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SUPERIOR COURT  
COUNTY OF SAN FRANCISCO

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9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO

12 ASIAN AMERICAN RIGHTS COMMITTEE OF  
CALIFORNIA, an unincorporated association,

Case No. CGC-12-517723

13 Plaintiff,

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

14 v.

15 EDMUND BROWN, in his official capacity as  
Governor of the State of California, KAMALA D.  
16 HARRIS, in her official capacity as Attorney  
General of the State of California, and the STATE  
17 OF CALIFORNIA,

18 Defendants.

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20  
21 NOW COMES ASIAN AMERICAN RIGHTS COMMITTEE OF  
22 CALIFORNIA ("AARCCA"), Plaintiff herein, by its undersigned attorneys,  
23 makes and files this Complaint against Defendants EDMUND BROWN,  
24 Governor of the State of California, KAMALA D. HARRIS, Attorney General  
25 of the State of California, and the STATE OF CALIFORNIA:

26 **NATURE OF ACTION**

27 1. This is an action for declaratory and injunctive relief under the  
28 statutory and common law of the State of California. As set forth below,

1 AARCCA seeks a declaration from this Court that the State of California's law  
2 prohibiting the possession, sale, offer for sale, distribution, or trade of shark  
3 fins, enacted through California State Assembly Bills 376 and 853 (the "Shark  
4 Fin Ban"), is an unlawful interference with the power of the United States  
5 Congress to regulate interstate commerce under Article I, Section 8, Clause 3  
6 of the United States Constitution, as well as an unlawful taking of AARCCA's  
7 members' private property in violation of the Fifth and Fourteenth Amendments  
8 to the United States Constitution.

### 9 **PARTIES**

10 2. Plaintiff AARCCA is a voluntary association having its  
11 headquarters in San Francisco, California. AARCCA's members are engaged in  
12 commercial enterprises that purchase and sell shark fins and shark fin soup  
13 throughout the United States, primarily to Asian restaurants, groceries and  
14 specialty shops.

15 3. AARCCA's membership represents approximately 90% of  
16 California Department of Fish and Game licensed and recognized Shark Fin  
17 Receivers, Wholesalers and Processors.

18 4. On information and belief, AARCCA's members supply nearly 100  
19 percent of the shark fins consumed by Asian Americans in California.  
20 AARCCA's members also supply shark fins to most of the large cities in the  
21 United States.

22 5. Defendant, the State of California, through its officers and  
23 agencies, including Defendant Edmund Brown, the Governor of California, and  
24 Defendant Kamala D. Harris, the Attorney General of California, enforces the  
25 California Fish and Game Code.

### 26 **JURISDICTION AND VENUE**

27 6. This is a general case not subject to limited jurisdiction.  
28 Jurisdiction and venue are appropriate in this Court.



1 misdemeanor and may be punished by up to six months imprisonment and a fine  
2 of up to \$1,000.

3 13. An actual controversy has arisen and now exists because  
4 AARCCA's members face the imminent threat of criminal sanctions if they do  
5 not comply with the Shark Fin Ban, which became effective on January 1, 2012.  
6 Under the Shark Fin Ban, it is now illegal for AARCCA's members to acquire  
7 any new shark fins and will be illegal for them to possess, sell, offer for sale,  
8 trade, or distribute any shark fins as of July 1, 2013.

9 14. The Shark Fin Ban is unconstitutional under the United States  
10 Constitution. It is a violation of Article I, Section 8, Clause 3 of the U.S.  
11 Constitution (the "Commerce Clause") because it interferes with the power of  
12 the United States Congress to regulate interstate commerce.

13 15. It is also an unlawful taking of AARCCA's members' private  
14 property in violation of the Fifth and Fourteenth Amendments to the U.S.  
15 Constitution because it will deprive AARCCA's members of all economically  
16 beneficial use of shark fins they possess.

17 16. AARCCA seeks a declaration from this Court that the Shark Fin  
18 Ban is unconstitutional and therefore unenforceable and void. AARCCA  
19 further seeks a declaration that the Shark Fin Ban is an unlawful taking of its  
20 members' private property in violation of the Fifth and Fourteenth Amendments  
21 to the U.S. Constitution, and a violation of the Commerce Clause.

22 17. Such a declaration is necessary and proper at this time so that  
23 AARCCA's members may establish certainty as to their legal obligations and  
24 conduct their business and cultural affairs without subjecting themselves to  
25 potential liability for violation of the Shark Fin Ban.

26 18. Absent a judicial declaration that the Shark Fin Ban violates the  
27 United States Constitution, AARCCA's members face potential criminal  
28 sanctions for ongoing business activities that they have legitimately pursued

1 for as many as 35 years, in which they have invested substantially, and on  
2 which the vast majority of their income depends. They also face potential  
3 criminal sanctions for the traditional use of shark fin soup in cultural  
4 ceremonies and celebrations that have been carried on for hundreds of years.

5 19. The actual controversy presented to this Court is ripe for  
6 adjudication and suitable for judicial determination. It is an existing legal  
7 dispute between the parties regarding a discrete issue (*i.e.*, the legality of the  
8 Shark Fin Ban under the Fifth and Fourteenth Amendments to the United States  
9 Constitution and under the Commerce Clause) and is based on ongoing and  
10 prospective conduct.

#### 11 **OVERVIEW OF THE UNCONSTITUTIONAL STATUTORY PROVISIONS**

12 20. Section 2021, the prohibition, makes it “unlawful for any person  
13 to possess, sell, offer for sale, trade, or distribute a shark fin.” Cal. Fish &  
14 Game Code § 2021(b). Section 2021 also enumerates three exemptions from  
15 the general prohibition, none of which are relevant to AARCCA’s members.

16 21. First, it allows shark fin possession by “[a]ny person who holds a  
17 license or permit pursuant to Section 1002 [providing for possession of animal  
18 life for scientific, educational, or propagation purposes].” *Id.* § 2021(c).  
19 Second, it allows shark fin possession by “[a]ny person who holds a license or  
20 permit issued by the [California Department of Fish and Game] to take or land  
21 sharks for recreational or commercial purposes.” *Id.* § 2021(d). Finally, it  
22 allows that “[b]efore January 1, 2013, any restaurant may possess, sell, offer  
23 for sale, trade, or distribute a shark fin possessed by that restaurant, as of  
24 January 1, 2012, that is prepared for consumption.” *Id.* § 2021(e).

25 22. Section 2021.5 includes additional limited exemptions. It  
26 generally allows the sale and possession of shark fins for taxidermy. *See id.* §  
27 2021.5(a)(1), (a)(3). In addition, it temporarily delays the applicability of the  
28

1 prohibition only as to any shark fins acquired prior to January 1, 2012.  
2 Specifically, it provides that “[b]efore July 1, 2013, any person may possess,  
3 sell, offer for sale, trade, or distribute a shark fin possessed by that person, as  
4 of January 1, 2012.” *Id.* § 2021.5(a)(3).

5 23. A violation of the Fish and Game Code, unless otherwise specified,  
6 is a misdemeanor punishable by up to six months imprisonment and a fine of up  
7 to \$1,000. *See* Cal. Fish and Game Code § 12000.

8 24. The net effect of Sections 2021 and 2021.5 on AARCCA’s  
9 members, who possess and sell shark fins exclusively in connection with food  
10 production, is to prohibit them from acquiring any new shark fins as of January  
11 1, 2012, and to prohibit them from possessing or selling any shark fins acquired  
12 before that date as of July 1, 2013.

### 13 FIRST CAUSE OF ACTION

#### 14 (Declaratory Relief - Commerce Clause)

15 25. AARCCA re-alleges and incorporates the allegations of paragraphs  
16 1 through 24 as if fully set forth herein.

17 26. The State of California’s Shark Fin Ban violates the Commerce  
18 Clause of the U.S. Constitution.

19 27. Under the Commerce Clause, Congress retains the ultimate power  
20 to regulate interstate commerce. A state law that interferes with this  
21 Congressional authority by imposing a burden on interstate commerce that is  
22 excessive in relation to its putative local benefits violates the Commerce  
23 Clause.

24 28. A significant number of the shark fins that AARCCA’s members  
25 possess, sell, trade, or distribute cross state lines as domestic imports or  
26 exports from outside of the United States.  
27  
28



1           36.    The State of California's Shark Fin Ban violates the Fifth  
2 Amendment to the U.S. Constitution (the "Takings Clause"), as applied to the  
3 State of California by the Fourteenth Amendment to the U.S. Constitution.

4           37.    Under the Takings Clause, the government cannot take private  
5 property for public use without just compensation. A regulation that deprives a  
6 property owner of substantially all of the economically beneficial use of his or  
7 her property and/or substantially interferes with of his or her reasonable  
8 expectations related to the future use or value of the property is a regulatory  
9 taking of that property that is unlawful without just compensation.

10          38.    By forbidding AARCCA's members from possessing, selling,  
11 offering for sale, trading, or distributing lawfully harvested shark fins, the  
12 Shark Fin Ban deprives AARCCA's members of all economically beneficial use  
13 of any shark fins they have acquired or will acquire through ongoing, lawful  
14 business or cultural activities. Many of AARCCA's members have invested  
15 substantially in the development of business capital, inventory, and goodwill  
16 based on their reasonable expectations for the continued use and value of shark  
17 fins as a component of longstanding cultural traditions that date back hundreds  
18 of years.

19          39.    The Shark Fin Ban therefore effects a regulatory taking of the  
20 private property of AARCCA's members. Because the Shark Fin Ban does not  
21 provide any compensation to AARCCA's members for this total economic loss,  
22 it is unlawful under the Fifth and Fourteenth Amendments to the U.S.  
23 Constitution.

24          40.    AARCCA is therefore entitled to a judgment declaring that the  
25 Shark Fin Ban violates the Fifth and Fourteenth Amendments to the U.S.  
26 Constitution.

27          41.    Such a declaration is necessary and appropriate at this time to  
28 determine the rights and obligations of the parties.



1 **THIRD CAUSE OF ACTION**

2 **(Injunctive Relief)**

3 42. AARCCA re-alleges and incorporates the allegations of paragraphs  
4 1 through 41 as if fully set forth herein.

5 43. The enforcement or threat of enforcement of the Shark Fin Ban will  
6 cause immediate and irreversible injury to AARCCA members who purchase,  
7 sell and possess shark fins and related products, including, but not limited to,  
8 loss of opportunity, disruption of business, lost profits, diminution in value,  
9 and criminal fines and penalties.

10 44. Because the State's conduct causes harm that cannot be adequately  
11 compensated in damages, AARCCA requests that the Court issue preliminary  
12 and permanent injunctive relief enjoining the State of California from enforcing  
13 the Shark Fin Ban.

14 **PRAYER FOR RELIEF**

15 Plaintiff AARCCA prays as follows:

16 (1) For a judgment in its favor on each and every cause of action  
17 alleged in the Complaint:

18 (a) A judgment declaring that California Fish and Game Code  
19 Sections 2021 and 2021.5 violate the Commerce Clause of the U.S.  
20 Constitution.

21 (b) A judgment declaring that California Fish and Game Code  
22 Sections 2021 and 2021.5 violate the Fifth and Fourteenth Amendments  
23 to the U.S. Constitution.

24 (2) For the preliminary and permanent injunctive relief as set forth  
25 above;

26 (3) For attorney's fees and costs of suit;

27 (4) For such other and further relief as the Court deems just and  
28 proper.

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Respectfully submitted, this 27th day of January, 2012.

Dated: January 27, 2012

CHRISTOPHER J. CARR  
WILLIAM F. TARANTINO  
SUSAN L. LANDSITTEL  
MORRISON & FOERSTER LLP

By:   
CHRISTOPHER J. CARR

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Asian American Rights Committee  
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