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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

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11 **IVORY EDUCATION INSTITUTE,**)
12 **a California non profit, unincorporated**)
13 **association, on behalf of itself and its**)
14 **participants and the taxpayers of**)
15 **California who own ivory objects of**)
16 **historic, artistic, cultural and practical**)
17 **importance created prior to 1977,**)
18 **Plaintiff,**)
19 **vs.**)
20 **THE STATE OF CALIFORNIA, by and**)
21 **through its agency the Department of**)
22 **Fish and Wildlife,**)
23 **Defendant.**)

CASE NO. _____

**COMPLAINT FOR INJUNCTION
TO PROHIBIT IMPLEMENTATION
OF CALIFORNIA ASSEMBLY
BILL 96 (California Fish and Game
Code Section 2022)**

24 PLAINTIFFS allege,

25 1. Plaintiff, Ivory Education Institute now and at all times herein mentioned, is a
26 nonprofit, unincorporated, association, formed for the purpose of improving understanding and
27 appreciation of objects made from or with ivory, and advancing the interests of collectors and
28 possessors of objects made from or with ivory, and particularly those of historic, artistic,

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1 cultural, and practical importance. Such articles include sculptures, jewelry pieces, flatware and
2 serving pieces, inlay decoration, and a myriad of other items worked from ivory prior to 1977.

3 2. Plaintiff Ivory Education Institute brings this action pursuant to C.C.P. Section
4 369.5 for itself and on behalf of its participants and California taxpayers who own ivory objects
5 of historic, artistic, cultural and practical importance existing before 1977 and include taxpayers.
6 The pre-1977 period is appropriate because that accepts a date in conformity to the coming into
7 force of the Convention on International Trade in Endangered Species of Wild Fauna and Flora
8 (CITES), a United Nations treaty ratified by the United States.

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10 3. The legislature of the State of California passed Assembly Bill 96, in the 2015
11 Legislative session signed by the governor, to be codified as California Fish and Game Code
12 Section 2022 (hereafter “the Law”), which provides in general that the sale of most ivory or
13 most products containing ivory will be illegal for sale after July 1, 2016. In essence, the Law
14 makes it a crime with certain modest exceptions to sell any tooth or tusk from a species of
15 elephant, hippopotamus, mammoth, mastodon, walrus, warthog, whale or narwhal or a piece
16 thereof, whether raw ivory or worked ivory, and regardless of the age of the item.

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18 4. The Law goes into effect on July 1, 2016 and this case is brought to enjoin
19 enforcement of the Law because the Law deprives Plaintiffs of due process, deprives Plaintiffs
20 of their property without compensation and is otherwise unconstitutional in that pre-1977 ivory
21 objects legally acquired owned by Plaintiffs will be rendered worthless as of July 1, 2016.
22 Furthermore, implementation of the Law will mean that state and local taxes on the sale of these
23 objects will not be available, constituting a loss to the citizens of California, including the
24 Plaintiffs. A true and correct copy of the Law is attached hereto marked Exhibit 1 and is
25 incorporated herein by this reference.
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1 5. Pre-1977 elephant ivory objects are too important to the artistic and cultural
2 heritage of this State to have them rendered worthless. Objects worked from elephant ivory have
3 been venerated for thousands of years by virtually every culture, and have been used in creating
4 extraordinary miniature sculptures, exquisite jewelry, fine decorations, and other objects of
5 historic, artistic, cultural and practical importance. To reduce the value of these holdings which
6 predate 1977 in the State of California to nothing, is an improper and unconstitutional taking of a
7 vast artistic heritage. Banning the trade in historic, artistic, cultural and practical artifacts
8 containing ivory is no less a destruction of a valuable artifact because it is taken by the Law than
9 the destruction of other works of art in the name of an extreme religion. Here the destruction is
10 in the name of the state encouraged by misguided animal rights groups operating under the
11 unproven assertion that criminalizing Californians because of their ownership of antique objects
12 somehow saves elephants in Africa from being poached by international criminals to feed a
13 demand centered in Asia.

16 6. As a result of the Law, works of art carved from ivory, and other ivory artifacts of
17 importance that can no longer be legally bought or sold, may as a consequence deteriorate, fall
18 into disrepair, become lost or destroyed, or become a part of an illegal underground commercial
19 market. Ivory objects of historic, artistic, cultural and practical importance constitute a record of
20 our shared past, a way of understanding ourselves and each other. The reduction of art and
21 artifacts to non saleable objects represents an attack on history, identity and civilization. The
22 loss to Plaintiffs and the taxpayers of California of the value of these artifacts of cultural history
23 and the vitality of their collections is enormous. Such a loss cannot be justified where, as here,
24 there has been and can be no demonstrated benefit to current African elephant herds by banning
25 sales of art, antiques and artifacts carved prior to 1977 containing ivory. The potential loss is
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1 considerably more than tens of millions of dollars. The Plaintiffs' due process rights are
2 abridged by the Law in that the effect of the Law is not reasonably related to a proper California
3 constitutional or legislative goal. There are no endangered elephants in California and no proven
4 reason to warrant rendering private property, bought and owned legally, worthless.
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6 7. Based on the legislature's findings, the committee hearings, and other
7 commentary, the Law was passed as an effort to protect endangered species, particularly African
8 elephants and rhinoceroses from being killed to support an illegal, international, commercial
9 ivory trade. The preamble to the Law overstates the problem and is based on a fallacy. It states
10 that "an average of 96 elephants per day are killed in Africa." That would mean 35,000
11 elephants per year die at the hands of poachers and therefore an absolute minimum of 700,000
12 pounds of ivory would become part of the annual commercial trade in this commodity. That
13 would be enough ivory for more than 46 million individual objects of jewelry, an amount far
14 beyond anything ever seen in the California marketplace. The number of killings as stated, is a
15 hoax, and fails to take into account elephant deaths due to age, disease, primacy battles,
16 environmental issues, overcrowding, accidents, and elephants as a food source. The number of
17 96 per day has been used and bandied about, and because it has been repeated so often, it has
18 become accepted as fact by the legislature, but it is a number without evidentiary support. The
19 number is bogus, and intended to overstate the problem in order to promote and encourage
20 passage of the Law.
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22 8. While the commercial ivory trade in poached tusks is a scourge and a root cause
23 of the reprehensible killing of elephants in Central Africa, the Law, as written will have
24 absolutely no impact or effect on preventing future such trade in Africa or Asia. No credible
25 evidence has been produced that links the deaths of Central African forest or savannah elephants
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1 to the market for sales of objects in California worked from ivory taken before 1977. In fact, the
2 Law could have the opposite effect. It could encourage an increase in the likelihood of illegal
3 elephant killings in Africa. By legislating the removal of nearly all ivory objects from
4 commerce in California, it would lead to the scarcity of such objects which would ultimately
5 increase the market price of ivory objects elsewhere. The higher the price of raw ivory, the
6 greater the incentive to the criminal gangs that control the poachers, and the illegal ivory market.
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8 9. The Law is not reasonably related to the purpose of the act because:

9 a) Existing holdings in California of artistic, historic, cultural and practical
10 ivory objects include carved statues, netsuke, brooches, billiard balls, and many other
11 such items. These ivory objects held throughout California will be rendered worthless
12 because it will be illegal to sell such items of whatever age. Such a prohibition can have
13 no direct, indirect or collateral impact or effect whatsoever on the present day problem of
14 killing elephants in Central Africa by criminal gangs engaged by Asian interests. There
15 is simply no rational connection to the conservation and protection of African
16 wildlife to the sale of ivory objects in California worked from ivory taken prior to 1977.
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18 b) An ivory object owned in California and derived from the tusks of an
19 extinct animal, especially those carved from fossilized and preserved mastodons and
20 mammoth tusks, as well as from the tusks of such non endangered species as warthog,
21 boar, and walrus simply cannot have any impact on current elephant poaching, and the
22 proponents of the Law have offered no credible evidence to the contrary.
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24 10. The Law simply goes too far and is over broad in casting a wide net to prohibit
25 items that cannot be a factor in the current illegal poaching of elephants in Central Africa.
26 Further, because there is certainly no perceived problem in California requiring legislative action
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1 to preserve non-existent California elephant herds, the Law infringes on the U.S. Constitution
2 which requires that international matters be restricted to actions by the Federal Government. It
3 is also an area where the Federal Government has acted in the Federal Endangered Species Act
4 of 1973, as amended (16 USC 1531-1544), which means that the Law should be deemed
5 preempted by federal law.
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7 11. There are other problems with the Law which include but are not limited to:

8 a) There is no provision for funding the enforcement of the Law by local
9 government as required by Article 13 of the California Constitution. Without funding,
10 the California Department of Fish and Wildlife will not be able to plan and staff for the
11 implementation of the Law in 2016. As a result, the Law potentially becomes a
12 statement of policy only, with little actual effect. This leads to potential illicit behavior
13 and disrespect for the Law in general.
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15 b) The generic reference by the Legislature to the “plight of elephants and
16 rhinoceroses” killed in Africa is contrary to the actual situation and facts regarding
17 elephants in Africa. There are reports from experienced and well reported wildlife
18 experts that there is an over population of elephants in Southern Africa due to human
19 population encroachment on preserves and lack of sufficient habitat to sustain elephant
20 populations. It is arrogant to think that Botswana, Namibia, Zaire, Zimbabwe and other
21 countries in Southern Africa are in need of California protection of their wildlife. The
22 over population of Southern African elephants may require the expertise of African
23 conservationists, but certainly not the interference of the California legislature. The
24 elephants of Central Africa in Tanzania, Kenya, and the Democratic Republic of the
25 Congo, and other countries are endangered by the criminal poachers, but the problem
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1 cannot rationally be solved by banning trades in tusks of extinct species, or ivory items
2 worked from tusks taken prior to 1977 held by residents in California.

3 c) While there is clearly a need to protect endangered Central African
4 elephants from criminal gangs, this Law will have no impact on the problem because
5 there is no factual basis to conclude that there is a significant market in California for raw
6 or newly worked ivory. There is significant evidence that the demand for this commerce
7 is in China and other countries of East Asia, but not in California.
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9 The statute therefore is unconstitutional because the theories supporting the Law are
10 devoid of any rational connection with the misguided public interest objectives it seeks to
11 address.
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13 12. The effect of the Law additionally is that it violates the dormant commerce clause
14 also known as the negative commerce clause which in principle prohibits a State from enforcing
15 any law that negatively impacts interstate commerce. The absolute prohibition on any trade of
16 ivory, whether or not worked prior to 1977, would improperly burden interstate commerce. The
17 U.S. Constitution reserves for the Federal Government, the exclusive right to regulate commerce
18 with foreign nations, and among the several States and with the Indian Tribes. (Art 1 § 8.)
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20 13. By rendering the sale of practically all ivory objects, regardless of their age or
21 artistic or cultural value, illegal, the Law constitutes an improper taking by the government, of
22 the property of its citizens and taxpayers without fair compensation. (Amendments 5
23 and 14 to the U.S. Constitution.) The statute is therefore facially invalid as overboard and
24 without a rational relation to the perceived objective sought to be accomplished.
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1 14. There is simply no factual basis to justify the ban on mastodon, mammoth,
2 fossilized walrus or other extinct species, which constitute specific exemptions in the Federal
3 Endangered Species Act., as amended, but which are expressly included as prohibited items
4 within the Law. As such, the Law violates Plaintiff’s due process rights because it constitutes
5 arbitrary legislative action which deprives Plaintiffs of their property without compensation.
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7 15. Plaintiffs seek hereby to enjoin the implementation of the Law as unconstitutional
8 and a violation of Plaintiffs’ due process rights additionally in the following respects:

9 It is a violation of due process to prohibit conduct that is in terms so vague that one must
10 guess at its meaning. In this regard, the Law prohibits sales of musical instruments of which the
11 ivory content is more than 20% “by volume of the instrument.” The meaning of an instrument’s
12 “volume” is without definition. How volume is to be determined is not specified. In addition, an
13 antique which is less than 5% ivory by “volume” is exempt, but again, the definition of
14 “volume” is absent, and requires guess work. The statute is therefore unconstitutional by virtue
15 of its uncertainty.
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17 16. Plaintiffs bring this action based upon the following general principles:

- 18 a) Courts do not pass on the wisdom of laws. As a result legislative power
19 must be upheld unless the laws infringe on constitutional guarantees.
20 b) If a statute encroaches on constitutional limitations, the Courts must act.
21 c) The fact determination underlying a statute will be accepted unless error
22 clearly appears.
23 d) Invalidity must be clear before a statute may be declared unconstitutional.
24 e) The legislature under the guise of its police power may not impose
25 unnecessary and unreasonable restrictions on the use of private property and the
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1 legislation in exercise of its police powers must bear a rational relation to the objective
2 sought to be accomplished.

3 Plaintiffs contend that the foregoing principles weigh heavily on the side of the Law's
4 invalidity.

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6 17. At various times before the passage of the Law and at various other times
7 between that date and the present time, Plaintiffs requested that the California legislature and the
8 Defendants refrain from passing or implementing the Law, but Defendants have refused and
9 threatens to enforce the Law as of July 1, 2016 unless enjoined and restrained by the court.

10 18. Because the Law will, when implemented, cause Plaintiff's participants,
11 taxpayers, and citizens to suffer great and irreparable injury by rendering practically all of their
12 ivory holdings worthless, by preventing their sale, Plaintiff's members will be deprived of their
13 personal and constitutional rights such that it will be practically impossible to ascertain the
14 precise damages sustained if Defendant is not enjoined from implementing and enforcing the
15 Law and Plaintiff is otherwise without any adequate remedy at law.

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17 WHEREFORE, Plaintiff prays for judgment as follows:

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19 1. For a preliminary and permanent injunction enjoining and restraining Defendant
20 the State of California and its Department of Fish and Wildlife, and their agencies, departments,
21 commissions, employees and persons acting in concert with them, from implementing, enforcing
22 or otherwise upholding the provisions of Assembly Bill 96 codified as California Fish and Game
23 Code Section 2022.

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25 2. For an order that Defendant show cause at a time and place to be fixed by the
26 court, why a preliminary injunction should not issue as prayed for above.

27 3. For a determination that the Law is unconstitutional.
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- 4. For Plaintiff's attorneys' fees, pursuant to C.C.P. § 1021.5.
- 5. For Plaintiff's cost of suit.
- 6. For such other and further relief as the court may deem proper.

DATED: _____, 2015.

ROGERS & HARRIS

By: _____
**MICHAEL HARRIS, Attorneys for
Plaintiff**