds against

1 public officers in Stanislaus for actions taken “in virtue of [their] office.” (Code Civ. Proc.,
2 § 393(b).) The relief sought is within this Court’s power to grant.

3 **PARTIES**

4 **Plaintiffs**

5 14. PACIFIC MEDIA WORKERS GUILD (“the NewsGuild”) is a labor union that
6 represents journalists in the Modesto area, including journalists at the Modesto Bee and the
7 Modesto Focus. As a representative union, the NewsGuild advocates for its journalist members’
8 working conditions, negotiates contracts with newsrooms, helps its members prepare for
9 challenging assignments (such as covering protests), mentors student journalists, and works to
10 defend quality journalism. It also advises and trains its members about best practices when
11 covering protests. Because journalists are frequently injured by law enforcement’s use of crowd
12 control methods, including tear gas and rubber bullets, the NewsGuild specifically recommends
13 that all members covering protests carry basic safety gear, including respirator masks, helmets,
14 and goggles. The NewsGuild’s members would like to be able to bring and use this basic safety
15 gear when needed while covering public assemblies without threat of arrest and criminal sanction.
16 The NewsGuild worries that having to choose between personal safety and arrest will impair their
17 members’ constitutionally protected right to report on public assemblies and undercut their
18 statutory right to remain at a protest after a dispersal order is issued. The NewsGuild’s members
19 are taxpayers in Modesto and the State of California. The NewsGuild’s members have paid taxes
20 in Modesto within the past year and the NewsGuild has been assessed and/or paid taxes to the
21 State of California within one year of filing this action.

22 15. ANGEL JOSE FLORES is a local Modesto resident of Mexican American descent. He is
23 a father and works as a school bus driver. On June 14, 2025, Mr. Flores attended an “ICE Out”
24 protest in downtown Modesto. The protest was organized by a Modesto-centered group known as
25 the Central Valley Black, Indigenous, and People of Color Coalition (“the Coalition”). Mr. Flores
26 wore a gaiter-style facial covering to the protest for his own comfort and to protect his anonymity
27 out of fear of retaliation for engaging in protected free speech activity. Within minutes of his
28 arrival, Modesto police officers arrested Mr. Flores for wearing the mask in violation of the

1 Ordinance. He was held in custody for 12 hours and no charges were ever filed. Mr. Flores would
2 like to attend future protests in Modesto, but because of the Ordinance and the police's history of
3 selective and disparate enforcement detailed herein, he fears doing so. Mr. Flores is confused as to
4 why the officers arrested him, but not others, for wearing masks that covered roughly the same
5 amount of their faces at the protest. Mr. Flores is a taxpayer in Modesto and the State of
6 California. Mr. Flores has paid taxes in Modesto within the past year and has been assessed and/or
7 paid taxes to the State of California within one year of filing this action.

8 16. JULISSA RUIZ RAMIREZ grew up in the Modesto area and is a co-founder of the
9 Coalition, which is centered in Stanislaus County. Ms. Ramirez regularly organizes and attends
10 protests in Modesto on a range of controversial issues touching on immigration enforcement,
11 police conduct, income inequality, food insecurity, and the war in Gaza. At these events, Ms.
12 Ramirez often wears a checkered scarf called a keffiyeh to cover her face as a way of expressing
13 support for Palestine and to maintain a degree of anonymity out of fear of retaliation for engaging
14 in protected free speech activity. Activists opposing her positions have targeted and doxed Ms.
15 Ramirez in retaliation for her public advocacy. She is concerned that if she protests at certain
16 events without a face covering in Modesto, the online targeting and harassment will increase. Ms.
17 Ramirez would like to organize and attend future protests in Modesto, but because of the
18 Ordinance and the police's history of selective and disparate enforcement detailed herein, she fears
19 doing so. Ms. Ramirez is particularly afraid that the City will enforce the Ordinance in an arbitrary
20 and biased manner, as well as prevent her from wearing a keffiyeh facial covering at future
21 protests. Given increasing news reports about how quickly protests can turn chaotic, Ms. Ramirez
22 would also like to carry basic safety gear, such as goggles, a protective vest, and a helmet when
23 attending demonstrations. But for the confusion and risk of arrest created by the Ordinance, Ms.
24 Ramirez would bring such gear with her to some protests while engaging in protected peaceful
25 assembly and free speech activities. Not being able to wear this face covering or to carry this gear
26 chills Ms. Ramirez's free speech rights. Ms. Ramirez is a taxpayer in Modesto and the State of
27 California. Ms. Ramirez has paid taxes in Modesto within the past year and has been assessed
28 and/or paid taxes to the State of California within one year of filing this action.

1 17. ALYSSA LEIVA is a member of the Coalition and a frequent attendee at Modesto
2 protests. At local protests, Ms. Leiva often wears a keffiyeh as a facial covering to express her
3 support for Palestine and to maintain a degree of anonymity out of fear of retaliation for engaging
4 in protected free speech activity. Activists opposing her positions have targeted and doxed Ms.
5 Leiva in retaliation for her public advocacy. She is concerned that if she protests in Modesto at
6 certain events without a face covering, the online targeting and harassment will increase. Ms.
7 Leiva would like to attend future protests in Modesto, but because of the Ordinance and the
8 police's history of selective and disparate enforcement detailed herein, she fears doing so. Ms.
9 Leiva is particularly afraid that the City will enforce the Ordinance in an arbitrary and biased
10 manner, as well as prevent her from wearing a keffiyeh facial covering. But for the confusion and
11 risk of arrest created by the Ordinance, Ms. Leiva would continue to wear a keffiyeh as a face
12 covering while engaging in protected peaceful assembly and free speech activities. Not being able
13 to wear this covering chills Ms. Leiva's free speech rights. Ms. Leiva is a taxpayer in Modesto and
14 the State of California. Ms. Leiva has paid taxes in Modesto within the past year and has been
15 assessed and/or paid taxes to the State of California within one year of filing this action

16 **Defendants**

17 18. Defendant CITY OF MODESTO is a charter city and municipal corporation duly created
18 and existing under the California Constitution and state law. The City is responsible for amending,
19 approving, and adopting the Ordinance set forth at Section 4-23.02 of the Municipal Code.

20 19. Defendant BRANDON GILLESPIE is the Modesto Chief of Police. Mr. Gillespie
21 oversees the Modesto Police Department, which enforces the challenged Ordinance, issues
22 citations, and supports prosecutions alleged thereunder.

23 **STATEMENT OF FACTS AND LEGAL BACKGROUND**

24 **I. The Ordinance's legislative history, record of selective enforcement, and absurd results 25 demonstrate fatal flaws.**

26 **A. The City Council adopted the original Ordinance in 2019 and then expanded its restrictions in 2021 to target specific speakers.**

27 20. Modesto enacted the first version of the Ordinance on August 13, 2019 as an urgency
28 measure to take effect before a "Straight Pride" event scheduled to occur just eleven days later on

1 August 24. The original ordinance prohibited individuals from “utiliz[ing], carry[ing], or
2 possess[ing]” specified items while attending any “demonstration, rally, protest, counter-protest,
3 picket line, march, or public assembly.” Among the prohibited items were “the wearing of a mask,
4 scarf, bandana, or any other accessory or item that covers or partially covers the face, shields the
5 wearer’s face from view, and conceals the wearer’s identity, except for coverings worn due to
6 religious beliefs, practices or observances or due to medical necessity.”¹

7 21. When presenting the original version of the Ordinance to the City Council, then-Police
8 Chief Galen Carroll explained that the restrictions were necessary because groups associated with
9 ideologies of the “Proud Boys and Antifa” were likely to attend the Straight Pride event. He
10 further advised that “masks are only brought to events so you have complete anonymity to do
11 whatever you want, to commit crimes and th[en] you can’t be identified later.” Chief Carroll
12 displayed two slides to illustrate his interpretation. The first was entitled “Rallies / Protests.” It
13 portrayed a single photo of a crowd gathered around an “Antifa” flag. The second slide, entitled
14 “Proud Boys / Antifa,” showed a photo of people purportedly affiliated with those two groups.²

15 22. During the legislative deliberations, the City Council expressed animus toward the Proud
16 Boys, Antifa, and the Straight Pride event organizers. The supporting materials in the Council’s
17 agenda packet identified only these three groups. Then-Councilmember Kristin Ah You stated that
18 she became supportive of the legislation as soon as she learned that “the Proud Boys and Antifa
19 were . . . invited” to the Straight Pride event and that she “want[ed] no part of this in our
20 community.”³

21 23. In the fall of 2021, the Police Department urged the City Council to expand the original
22 version of the Ordinance to prohibit metal containers, gas masks, helmets, laser pointing devices,
23 umbrellas “in the absence of rain,” and impact-resistant clothing. Police Lieutenant T.J. Moffett

24 _____
25 ¹ Modesto, Cal., Ordinance No. 3701-C.S. at p. 85 (Aug. 13, 2019) (codified at Modesto Mun.
Code tit. 4, ch. 23, § 2(a)), <https://tinyurl.com/mrr4fsw2>.

26 ² City of Modesto, 8/13/19 – *City of Modesto Council Meeting*, <https://tinyurl.com/yev4f44v>
(timestamps 3:15:29; 3:03:48; 3:02:45; 3:03:08).

27 ³ City of Modesto, 8/13/19 – *City of Modesto Council Meeting*, <https://tinyurl.com/yev4f44v>
28 (timestamp 3:20:09); Modesto, Cal., Ordinance No. 3701-C.S. at p. 80 (Aug. 13, 2019) (codified
at Modesto Mun. Code tit. 4, ch. 23, § 2(a)(13)), <https://tinyurl.com/mrr4fsw2>.

1 stated that the restrictions would “only” be enforced when “a specific event or events might lead to
2 violence or other acts designed to prevent the exercise of constitutional rights.”⁴

3 24. To support the ban on helmets, tactical and impact-resistant gear, Lieutenant Moffett
4 asserted that this gear is “confrontational garb” neither “designed nor intended to facilitate
5 peaceful assembly or the exercise of constitutional rights.” He further claimed that that this gear
6 “may provide a level of intimidation to peaceful participants,” can be used as a weapon or to hide
7 identity, or can be “used as a tool to resist/overcome the lawful authority of officers, or in
8 escalation of conflict with other protesters.” With respect to “gas masks or similar breathing
9 devices,” his comments echoed the June 23, 2021 Council Agenda Report’s assertion that “[n]on-
10 authorized persons in possession of such masks during a public assembly have no justification for
11 their possession, other than a desire to overcome crowd control techniques used by law
12 enforcement.” Lieutenant Moffett did not cite specific examples of a helmet or tactical and
13 impact-resistant gear itself being used as a weapon. Nor did he discuss the common safety uses of
14 helmets, such as when riding a motorcycle, skateboard, or bicycle.⁵

15 25. The City Council unanimously adopted the expanded list of banned items as a non-
16 urgency measure one month later on September 7, 2021.⁶

17
18 **B. The Modesto Police Department has engaged in selective and disparate
enforcement of the Ordinance.**

19 26. The original Ordinance was in effect at the time the 2019 Straight Pride event and the
20 amended Ordinance was in effect for multiple demonstrations between 2021 and 2025.
21 Notwithstanding, many members of the community still attended these events wearing face
22 coverings and carrying banned items. The Modesto Police Department did not, however, report
23 making any arrests for violations of the Ordinance at these prior events. Instead, Modesto arrested

24
25 ⁴ City of Modesto, 8/10/21 – *City of Modesto Council Meeting*, <https://tinyurl.com/5facxjcb>
(timestamp 2:41:36); *see also* Modesto, Cal., Ordinance No. 3735-C.S. (Aug. 20, 2021) (codified
26 at Modesto Mun. Code tit. 4, ch. 23, § 2(a)), <https://tinyurl.com/c6e2hwm7>.

27 ⁵ City of Modesto, 8/10/21 – *City of Modesto Council Meeting*, <https://tinyurl.com/5facxjcb>
(timestamps 2:44:39; 2:45:40; 2:45:48).

28 ⁶ City of Modesto, 9/7/21 – *City of Modesto Council Meeting Agenda*,
<https://tinyurl.com/3dr2b2x8> (Item 3).

1 individuals for allegedly violating the Ordinance for the first (and only) time on June 14, 2025.⁷

2 27. Two protests took place in downtown Modesto on June 14. One protest coalesced around
3 a “No Kings” message and was organized by local progressive organizations as part of a broader
4 national movement opposed to President Trump’s executive actions. The second protest took place
5 near the 10th Street Plaza and was partially organized by the Coalition. The Coalition encouraged
6 the public to come together to express an “ICE Out” message in protest of ramped-up immigration
7 enforcement tactics and mass arrests in California and across the country. In preparation, Modesto
8 police installed a surveillance camera in the Plaza where the ICE Out protest was scheduled and
9 planned to conduct surveillance via airborne drones.⁸

10 28. On the day of the protests, Modesto police estimated that the No Kings protest had a
11 crowd of approximately 2,000 to 3,000 people. According to police estimates, the ICE Out protest
12 was much smaller and drew approximately 150 attendees. Pictures show that it was largely
13 attended by people of color. Though the No Kings crowd was diverse, it was far whiter and more
14 affluent than the crowd at the ICE Out protest. Both protest groups included people wearing masks
15 and other accessories that covered their faces. But law enforcement reported no arrests under the
16 Ordinance at the No Kings protest even though it had promised a “zero tolerance” approach. The
17 four people arrested on June 14 for wearing a mask were all participants in the ICE Out rally.⁹

18 29. One of the June 14 arrestees was Plaintiff Angel Jose Flores, who has worn a mask as
19 part of his regular routine for nearly a decade. Mr. Flores has done so for different reasons,
20 including to stay warm, calm his nerves, and minimize the risk of illness while at work, at the

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22 ⁷ Compare Exs. 13 & 5-22 with Ex. 4, City of Modesto, *Council Agenda Report re: Urgency*
23 *Ordinance and Non-Urgency Ordinance Amending the City of Modesto Municipal Code Title 4*
24 *Chapter 23*, City Council Meeting Agenda Packet (Dec. 2, 2025) 675-96, access at
<https://tinyurl.com/44ha6ea4>; City of Modesto, *Community Police Review Board Meeting*,
YouTube (Jul. 16, 2025) <https://tinyurl.com/2n96myf8> (timestamp: 53:14).

25 ⁸ City of Modesto, *Community Police Review Board Meeting*, YouTube (Jul. 16, 2025)
<https://tinyurl.com/2n96myf8> (timestamp 14:44-30:30).

26 ⁹ See City of Modesto, *Community Police Review Board Meeting*, YouTube (Jul. 16, 2025),
27 <https://tinyurl.com/2n96myf8> (timestamp 11:24-24:00); Julietta Bisharayan, *Modesto’s ‘No Kings’*
28 *protest begins at 10th St. Plaza with hundreds in attendance*, Modesto Bee (Jun. 16, 2025),
<https://tinyurl.com/5n66uph7>; Julietta Bisharayan, Maria Luisa Gigueroa and Trevor Morgan,
Arrests at weekend protest are decried at Modesto police review board meeting, Modesto Bee
(Jun. 20, 2025), <https://tinyurl.com/399hem3r>.

1 gym, and in other crowded places. Consistent with this practice, Mr. Flores was wearing a gaiter-
2 type face covering at the ICE Out protest. He had been motivated to attend the rally after seeing
3 news reports about the federal government’s aggressive campaign to arrest and detain immigrants
4 in Los Angeles. The ICE Out protest was one of the first protests that Mr. Flores had ever attended
5 and he was apprehensive about going to such a public demonstration. Still, he wanted to be there
6 to peacefully stand up for—in his own words—the “disappeared and the voiceless.”

7 30. Within twenty minutes of Mr. Flores’s arrival at the ICE Out protest, Modesto police
8 officers detained and arrested him. Officers led Mr. Flores to a police vehicle, confiscated his
9 mask, and searched him. They next drove Mr. Flores to a nearby alley where additional police
10 officers were present. He was then transported to the Modesto jail. When Mr. Flores asked one of
11 the officers why this was happening, the officer indicated that Mr. Flores was going to jail for
12 wearing a mask. There was no suggestion or evidence that Mr. Flores had been wearing his mask
13 to commit a separate criminal act at the protest. Mr. Flores remained in jail for almost 12 hours
14 before being released just before midnight with a citation for violating Modesto Municipal Code
15 section 4-23.02(a)(13) and Penal Code section 148(a)(1).

16 31. That same evening, Chief Gillespie recounted the day’s protest activity to the Mayor and
17 City Council in an email. With respect to the arrest of Mr. Flores and the others alleged to have
18 worn masks, the Chief wrote the arrests “were made early and intentionally to remove agitators
19 who showed clear intent to not follow the law and potentially disrupt an otherwise lawful and
20 peaceful gathering.”

21 32. On August 11, the City Attorney announced that it would not be filing criminal charges
22 “in connection with the June 14 face-covering violations” at the ICE Out rally. The City Attorney
23 urged that, in “the future,” “all protest organizers and community members . . . familiarize
24 themselves with applicable laws and work collaboratively with the City”¹⁰

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26
27
28 ¹⁰ City of Modesto, *City Elects to Move Forward: Continues to Encourage Awareness and Adherence to Local Laws*, (Aug. 11, 2025), <https://tinyurl.com/3y4v9xwm>.

1 **C. The community’s outcry over the Police Department’s selective and disparate**
2 **enforcement.**

3 33. Frustrated by the Modesto Police Department’s differential treatment of the ICE Out and
4 No Kings protests, members of the public attended the very next City Council meeting on June 24
5 and the Community Police Review Board meeting on July 16. At both, speakers questioned why
6 the Ordinance was enforced only at the ICE Out rally, even though the No Kings protest drew
7 exponentially more participants, many of whom wore face coverings and accessories that
8 ostensibly violated the Ordinance.

9 34. During the July 16 Community Police Review Board meeting, Chief Gillespie provided
10 his department’s account of the day. In so doing, he disclosed that officers had conducted
11 surveillance of the protesters via airborne drones and had installed at least one security camera at
12 the 10th Street Plaza on the eve of the ICE Out protests. The Chief also revealed that some officers
13 were deployed in plain clothes to monitor protesters and usher arrestees into unmarked cars.¹¹

14 35. To justify the arrests, Chief Gillespie stated that officers had used their discretion and
15 arrested “the most egregious” violators of the anti-mask provision. The Chief, in defining what he
16 meant by “most egregious,” explained that he felt “very confident” that the individuals arrested
17 were wearing masks to conceal their identity. He did not mention any other basis—unlawful or
18 otherwise—for arresting the individuals. Without reference to any evidence of the Coalition’s
19 specific involvement, the Chief falsely stated that the Coalition had encouraged people to violate
20 the Ordinance at the ICE Out rally.¹²

21 36. The Chief further suggested that it would be the responsibility of any individual wearing
22 a mask to approach law enforcement and affirmatively inform officers if they were wearing a
23 mask pursuant to the Ordinance’s religious or medical exemptions. But, the Chief insisted, he
24 would not be “the one who decides,” continuing that “the court process” via a judge or jury would
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27 ¹¹ City of Modesto, *Community Police Review Board Meeting*, YouTube (Jul. 16, 2025)
<https://tinyurl.com/2n96myf8> (timestamps: 14:46-15:20; 15:57-16:10).

28 ¹² City of Modesto, *Community Police Review Board Meeting*, YouTube (Jul. 16, 2025)
<https://tinyurl.com/2n96myf8> (timestamp: 22:17-23:59).

1 ultimately “work those things out.” The Chief deemed it “common sense” that the ICE Out
2 arrestees would not qualify for any exemption.¹³

3 37. Many members of the public were dissatisfied with Chief Gillespie’s vague explanations.
4 They engaged in a sustained community effort to press their concerns at City Council meetings on
5 July 22, August 12, August 26, September 9, September 23, October 14, October 28, and
6 November 4. The Council refused to agendize concerns over the Ordinance at these meetings.

7 38. In addition, the NewsGuild, together with the American Civil Liberties Union of
8 Northern California, the First Amendment Coalition, and the Northern California chapter of the
9 Society of Professional Journalists, wrote multiple advocacy letters to the City Council. The
10 advocacy was targeted and sustained so as to try and avoid the need for litigation. The
11 organizations emphasized that the Ordinance’s issues extended beyond the ban on face coverings
12 and led to real-world harms for members of the public and press alike. The press rights groups,
13 spearheaded by the First Amendment Coalition’s Advocacy Director Ginny LaRoe, highlighted
14 that, since 2017, the U.S. Press Freedom Tracker had documented more than 1,000 instances of
15 journalists being injured at protests by law enforcement and others. The groups also stressed that,
16 given the uptick in press injuries at public demonstrations, reporters now regularly rely on the
17 safety gear that the Ordinance prohibits.¹⁴

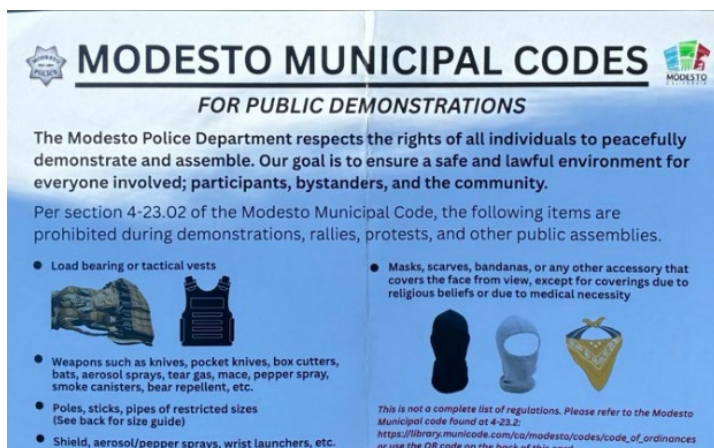
18 39. Eventually, the City Council asked the Community Police Review Board to review the
19 Ordinance and make a recommendation as to how the Council should proceed. The review board
20 formed an ad hoc committee, which concluded that prohibiting masks at public assemblies has a
21 “chilling effect on free speech and assembly;” that “[s]ymbolic acts such as a mask or face
22 covering with artistic or graphic expressions could be argued as a freedom of speech;” that the
23 Ordinance gives rise to due process concerns related to arbitrary enforcement and discrimination;

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25 ¹³ City of Modesto, *Community Police Review Board Meeting*, YouTube (Jul. 16, 2025)
<https://tinyurl.com/2n96myf8> (timestamp: 55:06-55:52).

26 ¹⁴ *Letter from ACLU NorCal* (Jul. 18, 2025), <https://tinyurl.com/mr2cbf5y>; *Letter from First*
27 *Amendment Coalition, Pacific Media Workers Guild and SPJ NorCal* (Jul. 21, 2025),
<https://tinyurl.com/mwj9smnw>; *Letter from ACLU NorCal and First Amendment Coalition* (Oct.
28 9, 2025), <https://tinyurl.com/44fmfhra>; *Letter from ACLU NorCal and First Amendment Coalition*
(Dec. 2, 2025), <https://tinyurl.com/y5sfnyb9>.

1 and that the Ordinance “risk[s] deterring people from attending protest altogether.” The committee
2 also noted that the Ordinance’s criminalization of protesters wearing masks at peaceful protests
3 “punishes a substantial amount of constitutionally protected activity along with any unprotected
4 conduct.” The Community Police Review Board voted to recommend that the Council amend the
5 Ordinance’s troubling provisions on September 17, 2025.¹⁵

6 40. Amidst this ongoing advocacy, groups in Modesto held a second No Kings protest on
7 October 18. Chief Gillespie threatened to enforce the Ordinance on the Department’s Facebook
8 page. Officers handed out cards, like the one below, which emphasized that certain banned items,
9 including face coverings and tactical vests, were illegal to wear.



18 D. The City Council adopted new problematic amendments in 2025.

19 41. Almost six months after the arrests at the ICE Out rally, the City Council considered
20 amending the Ordinance in open session on December 2, 2025. The proposed changes were as
21 follows. Additions appeared in **bold underline** and deletions in ~~strike through~~.

22 Section 4-23.02 Restrictions

23 (a) No person shall utilize, carry, or possess the following items or articles while
24 attending or participating in any demonstration, rally, protest, counter-protest, picket line,
25 march, or public assembly:

26 (13) The wearing of a mask, scarf, bandana or any other accessory or item that
27 covers or partially covers the face shielding the wearer’s face from view and
28 conceals the wearer’s identity, except for:

¹⁵ City of Modesto, Community Police Review Board Meeting, YouTube (Sept. 17, 2025)
<https://tinyurl.com/mc8um944> (timestamp: 2:41:25).

1 (i) coverings worn due to religious beliefs, practices, or observances. **For**
2 **purposes of this section, the religious exemption will apply to any**
3 **individual wearing a religious garment that covers their face including,**
4 **but not limited to hijabs, niqabs, burkas and the functional equivalent;**

5 (ii) ~~or coverings worn~~ due to medical necessity. **For purposes of this**
6 **section, the medical necessity exemption shall apply to any individuals**
7 **who are wearing medical grade masks including but not limited to a**
8 **surgical mask, disposable face mask, N95 mask, KN95 mask, elastomeric**
9 **mask, and/or the functional equivalent but not for balaclavas, ski masks**
10 **or the like; and**

11 (iii) **the restrictions of Section 4-23.02 (a)(13) do not apply to costumes**
12 **which obscure the face as part of the expressive function of the costume**
13 **including, coverings worn as part of a costume in connection with a**
14 **holiday event (e.g. Halloween), masquerade event (e.g. Mardi Gras),**
15 **theatrical or other entertainment event, and/or the functional equivalent.**

16 (15) Any **hardshell** impact resistant helmet, including, but not limited to:
17 motorcycle helmets, bicycle helmets, sports helmets, or ballistic helmets;. **This**
18 **provision does not include softshell bicycle/sports helmets;**

19 (17) Any umbrellas in the absence of rain: **or being used to protect from**
20 **extreme heat.** ~~During rainy weather an~~ **When an umbrella may be used based on**
21 **these weather conditions, the** umbrella shall not exceed sixteen (16) inches in its
22 longest dimension when fully collapsed and shall have a blunt end;¹⁶

23 42. As relevant to this litigation, the City left unchanged the Ordinance's bans on: "Any gas
24 masks or similar breathing devices" (Ord. § 4-23.02(a)(14)); "Any professionally manufactured or
25 personally fabricated equipment or clothing designed to be bullet-resistant, fragment-resistant,
26 stab-resistant, or impact resistant, including but not limited to: riot control gear, sports equipment,
27 bullet-resistant vests, flak jackets, or stab-resistant vests" (*Id.*, § 4-23.02(a)(18)); and "Load-
28 bearing or similar 'tactical' vests designed to carry weapons, tactical equipment, or armor plates
commonly used by law enforcement or military institutions" (*Id.*, § 4-23.02(a)(19)). The
Ordinance also left in place a provision affording the City's Police Chief broad discretion to
modify any prohibition for a parade so long as "the modification does not impair or threaten
public safety." (*Id.*, § 4-23.02(f).)¹⁷

¹⁶ City of Modesto, Ordinance No. 3805-C.S. (Jan. 8, 2026), <https://tinyurl.com/44y3bhwf>.

¹⁷ The Ordinance carried over pre-existing provisions prohibiting weapons, like "projectile launchers," and items that could be used as weapons, like sharpened metal rods and plastic piping. (Ord. §§ 4-23.02(a)(1)-(8), 10-12, 16-17.) These weapon bans are not the subject of this lawsuit.

1 43. Consistent with prior versions of the Ordinance, the supporting legislative materials and
2 findings again identified the “Proud Boys” and “Antifa” by name, suggesting that the groups had a
3 “reputation for violence.” The materials emphasized an “increase in public protests” in Modesto,
4 stating that the City “cannot adopt a ‘wait-and-see’ approach.” The materials asserted that the
5 “constitutionality” of the amendments was “supported by the City’s substantial interest in
6 safeguarding its citizens against violence and in protecting its police force from the type of
7 violence that has occurred at demonstrations in Los Angeles, Oakland, Berkeley, Chicago and
8 Portland.” The findings did not include any details as to the timing, events, or nature of “the
9 violence” beyond these general references to city names. The legislative materials also failed to
10 mention the press’s need to have access to basic safety gear while documenting and informing the
11 public on protests.¹⁸

12 44. With respect to the ban on masks and accessories covering the face, the legislative
13 materials asserted that the “[t]here is an increased risk that masked individuals will utilize their
14 anonymity to commit acts of violence or vandalism without concern of identification and
15 apprehension, disrupting the ability of others to safely assemble and demonstrate peacefully.” The
16 materials gave little weight to concerns around protester anonymity, concluding that “cameras are
17 recording us constantly out in public spaces such as at City Hall, at the 10th Street Plaza or on
18 major public rights-of ways,” and “iPhone cameras, Ring cameras and the like establishes that
19 virtually all of our movements within the public rights of ways are subject to possible video
20 recordation.” The materials further noted that “several of the individuals who expressed the
21 concern for their anonymity during protests have appeared unmasked” at “Modesto City Council
22 Meetings” although “these meetings are regularly broadcast to a large audience.”¹⁹

23 45. As for the other banned items, the legislative materials stated: “tactical gear worn at prior
24 protests in the City, and other forms of tactical gear such as gas masks, bullet-resistant vests, flak
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27 ¹⁸ City of Modesto, *Council Agenda Report* (Nov. 26, 2025), <https://tinyurl.com/3k7r3err> at p. 4;
see also City of Modesto, Ordinance No. 3805-C.S. (Jan. 8, 2026), <https://tinyurl.com/44y3bhwf>.

28 ¹⁹ City of Modesto, *Council Agenda Report* (Nov. 26, 2025), <https://tinyurl.com/3k7r3err> at p. 5;
City of Modesto, Ordinance No. 3805-C.S. (Jan. 8, 2026), <https://tinyurl.com/44y3bhwf> at p. 6.

1 jackets, stab resistant vests, and/or load bearing vests, are all associated with the potential for
2 violent clashes.” The restrictions, the materials continued, “are also directed at limiting other
3 items” such as “hardshell helmets and glass or metal water bottles that can, and have been
4 weaponized, while still allowing for peaceful expressive activity.”²⁰

5 46. Chief Gillespie, joined by a specially retained attorney who had drafted the original
6 Ordinance and was tasked with proposing the new amendments, made a presentation at the City
7 Council meeting on December 2, 2025. The presentation largely emphasized the public safety
8 points in the legislative materials. The presentation also attempted to justify the need for the
9 Ordinance by showing selected images and videos of protests in Modesto that had primarily
10 occurred between 2020 and 2022 where people wore masks and other banned items. A few photos
11 showed protesters wearing balaclavas, gaiters, or ski masks alongside others wearing cloth or
12 surgical masks, hats, and sunglasses. Often this attire resulted in equally obscured facial features,
13 only some of which was criminalized.²¹ Further, the pictures of people wearing these accessories
14 and gear demonstrated that the Ordinance was either ineffectual or just never enforced.

15 47. In presenting the images from these prior protests to the City Council, Chief Gillespie
16 commented that those “wearing your typical medical style mask” were “not addressed [by the
17 officers] because those [masks] have never been a target of what we see in this prohibition.” But
18 he asserted, somewhat paradoxically, that as a general matter face coverings are “used to hide
19 identities, intimidate, and avoid accountability for criminal acts.” The Chief further claimed that
20 hard-shelled helmets serve “as body armor,” and that tactical vests are used “to conceal objects.”²²

21 48. The City’s retained counsel made a similar observation about the mask ban: “The whole
22 purpose is to reduce violence and vandalism to limit the individuals who might mask themselves
23 to be committing violent acts, to be anonymous, and to avoid accountability.” Even though the
24 masks depicting rainbows in some of these pictures significantly obscured peoples’ identity, she

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26 ²⁰ City of Modesto, Ordinance No. 3805-C.S. (Jan. 8, 2026), <https://tinyurl.com/44y3bhwf> at 2, 5.

27 ²¹ City of Modesto, *12/2/2025 – City of Modesto Council Meeting*, YouTube (Dec. 2, 2025)
<https://tinyurl.com/3vkstntx> (timestamp: 1:08:55; 1:14:25-1:17:05).

28 ²² City of Modesto, *12/2/2025 – City of Modesto Council Meeting*, YouTube (Dec. 2, 2025)
<https://tinyurl.com/3vkstntx> (timestamps 1:14:06; 1:18:10; 1:27:26).

1 stated that they were “not a problem.” She then went on to explain the costume exemption as
2 follows: “Let me be clear: If you’re dressed as Snow White or you’re dressed as a dancing ninja or
3 a regular ninja or you’re dressed as a frog, those are elements of expressive activity.” No
4 clarification was offered as to how to determine when something was a “costume” or if an actual
5 medical or religious reason was needed to cover one’s face.²³

6 49. Echoing the silence in the legislative materials, the presentation did not address any of
7 the concerns raised by the public or the press rights groups about safety gear serving a life-saving
8 and vital function when observing public demonstrations.

9 50. The public was quick to highlight the illogical results flowing from the amendments. One
10 community member expressed confusion about whether he could be arrested for wearing a Snow
11 White costume and a mask as part of a street theater act. Expanding on this question, another
12 commenter observed: “So a person who comes in that Snow White costume with that mask is now
13 given more freedom than the same exact person who goes to their car, takes off the Snow White
14 mask, puts on a yellow bandana, and walks back into the protest?” He then asked: “If I was going
15 to come to a protest in a costume as a masked protester, for example, is now my mask finally a
16 part of my expressive right to then wear that mask?”²⁴

17 51. Another commenter objected that the Ordinance “likens peaceful protesters wearing
18 masks to violent criminals.” And asked: “Does the City seriously believe that, on Halloween, a
19 person is any less dangerous or their identity is any less concealed?” “By creating an arbitrary
20 exception,” he said, “the City admits that a mask alone is not a danger. The perceived danger is a
21 mask in a political setting.”²⁵

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25 ²³ City of Modesto, 12/2/2025 – *City of Modesto Council Meeting*, YouTube (Dec. 2, 2025)
26 <https://tinyurl.com/3vkstntx> (timestamps 1:12:40; 1:32:40; 2:44:05; 2:45:01).

27 ²⁴ City of Modesto, 12/2/2025 – *City of Modesto Council Meeting*, YouTube (Dec. 2, 2025)
28 <https://tinyurl.com/3vkstntx> (timestamps 1:43:15; 1:58:19; 1:58:58).

²⁵ City of Modesto, 12/2/2025 – *City of Modesto Council Meeting*, YouTube (Dec. 2, 2025)
<https://tinyurl.com/3vkstntx> (timestamp: 2:12:30-2:15:30).

E. The amended Ordinance leads to absurd results.

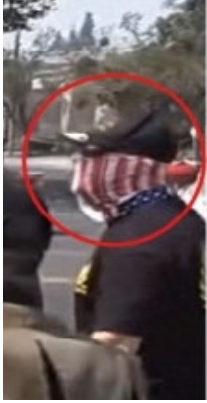
52. As forecasted at the December 2, 2025 City Council meeting, the amended Ordinance does lead to absurd results. The tables below capture some of the photographs presented to the Council or show some of the costumes referred to during its deliberations. The difference between the attire is subtle, but the consequences are not. The lefthand column shows items that are allowed, while the right-hand column shows items that expose anyone who utilizes, carries, or even possesses them at “any public assembly” to arrest and six months in jail.

TABLE 1²⁶

ALLOWED	SUBJECT TO ARREST AND JAIL TIME
 Council Presentation (timestamp 1:15:45)	 Agenda Report Index – Exhibit 3
 Agenda Report Index – Exhibit 18	 Agenda Report Index – Exhibit 9

²⁶ The Frog Costume appears in an article by Abigail Dollins entitled *See how Portland keeps it ‘weird’ as ICE patrols streets*, USA Today (Oct. 16, 2025), <https://tinyurl.com/5n87bpk4/>. The Ninja Costume can be purchased from Michael’s for \$29.99, <https://tinyurl.com/25sjsrdt>. All other pictures appeared in the City Council Presentation, the Agenda Report Index of Exhibits, or both. See City of Modesto, *Council Agenda Report re: Urgency Ordinance and Non-Urgency Ordinance Amending the City of Modesto Municipal Code Title 4 Chapter 23*, City Council Meeting Agenda Packet, Index of Exhibits (Dec. 2, 2025) access at <https://tinyurl.com/44ha6ea4>; see also City of Modesto, *12/2/2025 – City of Modesto Council Meeting*, YouTube (Dec. 2, 2025), <https://tinyurl.com/449hp5f5> (timestamp 1:15:45).

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ALLOWED	SUBJECT TO ARREST AND JAIL TIME
 Agenda Report Index – Exhibit 21	 Agenda Report Index – Exhibit 4
 Agenda Report Index – Exhibit 11	 Agenda Report Index – Exhibit 11
 Frog Costume	 Agenda Report Index – Exhibit 16
 Ninja Costume	 Agenda Report Index – Exhibit 4

53. The Ordinance also bars journalists from wearing the standard gear pictured in Table 2, leaving them to weigh the risk of arrest and jail time against their professional duty to report public events and their personal safety when covering public demonstrations. Yet the Ordinance, simultaneously permits people to dress up in costumes featuring Snow White, Darth Vader, or potentially even an ICE agent in protective gear.

TABLE 2²⁷

ALLOWED	BANNED	BANNED
		
Darth Vader Costume	Press in Helmet with Gas Mask	Press in Helmet with Vest

54. And the Ordinance leaves much speculation about whether this bicyclist possessing a prohibited helmet would run afoul of the Ordinance during Modesto’s Annual “Bike N’Trike” celebration at Roosevelt Park, where community members gather for food and to do “hands-on activities” besides riding bicycles.²⁸



²⁷ The Darth Vader costume can be purchased on Etsy for \$61.25. See ProCosplayProps, *Handmade Star Wars Inspired Darth Vader Cosplay Costume*, Etsy (Mar. 1, 2026), <https://tinyurl.com/mr262zay>. The press picture in the middle features a high school student covering a Portland Black Lives Matter protest for her high school paper. See Lisa Grace Lednicer, *How a high school journalist geared up to cover protests in Portland, Oregon* (Aug. 20, 2020) <https://tinyurl.com/36s8na8a>. The press picture on the right is of independent journalist Jake Lee Green, who—as discussed at Paragraph 80—was injured covering a protest in Modesto.

²⁸ See Modesto Children Museum, *Annual Crowd-Drawing Celebration Coming Back to Modesto. Where, When*, <https://tinyurl.com/2d8eht73>

1 **II. Protests and public assemblies are fundamental to democracy, but present unique risks**
2 **for attendees.**

3 55. The “Framers of our Constitution” considered “freedom of speech[,] a free press, [and]
4 the right of peaceable assembly to lie at the foundation of a government based upon the consent of
5 an informed citizenry—a government dedicated to the establishment of justice and the
6 preservation of liberty.” (*Bates v. City of Little Rock* (1960) 361 U.S. 516, 522-23.) Enshrined in
7 both the U.S. and the California Constitutions, these special freedoms must be “protected not only
8 against heavy-handed frontal attack, but also from being stifled by more subtle government
9 interference.” (*Id.* at p. 523; *Ghafari, supra*, 87 Cal.App.3d at p. 260 [quoting *Bates*].)

10 56. Given the importance of these rights, robust safeguards exist to protect the act of
11 protesting whether in the form of marches and demonstrations (*Edwards v. South Carolina* (1963)
12 372 U.S. 229); picketing (*Police Dep’t of Chicago v. Mosley* (1972) 408 U.S. 92); or the
13 distribution of leaflets (*Schneider v. State of New Jersey, Town of Irvington* (1939) 308 U.S. 147;
14 *Org. for a Better Austin v. Keefe* (1971) 402 U.S. 415). In California, courts have concluded that
15 state constitutional guarantees for the rights of free speech encompass a “protective provision
16 more definitive and inclusive than the First Amendment.” (*Wilson v. Superior Court* (1975) 13
17 Cal.3d 652, 658.)

18 57. Equally robust protections exist for the press when covering the news under both federal
19 law and state law. (*See Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 576
20 [recognizing First Amendment protection for newsgathering because “without some protection for
21 seeking out the news, freedom of the press could be eviscerated”]; *San Jose Mercury News v.*
22 *Municipal Court* (1982) 30 Cal.3d 498, 508 [noting that under the California constitution
23 “potential infringements of the people’s need for informed speech call for specially astute
24 analysis”]; *Nicholson v. McClatchy Newspapers* (1986) 177 Cal.App.3d 509, 513 “[T]he First
25 Amendment protects the ordinary news gathering techniques of reporters.”].)

26 58. “Demonstrations can be expected when the government acts in highly controversial ways,
27 or other events occur that excite or arouse the passions of the citizenry.” (*Collins, supra*, 110 F.3d
28 at p. 1372 [citing *Cox v. Louisiana* (1965) 379 U.S. 536, 551].) First Amendment activities cannot

1 “be banned simply because prior similar activity led to or involved instances of violence.” (*Ibid.*)
2 Nor can officials punish people at a public assembly just because others might find their speech
3 offensive or objectionable (*Cohen v. California* (1971) 403 U.S.15, 25-26; *Snyder v. Phelps*
4 (2011) 562 U.S. 443, 458); or because others present are engaged in criminal activity (*N.A.A.C.P.*
5 *v. Claiborne Hardware Co.* (1982) 458 U.S. 886, 916; *see also Index Newspapers LLC v. U.S.*
6 *Marshals Serv.* (9th Cir. 2020) 977 F.3d 817, 834 [“The many peaceful protesters, journalists, and
7 members of the general public cannot be punished for the violent acts of others.”].)

8 59. Plaintiffs contend that Modesto grossly misjudges the weight of these protections, but
9 they do agree with the City in one important respect: protests and public demonstrations can put
10 people at risk. This risk does not, however, stem primarily from the bogeyman protester throwing
11 his helmet or masking her face. Nor does it come from members of the press wearing basic safety
12 gear and reporting on public demonstrations.

13 60. Rather, the risk can often come from law enforcement’s use of “kinetic energy projectiles
14 and chemical agents” when officers attempt to disperse an assembly, protest, or demonstration.
15 Officers—who are authorized to use these “less lethal” crowd control measures under Penal Code
16 section 13652—may deploy “rubber bullets [and] beanbag rounds” as well as
17 “chloroacetophenone tear gas,” “2-chlorobenzalmalononitrile gas,” “pepper balls, pepper spray,
18 [and] oleoresin capsicum.” (Pen. Code, § 13652, subd. (d); *see also* Modesto Police Department,
19 *Modesto PD Policy Manual* (“MPD Policy”) at p. 71-72, 544 (Jul. 1, 2024),
20 <https://tinyurl.com/kjrtuc7s>.)

21 61. These measures do not just inflict a transient harm on a few “bad actors.” They have
22 broadly diffuse impacts that can be very detrimental to anyone in the vicinity of their use—law-
23 abiding protesters and journalists included. For instance, rubber bullets have an irregular shape
24 that can cause them to tumble and ricochet, resulting in unpredictable trajectories that lead to
25 bystander injuries. Rubber bullets are also fired at extremely high velocities and, when fired at
26 close range, are capable of breaking bones, fracturing a skull, or destroying an eye socket. Tear
27 gas that is deployed in tight spaces can cause chemical burns, breathing problems, agitation,
28 disorientation, sensations of suffocation, severe pain, and damage to the eyes or other mucous

1 membranes of anyone who comes in contact. Sometimes the fired tear gas canisters themselves hit
2 a person's head or body, causing skull fractures and even death.²⁹

3 62. California law and Modesto Police's policy for responding to public assemblies explicitly
4 recognize the risk of collateral impact on bystanders. Both require that officers "minimize the
5 possible incidental impact of their use of kinetic energy projectiles and chemical agents on
6 bystanders, medical personnel, journalists, or other unintended targets." (Pen. Code, § 13652,
7 (subd. (b)(6)); MPD Policy 466 at p. 431-438, <https://tinyurl.com/kjrtuc7s>.)

8 63. In light of the gravity of these risks, groups like Physicians for Human Rights which
9 document the adverse health impacts of less lethal crowd control methods advise anyone attending
10 a protest to carry "scarves or bandanas large enough to cover [the] face from nose to chin" and
11 "[s]hatter-resistant eye protection (e.g. shatter-resistant sunglasses, swim goggles, or a gas mask)"
12 to protect against chemical agents. They further advise anyone who wears contact lenses to "keep
13 a full facial gas mask or goggles on at all times." The American Academy of Ophthalmology also
14 emphasizes that goggles may help to provide eye protection from projectiles like rubber bullets.³⁰

15 64. The accessories, face coverings, and safety gear banned by the Ordinance, such as
16 goggles, gas masks, helmets, and vests, can lessen the detrimental effects of less-lethal crowd
17 control measures when people are complying with dispersal orders. This safety gear is not the
18 exclusive province of people intent on defying lawful police orders or disturbing the peace. And
19 regardless, if an individual were to wear some of this gear *and* defy lawful orders, the City would
20 be able to address the situation even without the Ordinance because it would have—in the words
21 of the *Ghafari* court—much more narrowly tailored "legal armamentarium" at its disposal. (87

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23 ²⁹ See generally Physicians for Human Rights ("PHR") & International Network of Civil Liberties
24 Organizations ("INCLO"), *Lethal in Disguise 2: How Crowd Control Weapons Impact Health and*
25 *Human Rights*, (Mar. 1, 2023), <https://tinyurl.com/3s7znw63>; PHR & INCLO, *Lethal in Disguise:*
The Health Consequences of Crowd Control Weapons, (Mar. 1, 2016),
<https://tinyurl.com/yn6z8faa>.

26 ³⁰ See *Preparing for, Protecting Against, and Treating Tear Gas and Other Chemical Irritant*
Exposure: A Protestor's Guide, Physicians for Human Rights (2025),
27 <https://tinyurl.com/yvzdfyfa>; Louryn Strampe, Lauren Goode, Boone Ashworth, *How to Protest*
Safely: What to Bring, What to Do, and What to Avoid, WIRED (Jun. 11, 2025),
28 <https://tinyurl.com/bjpx3urb>; *Eye Protection for Tear Gas and other Hazards: A Protest Safety*
Guide, American Academy of Ophthalmology (Jan. 15, 2026), <https://tinyurl.com/2pd3b7nk>.

1 Cal.App.2d at p. 262.) As discussed in more detail below, officers do not need the Ordinance
2 because they already have the authority to arrest any protester concealing their identity while
3 committing an unlawful act like failing to disperse, causing a riot, resisting arrest, and so on.

4 65. Modesto, motivated by its singular view of the “Proud Boys” and “Antifa,” has imposed
5 a blanket ban on even possessing certain types of face coverings and basic safety gear at *any*
6 public assembly. These restrictions put everyone in Modesto at risk. But the risks do manifest
7 differently for the press and the public and thus cause different constitutional harms. The next two
8 sections elucidate these harms—first for journalists, then for protesters, while the final section
9 discusses other available law enforcement tools to help maintain public safety in the City.

10 **III. The Ordinance misapprehends the importance of a free press and undercuts** 11 **constitutional and statutory protections for newsgathering at protests.**

12 **A. The press is an essential watchdog at protests.**

13 66. The U.S. Constitution “specifically selected” the press to serve “an important role in the
14 discussion of public affairs” and to be “a powerful antidote to any abuses of power by
15 governmental officials.” (*Mills v. Alabama* (1966) 384 U.S. 214, 219.) For “a society in which
16 each individual has but limited time and resources with which to observe at first hand the
17 operations of his government, he relies necessarily upon the press to bring to him in convenient
18 form the facts of those operations.” (*Cox, supra*, 420 U.S. at pp. 491–92.) “Without the
19 information provided by the press, most of us and many of our representatives would be unable to
20 vote intelligently or to register opinions on the administration of government.” (*Ibid.*) Indeed, the
21 public has a protected right to receive reporting from a free press. (*See Stanley v. Georgia* (1969)
22 394 U.S. 557, 564 [“It is now well established that the Constitution protects the right to receive
23 information and ideas.”].)

24 67. Because the press is “the information-gathering agent of the public,” the public has a
25 strong interest in ensuring that reporters have access to public affairs and protecting that access.
26 (*Nixon v. Warner Communications, Inc.* (1978) 435 U.S. 589, 609.) Such protections safeguard
27 the newsgathering process and all predicates for it, including the press’ ability to access places
28 traditionally open to the public and observe events there. (*Richmond Newspapers Inc. v. Virginia*

1 (1980) 448 U.S. 555, 576-77 [recognizing that the First Amendment protects the “right of access”
2 as part of the broader “right to gather information” because journalists cannot report on events that
3 they cannot observe]; *Garcia v. County of Alameda* (9th Cir. 2025) 150 F.4th 1224, 1231 [holding
4 that observation of a public event was protected by the First Amendment because it was “predicate
5 for, and thus inextricably intertwined with” reporting on the event].)

6 68. Protests—and how the government responds to them—are matters of the utmost public
7 concern. Accordingly, courts have recognized that the press can have a protected right to remain in
8 active dispersal areas to report on law enforcement protest response. (*See Index Newspapers LLC*,
9 *supra*, 977 F.3d at p. 834; *Los Angeles Press Club v. Noem* (C.D. Cal. 2025) 799 F.Supp.3d 1036,
10 1045; *Goyette v. City of Minneapolis* (D. Minn. 2021) 338 F.R.D. 109, 116; *see also Garcia*,
11 *supra*, 150 F.4th at p. 1230 [firsthand observation is “quintessential function of a reporter”].)

12 69. Absent the lens of a reporter, camera operator, or videographer, the public would not
13 have the full picture of a demonstration, including the unruliness of a crowd and any uses of force.
14 Nor would the public have a frame to push back against official narratives that may be misleading
15 or even false. If it were not for on-scene reporters, for example, the public might have believed the
16 government’s initial (false) accounts that Kent State students gunned down by the National Guard
17 on May 4, 1970 were armed—which they were not.³¹

18 70. In a recent *amici curiae* brief authored by the Reporters Committee for Freedom of the
19 Press and joined by 44 news and advocacy organizations, the groups highlighted other examples
20 of times when reporters provided the public with essential facts. Among the examples cited was a
21 1968 Report by President Lydon B. Johnson’s Kerner Commission that found reporters had played
22 an important role in uncovering misleading government accounts that a protest had been egged on
23 by “nests of snipers.” In reality, reporters on the ground observed that the “snipers” were different
24
25
26

27 ³¹ *See* Robert Giles, *When Truth Mattered: The Kent State Shootings 50 Years Later* (Mission
28 Point Press 2020) (news editor detailing efforts to report truth amidst conflicting initial reports).
For modern-day analogue, *see* Nathan O’Neal, *ICE Claims Repeatedly Undercut by Video*, Fox9
KMSP (Feb. 25, 2026), <https://tinyurl.com/3a24xt2m>.

1 law enforcement groups “shooting at each other.”³²

2 71. The Reporters Committee brief cites more recent examples as well, the titles of which
3 reveal their import:

- 4 • Alex Horton, *In Violent Protest Incidents a Theme Emerges: Videos Contradict Police*
5 *Accounts*, Wash. Post (June 6, 2020), <https://perma.cc/UTU8-5VX7>;
- 6 • Bill Hutchinson, *Trump Says LA is Under Siege, but the Mayor and Governor Paint a*
7 *Different Picture*, ABC News (June 10, 2025), <https://bit.ly/4p6wyHN>;
- 8 • Bill Kirkos, et al. *Federal Judge Says Border Patrol Chief Admitted He Lied in Ruling*
9 *Limiting Agents’ Use of Force in Chicago*, CNN (Nov. 7, 2025)
10 <https://perma.cc/S6DW-NBAR>;
- 11 • Claire Rush & Melissa Goldin, *FACT FOCUS: Trump Paints a Grim Portrait of*
12 *Portland. The Story on the Ground is Much Less Extreme*, Associated Press (Oct. 9,
13 2025), <https://perma.cc/U5C9-BNYA>;

14 **B. California law specifically ensures the press be able to report at protests.**

15 72. Given the press’s important role of reporting on protests and public assemblies,
16 California includes a statutory protection for journalists so that they may remain in an area after an
17 unlawful assembly is declared and a dispersal order is given. Senate Bill 98, passed in 2021 and
18 codified at Penal Code section 409.7, ensures the right of the press to observe and record law
19 enforcement activities at public protests.

20 73. In enacting Section 409.7, the Legislature recognized that, although existing “California
21 law protects members of the press from being stopped when entering closed areas during
22 emergencies and natural disasters to gather information, these protections don’t extend to protest
23 events such as demonstrations, marches, protests, or rallies where individuals largely engage their
24 First Amendment right to speech.”³³

25 74. The bill’s author stated that it was enacted following widespread assaults and arrests of
26 reporters covering the protests in response to the killing of George Floyd in 2020. “In California
27 and across the country police have arrested, detained, and have physically assaulted journalists
28

32 *See Los Angeles Press Club v. Noem* (9th Cir. Nov. 25, 2025), Case No. 25-5975, Dkt. No. 46.1,
available at <https://tinyurl.com/ym4zbsua>; *see also id.* at p. 23 (citing Report of the National
Advisory Commission on Civil Disorders, 202 (1968) <https://perma.cc/D3J2-SFGQ>).

33 Assem. Pub. Safety Committee Analysis, California Senate Bill No. 98, California 2021- 2022
Regular Session (Jul. 13, 2021), available at <https://perma.cc/N5YX-YAEQ>.

1 with rubber bullets, pepper spray, tear gas, batons, and fists. In many cases there are strong
2 indications that the officers injuring journalists knew their targets were members of the press.
3 Members of the press risk their personal safety and well-being each time they attend protest events
4 to get the public the information they need, but rubber bullets, teargas, and even arrest cannot be
5 the norm for an essential pillar of our democracy.” (*Ibid.*)

6 75. Section 409.7 to the Penal Code reads as follows, in relevant part:

7 409.7. (a) If peace officers . . . close the immediate area surrounding any emergency
8 field command post or any other command post, or establish a police line, or rolling
9 closure at a demonstration, march, protest, or rally where individuals are engaged in
activity that is protected pursuant to the First Amendment to the United States Constitution
or Article I of the California Constitution, the following requirements shall apply:

- 10 (1) A duly authorized representative of any news service, online news service,
11 newspaper, or radio or television station or network may enter the closed areas
described in this section.
- 12 (2) A peace officer or other law enforcement officer shall not intentionally assault,
13 interfere with, or obstruct the duly authorized representative of any news
service, online news service, newspaper, or radio or television station or
14 network who is gathering, receiving, or processing information for
communication to the public
- 15 (3) A duly authorized representative of any news service, online news service,
16 newspaper, or radio or television station or network that is in a closed area
described in this section shall not be cited for the failure to disperse, a violation
of a curfew, or a violation of paragraph (1) of subdivision (a) of Section 148,
for gathering, receiving, or processing information[.]

17 **C. The press cannot safely report on protests without access to safety gear.**

18 76. The press, including the NewsGuild and its members, face chaotic and sometimes
19 dangerous environments when reporting on protests. This truism, while accurate across the
20 country, is particularly resonant in California because of Penal Code section 409.7. Reporting
21 from an area where police are engaged in crowd control activities puts journalists in the crosshairs
22 at the exact moment when crowd dispersal measures are most likely to be deployed.

23 77. Journalists at a protest are routinely impacted by rubber bullets with unpredictable
24 trajectories and easily dispersed tear gas. During the Black Lives Matter protests in 2020, for
25 example, the Reporters Committee tallied hundreds of physical attacks on reporters, most due to
26 crowd control weapons at protests. The injuries ranged from concussions to broken bones. One
27 reporter, journalist Linda Tirado, lost sight in one of her eyes after being shot in the head with a
28

1 non-lethal munition.³⁴ The incident was reminiscent of a defining moment in the era of Vietnam
2 War protests, when police deployed tear gas and the canister struck long-time reporter Ruben
3 Salazar in the head, killing him while he was covering the National Chicano Moratorium in Los
4 Angeles.³⁵

5 78. More recently, in *Los Angeles Press Club v. City of Los Angeles* (C.D. Cal. 2025) 799
6 F.Supp.3d 1007, 1015, journalists covering protests over the government’s immigration
7 crackdown sued the city of Los Angeles for unlawful and violent tactics by police. Pictures of the
8 injuries sustained show members of the press with bloody head gashes, bruises, and welts on their
9 chests, stomachs, and legs. The court, in issuing an injunction, recounted a “long and unfortunate
10 saga” of officers striking journalists and others not engaged in any criminal activity with
11 projectiles, munitions, stinger grenades, and bean bag shots, as well as with batons and other
12 force. (*Ibid.* [citing *Crespo v. City of Los Angeles* (C.D. Cal. 2000) No. 2:00-cv-08869 GHK
13 (RC); *Multi-Ethnic Immigrant Workers Org. Network v. City of Los Angeles* (C.D. Cal. 2007) 246
14 F.R.D. 621, 624; *Black Lives Matter Los Angeles v. City of Los Angeles* (C.D. Cal. Apr. 28, 2021)
15 No. CV-20-5027-CBM-ASX, 2021 WL 3163306, at *2].)³⁶

16 79. The *Los Angeles Press Club* court is not alone in its findings. Courts have repeatedly
17 recognized that, when the government unleashes crowd control weapons targeting or impacting
18 journalists at a protest, it can have a chilling effect on constitutionally protected newsgathering
19 and, consequently, on the public’s access to reporting on these matters. (*See Index Newspapers*,
20 *supra*, 977 F.3d at pp. 828-29 [affirming that crowd control measures on plaintiff journalists
21 chilled their First Amendment rights]; *Dickinson (a.k.a. “the Portland Chicken”) v. Trump*, Case
22 No. 3:25-cv-02170-SI, (D. Or. Feb. 3, 2026) __ F.Supp.3d __, 2026 WL 279917, at *6, 9.)

23
24 ³⁴ See Reporters Comm. for Freedom of the Press, *Press Freedoms in the United States 2020*, at p.
25 8 (2021), <https://tinyurl.com/khbj7mr7>.); see also Linda Tirado, *I Came to the Minneapolis Protests to Cover Police Aggression. Then I Became the Victim of It*, NBC News (Jun. 1, 2020),
<https://tinyurl.com/3rttmw74>.

26 ³⁵ See Raul A. Reyes, *Prominent Latino journalist Ruben Salazar, Killed 50 Years Ago, Tackled Racism, Identity*, NBC News (Aug. 28, 2020), <https://tinyurl.com/ytz5vhac>.

27 ³⁶ See also Human Rights Watch, *US: Excessive Force Against LA Protesters* (Aug. 18, 2025),
28 <https://tinyurl.com/3bxmskh8> (multiple incidents of use of force against press, including shooting
of LA Daily News Reporter above the ear with less lethal projectile followed by tear gas).

1 80. Modesto journalists are similarly at risk. During the August 2022 Straight Pride Event,
2 independent photojournalist Jake Lee Green was documenting officers who seemed to be
3 indiscriminately firing pepper ball rounds into a crowd of protesters when he himself was hit. The
4 pepper ball exploded against his leg and released powdered chemical irritants into his body. The
5 powdery substance got into his eyes, lungs, and equipment. It took weeks for Mr. Green's injury
6 to heal. Before being shot, he had not engaged in any unlawful conduct and had his press
7 credentials on his hat so they could easily be seen.³⁷

8 81. Given the risks that the press faces when covering protests, journalists increasingly
9 consider it standard practice to carry basic safety gear to a public demonstration. Professional
10 organizations, like the Committee to Protect Journalists, advise that members of the press carry a
11 safety kit, including protective goggles, tear gas respirators, and hard-shell helmets. These items
12 are essential to ensuring journalists are able to protect their vital organs from crowd control
13 weapons and to continue reporting even from areas where tear gas is deployed.³⁸ But the press is
14 prohibited from wearing or possessing every one of these items under the Ordinance.

15 82. Simply stated, journalists cannot do their jobs when they are on the receiving end of
16 direct, or indirect, use of force without basic safety gear to shield them. Nor can they do to their
17 jobs if they cannot see or breathe. Here, by denying the press the right to even carry safety gear,
18 Modesto jeopardizes the NewsGuild's members' and other journalists' physical safety, thwarts
19 their ability to gather (and the public's right to receive) firsthand news, and, for all practical
20 purposes, excludes the press from unlawful assemblies in violation of Penal Code section 409.7.

21 **IV. The Ordinance chills speech and restricts the ability of protesters to protect themselves.**
22
23 **A. Law-abiding protesters and bystanders risk injury without access to basic
24 safety gear.**

25 83. Similar to journalists covering protests, peaceful protesters who are complying with, or

26 ³⁷ See Press Freedom Tracker, *Independent Journalist Shot with Pepper Ball at Modesto Protest*,
<https://tinyurl.com/47eaaryw>.

27 ³⁸ Committee to Protect Journalists, *Physical and digital safety: Civil Disorder* (Sept. 10, 2018),
<https://tinyurl.com/2vnux7tu>; Committee to Protect Journalists, *A Guide to PPE*,
28 <https://tinyurl.com/2hcmk2m2>.

1 attempting to comply with, lawful orders can be impacted by less-lethal munitions. Plaintiffs and
2 other members of the public should not be forced to choose between foregoing their physical
3 safety and risking criminal sanctions when seeking to exercise their constitutionally protected
4 right to peaceful assembly. Ms. Ramirez, for example, has no intent to defy any dispersal orders or
5 commit a violent act at a protest, but she still wishes to bring a helmet and goggles in her
6 backpack in case officers opt to use unpredictable rubber bullets or easily dispersed tear gas. The
7 Ordinance, however, would subject her to six months in jail for doing so.

8 84. Recent events in California demonstrate that the risk of bodily harm to individuals in the
9 protest context is not hypothetical. To take just a few examples: at a rally in Santa Ana, a
10 Department of Homeland Security officer fired a nonlethal round that hit twenty-one-year-old
11 Kaden Rummier, who was standing just a few feet away. Rummier underwent six hours of surgery
12 and permanently lost vision in his left eye.³⁹ A 23-year-old autistic man at an anti-ICE protest in
13 Los Angeles also permanently lost vision in his eye after being hit with a projectile fired by law
14 enforcement.⁴⁰ And at protest over the murder of George Floyd in Sacramento, police officers
15 injured Navy veteran Danny Garza, who was acting as a legal observer when a bean bag round hit
16 him in the face causing traumatic brain injury. The city recently settled Mr. Garza's lawsuit for
17 \$2.2 million.⁴¹

18 85. The reality is that dispersal orders are not always clear or audible, and people may not
19 have a reasonable opportunity to disperse. Thus, despite best efforts, even those acting in good
20 faith can easily become caught up with non-compliant individuals in a chaotic environment. At a
21 No Kings protest in Los Angeles, for instance, Christopher Fernandez, an intensive care nurse, did
22
23

24 ³⁹ Ruben Vives and Itzel Luna, *Anti-Ice Protester Blinded by Federal Agent During*
25 *Demonstration in Santa Ana, Family Says*, LA Times (Jan. 13, 2025), <https://tinyurl.com/5cfdnc6p>
26 (also describing that an individual attempting to record the aftermath of Rummier's injury was
shot at the back of the head and neck by pepper balls).

27 ⁴⁰ James Queally and Libor Jany, *LAPD Fired Munition at Anti-ICE Protest that Left Man Blind in*
One Eye, LA Times (Mar. 19, 2026) <https://tinyurl.com/2tjmf7hh>.

28 ⁴¹ Steve Large, *Sacramento to pay \$2.2 million to man injured by police during George Floyd*
protests - CBS Sacramento, CBS News (Feb. 9, 2026), <https://tinyurl.com/5duaxwnn>.

1 not hear any dispersal order before he was shot in the back of his left thigh with a foam projectile
2 while rendering aid to protesters injured by kinetic impact projectiles and tear gas.⁴²

3 86. Individuals who are not attempting to break the law should be permitted to protect
4 themselves from serious physical harm if they want to carry or use basic safety equipment at
5 protests, especially when situations become highly volatile. Modesto ignores this reality. The
6 Ordinance prohibits basic safety gear that could mitigate severe harms on the mistaken assumption
7 that only people who want to engage in violence carry this gear. In so doing, the Ordinance
8 sweeps far too broadly.

9
10 **B. Omnipresent surveillance presents a significant risk to protesters and exposes
them to retaliation for engaging in protected activities.**

11 87. In addition to physical injury, the Ordinance subjects peaceful, law-abiding protesters
12 like Plaintiffs to another distinct risk: enhanced surveillance by government and private actors. As
13 both public and private actors increasingly rely on invasive technologies to identify protesters,
14 many members of the public worry that their protected expression could lead to negative, life-
15 altering repercussions if they are identified at a particular protest. Face coverings serve as a basic
16 means of protecting individuals' ability to freely associate and speak out on matters of public
17 concern. The ability to wear them implicates constitutional rights and should not be contingent on
18 the pretense of a sincere "religious belief" or "medical necessity," or the discretion of an officer
19 evaluating the expressiveness of a "costume."⁴³

20
21
22 ⁴² *US: Excessive Force Against LA Protesters*, Human Rights Watch (Aug. 18, 2025),
23 <https://tinyurl.com/3bxmskh8> (also describing the experience of Sergio Espejo, at the same
24 protest, who stated he only heard deputies make an inaudible announcement only before they
25 began firing tear gas and stun grenades. After a flash bang device exploded upon impact on his
hand, he was rushed to the hospital where the top two inches of his left index finger were
amputated.).

26 ⁴³ See Andy Greenberg & Lily Hay Newman, *How to Protest Safely in the Age of Surveillance*,
WIRED (Jan. 8, 2026), <https://tinyurl.com/4rrw69b2>; Nicholas Fandos, *In an Online World, a
27 New Generation of Protesters Chooses Anonymity*, New York Times (May 2, 2024),
<https://tinyurl.com/huyjje8z>; Joseph Denney & Inga Kristina Trauthig, *How Digital Surveillance
28 Deters Protest Participation*, Univ. of Texas at Austin, Center for Media Engagement, (Mar. 9,
2022), <https://tinyurl.com/juhawfm9>.

1 88. Government surveillance of protests is no secret, but its scope today is unprecedented.
2 Across California, law enforcement agencies maintain an extensive surveillance infrastructure.⁴⁴
3 More locally, the Modesto Police Department compiles live video and data from hundreds of
4 traffic cameras, automatic license plate readers, and body-worn cameras into its “Real Time Crime
5 Center.”⁴⁵ Some of this data has, as Modesto admits, been shared with federal agencies, including
6 Customs & Border Patrol, the IRS Criminal Investigations Department, and the Department of
7 Veterans Affairs, in violation of state law.⁴⁶

8 89. Research shows that “ethnic minorities [are] at greater risk of oversurveillance” by the
9 government during and after a protest.⁴⁷ Indeed, Modesto specifically amped up its surveillance
10 for the ICE Out rally, deploying airborne drones and specially placing a security camera at the
11 10th Street Plaza to monitor the protest. No reports established that the same enhanced
12 surveillance measures were taken in preparation for the No Kings protest on June 14.⁴⁸

13 90. Private actors also generate vast amounts of visual data about people in public spaces.
14 Security cameras, now commonplace features of businesses and homes, are part of the broader
15 surveillance ecosystem.⁴⁹ And nearly every person over 16 years old owns a phone equipped with
16 a camera that can film or photograph the people around them.⁵⁰

19 ⁴⁴ See, e.g., *ACLU Investigation Uncovers Footage from Widespread Aerial Surveillance of Racial*
20 *Justice Protests* (Nov. 16, 2021), <https://tinyurl.com/3p6fyfpp> (California Highway Patrol
recorded protesters from the skies in dozens of California cities after murder of George Floyd).

21 ⁴⁵ Maria Luis Figueroa, *Modesto police’s real-time crime center captures video around city. “Like*
22 *an episode of ‘Cops’”* Modesto Bee (Feb. 8, 2025), <https://tinyurl.com/34rxa8wf>.

23 ⁴⁶ Facebook, *Modesto Police Department* (Mar. 13, 2026), <https://tinyurl.com/3r53za62>; see also
24 Julietta Bisharyan, *Modesto Police Find Federal Agencies Had Prohibited Access to License Plate*
25 *Data* (Mar. 13, 2026), <https://tinyurl.com/k9aba33f>.

26 ⁴⁷ Privacy International, *Ethnic Minorities at Greater Risk of Oversurveillance After Protests*
27 (June 15, 2020), <https://tinyurl.com/2mj47src>.

28 ⁴⁸ City of Modesto, *Community Police Review Board Meeting*, YouTube (Jul. 16, 2025)
<https://tinyurl.com/2n96myf8> (timestamp 14:44-30:30).

⁴⁹ See Sam Sabin, *Doorbell cams, surveillance tech face growing backlash*, Axios (Feb. 17, 2026),
<https://tinyurl.com/mtvxvyzu>.

⁵⁰ See Darrell M. West, *How technology is altering citizen protests*, Brookings (Sept. 30, 2025),
<https://tinyurl.com/bdfdbtsc>.

1 91. The large amount of private information that can be gathered via surveillance is
2 supercharged by the increasing ubiquity of facial recognition technology. Today, a single
3 photograph of a person’s face can be used to identify them almost instantaneously. Technologies
4 produced by data analytics companies like Palantir and Clearview AI help officers run pictures
5 through government databases to seek a visual match or build up an individual’s dossier. A match
6 can quickly reveal a person’s name, date of birth, immigration status, and other personal data.
7 ICE’s use of this facial recognition technology is well documented, but other agencies as well as
8 private actors are increasingly using it as well.⁵¹

9 92. For some individuals, showing their face—and thus revealing their identity—at a protest
10 over a controversial issue can jeopardize their safety, immigration status, employment, and mental
11 well-being. As the *Ghafari* court held when striking down California’s similar ban on face
12 coverings in public, enforcement of the statute either “inhibits the exercise of free speech” or risks
13 harming “the speaker who dares.” (87 Cal.App.3d at p. 261.) Mere identification in connection
14 with speech has caused professors to face abrupt termination,⁵² and students to suffer disciplinary
15 action⁵³ and embarrassing public campaigns.⁵⁴ Some corporate executives have called for
16 employers to blacklist or refuse to hire individuals who espouse certain viewpoints.⁵⁵

19 ⁵¹ See Jay Stanley, *Face Recognition and the ‘Trump Terror’: A Marriage Made in Hell*, ACLU (Nov. 13, 2025), <https://tinyurl.com/39sjrvvr>; see also Jude Joffe-Block, *A new lawsuit alleges DHS illegally tracked and intimidated observers*, NPR (Feb. 23, 2026),
20 <https://tinyurl.com/krk3cwnj>; Adam Geller, *Private groups work to identify and report student protesters for possible deportation*, AP News (Mar. 28, 2025), <https://tinyurl.com/36dezv5>.

21 ⁵² Anna Liz Nichols, *Lawsuit alleges former University of Michigan employees were fired for participating in protests*, Michigan Advance (May 2, 2025), <https://tinyurl.com/ycxe7sby>.

22 ⁵³ Arielle Robinson, *Tulane accuses students who participated in peaceful, off-campus protest of conduct violations* (Mar. 31, 2025), <https://tinyurl.com/4ybзда86>.

23 ⁵⁴ See, e.g., Tristan Hernandez & Esma Okutan, *‘Doxxing truck’ targets Yale, Harvard students on the day of The Game*, Yale News (Nov. 18, 2023) <https://tinyurl.com/5n6za24h>; Gabe Stut, *Family homes of Berkeley Law students targeted by conservative media group*, JWeekly (Jan. 17, 2023),
24 <https://tinyurl.com/348rcjap>; Accuracy in Media, *Accuracy in Media brings mobile billboard to UW commencement* (Jun. 24, 2025), <https://tinyurl.com/2wcv7fpj>; see also Maya Mirsky, *Truck that doxxes alleged antisemites returns to UC Berkeley*, JWEEKLY (Feb. 6, 2024),
25 <https://tinyurl.com/24uf6wex>.

26 ⁵⁵ Clifford D. Solomon, *Op-Ed: Don’t Hire My Anti-Semitic Law Students*, WALL ST. J. (Oct. 15, 2023), <https://tinyurl.com/5tnr6atb>.

1 93. Additionally, in a practice known as “doxxing,” private actors often publicly identify
2 protesters with opposing views to harass them, harm their employment prospects, or shame them
3 into silence. Victims of doxxing also frequently become the target of death threats, sexual
4 harassment, and a malicious prank called “swatting,” in which individuals make fake emergency
5 calls to send a large, armed police response to the victim’s home.⁵⁶

6 94. One concrete example showing the impact of face coverings is the case of Mahmoud
7 Khalil, a lawful permanent resident and outspoken pro-Palestine advocate at Columbia University.
8 Mr. Khalil, unlike many of the others with whom he associated, chose not to wear a mask at
9 protests. He was thus readily identified by the group Canary Mission, which compiles public
10 databases about individuals who advocate against Israel’s actions in Gaza.⁵⁷ The group urged the
11 government to detain Mr. Khalil, which it did for more than 100 days, causing him to miss the
12 birth of his child. He is currently in deportation proceedings despite having committed no crime.⁵⁸

13 95. At the December 2, 2025 City Council meeting, a member of the public supporting the
14 Ordinance stated that, if someone cares enough to protest about an issue, they should show their
15 face when doing so. This statement ignores the reality that, for some, the stakes to maintaining
16 one’s anonymity in connection with controversial speech could not be higher. As has long been
17 recognized, “anonymity is a shield from the tyranny of the majority.” (*McIntyre v. Ohio Elections*
18 *Comm’n* (1995) 514 U.S. 334, 357.) It “exemplifies the purpose behind the Bill of Rights, and of
19 the First Amendment in particular: to protect unpopular individuals from retaliation—and their
20 ideas from suppression—at the hand of an intolerant society.” (*Ibid.*) The statement also ignores
21 our country’s historical tradition, whereby even at the time of the nation’s founding and the debate
22

23
24 ⁵⁶ See Micah Lee, *How Right-Wing Extremists Stalk, Dox, and Harass their Enemies, The*
25 *Intercept* (Sept. 6, 2017), <https://tinyurl.com/45jaan4v>; Emily Gorcenski, *Case #6847303: A Tale*
of Twitter’s Broke Harassment Standards, Medium (Oct. 17, 2017), <https://tinyurl.com/bde8zmee>.

26 ⁵⁷ Canary Mission, *Welcome to Canary Mission* (last accessed Mar. 24, 2026)
<https://tinyurl.com/y69tzc4k>.

27 ⁵⁸ Michael Wilson, Michael Rothfeld and Ana Ley, *How Mahmoud Khalil, a Columbia Student*
Activist, Landed in Federal Detention, New York Times (Mar. 16, 2025),
28 <https://tinyurl.com/jvtze7k9>; Jonah E. Bromwich, *A Year After His Arrest, Mahmoud Khalil Lives*
in Limbo and in Fear, New York Times (Mar. 8, 2026), <https://tinyurl.com/3r4aync8>.

1 over the Constitution, pamphleteers like the author of *Common Sense* and *The Federalist Papers*
2 expressed their opinions anonymously.⁵⁹

3
4 **C. Protesters wear certain face-coverings and other accessories to convey
constitutionally protected symbolic expression.**

5 96. The Ordinance leads to yet one more free speech injury. It curtails the rights of the
6 public—including Mr. Flores, Ms. Ramirez, and Ms. Leiva—to engage in symbolic expressive
7 speech conveyed by their choice of face coverings and other accessories that “cover[] or partially
8 cover[] the face from view and conceal[] the wearer’s identity.”

9 97. The First Amendment’s protections extend beyond “actual speech” to encompass
10 “symbolic or expressive conduct.” (*Virginia v. Black* (2003) 538 U.S. 343, 358; *Texas v. Johnson*
11 (1989) 491 U.S. 397, 404 [flag burning is protected speech]; *Tinker v. Des Moines Independent*
12 *Community School Dist.* (1969) 393 U.S. 503, 505 [wearing black armband at school in protest of
13 Vietnam War is protected speech]; *Brown v. Louisiana* (1966) 383 U.S. 131, 141–142 [sit-in
14 conveyed expressive message].)

15 98. Masks are commonly worn at protests to communicate a political message or reflect
16 support for a particular group or movement. The Ordinance undermines this protected expression
17 and makes content-based distinctions about certain types of attire. It broadly bans face coverings
18 that a police officer decides are not worn as a costume or for a religious or medical reason. But
19 there is no compelling, or even rational, reason why the gaiter worn by Mr. Flores should be
20 subject to criminal punishment, while other masks or costumes covering the same proportion (or
21 more) of a protester’s face would be acceptable. (*See Williams v. Pryor* (11th Cir. 2001) 240 F.3d
22 944, 948 & fn.2 [recognizing that the “irrationality of government attempts to regulate the dress
23 and grooming of adults” are among the exceptional circumstances in which laws are found
24 unconstitutional even under rational basis review].)

25 99. There is also no compelling reason why Ms. Ramirez and Ms. Leiva, along with other
26 members of the public, should not be able to wear a keffiyeh scarf to cover their faces as a symbol

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28 ⁵⁹ See, e.g., L Wachoub, *Protecting Anonymous Speech Used to be ‘Common Sense’*, Institute of
Free Speech (Jan. 10, 2014), <https://tinyurl.com/yyt5su9t>.

1 of Palestinian solidarity, freedom, and defiance.⁶⁰ The Ordinance also targets other items that
2 convey well-recognized expressive messages. Gas masks, for example, are often worn to protests
3 to convey messages about environmental injustice.⁶¹ And people often wear bandanas to express
4 solidarity with farmworkers—especially with female farmworkers, who are known to wear
5 bandanas to shield themselves not only from dust and sun, but also from the unwanted attention of
6 male co-workers and supervisors.⁶²

7
8 **V. The Ordinance ignores longstanding law that already provides Modesto with the legal
tools to address any unlawful conduct at a protest.**

9 100. Neither the First Amendment nor California law protects violent or otherwise unlawful
10 activity. While “the constitutional guarantees of free speech and free press do not permit a State to
11 forbid or proscribe advocacy of the use of force or of law violation,” the government may respond
12 when unlawful acts do occur or when “advocacy is directed to inciting or producing imminent
13 lawless action and is likely to incite or produce such action.” (*Brandenburg v. Ohio* (1968) 395
14 U.S. 444, 447.)

15 101. As the *Ghafari* court noted when it struck down California’s state-wide ban on masks,
16 where “protected activities may be involved,” the Penal Code provides “police with the legal
17 armamentarium to deal effectively” with disturbances at public assemblies. (87 Cal.App.3d at pp.
18 260, 262; *see also People v. Smith* (1967) 248 Cal.App.2d 134 [prosecution under a broad general
19 statute is barred when the same acts are prohibited by a specific, more narrowly drawn statute]; *In*
20 *re Williamson* (1969) 43 Cal.2d 651; *People v. Gilbert* (1969) 1 Cal.3d 475.)

21
22 ⁶⁰ See Samaa Khullar, *Everything You’ve Heard About the Keffiyeh Is Wrong*, The Nation (Jul. 24,
23 2024), <https://tinyurl.com/y727u29h> [describing how the keffiyeh’s historical role to help
24 Palestinians conceal their identities from colonial authorities helped it to grow into a “shorthand
for Palestinian struggle”].

25 ⁶¹ See Finis Dunway, *Gas Masks, Pogo, and the Ecological Indian: Earth Day and the Visual*
26 *Politics of American Environmentalism*, 60 American Quarterly 67, 75, (Mar. 2008), available at
<https://tinyurl.com/5xzryyem> [noting that protesters have historically worn gas masks to “express
their outrage at the increasing levels of lead, carbon monoxide, and other pollutants in the
atmosphere”].

27 ⁶² See Lily Dayton, *Fields of Fear*, California Health Report (Aug. 15, 2014),
28 <https://tinyurl.com/5n76hs4u> (detailing how organizations use white bandanas as a symbol of
solidarity with women farmworkers facing sexual violence).

1 102. Thus, here, Modesto may take action when unlawful conduct intertwined with
2 constitutionally protected activity arises. Among the Penal Code provisions at the City’s disposal
3 is section 407, which prohibits “unlawful assemblies,” defined as “two or more persons
4 assembl[ing] together to do an unlawful act, or do a lawful act in a violent, boisterous, or
5 tumultuous manner.” Meanwhile, sections 404.6 and 406 criminalize inciting a riot or assembling
6 together for a rout, and section 408 punishes any participation in such a rout or unlawful assembly.
7 Section 409, in turn, criminalizes any person who remains at the scene of a “riot, rout, or unlawful
8 assembly” after having received a clear, lawful order to disperse with sufficient time to comply.
9 Where a riot might involve a “paramilitary” organization, the law imposes additional penalties as
10 well. (Pen. Code, § 11460.)

11 103. Additionally, Modesto would have the ability under Penal Code section 148 to arrest
12 people who are willfully resisting, delaying, or obstructing officers or emergency medical
13 technicians. It could also arrest people under section 415 for disturbing the peace by fighting,
14 noise, or offensive words that are “inherently likely to provoke an immediate violent reaction.” Or
15 it could employ section 416, which prohibits two or more people from assembling “for the
16 purpose of disturbing the public peace” and then failing to disperse when ordered. (*Cf. In re*
17 *Brown* (1973) 9 Cal.3d 612, 617-24 [construing statute more narrowly to comply with
18 constitutional parameters]; *see also NAACP v. Claiborne Hardware* (1982) 458 U.S. 886, 908
19 [individual wrongdoing does not transform an otherwise lawful assembly into an unlawful
20 assembly].)

21 104. Modesto would also be able to arrest and punish individuals engaging in other illegal acts
22 during a public assembly. Statutes available to the City in this regard include Penal Code sections
23 594 (prohibiting vandalism), 463 (looting), 459 (burglary), 451 (arson), 602 (trespassing), and
24 even 594.4 (defacing memorials). Of course, if an individual were to wear a mask for the purpose
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28

1 of hiding their identity while committing any of these enumerated unlawful acts or other crimes,
2 Modesto would be able to arrest and hold that person accountable under Penal Code section 185.⁶³

3 105. What Modesto cannot do, however, is prophylactically shut down the right of the public
4 and the press to wear certain accessories, face coverings, and basic safety gear when gathering to
5 exercise their constitutional rights. Much to the City’s chagrin, Modesto is legally bound to
6 tolerate some amount of “waiting-and-seeing” at a protest. (*See Ghafari, supra*, 87 Cal.App.3d at
7 p. 262; *Cox, supra*, 379 U.S. at p. 551.) Wearing certain attire at a protest or public demonstration
8 that offends people or which some might associate with a group known for violent conduct is not
9 *per se* illegal. (*See United States v. Mongol Nation* (2023) 56 F.4th 1244, 1249 [display of white
10 nationalist group’s collective membership marks constituted “expressive conduct communicating
11 a person’s association with the Mongol Nation, and his or her support for their views”].)

12 106. Although anonymity and basic safety gear could lend themselves to some abuse, the law
13 and “our society accord[] greater weight to the value of free speech than to the dangers of its
14 misuse.” (*McIntyre, supra*, 514 U.S. at p. 357.) Where, as here, “we are dealing with First
15 Amendment rights, ‘broad prophylactic rules are suspect’ and ‘precision of regulation must be the
16 touchstone in an area so closely touching our most precious freedoms.’” (*Castro v. Superior Court*
17 (1970) 9 Cal.App.3d 675, 683 [quoting *NAACP v. Button* (1963) 371 U.S. 415, 438]; *Alford v.*
18 *Municipal Court* (1972) 26 Cal.App.3d 244, 247.) And if there were ever any uncertainty that
19 Modesto has failed this precision test, “the benefit of any doubt” must be given “to protecting
20 rather than stifling speech.” (*Federal Election Comm’n v. Wisconsin Right to Life, Inc.* (2007) 551
21 U.S. 449, 469; *In re Kay* (1970) 1 Cal.3d 930, 941 [“The ‘threat of sanctions may deter almost as
22 potently as the application of sanctions”] [quoting *Burton v. Municipal Court* (1968) 68
23 Cal.2d 684, 691].)

24
25 ⁶³ Federal law also criminalizes certain acts that might interfere with the constitutional rights of
26 others. (*See* 18 U.S.C. § 241 [prohibiting two or more people from “conspir[ing] to injure,
27 oppress, threaten, or intimidate” others “in the free exercise or enjoyment” of any constitutional
28 right or federal statutory right]; *id.*, § 245 [criminalizing interference with federally protected
activities]; *id.*, § 249 [criminalizing hate crimes]; *District of Columbia v. Heller* (2008) 554 U.S.
570, 621 [citing *Presser v. Illinois* (1886) 116 U.S. 252 for principle that the Second Amendment
“does not prevent the prohibition of private paramilitary organizations” parading with weapons].)

1 **FIRST CAUSE OF ACTION**

2 **Violation of Freedom of Speech and Assembly**
3 **(First and Fourteenth Amendments to the U.S. Constitution; 42 U.S.C. § 1983)**

4 107. Plaintiffs incorporate by reference all foregoing and subsequent paragraphs as though
5 fully set forth herein.

6 108. The First Amendment, as applied to state and local government agencies and officials by
7 the Fourteenth Amendment, prohibits government entities from “abridging the freedom of speech,
8 or of the press; or the right of the people peaceably to assemble” The First Amendment
9 protects the right to advocate, protest, assemble, and engage in expressive association, as well as
10 the right of the press to gather, and the public to receive, news. The Ordinance is substantially
11 overbroad on its face and impermissibly burdens these protected speech, expressive conduct,
12 associational, and free press rights.

13 109. Constitutional principles protecting free expression and a free press are at their strongest
14 when expressive activity takes place in parks or on public streets and sidewalks—exactly where
15 the Ordinance applies. These public spaces are considered “traditional public fora that time out of
16 mind, have been used for purposes of assembly, communicating thoughts between citizens, and
17 discussing public questions.” (*Boos v. Barry* (1988) 485 U.S. 312, 318 [internal quotations
18 omitted].) “In such places, the government’s ability to restrict expressive activity is ‘very
19 limited.’” (*Ibid.* [quoting *United States v. Grace* (1983) 461 U.S. 171, 177].)

20 110. For any incursion into the realm of First Amendment rights in traditional public fora,
21 courts apply heightened constitutional scrutiny. The “government, including a municipal
22 government vested with state authority, ‘has no power to restrict expression because of its
23 message, its ideas, its subject matter, or its content.’” (*Reed v. Town of Gilbert* (2015) 576 U.S.
24 155, 163 [quoting *Police Dept. of Chicago v. Mosley*, *supra*, 408 U.S. at p. 95]; *see also Ashcroft*
25 *v. ACLU* (2002) 535 U.S. 564, 573.)

26 111. A law is deemed to be content-based, and thus “presumptively unconstitutional” and
27 subject to strict scrutiny, if it is: (1) expressly targeted at speech on the basis of content (*Reed*,
28 *supra*, 576 U.S. at p. 163); (2) facially content-neutral but borne of a discriminatory purpose or

1 justification (*id.* at p. 164); or (3) prompted by the prospect of an adverse audience response
2 (*Forsyth County, supra*, 505 U.S. at p. 134.) A content-based restriction fails strict scrutiny if not
3 “narrowly tailored to serve compelling state interests.” (*Reed, supra*, 576 U.S. at pp. 163-64;
4 *Forsyth County, supra*, 505 U.S. at p. 124 [strict scrutiny applies if an otherwise content-neutral
5 law is adopted because of a “disagreement with the message the speech conveys”].)

6 112. Intermediate scrutiny, in turn, applies to any restriction or law that is content-neutral and
7 which concerns the time, place, or manner of an expressive activity. Under this test, the
8 government must show that: (1) a law “furthers an important or substantial governmental interest;”
9 (2) “the governmental interest is unrelated to the suppression of free expression;” and (3) “the
10 incidental restriction on alleged First Amendment freedoms is no greater than is essential to the
11 furtherance of that interest.” (*United States v. O’Brien* (1968) 391 U.S. 367, 377.) A law must be
12 “narrowly tailored to serve a significant governmental interest” and cannot be “substantially
13 broader than necessary to achieve the government’s interest.” (*Ward v. Rock Against Racism*
14 (1989) 491 U.S. 781, 791 [citing *Clark v. Community for Creative Non-Violence* (1984) 468 U.S.
15 288, 293]; *see also McCullen v. Coakley* (2014) 573 U.S. 464, 486 [government “may not regulate
16 expression in such a manner that a substantial portion of the burden on speech does not serve to
17 advance its goals”].)

18 113. The Ordinance fails under both constitutional tests because it is not narrowly tailored to
19 serve the governmental interests asserted and because it punishes a substantially broader amount
20 of express activity than is necessary. (*See McCullen v. Coakley* (2014) 573 U.S. 464, 486
21 [government “may not regulate expression in such a manner that a substantial portion of the
22 burden on speech does not serve to advance its goals”].)

23 114. Modesto maintains that it has a “significant governmental interest” in preventing the use
24 of “hardshell helmets” as a weapon and “tactical gear, including gas masks [and] gear that further
25 heightens individuals feeling that they can operate free of any accountability as to violent acts.” It
26 also explains that its “face covering provision is needed because various individuals wish to
27 conceal their identity during public demonstrations so that they can be free from accountability for
28 their criminal actions.” Modesto asserts that these restrictions are necessary to further its

1 “substantial interest in safeguarding its citizens against violence” and protecting the property of
2 citizens and the City against damage and destruction.⁶⁴

3 115. As the legislative history of the Ordinance dating back to 2019 demonstrates, Modesto
4 adopted the Ordinance with a discriminatory purpose in mind—primarily its concern about the
5 Proud Boys, Antifa, and a fear of what might happen at a Straight Pride event. The City has now
6 twice amended the Ordinance with reference to these groups and no others. Their invocation as
7 justification for the Ordinance is, at a minimum, suspect, as are the Ordinance’s content-based
8 restrictions on face coverings depending on style, fashion, and expressive message. Juxtaposing
9 the Ordinance’s explicit and complete ban on “balaclavas, ski masks, or the like” with its more
10 favorable treatment of rainbow masks and full costumes gives rise to the inference that officials
11 are impermissibly picking between speakers and their anticipated speech. (*See Reed, supra*, 576
12 U.S. at pp. 163-64; *Rosenberger v. Rector & Visitors of University of Virginia* (1995) 515 U.S.
13 819, 829 [government “must abstain from regulating speech when the specific motivating
14 ideology or the opinion or perspective of the speaker is the rationale for the restriction”].)

15 116. Even if considered content neutral, the Ordinance violates the First Amendment as an
16 unreasonable time, place, manner restriction that is substantially overbroad because it sweeps in a
17 great deal of activity that is either directly protected under the First Amendment, or a predicate for
18 such activity. (*Griswold v. Connecticut* (1965) 381 U.S. 479, 481 [recognizing that protecting
19 “peripheral rights” is necessary to protecting the freedom of speech and press].) It is immaterial to
20 the First Amendment analysis that some of the speech swept into the Ordinance’s ambit might be
21 offensive or off-putting to other protesters and members of the public. (*See National Socialist
22 Party of America v. Skokie* (1977) 432 U.S. 43, 43-44 [affirming free speech right to parade in
23 uniforms displaying the swastika]; *see also Hurley v. Irish-American Gay, Lesbian and Bisexual
24 Group of Boston* (1995) 515 U.S. 557, 569 [collecting symbolic speech cases].)

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26
27 ⁶⁴ City of Modesto, *Council Agenda Report re: Urgency Ordinance and Non-Urgency Ordinance*
28 *Amending the City of Modesto Municipal Code Title 4 Chapter 23*, City Council Meeting Agenda
Packet at pp. 649-51 (Dec. 2, 2025) access at <https://tinyurl.com/44ha6ea4>.

1 117. At protests, Mr. Flores, Ms. Ramirez, and Ms. Leiva, as well as other members of the
2 public, would like to continue exercising their rights to engage in protected speech, expression,
3 assembly and association while maintaining their anonymity, their expressive message, and their
4 personal safety. Similarly, the NewsGuild, its members, and other reporters would like to be able
5 to access basic safety gear when reporting at public demonstrations, especially if crowd control
6 measures are anticipated or deployed. But the Ordinance forces members of the public to choose
7 between these interests. The choice chills, deters, and infringes their constitutional rights. (*See*
8 *Steffel v. Thompson* (1974) 415 U.S. 452, 462 [observing that people should not have to choose
9 “between the Scylla of intentionally flouting state law and the Charybdis of forgoing . . .
10 constitutionally protected activity in order to avoid . . . a criminal proceeding”].)

11 118. The Ordinance further chills, deters, and infringes First Amendment rights by imposing
12 overbroad restrictions on face coverings that ignore protections for anonymous speech, treat
13 anonymous costumes more favorably than political speech, and lead to highly discretionary and
14 irrational results. The City’s vague scheme bans certain facial coverings, while permitting
15 numerous poorly defined exceptions—including for costumes that cloak one’s entire body and
16 obscure identity completely. These provisions render the Ordinance both woefully under and over-
17 inclusive, as well as dangerously susceptible to viewpoint discrimination. (*See Texas v. Johnson*,
18 *supra*, 491 U.S. at p. 414 [“If there is a bedrock principle underlying the First Amendment, it is
19 that the government may not prohibit the expression of an idea simply because society finds the
20 idea itself offensive or disagreeable.”].)

21 119. Equally nonsensical and unworkable is the Ordinance’s ban on “impact-resistant”
22 clothing (which would include leather motorcycle jackets), helmets (whether tucked into one’s bag
23 or worn on one’s head), and other safety gear. Members of the public ride their bicycles,
24 motorcycles, scooters, and skateboards to protests, and the law requires that some of them wear
25 helmets when doing so. (Vehicle Code § 21212; 27803.)

26 120. In addition, Plaintiffs, as well as many other members of the public and the press, want to
27 wear protective vests, eyewear, and helmets given the increasing likelihood that they could sustain
28 an injury to their torsos or heads while at a protest. The City certainly does not have a legitimate

1 interest in barring journalists from wearing this gear while newsgathering, and its unclear why the
2 City needs to bar the gear that protects these vital areas since the police should not be aiming for
3 them when deploying less lethal munitions. (*See* Pen. Code, § 13652, subd. (b)(9) [prohibiting
4 aiming any kinetic energy projectile at “the head, neck, or any other vital organs” while dispersing
5 an unlawful assembly]; *Modesto PD Policy Manual* 46 (Jul. 1, 2024) Policy Nos. 300.3, 308, 309
6 [stipulating that officers generally should not target a suspect’s head, neck, chest, or groin with
7 less lethal weapons].)

8 121. Moreover, while Plaintiffs do not quarrel with Modesto’s more general assertion that
9 public safety is an important governmental interest, the Ordinance is not narrowly tailored to
10 address this interest. As set forth in Section V, the City has many other legal tools to deal with
11 disturbances of the peace, property damage, and other violence at a protest or public assembly.

12 122. For these reasons, sections 4-23.02(a)(13)-(15) and (18)-(19) of the Ordinance should be
13 declared unconstitutional in violation of protections for free speech, free association, free
14 assembly, and a free press set forth in the First Amendment.

15 **SECOND CAUSE OF ACTION**

16 **Violation of Freedom of Speech and Assembly** 17 **(Article I, Sections 2 and 3 of the California Constitution)**

18 123. Plaintiffs incorporate by reference all foregoing and subsequent paragraphs as though
19 fully set forth herein.

20 124. The California Constitution, Article I section 2 prohibits laws that “restrain or abridge
21 liberty of speech or press.” (*See also Gilbert v. Nat’l Enquirer, Inc.* (1996) 43 Cal.App.4th 1135,
22 1144.) It “provides an even broader guarantee of the right of free speech and the press than does
23 the First Amendment.” (*Ibid.*; *see also Wilson, supra*, 13 Cal.3d 652 at p. 658.) Article I, section 3
24 protects the right to “assemble freely to consult for the common good.”

25 125. Although “the California Constitution is an independent document and its constitutional
26 protections are separate from and not dependent upon the federal Constitution,” the framework for
27 evaluating infringements proceeds along similar lines. (*Los Angeles Alliance for Survival, supra*,
28 22 Cal.4th at p. 366 [citing Cal. Const., art. I, § 24].) “[I]n analyzing speech restrictions under the

1 California Constitution, California courts employ the same time, place and manner test as the
2 federal courts.” (*Prigmore v. City of Redding* (2012) 211 Cal.App.4th 1322, 1336; *Best Friends*
3 *Animal Society v. Macerich Westside Pavilion Property LLC* (2011) 193 Cal.App.4th 168, 175
4 [“When analyzing time, place and manner restrictions, we may utilize California law as well as
5 federal constitutional standards.”].)

6 126. In light of this state law and for the same reasons as set forth in the related federal cause
7 of action, sections 4-23.02(a)(13)-(15), (18)-(19) of the Ordinance should be declared
8 unconstitutional in violation of protections for free speech, free association, free assembly, and a
9 free press set forth in Article I, sections 2 and 3.

10 127. These sections of the Ordinance should also be declared unconstitutional given the
11 California Court of Appeal’s binding decision in *Ghafari* recognizing that anonymity can be
12 “essential to the exercise of constitutional rights.” (87 Cal.App.3d at p. 260.) The *Ghafari* court
13 concluded that a law which “flatly prohibits anonymity under circumstances where . . . protected
14 activities may be involved” is unconstitutional unless (1) required by a “compelling state interest”
15 and (2) “implemented in the least restrictive manner possible.” (*Ibid.*) For the reasons stated
16 above, Modesto cannot satisfy this test.

17 128. *Ghafari*’s expansive protection for anonymous speech is bolstered by Article I, section 1
18 of the California Constitution, which guarantees an “inalienable” right to privacy and which was
19 adopted in connection with concerns over the surveillance of civil rights protesters in the 1960s
20 and 1970s. (See Nicole A. Ozer, *Golden State Sword: The History and Future of California’s*
21 *Constitutional Right to Privacy to Defend and Promote Rights, Justice, and Democracy in the*
22 *Modern Digital Age* (2024) Berkeley Tech. L.J., 963, 963-67.) As California state courts have
23 recognized, one of the principal purposes of the constitutional protection of associational privacy
24 is to free an individual to follow the dictates of his conscience by ensuring that he need not avoid
25 any ties simply because they might displease those who control his personal or professional
26 destiny.” (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 854-55 [quotations omitted]; see also *ZL*
27 *Techs., Inc. v. Does 1-7* (2017) 13 Cal.App.5th 603, 632 [noting broader privacy rights for
28 anonymous speech under the California Constitution as compared to the Federal Constitution].)

1 **THIRD CAUSE OF ACTION**

2 **Violation of Due Process—Void for Vagueness**
3 **(Fourteenth Amendment of the U.S. Constitution; 42 U.S.C. § 1983)**

4 129. Plaintiffs incorporate by reference all foregoing and subsequent paragraphs as though
5 fully set forth herein.

6 130. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides
7 that no state shall “deprive any person of life, liberty, or property, without due process of law.” To
8 satisfy due process, a law must be sufficiently definite to provide (1) adequate notice of the
9 conduct proscribed and (2) sufficient guidelines for officials so that arbitrary and discriminatory
10 enforcement does not occur. (*United States v. Williams* (2008) 553 U.S. 285, 304.) When, as here,
11 First Amendment rights are implicated, “a more stringent vagueness test” applies. (*Vill. of*
12 *Hoffman Ests. v. Flipside, Hoffman Ests., Inc.* (1982) 455 U.S. 489, 499.) The greater degree of
13 specificity is required to ensure that ambiguity does not chill protected speech and expression.
14 (*F.C.C. v. Fox Television Stations, Inc.* (2012) 567 U.S. 239, 253-54; *Forsyth, supra*, 505 U.S. at
15 p. 133.)

16 131. The Ordinance violates due process by failing to provide adequate notice of when it
17 applies. It broadly prohibits “utiliz[ing], carry[ing], or possess[ing]” certain items at any “public
18 assembly.” Yet it does not define what a “public assembly” means, implying that it governs any
19 time two or more people gather in public places. Such an application would sweep in everything
20 from large public demonstrations to a couple holding up a poster on the street corner, not to
21 mention when people come together in public parks for children’s sporting events and picnics.

22 132. The Ordinance also violates due process by failing to provide adequate notice of what
23 conduct it prohibits. It bans the “wearing of a mask, scarf, bandana or any other accessory or item
24 that covers or partially covers the face shielding the wearer’s face from view and conceals the
25 wearer’s identity.” (Ord. § (a)13(i)-(iii).) It imposes no intent element about concealing one’s
26 identity, and leaves ambiguous the extent to which one’s face and identity must be obscured
27 before attire triggers criminality. Wide-brimmed hats and big sunglasses would ostensibly be
28 banned by the Ordinance’s text, but clear shatter-proof goggles for the public or the press might—

1 or might not—be acceptable. It all depends on how a police officer views the accessory. Such
2 inconsistencies are needlessly confusing.

3 133. The labyrinth of the Ordinance’s confounding exceptions for medical necessity, religious
4 beliefs, and costumes complicates the ban on face coverings yet further. It is particularly unclear
5 what constitutes “costumes which obscure the face as part of the expressive function of the
6 costume including, coverings worn as part of a costume in connection with a holiday event (e.g.
7 Halloween), masquerade event (e.g. Mardi Gras), a theatrical or other entertainment event, and/or
8 the functional equivalent.” (*Id.* § (a)13(iii).) The definition is unworkable and permits the
9 exception to swallow the entirety of the Ordinance, unless a police officer—in his unbounded
10 discretion—decides otherwise. The terms also leave open significant questions as to whether
11 peaceful protesters like Ms. Ramirez and Ms. Leiva could wear around their faces expressive and
12 symbolic items like a keffiyeh scarf.

13 134. Also ambiguous is the meaning of the provision banning “balaclavas, ski masks, *or the*
14 *like*” as a carve-out to the exception concerning “coverings worn for medical necessity.” (*Id.* §
15 (a)13(ii) [emphasis added].) It is uncertain, for example, if the gaiter that Mr. Flores was wearing
16 and for which he was arrested would fall within this category. Similarly ambiguous are the
17 Ordinance’s bans on “impact resistant” clothing and “load-bearing or similar ‘tactical’ vests.” (*Id.*
18 § (a)18-19.) Anything made of leather, such as a motorcycle jacket, could qualify as impact
19 resistant, and the vests that many journalists wear when covering protests would likely be covered
20 by both provisions.

21 135. Furthermore, the Ordinance’s failure to provide adequate guidelines and more well-
22 defined terms gives rise to arbitrary, selective, and disproportionate enforcement problems. The
23 lack of articulated standards to govern enforcement creates a risk that Modesto police officers will
24 condition their application of the Ordinance based on the speaker or the viewpoint and content of
25 that speaker’s speech. A possibility that is more than theoretical given the police’s history of
26 enforcement. Also troubling is the expansive breadth of the Ordinance’s provision affording the
27 City’s Police Chief discretion to modify any prohibition for a parade so long as “the modification
28 does not impair or threaten public safety.” (4-23.02(f).)

136. A law cannot “entrust lawmaking to the moment-to-moment judgment of the policeman on his beat,” or “confer[] on police a virtually unrestrained power to arrest and charge persons with a violation.” (*Kolender, supra*, 461 U.S. at p. 360 [citing *Smith v. Goguen* (1974) 415 U.S. 566, 575 and *Lewis v. City of New Orleans* (1974) 415 U.S. 130, 135] [internal quotations omitted].) Where, as here, a law allows for the rudderless discretion of restrictions that impact free speech rights, then it is subject to facial invalidation unless the government can identify a “binding judicial or administrative construction” or “well-established practice” confining officials’ enforcement. (*City of Lakewood v. Plain Dealer Publ’g* (1988) 468 U.S. 750, 770; *see Coates v. City of Cincinnati* (1971) 402 U.S. 611.) Modesto has identified neither.

137. For these reasons, sections 4-23.02(a)(13)-(15) and (18)-(19) of the Ordinance should be declared unconstitutional in violation of due process protections under the Fourteenth Amendment to the U.S. Constitution.

FOURTH CAUSE OF ACTION

Violation of Due Process—Void for Vagueness (Article I, Section 7 of the California Constitution)

138. Plaintiffs incorporate by reference all foregoing and subsequent paragraphs as though fully set forth herein.

139. Article I, section 7 of the California Constitution provides that a “person may not be deprived of life, liberty, or property without due process of law.” The analysis for due process violations under state law is similar to the analysis under federal law. That is, a law must be sufficiently definite to provide adequate notice of the conduct proscribed and provide sufficient guidelines for officials so that arbitrary and discriminatory enforcement does not occur. When free speech rights are at stake, an even greater degree of specificity is required to ensure that ambiguity does not chill protected speech. (*Franklin v. Leland Stanford Junior Univ.* (1985) 172 Cal.App.3d 322, 347.) A law may not “impermissibly delegate[] basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” (*Williams v. Garcetti, supra*, 5 Cal.4th at pp. 567-68 [citing *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-109].)

1 140. In light of this state law and for the same reasons as set forth in the related federal cause
2 of action, sections 4-23.02(a)(13)-(15) and (18)-(19) of the Ordinance also violate California due
3 process protections and should be declared unconstitutional. (*See In re Marriage of Siller* (1986)
4 187 Cal.App.3d 36, 49 [holding that statutes “impinging upon constitutional rights (usually of free
5 speech)” may be “declared invalid in their entirety if piecemeal adjudication of the legality of the
6 statute would entail the vague or uncertain future application of the statute, thereby inhibiting the
7 exercise of constitutional rights”].)

8 141. Section 13 of the Ordinance, in particular, should be declared unconstitutional for the
9 additional reason that it violates Article I, section 7’s equal protection clause. The Ordinance
10 draws unconstitutional distinctions between, on the one hand, anonymous persons wishing to
11 communicate directly on political or public issues and, on the other hand, anonymous costume-
12 wearers at public “holiday event[s], “masquerade event[s]”, and “theatrical or other entertainment
13 event[s], and/or the functional equivalent.” (4-23.02(a)(13)(iii).) This classification scheme
14 subverts core free speech protections and improperly metes out differential treatment on the basis
15 of speech. (*See Ghafari, supra*, 87 Cal.App.3d at p. 265 [citing *Mosley, supra*, 408 U.S. at pp. 95-
16 96 and *Wirta v. Alameda-Contra Costa Transit Dist.* (1967) 68 Cal.2d 51, 57].)

17 142. In particular, Section 13 elevates “theatrical or other entertainment event[s] and/or the
18 functional equivalent” above core political speech in violation of state law without any reasonable
19 or rational basis. Such a scheme falls far-below the constitutionally-required standard that any
20 classification impacting free speech rights be as narrowly tailored as possible to support a
21 compelling state interest. (*See Serrano v. Priest* (1976) 18 Cal.3d 728, 767-78 [“In applying our
22 constitutional provisions guaranteeing equal protection of the laws, we still continue to apply strict
23 and searching judicial scrutiny to legislative classifications, which because of their impact on
24 those individual rights and liberties which lie at the core of our free and representative form of
25 government are properly considered ‘fundamental.’”].)

26 143. The state’s prior ban on face masks, which *Ghafari* invalidated, had similar a categorical
27 distinction between anonymous speakers and “anonymous public issue communication,” and this
28 distinction also provided the court an additional reason to find the law unconstitutional. (87

1 Cal.App.3d at p. 265.) Specifically, *Ghafari* ruled that, because the state statute “affect[ed] First
2 Amendment rights, it [wa]s not clothed with the usual presumption of constitutionality which most
3 legislation enjoys in the face of an equal protection argument.” (*Ibid.*) “Rather, ‘*the state* must first
4 establish that it has a *compelling* interest which justifies the law and then demonstrate that the
5 distinctions drawn by the law are *necessary* to further that purpose.” (*Ibid.* [itals. in original]
6 [quoting *People v. Olivas* (1976) 17 Cal.3d 236, 251].) As in *Ghafari*, and for the reasons stated
7 above, Modesto cannot satisfy this test.

8 **FIFTH CAUSE OF ACTION**

9 **Violation of California Statutory Law** 10 **(Penal Code § 409.7)**

11 144. Plaintiffs incorporate by reference all foregoing and subsequent paragraphs as though
12 fully set forth herein.

13 145. Penal Code section 409.7 codifies constitutional protections for a free press by
14 safeguarding journalists’ access when reporting on protests and public demonstrations. It prohibits
15 law enforcement from citing journalists who are in the midst of “gathering, receiving, or
16 processing information” for failing to disperse after an unlawful assembly is declared or for
17 violating a curfew. It further protects journalists engaged in newsgathering from being cited for
18 willful resistance, delay, or obstructing an officer in violation of Penal Code section 148(a)(1).

19 146. Section 409.7 was, “[a]ccording to the author,” intended to “prohibit law enforcement
20 from obstructing, detaining, assaulting or otherwise preventing the press from fulfilling their
21 constitutional mandate in relaying information regarding these events.” (Senate Rules Comm.,
22 Analysis of Assemb. B. 98, at 5 (May 20, 2021).) It thereby recognizes that press in the midst of
23 newsgathering do not present a safety risk and so are entitled to carry out their constitutional
24 newsgathering mandate after a dispersal order is issued. (*Ibid.*; *see also Goyette, supra*, 338 F.R.D.
25 at p. 116 [finding that journalists who reported on protest activity from an active dispersal area
26 were engaged in constitutionally protected newsgathering]; *Index Newspapers LLC, supra*, 977
27 F.3d at p. 834 [“The many peaceful protesters, journalists, and members of the general public
28 cannot be punished for the violent acts of others.”].)

1 147. The Legislature drafted Section 409.7 to follow long established press protections set
2 forth at Penal Code sections 409.5 and 409.6, which safeguard reporters' access when reporting at
3 the sites of natural disasters and avalanches. In interpreting Section 409.5, the California Court of
4 Appeal observed that "the news media must be afforded special access to disaster sites in order
5 that they may properly perform their function of informing the public." (*Leiserson v. City of San*
6 *Diego* (1986) 184 Cal.App.3d 41, 51.) The same is true for members of the press.

7 148. The Ordinance's vague and overbroad bans on face coverings, "gas masks or similar
8 breathing devices," protective helmets, and impact-resistant clothing thwart the press's
9 constitutional mandate and the public's right to receive firsthand news. Journalists reporting at
10 protests are often directly in harm's way, either as the target of violence or as lawful observers in
11 the vicinity of less lethal crowd control measures. Many of the banned items are among every
12 journalist's basic safety kit, including the kits of many NewsGuild members. They should not be
13 criminalized for carrying such gear to protect against tear gas, assault, and "less lethal" munitions.

14 149. The City's complete ban on carrying basic safety gear is, for all practical purposes, a de
15 facto exclusion of the press at public events where crowd dispersal measures are deployed. The
16 City has no compelling reason to impair the predicates needed by journalists to report the news.
17 (*See, e.g., Garcia, supra*, 150 F.4th at p. 1231 [laws that restrict not only speech itself, but also
18 actions that are a "predicate for" speech or that are "inextricably intertwined with speech" will
19 trigger First Amendment scrutiny].)

20 150. Sections 4-23.02(a)(13)-(15) and (18)-(19) of the Ordinance, when enforced against
21 journalists engaged in newsgathering at a protest or public assembly, violate Penal Code section
22 409.7, as well as the state and federal constitutional rights that animate Section 409.7's statutory
23 protections, and should be declared unlawful.

24 **SIXTH CAUSE OF ACTION**

25 **Taxpayer Action to Prevent Illegal Expenditure of Public Funds** 26 **(Code Civ. Proc. § 526a)**

27 151. Plaintiffs incorporate by reference all foregoing and subsequent paragraphs as though
28 fully set forth herein.

1 152. Plaintiff Pacific Media Workers Guild is a reporters' union that represents journalists in
2 Northern California and the Central Valley, including in Modesto. Its members have paid taxes in
3 Modesto within the past year and have been assessed and/or paid taxes to the State of California
4 within one year of filing this action. Plaintiffs Angel Jose Flores, Julissa Ruiz Ramirez, and Alyssa
5 Leiva have also each paid taxes in Modesto within the past year and have been assessed and/or
6 paid taxes to the State of California within one year of filing this action.

7 153. The Modesto City Council adopted, enacted, and amended the Ordinance. Defendant
8 Brandon Gillespie is an officer, agent, or person acting in an official capacity on behalf of the
9 City, and is subject to suit under Code of Civil Procedure section 526a as well as pursuant to the
10 common law theory of taxpayer standing. (*See California Assn. for Safety Educ. v. Brown* (1994)
11 30 Cal.App.4th 1264, 1281; *see also Los Altos Prop. Owners Assn. v. Hutcheon* (1977) 69
12 Cal.App.3d 22, 26.) Chief Gillespie oversees members of the Modesto Police Department, which
13 is charged with enforcing the law, including the Ordinance. The Modesto Police Department
14 enforces the Ordinance by arresting and issuing citations to individuals for alleged violations.

15 154. Enforcement of Sections 4-23.02(a)(13)-(15) and (18)-(19) of the Ordinance violates, or
16 will violate, Article I, Sections 2, 3, and 7 of the California Constitution and Penal Code section
17 409.7 and that this conduct constitutes an illegal expenditure of tax funds.

18 155. By making arrests, issuing citations, and prosecuting criminal charges under Sections 4-
19 23.02(a)(13)-(15) and (18)-(19) of the Ordinance, the City engages in conduct constituting an
20 illegal expenditure, a waste of public funds, an ultra vires action, and/or a failure to perform a duty
21 specifically enjoined in violation of Code of Civil Procedure section 526a and the common law.

22 156. Plaintiffs have an interest in enjoining the unlawful expenditure of tax funds. Pursuant to
23 Code of Civil Procedure sections 526, 526a, 1060, the common law, and this Court's equitable
24 power, Plaintiffs seek declaratory and injunctive relief to prevent continued harm and to protect
25 both themselves and the public from enforcement of the Ordinance. They have no plain, speedy,
26 and adequate alternative remedy at law

27 157. Unless compelled by this Court to comply with its legal obligations, the City will
28 continue to enforce the Ordinance.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully request the following relief:

3 A. Declare that sections 4-23.02(a)(13)-(15) and (18)-(19) of Title 4, Chapter 23, of the
4 Modesto Municipal Code, entitled "Restrictions on Use of Specified Items During Public
5 Assembly," violate the First and Fourteenth Amendments of the U.S. Constitution; Article I,
6 sections 2, 3, and 7 of the California Constitution; and California Penal Code section 409.7; and
7 are therefore void and unenforceable;

8 B. Issue a preliminary and permanent injunction prohibiting the City from enforcing
9 sections 4-23.02(a)(13)-(15) and (18)-(19) of the Ordinance and prohibiting the City from issuing
10 any citations or from prosecuting any criminal sanctions under these sections;

11 C. Award Plaintiffs' reasonable attorneys' fees pursuant to California Civil Code section
12 52 and California Civil Procedure Code section 1021.5;

13 D. Order such other relief that the Court deems necessary to address the harm to Plaintiffs
14 or which the Court may determine is warranted, just, or proper.

15
16 Dated: March 25, 2026

Respectfully submitted,

17 ACLU FOUNDATION OF
18 NORTHERN CALIFORNIA, INC.

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20 

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