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10 Attorneys for Plaintiff,
11 AMERICAN CANINE FOUNDATION

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

14 AMERICAN CANINE FOUNDATION,

15 Plaintiff,

16 vs.

CASE NO. C-06 4713- MHP
SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

17 BEN SUN, D.V.M, the Public Health
18 Veterinarian for the State of California; THE
19 CALIFORNIA DEPARTMENT OF HEALTH
20 SERVICES; THE CALIFORNIA HEALTH
21 AND HUMAN SERVICES AGENCY; CITY
22 AND COUNTY OF SAN FRANCISCO; THE
23 COUNTY OF LOS ANGELES and DOES 1 to
24 50, inclusive,

25 Defendants.

26 -----/
27 Plaintiff, American Canine Foundation (ACF) hereby alleges as follows:

28 1. Plaintiff, American Canine Foundation brings this action seeking prospective
declaratory and injunctive relief against Defendants. As alleged in more detail in this
complaint, Plaintiff challenges the constitutionality and validity of California Senate Bill
861 now codified in California Food and Agricultural Code Section 31683 and California

1 Health and Safety Code Sections 122330 and 122331 (“SB 861”), as well as San
2 Francisco Ordinance number 268-05 and Title 10 of the Los Angeles County Code.

3
4 2. Jurisdiction over this lawsuit is vested pursuant to 28 U.S.C § 1331, which
5 provides jurisdiction of all civil actions arising under the constitution and laws of the
6 United States, 28 U.S.C § 1343 which provides redress for deprivations under color of
7 State law or ordinances, secured by the Constitution of the United States, and 28 U.S.C §
8 1367 under the principles of supplemental jurisdiction. Jurisdiction also arises under 42
9 U.S.C. 1981, 42 U.S.C. 1982, 42 U.S.C. 1983; 42 U.S.C. 1988; 28 U.S.C. 2201 and 2202.
10

11 3. The applicable procedural rules for Declaratory Relief and Injunctive
12 Relief are Federal Rules of Civil Procedure, Rules 57 and 65.

13 4. This court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 for
14 Plaintiff’s state law claims arising under the California Constitution, statutes and
15 common law because Plaintiff’s claims are so related to the claims within the Court’s
16 original jurisdiction that they form part of the same case or controversy under Article 3 of
17 the United States Constitution.
18

19 5. Venue is proper in the United States District Court for the Eastern District of
20 California pursuant to 28 U.S.C §1391(b) because SB 861 applies to the entire State of
21 California; a substantial part of the events or omissions giving rise to the claim occurred
22 in this district, including but not limited to the lobbying for SB 861, political activity
23 related thereto and the signing of the bill; *and three of the five Defendants* are located in
24 this district. It is expected that various laws in different cities and counties will be
25 implemented, creating numerous venues for litigation, (there are already numerous cities
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1 which have named dog breeds, and or have implemented early mandatory spay/neuter
2 for non-shelter dogs), however, Plaintiffs have selected the Eastern District Federal Court
3 as a more centralized location and the majority of the witnesses intended to be called are
4 in Sacramento, also the city of Sacramento is planning on passing a law based off of
5 SB861 in July 2006, if they do, Plaintiff 's will seek to amend them to the complaint.
6

7 6. Plaintiff, American Canine Foundation is an organization based in the State
8 of Washington, and has active members that are residents in the State of California. The
9 American Canine Foundation is an interested party to these proceedings due to the legal
10 issues presented in this action involving its members' rights and the protection of
11 Constitutional rights and property. Plaintiff's members have been impacted and harmed
12 by the laws addressed in this complaint.
13

14 7. Defendant, Ben Sun, D.V.M. is the Public Health Veteranarian of California,
15 specifically charged with the responsibility and authority to ensure that all cities
16 and counties that create ordinances under SB 861 comply with its requirements.
17 Defendant Sun's obligations would naturally include necessary audits and investigation
18 of the unconstitutional so called "programs" created by Defendants, the city and county
19 of San Francisco and Los Angeles County.
20

21 8. Defendant Sun is responsible for collecting dog bite data from all those
22 who pass ordinances under SB861, it is a crucial and mandated part of SB861.
23

24 Defendant Sun is employed by the California Department of Health Services (CDHS),
25 which is charged with overseeing and supervising the work performed by Defendant Sun.
26 CDHS is part of the California Health and Human Services Agency (CHHSA).
27
28

1 9. Defendant, city and county of San Francisco has passed an ordinance
2 (268-05), described in more detail below, based on SB 861. San Francisco's mayor,
3 Gavin Newsom, a proponent of defying laws with which he does not agree, promoted and
4 pushed hard to pass SB 861.
5

6 10. Defendant, the County of Los Angeles, passed an ordinance (Title 10),
7 described in more detail below, based on SB 861 and the local police power.
8

9 11. The true names and capacities, whether individual, corporate, associate, or
10 otherwise of the Defendants named in this Complaint as Does 1 through 50, inclusive, are
11 unknown to Plaintiff who therefore sues such Defendants by such fictitious names.
12 Plaintiff is informed and believes, and on that basis alleges, that each of the DOE
13 Defendants is legally responsible in some manner for the events and happenings herein
14 referred to, and that each one proximately caused damage thereby to Plaintiff as herein
15 alleged. Plaintiff will amend this complaint by inserting the true names and capacities of
16 the fictitiously named Defendants when the same are ascertained.
17

18 12. California State Governor Arnold Schwarzenegger signed SB 861 on
19 October 7, 2005. This law went into effect on January 1, 2006. SB 861 amended Section
20 31683 of the California Food and Agricultural Code (FAC section 31683) and added
21 Sections 122330 and 122331 of the California Health and Safety Code (HSC sections
22 122330 and 122331.)
23

24 FAC section 31683 is part of Chapter 9 of Division 14 of the Food and Agricultural Code,
25 a series of twenty-eight (28) statutes designed to regulate vicious and potentially
26 dangerous dogs, and the owners who fail to contain or control them.
27
28

1 In the very first section of Chapter 9 (FAC section 31601) the Legislature
2 acknowledged that the number and severity of dog attacks “are attributable to the failure
3 of owners to register, confine, and properly control vicious and potentially dangerous
4 dogs.” This Chapter was completely devoid of discrimination against any dog breeds or
5 mixed breeds; in fact as originally drafted, FAC section 31683 specifically stated that
6 regulating dogs in a manner specific as to breed was not allowed under California law.
7

8 14. FAC section 31683 now reads as follows:
9

10 Nothing in this chapter shall be construed to prevent a city or county from
11 adopting or enforcing its own program for the control of potentially dangerous or
12 vicious dogs that may incorporate all, part, or none of this chapter, or that may
13 punish a violation of this chapter as a misdemeanor or may impose a more
14 restrictive program to control potentially dangerous or vicious dogs. Except as
15 provided in Section 122331 of the Health and Safety Code, no program regulating
16 any dog shall be specific as to breed.

17 15. SB 861 changed FAC section 31683’s anti-discrimination law, and now
18 *specifically authorizes discrimination* against certain dog breeds under HSC
19 section 122331, which reads as follows:
20

21 (a) Cities and counties may enact dog breed-specific ordinances pertaining
22 only to mandatory spay or neuter programs and breeding requirements,
23 provided that no specific dog breed, or mixed dog breed, shall be declared
24 potentially dangerous or vicious under those ordinances [Emphasis
25 added.]

26 (b) Jurisdictions that implement programs described in subdivision (a)
27 shall measure the effect of those programs by compiling statistical
28 information on dog bites. The information shall, at a minimum, identify
dog bites by severity, the breed of the dog involved, whether the dog was
altered, and whether the breed of dog was subject to a program established
pursuant to subdivision (a). **These statistics shall be submitted quarterly
to the State Public Health Veterinarian.** [Emphasis added.]

1 16. In Health and Safety Code section 122330 the Legislature declares
2 the stated intent behind SB 861:

3 The Legislature finds and declares the following:

4
5 (a) Uncontrolled and irresponsible breeding of animals contributes to pet
6 overpopulation, inhumane treatment of animals, mass euthanasia at local
7 shelters, and escalating costs for animal care and control; this
8 irresponsible breeding also contributes to the production of defective
9 animals that present a public
10 safety risk.

11 (b) Though no specific breed of dog is inherently dangerous or vicious,
12 the *growing* pet overpopulation and lack of regulation of animal breeding
13 practices necessitates a repeal of the ban on breed-specific solutions and a
14 more immediate alternative to existing laws.

15 (c) It is therefore the intent of the Legislature in enacting this chapter to
16 permit cities and counties to take appropriate action aimed at eliminating
17 uncontrolled and irresponsible breeding of animals.

18 17. Despite the convoluted and contradictory wording of SB 861, the
19 legislative history and language establish that the true intent behind this law was to single
20 out breeds or categories of canines (e.g. “pit bulls” in San Francisco) and label them
21 together as ‘potentially dangerous or vicious’ without regard to science, logic, or any
22 semblance of reason. Consideration for the individual temperament of any dog
23 unfortunate enough to be subject to this discriminatory law is **completely**
24 **DISREGARDED.**

25 18. Cities and counties in California have passed ordinances based on SB 861;
26 this includes but is not limited to the city and county of San Francisco and Los Angeles
27 County, which is claiming they passed their law under the police powers.
28

1 Under the authority provided by SB 861, named breeds of dogs, as well as mixed breed
2 dogs, can be selected for mandatory altering at four (4) months of age. "Pit bulls," a
3 widely misunderstood and misused label, and their owners are the victims of this
4 discrimination in San Francisco. Under Ordinance Number 268-05 it is now a
5 misdemeanor to own any of the following dogs (with only limited exceptions) if they
6 have not been spayed or neutered: a) The American Pit Bull Terrier; b) The American
7 Staffordshire Terrier; c) The Staffordshire Bull Terrier; or d) Any dog displaying the
8 physical traits of any one or more of the above breeds; or e) Any dog exhibiting those
9 distinguishing characteristics that conform to the standards established by the American
10 Kennel Club ("AKC") or United Kennel Club ("UKC"). This broad sweeping, vague
11 language applies to a wide variety of dogs, both purebred and mixed. There is no
12 grandfather clause in this ordinance.
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16 19. Defendant, Los Angeles County has gone even further by amending Title
17 10 of the Los Angeles County Code so that it now targets numerous
18 purebred dogs (including but not limited to the popular Jack Russell
19 Terrier and rare dog breeds) and mixed breed dogs, mandating their
20 sterilization the moment they reach the age of four months. Violations of
21 this ordinance are punishable as an infraction for the first violation,
22 resulting in a fine up to \$250.00. The second violation is a misdemeanor
23 punishable by imprisonment in the county jail not to exceed six months or
24 by a fine not to exceed \$1,000.00 or by both a fine and imprisonment.
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1 There is no grandfather clause applicable to this ordinance, and no grandfather
2 clause provided for in SB 861.

3
4
5 20. While Defendant Los Angeles County is claiming they passed their
6 ordinance under the police power , whether on its face it names one
7 breed, several breeds, no breeds or 'all breeds'-- the **effect** is the same..
8 **Mandatory spay and neuter of all puppies at four months, unless**
9 **owner and dog meet specific criteria.** At trial Plaintiffs will prove
10 mandatory spay and neuter is detrimental and dangerous at the age cited
11 and at all ages- does not serve a rational basis legitimate governmental
12 purpose. Further, the conditional breeding permits are impermissibly
13 regulated by the same agency that seeks to curtail the actual breeding
14 process, where that agency knows nothing about canine breeding. The law
15 calls for a criminal offense if one breeds a dog outside of the law,
16 regardless of how the law was passed. Furthermore, Plaintiff American
17 Canine Foundation already has an affected member in Los Angeles which
18 has been harmed by the law.
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23 21. Defendants, Sun, CDHS and CHHSA are all responsible to ensure that
24 San Francisco, Los Angeles County, or any other county in California which implements
25 a mandatory spay/neuter program based off legislation such as SB861, properly report
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1 the relevant bite statistics under SB 861; if they do not, said Defendants are mandated to,
2 and have the authority to demand compliance; Plaintiff is informed and believes that Sun
3 can directly enforce compliance, which would include legal action, if necessary.
4

5 22. There is no scientific evidence that any breed of dog is inherently
6 dangerous. This was proven in the State of Ohio in the case of City of Toledo v.
7 Tellings, a case that Plaintiff's brought to trial and in several other cases in the United
8 States in the last four years. In the Tellings case, the Ohio Court of Appeals for the Sixth
9 District concluded that pit bulls are not inherently dangerous or vicious and struck down
10 ordinances that discriminated against pit bulls as unconstitutional on three separate
11 grounds.
12

13 23. The concept of forced/mandated surgical altering of canines (for
14 non-shelter animals) is *heavily pushed by the radical animal rights group* 'People for the
15 Ethical Treatment of Animals' (PETA). PETA, an organization with known terrorist
16 links, has killed over 10,000 homeless dogs and cats at its Virginia based "shelter," and
17 is *dedicated to eliminating pet ownership in the United States, as they believe animals*
18 **are 'not commodities.' and should never be bred, or sold.** PETA and other activist
19 groups backed and advocated directly, to help pass SB 861.
20
21

22 Several PETA employees are facing approximately 63 felony charges for having
23 killed and dumped "rescued" puppies and kittens taken from other animal groups, where
24 PETA assured such groups that the pets *would be placed* in new homes. Plaintiffs, at
25 trial, will prove spay and neutering of canines at four months of age is dangerous to the
26 health of the young puppies.
27
28

1 Laws passed under SB861 and under the police powers following passage of SB861, **all**
2 call for early spay and neuter at four months of age; formerly mandatory spay/neuter was
3 mandated only for shelter dogs.
4

5 24. Standing in staunch opposition to SB 861 and any other laws mandating
6 spay and neuter for canines at an early age, were Plaintiff, American Canine Foundation,
7 major dog registries, professional canine behaviorists, dog owners, dog-related
8 businesses, well-known scientific groups involved with canines and others.
9

10 The State of California, however, sided with the extreme animal rights groups,
11 including PETA ----- and ignored SB 861's credible opponents who had credible factual
12 data against the proposed laws.
13

14 25. SB 861, the Los Angeles ordinance, and ordinances arising out of SB861
15 do not provide for any appeal process, and as a direct and foreseeable result, cities and
16 counties either have not or will not provide for a constitutionally sound appellate process.
17 For example, in San Francisco, a "staff member" of the San Francisco Animal Care and
18 Control ("SFACC") will make the determination of whether a person owns a pit bull.
19 The only "appeal" from that staff member's decision is an appeal to the "Director [of
20 SFACC] "or his/her designee." That person's decision "is final," even if it is completely
21 erroneous.
22

23 In Los Angeles County the Director of Animal Control appoints a hearing officer, the
24 rules of evidence are left in control of LA County Animal Control, and dog owners in
25 violation of the unconstitutional breeding laws can face a criminal penalty without
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1 receiving a fair trial, therefore, all aspects of due process are left to the discretion of LA
2 County Animal Control.

3 26. SB 861, the Los Angeles ordinance, and ordinances arising out of SB861
4 will not accomplish any of the so-called goals, stated or unstated. It will not protect the
5 safety of California's citizens; it will not improve the quality of their lives and it will not
6 reduce dog bites or aggressive dogs.
7

8 What it will accomplish, among other things, is more dogs being abandoned,
9 excessive cost overruns for the government, more dogs ending up in shelters and dog
10 pounds, more dogs being euthanized, more discrimination against dog owners and their
11 dogs, and less compliance with existing animal control laws, such as licensing and
12 registration.
13

14 Using flawed data, Los Angeles is attempting to convince the general public that
15 mandatory early altering of canines (**not shelter dogs**) is the proper action to take,
16 despite the common sense knowledge that stopping well-bred dogs from being placed in
17 homes, *has absolutely nothing to do with animal shelter populations*, which have
18 decreased *statewide*. **IN FACT, Sacramento and Bay Area rescues currently import**
19 **approximately 100 dogs plus-- due to LACK of adoptable dogs!!**
20
21

22 Plaintiff can easily show these facts and more at trial.

23 Los Angeles County's mandatory spay and neuter breeding law will not protect
24 the public, it is based on flawed data and discriminates while doing nothing to reduce
25 problems associated with dangerous dogs. Los Angeles County's law will cause shelter
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1 impounds to increase while targeting responsible breeders, yet doing nothing to stop
2 irresponsible breeding.

3 27. SB861 is in direct conflict with the Animal Welfare Act (AWA) found in 7
4 U.S.C § 2131 and the rules promulgated by the Secretary of Agriculture regarding
5 breeding of dogs. SB 861 is also unconstitutional under both the Federal and California
6 Constitution as more fully alleged in this complaint.
7

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10 **FIRST CLAIM FOR RELIEF**
11 **FEDERAL ANIMAL WELFARE ACT PREEMPTION**
12

13 28. The factual allegations in the foregoing paragraphs are incorporated by
14 reference.

15 29. The Animal Welfare Act (AWA) authorizes the Secretary of Agriculture to
16 establish standards regarding the handling, housing, and transportation of animals. These
17 requirements provide rules regarding the licensing and registration of dealers, exhibitors
18 and animal research facilities. (*7. U.S.C. 2131 et seq.*). Section 2.1(a)(3)(iii) titled
19 *Requirements and Application Exemption from Licensing* exempts licensing for breeders
20 who have a minimal number of dogs breeding.
21

22 30. SB 861 and ordinances originally based on the legislation-- are in direct
23 conflict with federal law. The AWA rules allow for the breeding of minimal numbers of
24 dogs without requiring licensing whereas SB 861 and its radical change in prior law not
25 only permits, but encourages municipalities to pass mandatory spay/neuter laws for non-
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1 shelter animals. The passage of laws similar to the San Francisco and Los Angeles
2 County ordinances **is likely to continue as long as SB 861 remains the law of**
3 **California**, and Los Angeles County’s law remains the law; these are laws that ignore,
4 shun and disregard federal law. At trial Plaintiffs will prove allegations in the first claim
5 for relief.
6

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9 **SECOND CLAIM FOR RELIEF**
10 **VIOLATION OF FEDERAL AND STATE RIGHTS**
11 **TO PROCEDURAL DUE PROCESS**

12 31. The factual allegations in the foregoing paragraphs are incorporated by
13 reference.
14

15 32. The Fourteenth Amendment requires states to provide due process to citizens
16 and non-citizens within its jurisdiction. The Fourteenth Amendment also binds the Bill of
17 Rights to the States. This Amendment states in part that “no state shall make or enforce
18 any law which shall...deprive any person of life, liberty or property without due process
19 of law...”
20

21 33. SB 861 and the ordinances arising out of it and Los Angeles County’s
22 ordinance violate procedural due process because these laws allows for citizens to be
23 subjected to criminal sanctions and loss of their property (often beloved family dogs)
24 without a hearing to determine if a dog is dangerous or before seizing the dog or a true
25 right of appeal. SB 861, the ordinances arising out of it and Los Angeles County’s
26 ordinance will likely result in the killing of family pets, immediately, if the pet’s owner
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28

1 does not comply with the government's forced sterilization order.

2 Plaintiffs at trial, will prove with scientific evidence that spay and neuter as required by
3 SB861, San Francisco and Los Angeles County's ordinances, is harmful for canines and
4 dangerous to their health.
5

6 34. Further, the necessary proof to convict under these laws would require
7 proof beyond a reasonable doubt, which is impossible in application because neither
8 animal control nor law enforcement can identify specific breeds or mixed breeds beyond
9 a reasonable doubt; this will lead to arbitrary and discriminatory criminal charges against
10 dog owners.
11

12 35. SB 861, the ordinances arising out of it and Los Angeles County's law
13 violate the Federal and California Constitutions, which prohibit unreasonable searches
14 and seizures because their application allows municipalities to arbitrarily inspect the
15 premises of a licensed dog owner to make sure that the standards required to receive a
16 permit are met. Plaintiffs at trial, will proved the laws addressed in this complaint were
17 passed using flawed data.
18
19

20 **THIRD CLAIM FOR RELIEF**
21 **VIOLATION OF FEDERAL AND STATE RIGHTS**
22 **TO SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION**

23 36. The factual allegations in the foregoing paragraphs are incorporated by
24 reference.

25 37. SB 861 the ordinances arising out of it and Los Angeles county's law
26 violate substantive due process and equal protection. These laws will continue to bring
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1 about arbitrary, unreasonable and discriminatory law enforcement and they serve no
2 legitimate government purpose. The means the government adopts must be suitable to
3 the ends in view, they must be impartial in operation and not unduly oppressive upon
4 individuals, must have a real and substantial relation to their purpose, and must not
5 interfere with private rights beyond the necessities of the situation. Plaintiffs at trial, will
6 prove the laws addressed in this complaint were passed using flawed evidence and data.
7

8 38. Where a statute or ordinance is challenged on nonprocedural grounds as
9 violative of due process, the test is whether there is some fair, just and reasonable
10 connection between the statute and the promotion of the health, comfort, safety and
11 welfare of society. Neither SB 861 nor the San Francisco or Los Angeles County
12 ordinances will promote any of these governmental goals, they serve no legitimate
13 governmental purpose and should be struck down as unconstitutional because they were
14 passed using flawed data.
15
16

17 **FOURTH CLAIM FOR RELIEF**
18 **SB 861 AND THE ORDINANCES BASED UPON IT**
19 **ARE EX POST FACTO LAWS**

20 39. The factual allegations in the foregoing paragraphs are incorporated by
21 reference.

22 40. The United States Constitution Article I, §§ 9 and 10, prevents the federal
23 and state governments from enacting *ex post facto* laws.

24 41. SB 861 as amended and LA County's law allows municipalities to
25 criminalize dog owners who have not spayed or neutered their dogs, or owners who have
26 not complied with any number of other rules, requirements or regulations imposed on
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28

1 them by municipalities pursuant to the broad grant of power and authority provided by
2 SB 861 and the police power in LA County.

3
4 Defendants city and county of San Francisco and Los Angeles County have
5 utilized that broad grant of power in passing their unconstitutional and unlawful
6 ordinances. Los Angeles County's law---- although allegedly under the 'police power'---
7 is no different than SB861 in its effect or results. Plaintiffs will prove Los Angeles
8 County supported SB861, waited until it passed, then through a course of changes (to
9 avoid litigation), passed a law claiming it fell under the police power; yet the law **creates**
10 *the very same end result as that of SB861*---namely, it *mandates* EARLY spay/neutering
11 for canines which are not shelter animals, at the very same early age of four months, if
12 not sooner.
13

14
15 42. SB 861, the ordinances arising out of it, and Los Angeles County's law
16 are *ex post facto* laws because they impose penalties for acts committed before the law
17 was passed and that were legal at the time, without allowing an exemption for dogs that
18 were purchased or owned prior to the implementation of these laws. At trial plaintiffs
19 will prove the laws addressed in this complaint serve no legitimate government purpose
20 and will in no way protect the public, contrary to the city and county's proffered intent.
21

22 //

**FIFTH CLAIM FOR RELIEF
THE ENACTMENT OF SB 861
AND THE ORDINANCES ARISING OUT OF IT
VIOLATE THE NO TAKING CLAUSE
OF THE UNITED STATES CONSTITUTION**

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5 43. The factual allegations in the foregoing paragraphs are incorporated by
6 reference.

7 44. The Fifth Amendment of the United States Constitution prohibits the
8 deprivation of life, liberty, or property, without due process of law and prohibits private
9 property from being taken for public use without just compensation. The states are
10 bound by the Fifth Amendment as made applicable to the States through the Due Process
11 Clause of the Fourteenth Amendment.
12

13 45. Many California citizens have large financial and time investments in
14 training, planning, showing and providing for their dogs. Californians, including those
15 who participate in the purebred dog shows, and hobby breeders, will be deprived of their
16 property interests if they are forced to neuter or sterilize their dogs. Once any dog
17 is surgically altered, its economic capacity is irreparably lost if it was to be used as breed
18 stock. This in effect, is a taking. Moreover, an altered dog may not be shown in United
19 Kennel Club, American Dog Breeders Association or American Kennel Club events.
20 Therefore, owners of these expensive dogs would lose all rights and opportunities to
21 show the dog, breed the dog, or further the line of a champion dog due to the mandatory
22 altering.
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1 Breeders that produce reasonably priced, well-bred dogs (not necessarily
2 show dogs) would be unable to offer these dogs to the public, which in turn will
3 cause more defective dogs to be placed into the stream of commerce as underground
4 breeders, puppy mill dogs, and third world strays take their place.
5

6 In 2005, \$35.7 billion dollars was generated by the canine industry in the
7 United States. Laws like SB861 and the law Los Angeles County passed will open
8 the door for more puppy mills, and defective canines, while doing nothing to target
9 irresponsible breeders.
10

11 These laws actually would be creating problems which contradict the intent
12 of the laws themselves—that is, the laws will encourage the sale of dogs and puppies
13 which are NOT registered with specific breed registries, because those show dogs
14 which are continuously shown for competition, are far too expensive for the
15 average dog owner. When such dogs (dogs from responsible breeders) cannot be
16 placed into the market, this will cause serious damage to the Dog Fancy, resulting in
17 the taking of valuable property based on a law that was passed with false
18 information and flawed data. Further, it makes such pets unavailable to the
19 general public, thereby increasing the demand for such pets through avenues of
20 questionable origin (such as puppymills, dogs from Mexico, dogs imported from
21 third world countries, dogs sold on the internet for which recourse is limited, and
22 prosecution is almost non-existent.)
23
24

25
26 46. Those supporting legislation involving MANDATORY canine
27 altering are basically the Animal RIGHTS movement (not animal welfare), which
28 include extremist/radical groups known for eco-terrorist links.

1 The elimination of canine ownership and breeding altogether of canines is a known,
2 vocal GOAL of such animal RIGHTS groups. As an example, the animal rights
3 radical group in Los Angeles used smoke bombs on an Animal Control employee's
4 home in order to get this employee to step down from his job. They were successful
5 and the employee quit his job. *Is this the type of group that the government*
6 *should be listening to when bringing new laws into effect?*
7

8 Plaintiffs have proof beyond a reasonable doubt to support the allegations
9 made in this complaint and will present that proof at the time of trial.
10

11 Furthermore, while proponents of mandated spay/neuter claim this will stop
12 dangerous dogs, aggressive dogs, and dog bites, the facts show that in the recent
13 past, that shelter dogs and re-homed dogs have actually CAUSED a significant
14 number of the FATAL ATTACKS against humans.
15

16 Since shelter and rescued /re-homed dogs are usually already altered,
17 obviously there is a very big FLAW in the entire concept that "early spay/neuter"
18 will eliminate "DANGEROUS DOGS". Plaintiff can and will easily prove this at
19 trial without any doubt whatsoever.
20

21
22 **SIXTH CLAIM FOR RELIEF**
23 **ENACTMENT OF LAW VIOLATES FEDERAL COMMERCE CLAUSE**
24

25 47. The factual allegations in the foregoing paragraphs are incorporated by
26 reference.
27
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1 48. The United States Constitution Article 1 Section 8, Clause 3 of the United
2 States Constitution (Commerce Clause) empowers the United States government to
3 “regulate Commerce with foreign Nations, and among the several States, and with Indian
4 Tribes.”
5

6 49. SB 861 and the ordinances arising out of it and Los Angeles County’s law
7 substantially affect interstate commerce. The Supreme Court in *United States v. Lopez*,
8 *514 U.S. 549 (1995)* held that Congress has the power to regulate the channels of
9 commerce, the instrumentalities of commerce, and any action that substantially affects
10 interstate commerce.
11

12 50. The enactment and application of SB 861, the ordinances arising out of it
13 and Los Angeles County’s law adversely affect the flow of business commerce as it
14 relates to the sale of well-bred canines originating from California to the rest of the
15 United States. **The pet industry is a \$35.7 billion dollar industry which has a huge
16 commerce flow across the nation. The unsafe and unreasonable mandatory altering
17 of all canines, (not just shelter dogs) is not only contradictory, but based upon false
18 data and media hype, all of which will be shown at trial.** California is home to many
19 canine kennels and many well-bred dogs originate from California, selling and
20 shipping canines outside the state would be adversely and significantly affected, if not
21 eliminated, due to the mandatory altering of the breeds targeted by SB861 and Los
22 Angeles County’s laws.
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25 51. The application of SB 861, the ordinances arising out of it and Los
26 Angeles County’s law would substantially affect interstate and intrastate travel because
27
28

1 affected dog owners could no longer participate in sanctioned dog events, as many shows
2 and events do not allow canines that have been altered. **Reducing the number of well-**
3 **bred canines overall does absolutely nothing to promote the eradication of**
4 **dangerous dogs or dog bites.**

5
6 It should be noted that simply placing a dog in a breed registry does NOT indicate
7 nor guarantee that the dog has a good temperament. This can easily be proven at trial.
8

9
10 52. Further, each municipality can enact a completely different ordinance,
11 which could result in dog owners being in compliance with the law in one municipality
12 and in violation of it in the next. At trial plaintiffs will prove the laws addressed in this
13 complaint were passed using flawed data and that Plaintiffs members are suffering from
14 present harm and will be harmed in the future. *Babbitt v United Farm Workers Union*,
15 422 U.S. 289, 298 (1979).
16

17 **SEVENTH CLAIM FOR RELIEF**
18 **FREEDOM OF CONTRACT**

19
20 53. The factual allegations in the foregoing paragraphs are incorporated by
21 reference.

22 54. The enactment and application of SB 861 and Los Angeles county's law
23 infringes on the business of selling canines in California and thus to the rest of the United
24 States. Plaintiffs members will be harmed by the laws addressed in this complaint.
25

26
27 //

**EIGHTH CLAIM FOR RELIEF
SB 861 AND THE ORDINANCES ARISING OUT OF IT
ARE UNCONSTITUTIONALLY VAGUE**

55. SB 861, the ordinances arising out of it and Los Angeles County’s law were so poorly drafted it is impossible for the ordinary citizen to understand what they purport to do. SB 861 is being misused and misinterpreted by municipalities, and is leading and will continue to lead to, unintended and unfortunate consequences including, but not limited to the killing of family pets, false accusations against those who own breeds that “look like” breeds targeted pursuant to SB 861; as for Los Angeles County’s law, *arbitrary* arrests and prosecutions of dog owners as a result of the inability of dog owners to register their dogs with a specific ‘registry’, while animal control enforcement goes house to house looking for intact dogs. This has already taken place in Los Angeles County and Plaintiff can prove this fact. Further, Plaintiffs will prove at trial animal control agencies cannot identify certain breeds of canines beyond a reasonable doubt if certain specific breeds are targeted.

**NINTH CLAIM FOR RELIEF
SB 861 AND THE ORDINANCES ARISING OUT OF IT
INCLUDING THE SAN FRANCISCO AND
LOS ANGELES COUNTY ORDINANCES
ARE UNCONSTITUTIONAL IN THAT THEY
VIOLATE THE FREEDOM OF ASSOCIATION
PROTECTION AFFORDED BY THE FIRST AMENDMENT
OF THE FEDERAL CONSTITUTION**

56. SB 861, the ordinances arising out of it and LA County’s law violate the right to freedom of association under the First Amendment by requiring affiliations with

1 specific groups or organizations in order to fit within one of the exemptions provided for.
2 In all cases Plaintiffs members will be forced to join a specific breed club, in many cases
3 Plaintiff's members may be denied the right to join a breed club and be forced to seek an
4 alternative remedy which will not be available, Plaintiffs members are being harmed at
5 this time because of SB861, San Francisco and Los Angeles County's law addressed in
6 this complaint. At trial plaintiffs will bring forward members who have been harmed by
7 the unconstitutional breeding sterilization laws. At trial Plaintiff's will prove the laws
8 addressed in this complaint were passed using flawed data.
9
10

11 **TENTH CLAIM FOR RELIEF**
12 **VIOLATION OF CALIFORNIA'S CONSTITUTION**

13 57. The factual allegations in the foregoing paragraphs are incorporated by
14 reference.
15

16 58. California Constitution Section 1 states that "All people are by nature free
17 and independent and have inalienable rights. Among these are enjoying or defending life
18 and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining
19 safety, happiness, and privacy.
20

21 59. SB 861 and the ordinances arising out of it and Los Angeles County's law
22 violate the California Constitution Article 1 § 1 because they allow municipalities to in
23 effect restrict dog owners from possessing canines capable of reproduction and protecting
24 the inherent value of such canines, which are considered property.
25

26 60. California Constitution Article 1 § 7(a) states that "a person may not be
27 deprived of life, liberty or property without due process of law or denied equal protection
28

1 of the laws.”

2 61. SB 861 in its application allows municipalities such as the San Francisco
3 to pass legislation that allows for the destruction of certain breeds upon the first violation
4 of the statute without due process. Los Angeles County’s law which was passed after
5 SB861 was passed into law, also end in the same result with destruction of canines on a
6 first violation without being declared dangerous.
7

8 62. SB 861 and the ordinances arising out of it and Los Angeles County’s law
9 violate California Constitution Article 1 § 9 regarding *ex post facto* laws because they
10 impose penalties for an act committed before the law was passed and that was legal at the
11 time without allowing an exemption for dogs that were purchased or owned prior to the
12 law’s implementation.
13

14 63. SB 861 and the ordinances arising out of it and Los Angeles County’s law
15 violate California Constitution Article 1 Section 13 against unreasonable searches and
16 seizures because its application allows municipalities to arbitrarily inspect the premises
17 of a licensed dog owner to make sure that the standards required to receive a permit are
18 met. Plaintiffs at trial will prove the laws addressed in this complaint were passed using
19 flawed data.
20

21 //

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Assert jurisdiction over this lawsuit;
2. Declare SB 861 and Los Angeles County’s law unconstitutional;
3. Declare SB 861 to be in conflict with and in violation of the Animal Welfare Act;
4. Declare San Francisco Ordinance Number 268-05 unconstitutional;
5. Declare Title 10 of the Los Angeles County Code unconstitutional;
6. Declare San Francisco Ordinance Number 268-05 to be in conflict with and in violation of the Animal Welfare Act;
7. Declare Title 10 of the Los Angeles County Code to be in conflict with and in violation of the Animal Welfare Act;
8. Issue an Order for prospective injunctive relief preventing the application of SB 861 or the enforcement of any laws drafted as a result of its enactment, including but not limited to San Francisco Ordinance Number 268-05 and Title 10 of the Los Angeles County Code drafted under police powers;
9. Allow Plaintiff to proceed to trial by jury if requested;

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10. Award Plaintiff its court costs, fees and other disbursements associated with the filing and maintenance of this action, including but not limited to reasonable attorney’s fees under 42 U.S.C. 1982, 1983 and 1988 or other applicable law;

11. That the Court exercise continuing jurisdiction during the enforcement of relief;

12. Any other relief that this Court deems just and proper.

DATED: July 22, 2006

By /s/ _____
Carolyn Chan, Esq.
Attorney for Plaintiff,
American Canine Foundation