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BOSSÉ ROLLMAN PC
3507 North Campbell Avenue, Suite 111
Tucson, Arizona 85719 520.320.1300

Richard M. Rollman, SB#004116, PCC#48932
rollman@bosserollman.com
Kevin J. Kristick, SB#033070, PCC#66977
kristick@bosserollman.com
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

TOMBSTONE HISTORAMA
CORPORATION, an Arizona corporation,
Plaintiff,
vs.
CITY OF TOMBSTONE, an Arizona
municipal corporation; TOMBSTONE
MARSHAL’S OFFICE, an Arizona
municipal law enforcement department,
Defendants.

No.
COMPLAINT
Assigned to: Hon.

For its Complaint herein, Tombstone Historama Corporation (“O.K. Corral”) alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. O.K. Corral is an Arizona corporation doing business in Cochise County, Arizona.
2. City of Tombstone (“Tombstone”) is a charter city incorporated in 1881 and located in Cochise County, Arizona, where it enacts ordinances, rules, and regulations and governs constituents and businesses pursuant to its charter and those ordinances, rules, and regulations.
3. Tombstone Marshals Office (“Marshal”) is Tombstone’s law enforcement department, created by Tombstone Ordinance 5-1-1, and in charge of enforcing Tombstone’s charter, ordinances, rules, and regulations. Tombstone Ord. 5-1-5.

1 4. Tombstone, Arizona City Code Ordinance Chapter 4 governs street sales and
2 solicitation, specifically “off-premises commercial solicitation” in the “Historic Preservation
3 District” in Tombstone.

4 5. “Off-premises commercial solicitation” is defined as “[s]oliciting by a business
5 agent relating to a possible commercial transaction.” Tombstone Ord. 4-4-1.

6 6. “Soliciting” is defined as “[t]o entice, encourage or request donation or transfer
7 of money or other thing of value from another person, regardless of the solicitor’s purpose
8 or intended use of the money or other thing of value. This includes solicitation on publicly
9 owned property in connection with a commercial business or show and includes passing out
10 handbills.” Tombstone Ord. 4-4-1.

11 7. “Historic Preservation District” is defined as “[t]he Tombstone Historic
12 Preservation District is a National Historic Landmark District and is bounded by Fremont,
13 6th, Toughnut and 3rd Streets as described in section 10-19-1 of this Code.” Tombstone Ord.
14 4-4-1.

15 8. Tombstone City Code 10-19-1 limits the Historic Preservation Limits to:
16 “Block 2, lots 10 through 13; Block 3, lots 1 through 24; Block 4, lots 1 through
17 24; Block 5, lots 1 through 24; Block 6, lots 1 and 19 through 24; Block S, lots
18 1 through 10; Block T, lots 1 through 10; Block 51/2, lots 1 through 10; Block
19 16, lots 10 through 13; Block 17, lots 1 through 24; Block 18, lots 1 through 24;
20 Block 19, lots 1 through 24; Block 20, lots 1, 2, 22, 23, and 24; Block 31, lots
21 13 through 22; Block 32, lots 13 through 22; and Block 33, lots 13 through 22.”
22 Tombstone Ord. 10-19-1.

23 9. Tombstone Ordinance 4-4-2(B)-(C) reads:

24 B. Off premises commercial solicitation within the Historic
25 Preservation District is prohibited except that established business within the
26 Historic Preservation District may solicit:

27 1. Within twenty five feet (25') radius from the front door of their
own establishments, having no more than four (4) solicitors per business
ownership, or

 2. Behind the "Road Closed" barricade on Allen Street at the
intersections of Allen Street and 3rd, 4th, 5th and 6th Streets, having no more
than two (2) solicitors per business ownership.

 C. No person engaged in solicitation may solicit within fifteen feet

1 (15') of another person engaged in soliciting including solicitation from the
2 same business or show. (Ord. 2017-03, 4-24-2017).

3 10. The penalties for violating Tombstone Ordinance 4-4-2(B)-(C) are set forth in
4 Tombstone Ordinance 4-4-3:

5 A. A violation of section 4-4-2 of this chapter shall be a Class 1
6 misdemeanor against the solicitor and/or the proprietor for which the
7 solicitation was made.

8 B. Any arrest or conviction under section 4-4-2 of this chapter shall be
9 disclosed to governmental social services agencies who request that the
10 applicable public official be notified of such events.

11 C. The City Clerk shall set and impose an administrative fine not to
12 exceed one thousand dollars (\$1,000.00) against the proprietor for any violation
13 under this chapter. (Ord. 2017-03, 4-24-2017).

14 11. The solicitation ordinances “are not intended to create a result through
15 enforcement that is absurd, impossible or unreasonable.” Tombstone Ord. 4-4-4(B).

16 12. A dispute and controversy have arisen between the parties regarding the
17 interpretation, application, threat of enforcement, and enforcement of Tombstone Ordinance
18 4-4-2(B)-(C).

19 13. Pursuant to A.R.S. § 12-821.01, O.K. Corral submitted its Notice of Claim
20 dated February 3, 2022 to Defendants, who were served with the Notice on February 7, 2022.
21 A copy of the Notice is attached as Exhibit 1.

22 14. Defendants failed to respond to the Notice and more than 60 days have now
23 passed since service of the Notice. Thus, the Notice is deemed rejected, resulting in O.K.
24 Corral filing this Complaint.

25 15. Venue and jurisdiction are proper.

26 **TIER**

27 16. This case is subject to Tier 3 discovery rules.

GENERAL ALLEGATIONS

17. Tombstone is a historical and tourist town where visitors and residents often
dress in Western clothing.

18. Western themed businesses operate throughout Tombstone, where it is

1 common to see employees dress in Western clothing throughout the day.

2 19. Employees commonly remain dressed in Western clothing whether they are at
3 work, walking to and from work, walking to lunch, shopping, or doing anything else when
4 not at work.

5 20. Prior to November 16, 2021, for approximately 15 years, O.K. Corral actors
6 regularly walked in pairs on the sidewalks of Allen Street and a limited group of no more
7 than four would form a lineup to appear as Virgil Earp, Morgan Earp, Wyatt Earp, and Doc
8 Holliday to walk down Allen Street in the Historic Preservation District (collectively
9 “Walkdowns”).

10 21. The lineup is meant to reenact the historical walkdown of the Earps and
11 Holliday when they made their way to the O.K. Corral prior to the gunfight occurring on
12 October 26, 1881, as shown in the in 1993 film Tombstone.

13 22. The Walkdowns take place throughout the day and 15 minutes before each gun
14 show.

15 23. The Walkdowns are not meant to “entice, encourage or request donation or
16 transfer of money or other thing of value from another person.” Ordinance 4-4-1.

17 24. Rather, the Walkdowns are the exercise of non-commercial speech, expression,
18 association, assembly and movement based on Western culture.

19 25. The Walkdowns do not involve speaking with visitors until approached, and
20 when approached, actors simply answer whatever questions the visitors ask, regardless of
21 whether it relates to a gun show or Tombstone in general. They are often asked general
22 questions about Tombstone such as where a specific business is located, even other gun
23 shows.

24 26. At times, a visitor may ask an O.K. Corral actor to stand for a picture. But the
25 picture is always requested by a visitor and not an O.K. Corral actor.

26 27. The Walkdowns are neither intended for nor constitute “hawking” or acting
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1 belligerently towards visitors. They are not promoting the O.K. Corral Reenactment. They
2 are not saying how much a ticket costs for the O.K. Corral Reenactment. They are not saying
3 when the next O.K. Corral Reenactment will occur. They are simply walking.

4 28. O.K. Corral actors do not “hawk” or act belligerently towards visitors. Such
5 action often hurts business rather than helps and leads to visitors not wanting to come back
6 to Tombstone. O.K. Corral supports the citation of such conduct pursuant to the applicable
7 Tombstone ordinance.

8 29. O.K. Corral actors last performed Walkdowns on November 13, 2021, after
9 giving advanced written notice to counsel for Defendants.

10 30. Advanced written notice was given after preliminary discussions occurred
11 regarding whether Defendants intended to cite Walkdowns as solicitation under Ordinance
12 Chapter 4.

13 31. Following the Walkdowns on November 13, 2021, after not receiving a
14 response prior to conducting the Walkdowns, O.K. Corral received a response from
15 Defendants on November 16, 2021 giving notice of Defendants’ intentions to enforce
16 Tombstone Ordinances 4-4-2 and 4-4-3 and cite O.K. Corral and its actors should it continue
17 the Walkdowns of Allen Street.

18 32. No Walkdowns have occurred since November 13, 2021.

19 33. The Complaint focuses solely on the Walkdowns.

20 34. Upon information and belief, Plaintiffs are selectively enforcing the
21 solicitation ordinance against O.K. Corral. The solicitation ordinance is also overly broad
22 and vague, failing to provide O.K. Corral with adequate notice of the prohibited conduct.
23 This failure leaves O.K. Corral without a guide on how to act, and is further supported by the
24 selective enforcement.

25 35. Other gun shows in Tombstone are permitted to do similar Walkdowns and
26 have done so after O.K. Corral’s receipt of Defendants’ intent to enforce the solicitation
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1 ordinance and cite on November 16, 2021. This is true despite O.K. Corral’s numerous
2 complaints to the Marshal regarding same.

3 36. Upon information and belief, other businesses such as trolley tours and
4 stagecoaches utilize signs and loudspeakers that move up and down Allen Street within the
5 Tombstone Historic District and have also erected permanent ticket booths on the same
6 street. These other businesses have not been cited.

7 37. Defendants’ threat to cite O.K. Corral for solicitation if the Walkdowns are
8 resumed “creates a result through enforcement that is absurd, impossible or unreasonable.”
9 Tombstone Ord. 4-4-4(B).

10 38. Defendants’ threat to cite O.K. Corral for solicitation if the Walkdowns are
11 resumed, restricts O.K. Corral’s right to free speech, expression, association, assembly, and
12 movement, and exercise of those rights, in violation of the United States and Arizona
13 Constitutions’ free speech, due process, and equal protection clauses.

14 39. This threat is further amplified as a restriction of speech demonstrated by the
15 recent arrests of two O.K. Corral actor employees by Defendants. Although the two
16 employees were arrested for non-solicitation violations, upon information and belief, the
17 arrests were made one day before the Notice of Claim’s expiration period and were designed
18 to and have the effect of restricting speech.

19 40. Tombstone is vicariously and municipally liable for the enforcement actions of
20 the Marshal.

21 **COUNT ONE – DECLARATORY JUDGMENT – WALKDOWNS ARE NOT**
22 **SOLICITING AS DEFINED IN 4-4-2**

23 41. The allegations of the preceding paragraphs are incorporated herein as if fully
24 restated.

25 42. A dispute and controversy exist between the parties whether the Walkdowns
26 are soliciting and are therefore regulated under 4-4-2.

27 43. The solicitation ordinance suffers from vagueness in application and

1 overbreadth.

2 44. The Walkdowns are not soliciting because they do not “entice, encourage or
3 request donation or transfer of money or other thing of value from another person.”
4 Tombstone Ord. 4-4-1.

5 45. The Walkdowns also cannot constitute soliciting as Plaintiffs have not been
6 enforcing Ordinance 4-4-2 against other gun shows doing similar Walkdowns.

7 46. Defendants’ interpretation and threat of citation under Ordinance Chapter 4
8 relating to the Walkdowns violate O.K. Corral’s due process and other constitutional
9 protections including but not limited to speech, movement, expression, assembly, and
10 association.

11 47. O.K. Corral requests the Court declare the rights and obligations of the parties
12 as follows:

13 a. The Walkdowns are not soliciting as defined in Ordinance 4-4-1 because they
14 do not “entice, encourage or request donation or transfer of money or other thing of value
15 from another person.”

16 b. Defendants have not been enforcing Ordinance 4-4-2 relating to solicitation
17 against other gun shows who have been doing Walkdowns.

18 c. Defendants’ interpretation and threat of citation under Ordinance Chapter 4
19 relating to the Walkdowns violate O.K. Corral’s due process and other constitutional
20 protections including but not limited to speech, movement, expression, assembly, and
21 association.

22 d. O.K. Corral, its actors, employees, and representatives may resume
23 Walkdowns without interference by Defendants.

24 **COUNT TWO – DECLARATORY JUDGMENT – COMMERCIAL SPEECH¹**

25 48. The allegations of the preceding paragraphs are incorporated herein as if fully
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27 ¹ The remaining counts are pled in the alternative to Count One under Ariz. R. Civ. P. 8(e)(2).

1 restated.

2 49. A dispute and controversy exist between the parties whether the Walkdowns
3 are soliciting and therefore regulated under 4-4-2.

4 50. Pled alternatively, to the extent the Walkdowns are soliciting, the Walkdowns
5 are commercial speech, afforded due process, equal protection, and other constitutional
6 protections, including but not limited to the right to First Amendment speech protected by
7 First Amendment to United States Constitution and Article 2 Section 6 of the Arizona
8 Constitution.

9 51. Defendants' interpretation and threat of citation under Ordinance Chapter 4
10 relating to the Walkdowns are vague and overbroad, failing to provide O.K. Corral with
11 adequate notice of the prohibited conduct. This failure leaves O.K. Corral without a guide as
12 to how to act.

13 52. Defendants' interpretation and threat of citation are fundamentally unfair, as
14 they are doing so in a manner that is arbitrary, capricious, and wrong. This conduct
15 unreasonably and selectively targets enforcement at O.K. Corral, especially considering no
16 enforcement has been taken against other businesses such as trolleys and stagecoaches who
17 utilize signs and loudspeakers that move up and down Allen Street, and who have also erected
18 permanent ticket booths on the same street.

19 53. Defendants' restriction of the Walkdowns based on the potential of hawking
20 and acting belligerently, which is not the type of conduct O.K. Corral seeks to resume, is
21 neither narrowly tailored to serve a compelling interest of Tombstone nor less extensive than
22 necessary to serve a substantial interest of Tombstone.

23 54. There are more narrowly tailored and less restricting and extensive alternatives
24 to limit hawking and acting belligerently on Allen Street, which serve the interest of
25 Tombstone.

26 55. As a result of Defendants' actions, O.K. Corral has been harmed. Not only has
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1 its rights to speech, expression, association, assembly, and movement been harmed. It has
2 also suffered damages.

3 56. O.K. Corral requests the Court declare the rights and obligations of the parties
4 as follows:

5 a. The Walkdowns are commercial speech entitled to First Amendment, due
6 process and other constitutional protections.

7 b. The definition of “soliciting” in Ordinance Chapter 4 is vague and overbroad
8 and fails to provide O.K. Corral with adequate notice of the prohibited conduct.

9 c. Defendants have not been enforcing Ordinance 4-4-2 relating to solicitation
10 against other gun shows who have been doing Walkdowns or other businesses such as
11 trolleys and stagecoaches.

12 d. There are more narrowly tailored and less restricting and extensive alternatives
13 to limit hawking and acting belligerently on Allen Street, which serve the interest of
14 Tombstone.

15 e. As a result of Defendants’ actions, O.K. Corral has been harmed. Not only has
16 its rights to speech, expression, association, assembly, and movement been harmed. It has
17 also suffered damages.

18 f. O.K. Corral, its actors, employees, and representatives may resume
19 Walkdowns without interference of Defendants.

20 **COUNT THREE – INTERFERENCE WITH BUSINESS EXPECTANCY**

21 57. The allegations of the preceding paragraphs are incorporated herein as if fully
22 restated.

23 58. Pled alternatively, to the extent the Walkdowns are soliciting, Defendants’
24 actions alleged herein constitute an acknowledgement O.K. Corral had a business expectancy
25 with Tombstone visitors.

26 59. Defendants were aware of this business expectancy, or they would not have
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1 threatened citation.

2 60. Defendants intentionally interfered with O.K. Corral’s business expectancy
3 with the visitors of Tombstone by prohibiting the Walkdowns, causing a breach or
4 termination of the business expectancy.

5 61. Defendants’ conduct was improper.

6 62. O.K. Corral suffered damages in an amount to be proven at trial caused by the
7 breach or termination of O.K. Corral’s business expectancy to be realized with visitors of
8 Tombstone based on conducting the Walkdowns.

9 **COUNT FOUR – CIVIL RIGHTS CLAIM – 42 U.S.C. § 1983**

10 63. The allegations of the preceding paragraphs are incorporated herein as if fully
11 restated.

12 64. Pled alternatively, to the extent the Walkdowns are soliciting, Defendants’
13 actions under the solicitation statutes deprive O.K. Corral of its rights, privileges, or
14 immunities secured by the Constitution and laws, such as commercial speech, due process,
15 equal protection, and other constitutional protections, including but not limited to the right
16 to First Amendment speech protected by First Amendment to United States Constitution and
17 Article 2 Section 6 of the Arizona Constitution.

18 65. The Walkdowns are expression and advertising for O.K. Corral.

19 66. The Walkdowns do not express speech that is fraudulent or illegal.

20 67. There is neither a compelling nor substantial governmental interest in
21 prohibiting the Walkdowns.

22 68. By restricting the Walkdowns, the solicitation ordinance does not advance a
23 proper government al interest.

24 69. To the extent a governmental interest may be involved, the restriction created
25 by the solicitation ordinance has not been narrowly tailored to that interest.

26 70. The solicitation ordinance creates restrictions that are broader and more
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1 extensive than is necessary to serve that interest.

2 71. As a result of Defendants’ actions, O.K. Corral has been harmed.

3 72. Upon information and belief, the restriction on Walkdowns and recent arrests
4 are part of a scheme to damage O.K. Corral and in return promote and benefit others who
5 have business interests in competing businesses, including but not limited to stagecoach,
6 trolley, and gun show businesses.

7 **ATTORNEY’S FEES**

8 73. O.K. Corral is entitled to reimbursement of its attorney’s fees and costs
9 incurred pursuant to A.R.S. § 12-348 and U.S.C. § 1988(b).

10 WHEREFORE, O.K. Corral prays for relief as follows:

11 1. Declaratory judgment that:

12 a. The Walkdowns are not soliciting as defined in Ordinance 4-4-1
13 because they do not “entice, encourage or request donation or transfer of
14 money or other thing of value from another person.”

15 b. Defendants have not been enforcing Ordinance 4-4-2 relating to
16 solicitation against other gun shows who have been doing Walkdowns.

17 c. Defendants’ interpretation and threat of citation under Ordinance
18 Chapter 4 relating to the Walkdowns violate O.K. Corral’s due process and
19 other constitutional protections including but not limited to speech, movement,
20 expression, assembly, and association.

21 d. O.K. Corral, its actors, employees, and representatives may resume
22 Walkdowns without interference of Defendants.

23 2. Plead alternatively, declaratory judgment that:

24 a. The Walkdowns are commercial speech entitled to due process and
25 other constitutional protections.

26 b. The definition of “soliciting” in Ordinance Chapter 4 is vague and
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overbroad and fails to provide O.K. Corral with adequate notice of the prohibited conduct.

c. Defendants have not been enforcing Ordinance 4-4-2 relating to solicitation against other gun shows who have been doing Walkdowns.

d. There are more narrowly tailored but less restricting alternatives to limit hawking and acting belligerently on Allen Street, which serve the interest of Tombstone.

e. As a result of Defendants' actions, O.K. Corral has been harmed. Not only has speech, expression, association, assembly, and movement been harmed. It has also suffered damages.

f. O.K. Corral, its actors, employees, and representatives may resume Walkdowns without interference of Defendants.

3. Damages in an amount to be proven at trial.
4. Attorney's fees and costs incurred per A.R.S. § 12-348 and U.S.C. § 1988(b).
5. For such other relief as court deems just and proper.

RESPECTFULLY SUBMITTED July 18, 2022.

BOSSÉ ROLLMAN PC

By: /s/ Kevin J. Kristick
Richard M. Rollman
Kevin J. Kristick
Attorneys for Plaintiff