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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13 SACRAMENTO DIVISION

15 PETER STAVRIANOUDAKIS; KATHERINE
STAVRIANOUDAKIS; SCOTT TIMMONS;
16 ERIC ARIYOSHI; **and** AMERICAN FALCONRY
CONSERVANCY,

17 Plaintiffs,

18 v.

19
20 U.S. DEPARTMENT OF FISH & WILDLIFE;
CHARLTON H. BONHAM, in his official capacity
21 as Director of California Department of Fish and
Wildlife; **and** JIM KURTH, in his official capacity
22 as Deputy Director Exercising the Authority of the
Director of U.S. Department of Fish and Wildlife,

23 Defendants.
24
25
26
27

No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

28 *Licensed to practice law in Arizona and Colorado. Not licensed to practice law in California.

Complaint for Declaratory and Injunctive Relief
No.

1 8. The Migratory Bird Treaty Act grants Defendants the “authority, with a search
2 warrant, to search any place” and by plain implication denies the authority to search without a
3 warrant. 16 U.S.C. § 706. Neither the Migratory Bird Treaty Act nor the Bald and Golden Eagle
4 Protection Act grant Defendants the authority to conduct warrantless searches of private property
5 or regulate falconers’ speech.

6 9. The federal regulations include 50 C.F.R. § 21.29(b)(4)(i), which authorizes
7 Defendants to conduct warrantless searches of falconry “facilities” to ensure that the “facilities
8 standards” in § 21.29 are met, and 50 C.F.R. § 21.29(d)(2) and (d)(9), which grant state officials
9 the power to conduct warrantless searches of the “equipment and records” of falconers.

10 10. The federal regulations also include 50 C.F.R. § 21.29(f)(8)–(9), which prohibit
11 falconers from photographing or filming their birds to make movies, commercials, or in other
12 commercial ventures unrelated to falconry, limit compensation for falcon-related educational
13 speech, and dictate the content of conservation education programs.

14 11. The federal regulations encourage states to create licensing and regulatory schemes
15 consistent with the federal regulations. Any state rules must be at least as restrictive as the federal
16 rules. 50 C.F.R. § 21.29(b).

17 12. Pursuant to 50 C.F.R. § 21.29(b), California promulgated falconry regulations in
18 2014, including 14 C.C.R. § 670(h)(13)(A), which contains substantively identical speech
19 restrictions as those contained in the federal regulations, and further bans any compensation of
20 falconers’ speech if the “fees charged, compensation, or pay received ... exceed the amount
21 required to recover costs.”

22 13. In 2017, the California regulations were amended to include 14 C.C.R.
23 § 670(j)(3)(A), which authorizes warrantless searches of falconry “facilities, equipment, or raptors
24 possessed” by licensees, including the power to “inspect, audit, or copy any permit, license,
25 book[,]” or other required record.

26 14. Failure to comply with the above requirements may result in the denial of a falconry
27 license or in a previous license’s immediate suspension. 14 C.C.R. § 670(j)(3)(A).

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1 15. A refusal to allow inspection may be inferred if, after “reasonable attempts” by the
2 department, the licensee is unavailable for inspection. *Id.*

3 16. Failure to follow the state and federal regulations also subjects Plaintiffs to civil and
4 criminal penalties. *See* 16 U.S.C. § 707; 14 C.C.R. § 747.

5 17. Falconry license holders are required to renew their licenses annually. 14 C.C.R.
6 § 670(a)(1); 14 C.C.R. § 670(e)(4); 50 C.F.R. § 21.29(c)(1)(i).

7 18. As a consequence, licensed falconers are forced to continually consent to
8 unconstitutional searches of their private homes and property as conditions of licensure, thereby
9 suffering ongoing and continuing constitutional injury.

10 19. This suit seeks to vindicate the rights of Plaintiffs to be secure in their private homes
11 and curtilage against unreasonable warrantless searches by armed government agents under the
12 Fourth Amendment, and their rights to freedom of speech under the First Amendment.

13 20. Plaintiffs will suffer the continued deprivation of their constitutional rights due to
14 the continual enforcement of the unconstitutional rules complained of herein by state and federal
15 officials, unless the regulations challenged herein are declared unconstitutional and unlawful and
16 Defendants are enjoined from enforcing them.

17 21. This action seeks wholly prospective declaratory and injunctive relief and no
18 monetary damages against any party.

19 **PARTIES**

20 22. Plaintiff Peter Stavrianoudakis is a United States citizen, Deputy Public Defender
21 for Stanislaus County, and Pacific Coast Director for American Falconry Conservancy. He resides
22 in Hilmar, California, and was first licensed as a falconer over 30 years ago. He is a Master
23 Falconer.

24 23. Plaintiff Katherine Stavrianoudakis is a United States citizen and a Service
25 Coordinator for Valley Mountain Regional Center, a nonprofit that provides services for the
26 developmentally disabled. She resides in Hilmar, California, and is married to and lives in the same
27 residence as Plaintiff Peter Stavrianoudakis. She does not have a falconry license but is subject to
28 the same intrusive inspections of her home by Defendants as her husband.

1 24. Plaintiff Eric Ariyoshi is a United States citizen, Marketing Director for a California
2 winery, and Secretary for American Falconry Conservancy. He resides in Novato, California, and
3 has been a licensed falconer for 20 years.

4 25. Plaintiff Scott Timmons is a United States citizen, and owner of Aerial Solutions, a
5 small privately owned abatement company, and a member of American Falconry Conservancy. He
6 resides in Lompoc, California, and has been licensed as a falconer for 30 years. He has been
7 licensed to use falcons in professional abatement for more than 10 years. Abatement is the practice
8 of flying certain species of raptor over a given area as a deterrent to the presence of other invasive
9 bird species. Abatement is important in the prevention of nuisance caused by seagulls and other
10 bird species at landfills and near airports.

11 26. Plaintiff American Falconry Conservancy is a membership organization established
12 in 2002 and composed of approximately 100 members across the United States. American Falconry
13 Conservancy is dedicated to protecting and preserving the practice of falconry, and protecting
14 falconers' rights.

15 27. Defendant Greg Sheehan is Principal Deputy Director of the U.S. Fish and Wildlife
16 Service. In his capacity as Principal Deputy Director of the U.S. Fish and Wildlife Service he is
17 charged with enforcing the federal warrantless search and speech regulations challenged in this
18 lawsuit. By enforcing the policies complained of in this action, he is currently depriving Plaintiffs
19 of their rights to be free from unreasonable warrantless searches of their private property, and rights
20 to freedom of speech guaranteed by the United States Constitution, and will continue to do so absent
21 this Court's injunction. Defendant Sheehan is sued in his official capacity.

22 28. Defendant Charlton Bonham is Director of the California Department of Fish and
23 Wildlife. In his capacity as Director of the California Department of Fish and Wildlife he is charged
24 with enforcing the California and federal warrantless search and speech regulations challenged in
25 this lawsuit. By enforcing the policies complained of in this action, he is currently depriving
26 Plaintiffs of their rights to be free from unreasonable warrantless searches of their private property,
27 and rights to freedom of speech guaranteed by the United States Constitution, and will continue to
28 do so absent this Court's injunction. Defendant Bonham is sued in his official capacity.

1 37. Plaintiffs' falconry "facilities," are located within private homes or structures within
2 the curtilage of private homes, as are the targeted "equipment and records."

3 38. Plaintiffs' birds, falconry equipment, and records are also "papers and effects"
4 protected by the Fourth Amendment.

5 **The First Amendment Presumptively Prohibits Content-Based Speech Restrictions**

6 39. The First Amendment protects the right of free speech by commanding that
7 "Congress shall make no law ... abridging the freedom of speech." U.S. Const. amend. I.

8 40. Regulations that control speech based on its content are "presumptively invalid, and
9 the Government bears the burden to rebut that presumption." *United States v. Stevens*, 559 U.S.
10 460, 468 (2010).

11 41. Movies, commercials, entertainment, advertisements, educational programs, and
12 promotion or endorsement of products are forms of speech protected by the First Amendment.

13 **Federal and California Speech Restrictions**

14 42. 50 C.F.R. § 21.29(f)(9)(i) prohibits Plaintiffs from photographing or filming their
15 birds for "movies, commercials, or in other commercial ventures"— if the images will be used in
16 a production that is not about falcons or falconry.

17 43. 50 C.F.R. § 21.29(f)(9)(ii) prohibits Plaintiffs from photographing or filming their
18 birds for "advertisements; as a representation of any business, company, corporation, or other
19 organization; or for promotion or endorsement of any products, merchandise, goods, services,
20 meetings, or fairs"—unless the promotion or endorsement is of "a nonprofit falconry organization
21 or association" or "products or endeavors related to falconry."

22 44. 50 C.F.R. § 21.29(8)(v) imposes content-based restrictions about what Plaintiffs can
23 discuss in conservation education programs—including "information about the biology, ecological
24 roles, and conservation needs of raptors and other migratory birds."

25 45. 50 C.F.R. § 21.29(f)(8)(iv) prohibits Plaintiffs from being paid to speak in a
26 conservation education program using their birds if they charge a fee for the presentation that
27 exceeds the amount required to recoup their costs.

1 60. Peter does not generate any type of income, or participate in any kind of industry
2 through his ownership, training, or care of Ares.

3 61. Ares lives exclusively inside Peter's home, and is occasionally weathered in a
4 protected enclosure in his yard to ensure the health of his falcon.

5 62. There is no separate structure used for the care or housing of Ares.

6 63. Peter and Katherine Stavrianoudakis were married in May 2014.

7 64. Peter and Katherine's home was originally purchased by Peter's mother Darlene
8 Stavrianoudakis in 1973.

9 65. Peter and Katherine have lived there together for a total of five years.

10 66. Katherine does not, and has never, held a falconry license or practiced falconry.

11 **Eric Ariyoshi**

12 67. Eric Ariyoshi has been interested in, housed, cared for, trained, and flown falcons
13 and other birds of prey used in falconry since he was 13-years old.

14 68. In 1988, when he was 16-years old, Eric secured his first falconry license and has
15 held a valid falconry license for approximately the last 30 years.

16 69. Eric last renewed his falconry license in June 2018, and will renew his license in
17 June 2019.

18 70. Eric has continuously complied with all requirements for falconry licensure.

19 71. In his time as a falconer, Eric has housed, cared for, trained, and flown
20 approximately 20 birds.

21 72. Eric has never been sanctioned or cited by U.S. Fish and Wildlife, California Fish
22 and Wildlife, or any other agency or body, related to his practice of falconry.

23 73. Eric currently owns one three-year-old male Peregrine Falcon named "Finn."

24 74. Finn is housed in an unrestricted mews located 30 feet away with a direct line of
25 sight to the rear of Eric's home.

26 75. Eric first became aware of American Falconry Conservancy in 2016, shortly
27 thereafter become the organization's Secretary.

28 76. Eric has given uncompensated educational presentations about falconry.

1 **Scott Timmons**

2 77. Scott Timmons has been interested in, housed, cared for, trained, and flown falcons
3 and other birds of prey used in falconry since he was 16-years old.

4 78. In 1988, when he was 20-years old, Scott secured his first falconry license and has
5 held a valid falconry license for approximately 30 years.

6 79. Scott last renewed his falconry license in June 2018, and will renew his license in
7 June 2019.

8 80. Scott has continuously complied with all requirements for falconry licensure.

9 81. In his time as a falconer, Scott has housed, cared for, trained, and flown
10 approximately 40 birds; 20 falconry birds and 20 birds used for abatement services.

11 82. Species that Scott has owned include red-tailed hawks, cooper's hawks, peregrine
12 falcons, and hybrid species.

13 83. In 1992, Scott was approached on his mother's private property in Thousand Oaks,
14 California, by officers of the California Fish & Game Department.

15 84. Scott was living with his mother and attending college at the time.

16 85. The officers claimed to be there to inquire as to whether he was still in possession
17 of a certain red-tailed hawk.

18 86. Scott told them that said hawk had flown away, and they soon revealed that they
19 were already in possession of the hawk.

20 87. Scott believes the officers used the hawk as pretext to attempt an unreasonable
21 warrantless search of his mother's private property.

22 88. Scott has never been sanctioned or cited by U.S. Fish and Wildlife, California Fish
23 and Wildlife, or any other agency or body, related to his practice of falconry.

24 89. Currently, Scott owns three birds: "June," is a five-year-old Goshawk, "Jeppa" is a
25 five-year-old Peregrine Falcon, and "Tio" is a six-year-old Harris Hawk.

26 90. Scott has a close personal bond and friendship with June, Jeppa, and Tio that rivals
27 that of any other human and pet.

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1 91. Scott's falcons live exclusively in mews and other structures directly adjacent to his
2 home.

3 92. Scott first heard of and became acquainted with American Falconry Conservancy in
4 2014 and became a member in 2018.

5 93. Scott is the owner of an abatement services company called Aerial Solutions.

6 94. Abatement is the practice of flying certain species of raptor over a given area as a
7 deterrent to the presence of other invasive bird species. Abatement is important in the prevention
8 of nuisance caused by seagulls and other bird species at landfills and near airports.

9 95. Scott has been asked to perform educational presentations, including conservation
10 education presentations, at the same time that he is flying his birds for abatement. But he has
11 declined to perform these demonstrations because of the regulations that prohibit compensation for
12 speaking that exceeds the amount required to recoup his costs.

13 **American Falconry Conservancy**

14 96. American Falconry Conservancy is a membership organization established in 2002
15 and composed of approximately 100 members from across the United States.

16 97. American Falconry Conservancy's stated purpose is to promote "the broadest
17 liberties possible that are not in conflict with legitimate conservation efforts based upon sound
18 biological and legal reasoning," and "promote knowledge of quality falconry, as well as to instill
19 pride in falconers for the cultural heritage of the sport, and its place in world history."

20 98. American Falconry Conservancy is comprised of six districts across the United
21 States, with each region overseen by a regional director.

22 99. American Falconry Conservancy is managed by an executive board consisting of a
23 president, vice-president, secretary, and treasurer, with membership decisions vested in a board of
24 directors.

25 100. American Falconry Conservancy membership is open to "[a]ny falconer—neither
26 antagonistic nor detrimental to the association or its purpose—of good moral character and over
27 the age of 17 years."

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1 101. American Falconry Conservancy members pay annual dues, starting at \$30 for one
2 year.

3 102. By virtue of holding falconry licenses, all members of American Falconry
4 Conservancy are subject to the federal warrantless search provisions challenged herein.

5 103. By virtue of holding falconry licenses, all members of American Falconry
6 Conservancy residing in California are subject to the California warrantless search provision
7 challenged herein.

8 104. By virtue of holding falconry licenses, all members of American Falconry
9 Conservancy are subject to the federal speech restrictions challenged herein.

10 105. By virtue of holding falconry licenses, all members of American Falconry
11 Conservancy residing in California are subject to the California speech restrictions challenged
12 herein.

13 106. American Falconry Conservancy members have been subject to unreasonable
14 warrantless searches pursuant to the regulations challenged herein.

15 107. American Falconry Conservancy members are subject to the speech prohibiting
16 regulations complained of in this action.

17 108. Certain members of American Falconry Conservancy have declined to create
18 photographs, movies, commercials, and other expression due to Defendants' active enforcement of
19 the regulations complained of in this action.

20 109. Certain members of American Falconry Conservancy have modified the content of
21 their educational presentations due to Defendants' active enforcement of the regulations
22 complained of in this action.

23 110. Certain members of American Falconry Conservancy have declined to perform
24 educational presentations and engage in other expression due to Defendants' active enforcement of
25 the regulations limiting compensation complained of in this action.

26 111. American Falconry Conservancy as an association is dedicated to protecting and
27 preserving the practice of falconry and protecting falconers' rights.

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1 112. Neither the claims asserted here, nor the specific relief requested, require the
2 participation of individual members of American Falconry Conservancy.

3 **CLAIMS FOR RELIEF**

4 **Count I**

4 **(50 C.F.R. § 21.29(b)(4)(i), 50 C.F.R. § 21.29(d)(2) and (d)(9), and 14 C.C.R. § 670(j)(3)(A))**
5 **(Warrantless Search of Falconry License Holders)**
6 **(Fourth and Fourteenth Amendments)**

6 113. Plaintiffs incorporate the allegations in the preceding paragraphs.

7 114. Under 50 C.F.R. § 21.29(b)(4)(i), Defendants assert the purported authority to
8 inspect Plaintiffs' facilities without a warrant "to ensure that the facilities standards" in § 21.29 are
9 met.

10 115. 50 C.F.R. § 21.29(d)(2) and (d)(9) purports to grant state officials the power to
11 conduct warrantless searches of the "equipment and records" of Plaintiff falconers.

12 116. 14 C.C.R. § 670(j)(3)(A), purports to authorize warrantless searches of falconry
13 "facilities, equipment, or raptors possessed" by licensees, including the power to "inspect, audit, or
14 copy any permit, license, book[.]" or other required record.

15 117. Plaintiffs' falconry "facilities" are located within private homes or structures within
16 the curtilage of private homes, as are the targeted "equipment and records."

17 118. Plaintiffs' birds, falconry equipment, and records are also "papers and effects"
18 protected by the Fourth Amendment.

19 119. As a condition of securing and maintaining their falconry licenses, Plaintiffs are
20 forced, in violation of the unconstitutional conditions doctrine, to waive their Fourth Amendment
21 rights to be free from unreasonable warrantless searches of their private homes and curtilage.

22 120. Falconry license holders are required to renew their licenses annually, and as a
23 consequence are forced to continually consent to unconstitutional searches of their private homes
24 and property as a condition of licensure, thereby suffering ongoing and continuing constitutional
25 injury.

26 121. Day-to-day, Plaintiffs live in ongoing fear of their home and curtilage being subject
27 to unreasonable warrantless search by armed government agents.

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1 122. The federal and California search provisions challenged herein violate Plaintiffs'
2 Fourth Amendment rights and exceed Defendants' authority under the Migratory Bird Treaty Act.
3 Plaintiffs have no adequate remedy at law to compensate for the loss of these fundamental
4 freedoms and will suffer irreparable injury absent an injunction restraining Defendants'
5 enforcement of the regulations complained of in this action. Plaintiffs are therefore entitled to
6 declaratory and permanent injunctive relief against continued enforcement and maintenance of
7 Defendants' unconstitutional laws, practices, and policies. *See* 28 U.S.C. §§ 2201, 2202.

8 **Count II**
9 **(50 C.F.R. § 21.29(b)(4)(i), 50 C.F.R. § 21.29(d)(2) and (d)(9), and 14 C.C.R. § 670(j)(3)(A))**
10 **(Warrantless Search of Non-Falconry License Holders)**
11 **(Fourth and Fourteenth Amendments)**

12 123. Plaintiffs incorporate the allegations in the preceding paragraphs.

13 124. Under 50 C.F.R. § 21.29(b)(4)(i), Defendants assert the purported authority to
14 inspect Plaintiffs' facilities without a warrant "to ensure that the facilities standards" in § 21.29 are
15 met.

16 125. 50 C.F.R. § 21.29(d)(2) and (d)(9) purports to grant state officials the power to
17 conduct warrantless searches of the "equipment and records" of Plaintiff falconers.

18 126. 14 C.C.R. § 670(j)(3)(A), which authorizes warrantless searches of falconry
19 "facilities, equipment, or raptors possessed" by licensees, including the power to "inspect, audit, or
20 copy any permit, license, book[.]" or other required record.

21 127. Katherine Stavrianoudakis does not, and has never, held a falconry license or
22 practiced falconry; yet her private home and curtilage is still subject to unreasonable warrantless
23 searches.

24 128. Peter Stavrianoudakis's falconry "facility" is located within Katherine's private
25 home, as are the targeted "equipment and records."

26 129. Day-to-day Katherine lives in ongoing fear of her home and curtilage being subject
27 to unreasonable warrantless search by armed government agents.

28 130. The federal and California search provisions challenged herein violate Katherine's
Fourth Amendment rights and exceed Defendants' authority under the Migratory Bird Treaty Act.

1 140. But for Defendants’ active enforcement of 50 C.F.R. § 21.29(f)(9)(i), Plaintiffs
2 would photograph or film their birds for “movies, commercials, or in other commercial ventures”
3 unrelated to falcons or falconry.

4 141. By prohibiting Plaintiffs from photographing or filming their birds for “movies,
5 commercials, or in other commercial ventures” unrelated to falcons or falconry, Defendants
6 currently maintain and actively enforce a set of laws, practices, policies, and procedures under
7 color of state and federal law that deprive Plaintiff falconers and American Falconry Conservancy
8 members of their rights to freedom of speech, in violation of the First and Fourteenth
9 Amendments to the United States Constitution and 42 U.S.C. § 1983.

10 142. Plaintiffs have no adequate remedy at law to compensate for the loss of these
11 fundamental freedoms and will suffer irreparable injury absent an injunction restraining
12 Defendants’ enforcement of the regulations complained of in this action. Plaintiffs are therefore
13 entitled to declaratory and permanent injunctive relief against continued enforcement and
14 maintenance of Defendants’ unconstitutional laws, practices, and policies. *See* 28 U.S.C. §§ 2201,
15 2202.

16 **Count IV**
17 **(50 C.F.R. § 21.29(f)(9)(ii))**
18 **(Commercial Speech)**
19 **(First and Fourteenth Amendments)**

20 143. Plaintiffs incorporate the allegations in the preceding paragraphs.

21 144. The First Amendment to the United States Constitution, as applied to the states
22 through the Fourteenth Amendment, protects the truthful, non-misleading speech that Plaintiffs
23 would engage in but for the regulations complained of in this action.

24 145. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(9)(ii) prohibits
25 Plaintiffs from photographing or filming their birds for “advertisements; as a representation of any
26 business, company, corporation, or other organization; or for promotion or endorsement of any
27 products, merchandise, goods, services, meetings, or fairs”—unless the promotion or endorsement
28 is of “a nonprofit falconry organization or association” or “products or endeavors related to
falconry.”

1 146. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(9)(ii) prohibits
2 Plaintiffs from engaging in lawful communication using their birds.

3 147. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(9)(ii) burdens
4 speech protected by the First Amendment.

5 148. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(9)(ii) is based on
6 the content of the regulated speech.

7 149. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(9)(ii) is not tailored
8 to serve a substantial or compelling government interest.

9 150. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(9)(ii) is an
10 unconstitutional condition imposed on falconry permits, in violation of the First Amendment.

11 151. But for Defendants' active enforcement of 50 C.F.R. § 21.29(f)(9)(ii), Plaintiffs
12 would photograph or film their birds for "advertisements; as a representation of any business,
13 company, corporation, or other organization; or for promotion or endorsement of any products,
14 merchandise, goods, services, meetings, or fairs" unrelated to falconry.

15 152. By prohibiting Plaintiffs from photographing or filming their birds for
16 "advertisements; as a representation of any business, company, corporation, or other organization;
17 or for promotion or endorsement of any products, merchandise, goods, services, meetings, or fairs"
18 unrelated to falconry, Defendants currently maintain and actively enforce a set of laws, practices,
19 policies, and procedures under color of state and federal law that deprive Plaintiff falconers and
20 American Falconry Conservancy members of their rights to freedom of speech, in violation of the
21 First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

22 153. Plaintiffs have no adequate remedy at law to compensate for the loss of these
23 fundamental freedoms and will suffer irreparable injury absent an injunction restraining
24 Defendants' enforcement of the regulations complained of in this action. Plaintiffs are therefore
25 entitled to declaratory and permanent injunctive relief against continued enforcement and
26 maintenance of Defendants' unconstitutional laws, practices, and policies. *See* 28 U.S.C. §§ 2201,
27 2202.

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1 **Count V**
2 **(50 C.F.R. § 21.29(f)(8)(v))**
3 **(Compelled Content of Conservation Education Programs)**
4 **(First and Fourteenth Amendments)**

5 154. Plaintiffs incorporate the allegations in the preceding paragraphs.

6 155. The First Amendment to the United States Constitution, as applied to the states
7 through the Fourteenth Amendment, protects the truthful, non-misleading speech that Plaintiffs
8 would engage in but for the regulations complained of in this action.

9 156. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(v) imposes
10 content-based restrictions about what Plaintiffs can discuss in conservation education programs—
11 including requiring discussion of “information about the biology, ecological roles, and conservation
12 needs of raptors and other migratory birds.”

13 157. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(v) prohibits
14 Plaintiffs from engaging in lawful communication using their birds.

15 158. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(v) compels
16 Plaintiffs to communicate particular messages when conducting conservation education programs.

17 159. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(v) burdens
18 speech protected by the First Amendment.

19 160. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(v) is based on
20 the content of the regulated speech.

21 161. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(v) is not tailored
22 to serve a substantial or compelling government interest.

23 162. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(v) is an
24 unconstitutional condition imposed on falconry permits, in violation of the First Amendment.

25 163. But for Defendants’ active enforcement of 50 C.F.R. § 21.29(f)(8)(v), Plaintiffs
26 would determine the content of conservation education programs that they perform.

27 164. By prohibiting Plaintiffs from determining the content of conservation education
28 programs that they perform, Defendants currently maintain and actively enforce a set of laws,
practices, policies, and procedures under color of state and federal law that deprive Plaintiff

1 falconers and American Falconry Conservancy members of their rights to freedom of speech, in
2 violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C.
3 § 1983.

4 165. Plaintiffs have no adequate remedy at law to compensate for the loss of these
5 fundamental freedoms and will suffer irreparable injury absent an injunction restraining
6 Defendants' enforcement of the regulations complained of in this action. Plaintiffs are therefore
7 entitled to declaratory and permanent injunctive relief against continued enforcement and
8 maintenance of Defendants' unconstitutional laws, practices, and policies. *See* 28 U.S.C. §§ 2201,
9 2202.

10 **Count VI**
11 **(50 C.F.R. § 21.29(f)(8)(iv))**
12 **(Payment for Conservation Education Programs)**
13 **(First and Fourteenth Amendments)**

14 166. Plaintiffs incorporate the allegations in the preceding paragraphs.

15 167. The First Amendment to the United States Constitution, as applied to the States
16 through the Fourteenth Amendment, protects the truthful, non-misleading speech that Plaintiffs
17 would engage in but for the regulations complained of in this action.

18 168. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(iv) prohibits
19 Plaintiffs from being paid to speak in a conservation education program using their birds if they
20 charge a fee for the presentation that exceeds the amount required to recoup their costs.

21 169. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(iv) imposes a
22 disincentive to engage in conservation education programs by limiting compensation.

23 170. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(iv) burdens
24 speech protected by the First Amendment.

25 171. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(iv) is based on
26 the content of the regulated speech.

27 172. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(iv) is not
28 tailored to serve a substantial or compelling government interest.

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1 173. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(8)(iv) is an
2 unconstitutional condition imposed on falconry permits, in violation of the First Amendment.

3 174. But for Defendants' active enforcement of 50 C.F.R. § 21.29(f)(8)(iv), Plaintiffs
4 would accept compensation for conservation education programs that exceeds the amount required
5 to recoup their costs.

6 175. By prohibiting Plaintiffs from receiving compensation for conservation education
7 programs that exceeds the amount required to recoup their costs, Defendants currently maintain
8 and actively enforce a set of laws, practices, policies, and procedures under color of state and
9 federal law that deprive Plaintiff falconers and American Falconry Conservancy members of their
10 rights to freedom of speech, in violation of the First and Fourteenth Amendments to the United
11 States Constitution and 42 U.S.C. § 1983.

12 176. Plaintiffs have no adequate remedy at law to compensate for the loss of these
13 fundamental freedoms and will suffer irreparable injury absent an injunction restraining
14 Defendants' enforcement of the regulations complained of in this action. Plaintiffs are therefore
15 entitled to declaratory and permanent injunctive relief against continued enforcement and
16 maintenance of Defendants' unconstitutional laws, practices, and policies. *See* 28 U.S.C. §§ 2201,
17 2202.

18 **Count VI**
19 **(14 C.C.R. § 670(h)(13)(A))**
20 **(Free Speech)**
21 **(First and Fourteenth Amendments)**

22 177. Plaintiffs incorporate the allegations in the preceding paragraphs.

23 178. On its face and as enforced by Defendants, 14 C.C.R. § 670(h)(13)(A) incorporates
24 the speech restrictions contained in 50 C.F.R. § 21.29 and is unconstitutional for the same reasons.

25 179. On its face and as enforced by Defendants, 14 C.C.R. § 670(h)(13)(A) prohibits
26 Plaintiffs from being paid to speak in any context using their birds if they charge a fee for the
27 presentation that exceeds the amount required to recoup their costs. It is unconstitutional for the
28 same reasons as 50 C.F.R. § 21.29(f)(8)(iv).

///

1 180. But for Defendants’ active enforcement of 14 C.C.R. § 670(h)(13)(A), Plaintiffs
2 would accept compensation for speaking using their birds that exceeds the amount required to
3 recoup their costs.

4 181. By prohibiting Plaintiffs from speaking using their birds and by prohibiting
5 Plaintiffs from accepting compensation for that speech that exceeds the amount required to recoup
6 their costs, Defendants currently maintain and actively enforce a set of laws, practices, policies,
7 and procedures under color of state and federal law that deprive Plaintiff falconers and American
8 Falconry Conservancy members of their rights to freedom of speech, in violation of the First and
9 Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

10 182. Plaintiffs have no adequate remedy at law to compensate for the loss of these
11 fundamental freedoms and will suffer irreparable injury absent an injunction restraining
12 Defendants’ enforcement of the regulations complained of in this action. Plaintiffs are therefore
13 entitled to declaratory and permanent injunctive relief against continued enforcement and
14 maintenance of Defendants’ unconstitutional laws, practices, and policies. *See* 28 U.S.C. §§ 2201,
15 2202.

16 **Count VII**
17 **(5 U.S.C. § 706)**
18 **(Regulations In Excess of Statutory Jurisdiction, Authority, or Limitations)**

19 183. Plaintiffs incorporate the allegations in the preceding paragraphs.

20 184. The regulations challenged herein were promulgated pursuant to the Migratory
21 Bird Treaty Act, 16 U.S.C. § 703, *et seq.*, and the Bald and Golden Eagle Protection Act, 16
22 U.S.C. § 668, *et seq.*

23 185. The Migratory Bird Treaty Act grants Defendants the “authority, with a search
24 warrant, to search any place” and by plain implication denies the authority to conduct searches
25 without a warrant. 16 U.S.C. § 706.

26 186. Neither the Migratory Bird Treaty Act nor the Bald and Golden Eagle Protection
27 Act grant Defendants the authority to regulate falconers’ speech.

28 187. The regulations challenged herein are in excess of statutory jurisdiction, authority,
or limitations in violation of 5 U.S.C. § 706(2)(C).

1 188. Plaintiffs have no adequate remedy at law and will suffer irreparable injury absent
2 an injunction restraining Defendants' enforcement of the regulations complained of in this action.
3 Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued
4 enforcement and maintenance of Defendants' illegal laws, practices, and policies. *See* 28 U.S.C.
5 §§ 2201, 2202.

6 **PRAYER FOR RELIEF**

7 Wherefore, Plaintiffs respectfully request that this Court enter judgment in their favor as
8 follows:

9 A. Declare that regulations challenged herein violate Plaintiffs' rights to be free from
10 unreasonable searches protected by the Fourth and Fourteenth Amendments on their face and as
11 applied;

12 B. Declare that regulations challenged herein violate Plaintiffs' rights to freedom of
13 speech protected by the First and Fourteenth Amendments on their face and as applied;

14 C. Preliminarily and permanently enjoin Defendants, their officers, agents, servants,
15 employees, and all persons in active concert or participation with them from enforcing the
16 regulations complained of in this action;

17 D. Award Plaintiffs their costs, attorneys' fees, and other expenses in accordance with
18 law, including 42 U.S.C. § 1988; and

19 E. Order such additional relief as may be just and proper.

20 DATED: October 30, 2018.

21 Respectfully submitted,

22 TIMOTHY R. SNOWBALL
23 ANTHONY L. FRANÇOIS
24 JAMES M. MANLEY*

25 By: s/Timothy R. Snowball
TIMOTHY R. SNOWBALL

26 *Pro Hac Vice application to be filed

27 Attorneys for Plaintiffs