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Freedom From Religion Foundation, Inc.,  
10 and Andrew DeFaria

11 UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION

14 FREEDOM FROM RELIGION )  
FOUNDATION, INC., and ANDREW )  
15 DEFARIA, )

16 Plaintiffs, )

vs. )

17 CITY OF SANTA CLARA, and CITY OF )  
SANTA CLARA CITY COUNCILMEMBERS )  
18 MAYOR LISA GILLMOR, VICE MAYOR )  
TERESA O'NEILL, PAT KOLSTAD, DEBI )  
19 DAVIS, JERRY MARSALLI, DOMINIC )  
CASERTA, and KATHY WATANABE, in )  
20 their official representative capacities, )

21 Defendants. )  
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Case No.:  
VERIFIED COMPLAINT FOR  
EQUITABLE RELIEF AND  
DAMAGES

**VERIFIED COMPLAINT**

Seeking to protect their civil liberties and constitutional rights, Plaintiffs Freedom From Religion Foundation, Inc. and Andrew DeFaria (“Plaintiffs”), as their complaint against the City of Santa Clara, California, and City of Santa Clara City Councilmembers Mayor Lisa Gillmor, Vice Mayor Teresa O’Neill, Pat Kolstad, Debi Davis, Jerry Marsali, Dominic Caserta, and Kathy Watanabe, in their official individual, representative capacities (“Defendants”), allege as follows:

**NATURE OF THE CLAIMS**

1. This action challenges the constitutionality of the Defendant’s display of a Latin cross (the “Cross”) in Memorial Cross Park (the “Park”), a City park, as a violation of the separation of church and state required by (i) the Establishment Clause of the First Amendment of the United States Constitution, as applied to the City by the Fourteenth Amendment, and (ii) the Establishment, No Preference, and No Aid Clauses of Articles I (Section 4) and XVI (Section 5) of the California Constitution.

2. The Plaintiffs seek injunctive and declaratory relief under 42 U.S.C. § 1983 against the Defendants, and damages according to proof to redress this violation of the separation of church and state, together with recovery of attorney’s fees and costs under 42 U.S.C. § 1988(b).

**JURISDICTION AND VENUE**

3. This case arises under the First Amendment to the Constitution of the United States and presents a federal question within this court’s jurisdiction pursuant to 28 U.S.C. §§1331 and 1343 (a)(3). This Court has supplemental jurisdiction to hear

1 the related claims under the California Constitution arising from the same facts  
2 pursuant to 28 U.S.C. §1367.

3 4. The Court has the authority to issue a declaratory judgment under 28  
4 U.S.C. §2201 and to provide injunctive relief under 28 U.S.C. §1343 and Federal Rule  
5 of Civil Procedure 65.

6 5. Venue is proper within this judicial district pursuant to 28 U.S.C.  
7 § 1391(b)(2) because the events giving rise to the Plaintiffs’ claims occurred within the  
8 district.

9 **INTRADISTRICT ASSIGNMENT**

10 6. This action involves the City of Santa Clara and all events and conduct  
11 giving rise to Plaintiffs’ claims arose within the City of Santa Clara, in the County of  
12 Santa Clara. Pursuant to Local Rule 3-2(e), this action is properly assigned to the San  
13 Jose Division of this Court.

14 **PARTIES**

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16 7. The first Plaintiff, the Freedom From Religion Foundation (“FFRF”), is a  
17 nonprofit corporation incorporated in Wisconsin that advocates for the separation of  
18 church and states and educates on matters of non-theism. FFRF has over 23,500  
19 members nationwide, including more than 3,200 members in California, a state chapter  
20 in Sacramento, and members who are residents of Santa Clara. FFRF brings this action  
21 to assert the First Amendment rights of its members.  
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1 8. FFRF’s membership includes individuals who have had direct and  
2 unwanted exposure to the Latin cross in the Park, and will continue to have direct and  
3 unwanted exposure to the cross in the future.

4 9. The second Plaintiff, Andrew DeFaria, is a member of FFRF and a  
5 resident of the City. He objects to the display and maintenance of the Cross, and has  
6 had unwanted and unwelcome contact with it. He does not want to continue enduring  
7 the unwelcome contact with this clear symbol of the Christian religion and objects to  
8 the City’s maintenance of such a blatant religious symbol, and he also objects to the  
9 City’s endorsement of and display of its preference for the Christian religion.

10 10. The Defendants are the City of Santa Clara, a California local  
11 government entity and the City of Santa Clara City Council, Mayor Lisa Gillmor, Vice  
12 Mayor Teresa O’Neill, Pat Kolstad, Debi Davis, Jerry Marsali, Dominic Caserta, and  
13 Kathy Watanabe, in their official individual, representative capacities. This action  
14 challenges the City’s decision to display and maintain the Cross. Its actions described  
15 herein constitute “state action” as that term has been defined by relevant case law.

16 **FACTS**

17 11. The City of Santa Clara owns a piece of public property commonly  
18 known as Memorial Cross Park, located at the intersection of Martin Avenue and De  
19 La Cruz Boulevard in the City. The Park lies at the site of the second Spanish Catholic  
20 mission established in the City in 1777 by the Franciscan Padres.

21 12. Despite the fact that the Park was, and still is, owned and maintained by  
22 the City, in 1953 the City permitted the Santa Clara Lions Club to donate a 14-foot  
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1 granite Latin cross to be displayed in the Park to commemorate the 1777 Spanish  
2 Catholic mission in the City.

3 13. The City has continued to maintain and display the Cross from 1953 until  
4 present. (See Exhibit 1).

5 14. The cross was rededicated in a ceremony in May 1961.

6 15. On April 5, 2012, FFRF Senior Staff Attorney Rebecca Markert  
7 (“Markert”) sent a letter of complaint to Jamie L. Matthews, the then-Mayor of Santa  
8 Clara, alerting him that the Cross’s presence on public land violates the Establishment  
9 Clause of the First Amendment of the United States Constitution. A true and correct  
10 copy of this letter is attached hereto as Exhibit A.

11 16. On July 14, 2012, the City replied to FFRF’s letter, and said that it was  
12 considering dismantling the Cross, moving the Cross, transferring the land on which  
13 the Cross sits, or changing the name of the Park. The City’s letter stated that the matter  
14 would be discussed at the City Council meeting on August 21, 2012 and that the City  
15 looked forward “to resolving this matter in an expeditious and responsible manner.” A  
16 true and correct copy of this letter is attached hereto as Exhibit B.

17 17. After her original April 5 letter, over the past three years, on at least  
18 twelve occasions, Markert and other FFRF employees have asked the City for updates  
19 on the status of the Cross’s removal.

20 18. Despite repeated assurances to FFRF and its stated intent to take some  
21 action with regard to the Cross, other than removing a City sign reading “Memorial  
22 Cross Park,” the City has not currently dismantled, moved, transferred or otherwise  
23 modified the Cross or Park. It is still owned and maintained by the City of Santa  
24 Clara.

1           19. Plaintiff DeFaria lives in the City of Santa Clara, and his residence is  
 2 comparatively close to the Memorial Cross Park. He has gone to the park and  
 3 encountered the Cross on several occasions. As a non-believer in any religion, he finds  
 4 the Cross on public land objectionable. As a consequence, he avoids the public park  
 5 and even goes so far as to avoid the street on which the park and Cross are located in  
 6 order to avoid the offensive encounter with the City’s endorsement of the Christian  
 7 religion through this symbolism. Mr. DeFaria does not want to be excluded from  
 8 public land in his city by such conduct where religion is endorsed. Mr. DeFaria does  
 9 not want to have to choose to be exposed to objectionable religious endorsement by  
 10 Defendants, who are part of his local government and elected officials, in order to have  
 11 access to public land in his city. He has been placed in the position of having to choose  
 12 between suffering exposure to the offensive conduct by Defendants if he wants to use  
 13 the public lands as any other citizen or being excluded from the public land in order to  
 14 avoid the offensive display by the Defendants.

**GROUND FOR RELIEF**

**First Ground for Relief: Federal Establishment Clause Violation**

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 17           20. Plaintiffs incorporate and adopt each and every allegation in the  
 18 preceding paragraphs numbered 1 through 19 as though fully set forth herein.

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 20           21. The Defendant’s acceptance of the Cross from the Santa Clara Lion’s  
 21 Club and its subsequent display and maintenance of the Cross amounts to the  
 22 advancement of religion, and specifically an endorsement of and affiliation with  
 23 Christianity, in violation of the Establishment Clause of the First Amendment to the  
 24 United States Constitution.

1 22. The Defendant acted under color of state law in violation the First  
2 Amendment as described above in violation of 42 U.S.C. § 1983.

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4 **Second Ground for Relief: California Constitution Violation**

5 23. Plaintiffs incorporate and adopt each and every allegation in the  
6 preceding paragraphs numbered 1 through 22 as though fully set forth herein.

7 24. The Cross, as described above, constitutes an impermissible  
8 establishment of religion in violation of the Establishment Clause contained in Article  
9 I, §4 of the California Constitution.

10 25. The Cross gives the appearance that the Defendant prefers Christianity  
11 over all other religions, and religion in general over non-religion, in violation of the  
12 No Preference Clause contained in Article I, § 4 of the California Constitution.

13 26. The City’s maintenance of the Cross and the use of City property to  
14 display it violate the No Aid Clause contained in Article XVI, §5 of the California  
15 Constitution.

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17 **REQUEST FOR RELIEF**

18 27. The Plaintiffs request that this Court grant the following relief:

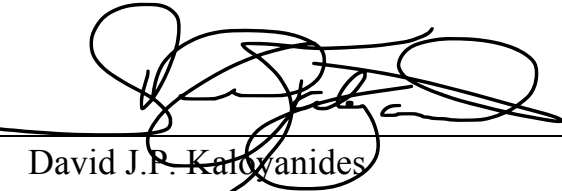
- 19 a. A declaratory judgment that the Defendant’s acceptance of the donation of the  
20 Cross and subsequent display and maintenance of the Cross on public property  
21 violates (i) the Establishment Clause of the First Amendment of the United  
22 States Constitution and (ii) Article 1, Section 4 and Article 16, Section 5 of the  
23

1 California Constitution, and is a violation of the Plaintiffs’ constitutional rights  
2 under 42 U.S.C. § 1983;

- 3 b. An injunction preventing the Defendant (and any successors or assigns) from
- 4 maintaining or displaying the Cross on public property, or, through subsequent
- 5 transfer, on private property, in violation of the Establishment Clause and/or the
- 6 California Constitution;
- 7 c. A judgment in the Plaintiffs’ favor for nominal damages;
- 8 d. An award to the Plaintiffs of reasonable costs, disbursements, and attorneys’
- 9 fees as allowed by law from the Defendant pursuant to 42 U.S.C. § 1988; and
- 10 e. An award of such further relief as the Court deems just.

11 Respectfully submitted,

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13 Dated: April 20, 2016



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Rebecca Markert PHV Pending  
Madeline Ziegler PHV Pending  
Freedom From Religion Foundation, Inc.

Attorneys for Plaintiffs  
Freedom From Religion Foundation, Inc.,  
and Andrew DeFaria



**VERIFICATION**

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I, the undersigned Plaintiff, have read this Verified Complaint. The allegations set forth are true and correct based on my own knowledge and upon information provided to me.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20<sup>th</sup> day of April, 2016.

Annie Laurie Gaylor  
Freedom From Religion Foundation, Inc.

By: Annie Laurie Gaylor  
Print Name

Its: Co-President  
Title

**VERIFICATION**

I, the undersigned Plaintiff, have read this Verified Complaint. The allegations set forth are true and correct based on my own knowledge and upon information provided to me.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of April, 2016.

*Andrew De Faria*

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Andrew DeFaria

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EXHIBIT 1





EXHIBIT 1

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VERIFIED COMPLAINT FOR EQUITABLE RELIEF AND DAMAGES