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

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

17 Plaintiffs,

18 v.
19

20 UNITED STATES FISH & WILDLIFE SERVICE;
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 United States Fish & Wildlife Service,

23 Defendants.
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No. 1:18-cv-01505-LJO-BAM

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

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INTRODUCTION
CIVIL RIGHTS COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

3 Plaintiffs Peter Stavrianoudakis, Katherine Stavrianoudakis, Eric Ariyoshi, Scott Timmons,
4 and American Falconry Conservancy, by and through undersigned counsel, bring this First
5 Amended Complaint, filed pursuant to stipulation of the parties and approved by the Court (ECF
6 no. 15), for declaratory and injunctive relief, and allege as follows:

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JURISDICTION & VENUE

8 1. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal
9 question jurisdiction) and 1343 (jurisdiction to redress deprivations of civil rights), and the Civil
10 Rights Act of 1871, 42 U.S.C. § 1983.

11 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because this judicial
12 district is one in which a defendant is subject to the court’s personal jurisdiction.

13 3. The Court has authority to provide the relief requested under the Fourth
14 Amendment, First Amendment, Fourteenth Amendment, 28 U.S.C §§ 2201 & 2202 (Declaratory
15 Judgment Act), 42 U.S.C. § 1983, and its inherent equitable powers.

16 4. Defendant Charlton Bonham is Director of the California Department of Fish and
17 Wildlife, and is a “person” within the meaning 42 U.S.C. § 1983. *See Will v. Michigan Dep't of*
18 *State Police*, 491 U.S. 58, 71 n.10 (1989).

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INTRODUCTION

20 5. The First and Fourth Amendments contain some of the most important and well-
21 protected individual civil liberties contained in the United States Constitution, and constrain both
22 federal officials and, through the Fourteenth Amendment, state officials.

23 6. Falconry is the art of housing, tending, training, flying, and hunting with birds of
24 prey, such as falcons, hawks, and eagles.

25 7. In 2008, ostensibly for the purpose of regulating the “taking, possessing, purchasing,
26 bartering, [or] selling” certain birds of prey pursuant to the Migratory Bird Treaty Act, 16 U.S.C.
27 § 703, *et seq.*, and the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668, *et seq.*, the U.S.
28 Fish and Wildlife Service promulgated regulations governing falconry. *See* 50 C.F.R. § 21.29(a).

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 29. Defendant U.S. Fish and Wildlife Service is responsible for creating and enforcing
2 the federal warrantless search and speech regulations challenged in this lawsuit. By enforcing the
3 policies complained of in this action, it is currently depriving Plaintiffs of their rights to be free
4 from unreasonable warrantless searches of their private property, and rights to freedom of speech
5 guaranteed by the United States Constitution.

6 **LEGAL BACKGROUND**

7 **The Fourth Amendment Forbids Unreasonable Warrantless Searches**

8 30. The Fourth Amendment protects “persons, houses, papers, and effects” from
9 unreasonable warrantless searches by government agents. U.S. Const. amend IV.

10 31. Under the privacy-based approach to the Fourth Amendment, a search warrant is
11 required for government searches where (1) a person has exhibited an actual (subjective)
12 expectation of privacy in the area searched, and (2) the expectation is one that society is prepared
13 to recognize as reasonable. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

14 32. Under Fourth Amendment privacy analysis, private homes and curtilage enjoy a
15 strong presumption of privacy. *See Kylo v. United States*, 533 U.S. 27, 34 (2001); *Camara v.*
16 *Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967).

17 33. Property rights also provide an independent basis for requiring a warrant under the
18 Fourth Amendment. *See, e.g., Collins v. Virginia*, 138 S. Ct. 1663 (2018); *Florida v. Jardines*,
19 569 U.S. 1 (2013); *United States v. Jones*, 565 U.S. 400 (2012).

20 **Federal and California Unreasonable Warrantless Search Regimes**

21 34. Under 50 C.F.R. § 21.29(b)(4)(i), Defendants purport to authorize themselves to
22 inspect Plaintiffs’ facilities without a warrant “to ensure that the facilities standards” in § 21.29 are
23 met.

24 35. 50 C.F.R. § 21.29(d)(2) and (d)(9) grant state officials the purported power to
25 conduct warrantless searches of the “equipment and records” of Plaintiff falconers.

26 36. 14 C.C.R. § 670(j)(3)(A), purports to authorize warrantless searches of falconry
27 “facilities, equipment, or raptors possessed” by licensees, including the power to “inspect, audit, or
28 copy any permit, license, book[,]” or other required record.

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.

28 46. 14 C.C.R. § 670(h)(13)(A) prohibits Plaintiffs from being paid to speak in any

1 context using their birds if they charge a fee for the presentation that exceeds the amount required
2 to recoup their costs.

3 **FACTUAL ALLEGATIONS**

4 **Peter and Katherine Stavrianoudakis**

5 47. Peter Stavrianoudakis has been interested in, housed, cared for, trained, and flown
6 falcons and other birds of prey used in falconry since he was 16-years old.

7 48. On or about 1980, when he was 20-years old, Peter secured his first falconry license
8 and has held a valid falconry license for the last 38 years.

9 49. Peter last renewed his falconry license in June 2018, and will renew his license in
10 June 2019.

11 50. Peter has continuously complied with all requirements for falconry licensure.

12 51. In approximately 1983, Peter was subject to an unreasonable warrantless search of
13 his home and warrantless arrest by armed members of the California Department of Fish and
14 Wildlife related to his lawful activities as a non-resident falconer in Nevada.

15 52. No charges were filed against Peter related to this incident.

16 53. Peter first became affiliated with American Falconry Conservancy in 2017.

17 54. Shortly thereafter he became the Pacific Coast Director for American Falconry
18 Conservancy for a two-year term expiring in 2019.

19 55. Peter has never been sanctioned or cited by U.S. Fish and Wildlife, California Fish
20 and Wildlife, or any other agency or body, related to his practice of falconry.

21 56. In his time as a falconer, Peter has housed, cared for, trained, and flown
22 approximately 15 birds.

23 57. Currently, Peter owns one four-year-old aplomado falcon named "Ares."

24 58. Peter has owned, housed, cared for, trained, and flown Ares for the last three years.

25 59. Peter has a close personal bond and friendship with Ares that rivals that of any other
26 human and pet.

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

4 78. Scott last renewed his falconry license in June 2018, and will renew his license in
5 June 2019.

6 79. Scott has continuously complied with all requirements for falconry licensure.

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

9 81. Species that Scott has owned include red-tailed hawks, coopers hawks, peregrine
10 falcons, and hybrid species.

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

13 83. Scott was living with his mother and attending college at the time.

14 84. The officers claimed to be there to inquire as to whether he was still in possession
15 of a certain red-tailed hawk.

16 85. Scott told them that said hawk had flown away, and they soon revealed that they
17 were already in possession of the hawk.

18 86. Scott believes the officers used the hawk as pretext to attempt an unreasonable
19 warrantless search of his mother's private property.

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

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

24 89. Scott has a close personal bond and friendship with June, Jeppa, and Tio that rivals
25 that of any other human and pet.

26 90. Scott's falcons live exclusively in mews and other structures directly adjacent to his
27 home.

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1 91. Scott first heard of and became acquainted with American Falconry Conservancy in
2 2014 and became a member in 2018.

3 92. Scott is the owner of an abatement services company called Aerial Solutions.

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

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

11 **American Falconry Conservancy**

12 95. American Falconry Conservancy is a membership organization established in 2002
13 and composed of approximately 100 members from across the United States.

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

18 97. American Falconry Conservancy is comprised of six districts across the United
19 States, with each region overseen by a regional director.

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

23 99. American Falconry Conservancy membership is open to “[a]ny falconer—neither
24 antagonistic nor detrimental to the association or its purpose—of good moral character and over
25 the age of 17 years.”

26 100. American Falconry Conservancy members pay annual dues, starting at \$30 for one
27 year.

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1 101. By virtue of holding falconry licenses, all members of American Falconry
2 Conservancy are subject to the federal warrantless search provisions challenged herein.

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

6 103. By virtue of holding falconry licenses, all members of American Falconry
7 Conservancy are subject to the federal speech restrictions challenged herein.

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

11 105. American Falconry Conservancy members have been subject to unreasonable
12 warrantless searches pursuant to the regulations challenged herein.

13 106. American Falconry Conservancy members are subject to the speech prohibiting
14 regulations complained of in this action.

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

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

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

24 110. American Falconry Conservancy as an association is dedicated to protecting and
25 preserving the practice of falconry and protecting falconers' rights.

26 111. Neither the claims asserted here, nor the specific relief requested, require the
27 participation of individual members of American Falconry Conservancy.

28 ///

CLAIMS FOR RELIEF

Count I

**(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))
(Warrantless Search of Falconry License Holders)
(Fourth and Fourteenth Amendments)**

112. Plaintiffs incorporate the allegations in the preceding paragraphs.

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

114. 50 C.F.R. § 21.29(d)(2) and (d)(9) purports to grant state officials the power to conduct warrantless searches of the "equipment and records" of Plaintiff falconers.

115. 14 C.C.R. § 670(j)(3)(A), purports to authorize warrantless searches of falconry "facilities, equipment, or raptors possessed" by licensees, including the power to "inspect, audit, or copy any permit, license, book[.]" or other required record.

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

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

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

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

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

121. The federal and California search provisions challenged herein violate Plaintiffs' Fourth Amendment rights and exceed Defendants' authority under the Migratory Bird Treaty Act. Plaintiffs have no adequate remedy at law to compensate for the loss of these fundamental

1 freedoms and will suffer irreparable injury absent an injunction restraining Defendants'
2 enforcement of the regulations complained of in this action. Plaintiffs are therefore entitled to
3 declaratory and permanent injunctive relief against continued enforcement and maintenance of
4 Defendants' unconstitutional laws, practices, and policies. *See* 28 U.S.C. §§ 2201, 2202.

5 **Count II**
6 **(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))**
7 **(Warrantless Search of Non-Falconry License Holders)**
8 **(Fourth and Fourteenth Amendments)**

9 122. Plaintiffs incorporate the allegations in the preceding paragraphs.

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

13 124. 50 C.F.R. § 21.29(d)(2) and (d)(9) purports to grant state officials the power to
14 conduct warrantless searches of the "equipment and records" of Plaintiff falconers.

15 125. 14 C.C.R. § 670(j)(3)(A), which authorizes warrantless searches of falconry
16 "facilities, equipment, or raptors possessed" by licensees, including the power to "inspect, audit, or
17 copy any permit, license, book[.]" or other required record.

18 126. Katherine Stavrianoudakis does not, and has never, held a falconry license or
19 practiced falconry; yet her private home and curtilage is still subject to unreasonable warrantless
20 searches.

21 127. Peter Stavrianoudakis's falconry "facility" is located within Katherine's private
22 home, as are the targeted "equipment and records."

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

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

27 130. Katherine has no adequate remedy at law to compensate for the loss of these
28 fundamental freedoms and will suffer irreparable injury absent an injunction restraining
Defendants' enforcement of the regulations complained of in this action. Katherine is therefore

1 entitled to declaratory and permanent injunctive relief against continued enforcement and
2 maintenance of Defendants’ unconstitutional laws, practices, and policies. *See* 28 U.S.C. §§ 2201,
3 2202.

4 **Count III**
5 **(50 C.F.R. § 21.29(f)(9)(i))**
6 **(Free Speech)**
7 **(First and Fourteenth Amendments)**

8 131. Plaintiffs incorporate the allegations in the preceding paragraphs.

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

12 133. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(9)(i) prohibits
13 Plaintiffs from photographing or filming their birds for “movies, commercials, or in other
14 commercial ventures”—but only if the images will be used in a production that is not about
15 falcons or falconry.

16 134. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(9)(i) prohibits
17 Plaintiffs from engaging in lawful communication using their birds.

18 135. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(9)(i) burdens
19 speech protected by the First Amendment.

20 136. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(9)(i) is based on
21 the content of the regulated speech.

22 137. On its face and as enforced by Defendants, 50 C.F.R. § 21.29(f)(9)(i) is not tailored
23 to serve a substantial or compelling government interest.

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

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

140. By prohibiting Plaintiffs from photographing or filming their birds for “movies,

1 commercials, or in other commercial ventures” unrelated to falcons or falconry, Defendants
2 currently maintain and actively enforce a set of laws, practices, policies, and procedures under
3 color of state and federal law that deprive Plaintiff falconers and American Falconry Conservancy
4 members of their rights to freedom of speech, in violation of the First and Fourteenth
5 Amendments to the United States Constitution and 42 U.S.C. § 1983.

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

12 **Count IV**
13 **(50 C.F.R. § 21.29(f)(9)(ii))**
14 **(Commercial Speech)**
15 **(First and Fourteenth Amendments)**

16 142. Plaintiffs incorporate the allegations in the preceding paragraphs.

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

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

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

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

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

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

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

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

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

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

24 **Count V**
25 **(50 C.F.R. § 21.29(f)(8)(v))**
26 **(Compelled Content of Conservation Education Programs)**
27 **(First and Fourteenth Amendments)**

28 153. Plaintiffs incorporate the allegations in the preceding paragraphs.

154. The First Amendment to the United States Constitution, as applied to the states

1 through the Fourteenth Amendment, protects the truthful, non-misleading speech that Plaintiffs
2 would engage in but for the regulations complained of in this action.

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

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

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

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

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

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

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

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

21 163. By prohibiting Plaintiffs from determining the content of conservation education
22 programs that they perform, Defendants currently maintain and actively enforce a set of laws,
23 practices, policies, and procedures under color of state and federal law that deprive Plaintiff
24 falconers and American Falconry Conservancy members of their rights to freedom of speech, in
25 violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C.
26 § 1983.

27 164. Plaintiffs have no adequate remedy at law to compensate for the loss of these
28 fundamental freedoms and will suffer irreparable injury absent an injunction restraining

1 Defendants' enforcement of the regulations complained of in this action. Plaintiffs are therefore
2 entitled to declaratory and permanent injunctive relief against continued enforcement and
3 maintenance of Defendants' unconstitutional laws, practices, and policies. *See* 28 U.S.C. §§ 2201,
4 2202.

5 **Count VI**
6 **(50 C.F.R. § 21.29(f)(8)(iv))**
7 **(Payment for Conservation Education Programs)**
8 **(First and Fourteenth Amendments)**

9 165. Plaintiffs incorporate the allegations in the preceding paragraphs.

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

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

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

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

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

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

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

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

174. By prohibiting Plaintiffs from receiving compensation for conservation education

1 programs that exceeds the amount required to recoup their costs, Defendants currently maintain
2 and actively enforce a set of laws, practices, policies, and procedures under color of state and
3 federal law that deprive Plaintiff falconers and American Falconry Conservancy members of their
4 rights to freedom of speech, in violation of the First and Fourteenth Amendments to the United
5 States Constitution and 42 U.S.C. § 1983.

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

12 **Count VI**
13 **(14 C.C.R. § 670(h)(13)(A))**
14 **(Free Speech)**
15 **(First and Fourteenth Amendments)**

16 176. Plaintiffs incorporate the allegations in the preceding paragraphs.

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

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

23 179. But for Defendants' active enforcement of 14 C.C.R. § 670(h)(13)(A), Plaintiffs
24 would accept compensation for speaking using their birds that exceeds the amount required to
25 recoup their costs.

26 180. By prohibiting Plaintiffs from speaking using their birds and by prohibiting
27 Plaintiffs from accepting compensation for that speech that exceeds the amount required to recoup
28 their costs, Defendants currently maintain and actively enforce a set of laws, practices, policies,
and procedures under color of state and federal law that deprive Plaintiff falconers and American

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

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

9 **Count VII**
10 **(5 U.S.C. § 706)**
11 **(Regulations In Excess of Statutory Jurisdiction, Authority, or Limitations)**

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

13 183. The regulations challenged herein were promulgated pursuant to the Migratory
14 Bird Treaty Act, 16 U.S.C. § 703, *et seq.*, and the Bald and Golden Eagle Protection Act, 16
15 U.S.C. § 668, *et seq.*

16 184. The Migratory Bird Treaty Act grants Defendants the "authority, with a search
17 warrant, to search any place" and by plain implication denies the authority to conduct searches
18 without a warrant. 16 U.S.C. § 706.

19 185. Neither the Migratory Bird Treaty Act nor the Bald and Golden Eagle Protection
20 Act grant Defendants the authority to regulate falconers' speech.

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

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

28 ///

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PRAYER FOR RELIEF

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

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

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

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

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

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

DATED: January 18, 2018.

Respectfully submitted,

ANTHONY L. FRANÇOIS
TIMOTHY R. SNOWBALL
JAMES M. MANLEY

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

Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and codes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Civil Cover Sheet (continued)

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Defendants:

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