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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

CENTER FOR BIO-ETHICAL REFORM,
INC., a California nonprofit corporation;
and GREGG CUNNINGHAM, an
individual,

Plaintiffs,

vs.

THE IRVINE COMPANY, LLC, a
Delaware limited liability company,

Defendant.

Case No.:

COMPLAINT FOR:

- (1) VIOLATION OF LIBERTY OF SPEECH
[Cal. Const. Art. I, § 2];
- (2) VIOLATION OF CIVIL RIGHTS
[CCP § 52.1];
- (3) DECLARATORY RELIEF
[CCP § 1060]; and
- (4) INJUNCTIVE RELIEF
[CCP § 526]

Plaintiffs CENTER FOR BIO-ETHICAL REFORM, INC. and GREGG
CUNNINGHAM (collectively “Plaintiffs”), on behalf of themselves and the general public,
allege, upon information and belief, as follows against Defendant THE IRVINE COMPANY,
LLC (“Defendant”):

INTRODUCTION

1. This is a private attorney general action brought by Plaintiffs on their own
behalf and on behalf of the general public. Defendant routinely engages in unlawful conduct

1 by promulgating and enforcing rules that violate the constitutional and civil rights of Plaintiffs
2 and other members of the general public who engage in, or seek to engage in, constitutionally
3 protected expressive activity at the Irvine Spectrum Center, a retail shopping center located at
4 71 Spectrum Center Drive, Irvine, California 92618, and Fashion Island, a retail shopping
5 center located at 401 Newport Center Drive, Newport Beach, California 92660.

6 2. Defendant is the owner of the Irvine Spectrum Center and Fashion Island, which
7 are public forums for expressive activity. Rather than adopting and enforcing reasonable time,
8 place, and manner regulations for expressive activity within these forums, Defendant has
9 promulgated and enforces rules that unconstitutionally restrict expressive activity. The
10 enforcement of these unlawful rules has caused, and will continue to cause, injury to Plaintiffs
11 and to the general public.

12 3. When Plaintiffs sought to engage in expressive activity at the Irvine Spectrum
13 Center and Fashion Island, Defendant, through its agent, threatened to enforce its unlawful
14 rules by, *inter alia*, threatening to physically remove Plaintiffs from the shopping centers. Such
15 a threat of physical force in retaliation for exercising constitutionally protected rights
16 constitutes a violation of California Civil Code section 52.1 (civil rights).

17 4. Plaintiffs want to engage in expressive activity at Defendant's shopping centers.
18 However, Defendant has informed Plaintiffs that it will enforce its unlawful rules to halt
19 Plaintiffs' constitutionally protected activity, and it has threatened to physically remove
20 Plaintiffs from the shopping centers as well as enforce other remedies against Plaintiffs if they
21 do exercise their free speech rights, thereby chilling, and indeed halting, Plaintiffs' right to
22 liberty of speech protected by the California Constitution.

23 **PARTIES**

24 5. Plaintiff Center for Bio-Ethical Reform, Inc. ("CBR"), is a nonprofit, California
25 corporation recognized by the IRS as a 501(c)(3) organization.

1 13. CBR engages in free speech activity by using images to demonstrate the
2 irrefutable truth that abortion is a violent act that results in the death of an innocent human life.

3 14. A number of significant public opinion polls indicate substantial confusion in
4 the public mind as to the humanity of the unborn child and the inhumanity of the act of
5 abortion. CBR's images address both areas of confusion.

6 15. Impactful images of injustice have long been a part of modern social reform.
7 Throughout our nation's history, social reform has often been achieved through the use of
8 graphic pictures designed to dramatize injustice and prick the collective conscience of the
9 culture. Examples of this phenomenon include the abolition of child labor, the civil rights
10 movement, anti-war movements, and environmental causes. Many of these disturbing images
11 are well known, and it is widely acknowledged that these images were indispensable in
12 changing public opinion at the levels necessary to create the political consensus required for
13 social reform.

14 16. Historically, many popular but unjust laws were reformed only when activists
15 exercised the right to confront society with irrefutable visual evidence of social injustice. Their
16 graphic images were not gratuitous, they were explanatory. They dramatized injustice in ways
17 which many found insulting, but their purpose was not to insult. They were merely trying to
18 accurately depict injustice which could only be fully understood visually. When words fail us,
19 we must turn to photos. Photos make injustice more difficult to trivialize or ignore. Abortion
20 photos are informative in useful ways which no words can achieve.

21 17. Defendant permits expressive activity at the Irvine Spectrum Center and Fashion
22 Island, which are shopping centers that are open to the public in the same manner as public
23 streets or parks and are therefore public forums for expressive activity.

1 18. The Irvine Spectrum Center is visited by more than 15 million people annually.
2 Stores located within this mall that donate to Planned Parenthood, the nation’s largest abortion
3 provider, include GameStop, Levi’s, and Starbucks Coffee.

4 19. Fashion Island is visited by more than 13 million people annually. Stores
5 located within this mall that donate to Planned Parenthood include Nike, Starbucks Coffee,
6 Urban Decay, and Whole Foods Market.

7 20. On or about November 25, 2014, Plaintiffs contacted Defendant, including
8 Donald Bren, the Chairman of the Board of The Irvine Company; James Ibbotson, the Director
9 of Operations for the Irvine Spectrum Center; and Tanya Thomas, the Senior General Manager
10 for Fashion Island, via letter informing them that Plaintiffs “intend to conduct boycott picketing
11 in close proximity to the Levi’s retail store inside the mall for the purpose of informing
12 prospective customers that this company permits business entities under its corporate control to
13 donate money to Planned Parenthood, America’s largest abortion provider.”

14 21. Plaintiffs explained that their “picket signs are professionally designed, printed
15 and fabricated to commercial standards. They conform to model hand-held sign specifications
16 contained in the uniform sign code.”

17 22. Plaintiffs stated that their “pickets will commence on or about 5 December 2014
18 and will urge customers to boycott Levi’s.”

19 23. Plaintiffs further explained that their “picketing activity will be conducted
20 pursuant to the California Constitution, article I, section 2, subdivision (a) which provides that:
21 ‘Every person may freely speak, write and publish his or her sentiments on all subjects, being
22 responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or
23 press.’”

24 24. Attached to the letter were proposed signs that Plaintiffs intended to display in
25 the malls as part of their picketing activity. These signs appear as follows:



25. The first sign shows a picture of a living human embryo at seven weeks gestational age, and the second sign shows a picture of a dead human embryo at eight weeks gestational age juxtaposed with a quarter to illustrate actual size. Both signs present accurate and objective facts.

26. On or about November 26, 2014, Plaintiff Cunningham received from Mr. Ernie Park an email stating that he is “counsel for The Irvine Company” and requesting “a complete copy” of Plaintiffs’ letter. Plaintiff Cunningham promptly responded that day and provided a copy of the letter to Mr. Park.

27. On or about December 1, 2014, Mr. Park sent an email to Plaintiff Cunningham, affirming that he was acting in his capacity as counsel for Defendant, the “owner of both the Irvine Spectrum and Fashion Island,” and stating that he would send Plaintiff Cunningham the “usual time, manner and place rules for this type of activity at either of these two centers.” Mr. Park further stated, “Our rules aside, we are prepared to accommodate your group in the following particulars,” offering Plaintiffs a location “in visual proximity” of the targeted store and a table with 2 chairs. The email further stated, “In exchange for the foregoing, [Plaintiffs] would agree not to have posters or other signage depicting the photographs (or comparable ones). We would have no objection to those images being available at your table as long as they were visible only if patrons came to the table.”

28. Later that day, Mr. Park sent an email to Plaintiff Cunningham, stating, in relevant part, “[P]lease find the rules for Fashion Island. They would be substantively the same

1 for the Spectrum.” Attached to the email was a document titled, “RULES FOR NON-
2 COMMERCIAL EXPRESSIVE ACTIVITIES AT FASHION ISLAND SHOPPING
3 CENTER” (hereinafter “Rules”). A true and correct copy of the Rules is attached to this
4 Complaint as Exhibit A.

5 29. Defendant’s Rules contain various restrictions on expressive activity that are
6 directly relevant here.

7 a. The Rules restrict “non-commercial expressive activity” to “activity
8 which is designed . . . to familiarize individuals with non-commercial subjects and which is
9 anticipated to result in individual or one-on-one communications as opposed to
10 communications intended for a group of people simultaneously.”

11 b. The Rules do not permit expressive activity that involves
12 “communications which mention either the Center or tenants at the center.”

13 c. The Rules only permit expressive activity in the “approximately 100
14 square foot portion of the Center expressly designated” for such activity (“Designated Area”).

15 d. The Rules permit “[n]o more than two (2) individuals engaged in
16 [expressive activity to] occupy the Designated Area at one time.”

17 e. The Rules state that “[s]ignage shall not exceed more than two (2) signs
18 each not greater than 22” by 28” in dimension” and that such “[s]igns shall not contain words
19 which are of an inflammatory nature, obscene, or are fighting words that contain gruesome
20 pictures or displays.”

21 f. The Rules state that “[t]he Owner reserves the right to place on the
22 Applicant’s table or in Applicant’s Designated Area a sign stating that the position being
23 advocated by the Applicant is not the position of the Owner or the Center.”

24 g. The Rules state that “Applicants will be entitled to one table and two
25 chairs. Said items will be furnished by the Owner”

1 h. And the Rules state that “Applicants shall make no express or implied
2 representation, to any person within the Center or on Center property that either the Owner or
3 the Center sponsors or supports any view, belief, or request contained in a petition, statement or
4 literature being disseminated or exhibited by Applicants on Center property.”

5 30. In follow-on correspondence to Plaintiffs, Mr. Park made it clear that if
6 Plaintiffs “intend to protest in violation of our rules,” then Defendant “will understand
7 [Plaintiffs’] conduct to be trespassory in nature” and will, therefore, “reserve [its] right to resort
8 to its various remedies,” which would include the physical removal of Plaintiffs from the
9 shopping centers.

10 31. Upon review of the Rules and Mr. Park’s correspondence, on or about
11 December 18, 2014, Plaintiff Cunningham sent Mr. Park a lengthy email setting forth
12 Plaintiffs’ position on the issues. In that email, Plaintiff Cunningham stated, in relevant part,
13 the following: “We do not trespass or engage in any other criminal misconduct. You will find
14 us to be both responsible and willing to extend to your clients every courtesy—including
15 making them aware of our picketing plans in advance of our arrival on private commercial
16 property or even the public property adjacent thereto. Issues raised by your correspondence are
17 as follows: 1) Notwithstanding your reference to our proposed expressive activity as a ‘protest,’
18 it is, in fact, an educational picket. 2) Your offer ‘to find a suitable location’ for our group ‘in
19 visual proximity of the store in question’ is not acceptable if that location is not essentially in
20 front of the targeted store. . . . ‘[T]he location of the employers is often the only effective
21 locus; alternative locations do not call attention to the problem which is the subject of the
22 picketing and may fail to apply the desired economic pressure.’ [citing and quoting *Diamond*
23 *v. Bland*, 3 Cal. 3d 653, 662 (1970) (“*Diamond I*”]. 3) Your client’s rules are unacceptable to
24 the extent that they permit only ‘one-on-one communications as opposed to communications
25 intended for a group of people simultaneously.’ The whole purpose of any educational picket

1 is to communicate with the largest groups possible. 4) Your rules appear to ban signs,
2 brochures or conversation which mentions ‘either the center or tenants at the center.’ But the
3 court in [*Glendale Associates v. NLRB*, 347 F.3d 1145 (9th Cir. 2003)] invalidated rules which
4 banned criticism of a named tenant. 5) Rule 3 appears to permit expressive activity only in
5 generic ‘designated areas’ which are more restrictive than the store-front locations permitted in
6 [*Diamond I (supra)*]. Again, this restriction is unlawful and therefore unacceptable. 6) Rule 9
7 seems to ban ‘gruesome pictures or displays,’ which language appears in [*H-Chh Assocs. v.*
8 *Citizens for Representative Gov’t*, 193 Cal. App. 3d 1193, 1216 (Cal. App. 2d 1987)], but the
9 state supreme court has not ruled on this issue and the majority in [*Fashion Valley Mall, LLC v.*
10 *NLRB*, 42 Cal. 4th 850 (2007)] held that a mall’s rule was not content-neutral because it barred
11 an entire category of speech. The same defect is inherent in a ban on an entire category of
12 speech which graphically depicts injustice which cannot be adequately described by the written
13 or spoken word. Abortion is inexpressibly ‘gruesome’ and ‘grisly,’ so banning photos of it
14 betrays disapproval of pickets intended to prove to consumers that businesses which fund
15 organizations that perform abortions should be boycotted. Photo bans render the moral
16 depravity of abortion impossible to prove and thereby doom related boycotts to inevitable
17 failure. That is not content-neutrality. 7) Rules 13, 14 and 20 deal with ‘insurance,’ ‘deposits’
18 and ‘indemnification.’ We do not rule out the possibility that some accord can be reached on
19 these issues, but we are confident that the courts will never grant to the wealthy expressive
20 rights superior to those available to the poor simply because the former meet certain standards
21 of financial responsibility which the latter cannot. 8) Rule 17 may also be unenforceable to the
22 extent that it prohibits behavior ‘likely to cause significant . . . alarm,’ etc. Abortion is an act of
23 violence which kills a baby. Proving that abortion is sufficiently alarming to warrant an
24 economic boycott is vital to the success of that boycott campaign. Our behavior will not be
25 ‘alarming’ despite the fact our photos are ‘alarming’ because abortion is ‘alarming’! 9) Rule 9

1 bans materials suggesting ‘ . . . the owner supports the view of the applicants’ and reserves to
2 the owner a right to post a sign repudiating the position of the applicant. An owner who
3 publicly and expressly rejects the content of an applicant’s position cannot fairly be said to be
4 imposing content-neutral restrictions. Our pictures are our message—by necessity. Such a
5 sign is somewhat redundant if the owner bans depictions of the subject of the boycott. In so
6 doing, the owner will obviously have taken the side of Planned Parenthood and its corporate
7 donors, who desperately wish to trivialize abortion by concealing its horror. What better way
8 to defeat boycotts and the accountability they impose? Partisanship of that intensity justifies
9 pickets of the owner’s entire mall, at the entrances to its parking lots, with signs which are far
10 more disturbing than any we propose to display inside the mall. Regarding your solicitation of
11 our agreement to not display the photos enclosed in our proposal letter, and only make them
12 available to ‘patrons [who come] to the table,’ we reply as follows: We submitted for your
13 approval, inside the mall, a picture of a human embryo before an abortion. There is nothing
14 ‘grisly’ or ‘gruesome’ about it. You have no legal basis on which to ban it. We also submitted
15 for your approval, inside the mall, a picture of a human embryo after an abortion, and since the
16 California Supreme Court has not ruled on imagery proposed for display on private commercial
17 property, we are prepared to litigate the question if negotiations prove fruitless. . . . Finally, we
18 are willing to confine our presence to the store-front of a targeted business, but we are not
19 willing to remain behind a table remotely located relative to that business. We have a right to
20 approach patrons who, experience teaches, don’t come to information tables. Those patrons
21 have a right to rebuff that approach. We also have a duty to respect that rebuff. Regarding
22 Fashion Island mall, we intend to picket Planned Parenthood donors Nike, Starbucks, Urban
23 Decay, and Whole Foods—unless they can be persuaded to ban donations by each and every
24 business entity over which they have control.”

25

1 32. Following this exchange, Plaintiffs and Mr. Park exchanged various other emails
2 and correspondence in an effort to reach a clearer understanding of the issues and to hopefully
3 find some common ground. To that end, Plaintiff Cunningham requested a face-to-face
4 meeting with the appropriate decision makers for Defendant in order to discuss the issues. The
5 request was granted.

6 33. On or about February 9, 2015, Plaintiff Cunningham and his associate, Kevin
7 Olivier, participated in a meeting held at the management office in the Irvine Spectrum Center.
8 Present for Defendant were Mr. Park; Ms. Nancy Feightner, Vice President and General
9 Manager of the Irvine Spectrum Center; and Ms. Tanya Thomas, Vice President and General
10 Manager of Fashion Island.

11 34. During this meeting, Plaintiff Cunningham described CBR's proposed activities
12 at the two shopping malls and presented printouts containing the content of the two signs they
13 intended to use. One sign showed a prenatal image and the other an abortion image. The
14 content of these signs is the same as the content of the signs proposed in Plaintiffs'
15 correspondence of November 26, 2014, and depicted in this Complaint at paragraph 24.

16 35. As described by Plaintiff Cunningham at this meeting and consistent with his
17 prior correspondence, Plaintiffs' proposed free speech activity would include the following:
18 approximately 4 to 5 picketers in total standing at the entrance to the targeted store; some of the
19 picketers (approximately 2 to 3) would be carrying hand-held signs depicting content similar to
20 the signs previously identified in paragraph 24 of this Complaint; and the remaining picketers
21 (2 to 3) would be distributing pro-life literature to passersby who would be willing to accept the
22 literature. At no time would any of the picketers block, impede, interfere with, harass, or annoy
23 any of the mall's patrons, customers, tenants, or personnel, nor would Plaintiffs in any way
24 impair or interfere with the smooth flow or free passage of such persons. And if requested,
25 Plaintiffs would be willing to post "warning" signs at various locations in the mall to alert

1 passersby of the abortion imagery, thereby giving them the option to physically avoid the
2 imagery or to avoid it simply by averting their eyes.

3 36. Mr. Park and Defendant's other representatives listened to Plaintiff
4 Cunningham's presentation and gathered the information. Defendant's representatives did not
5 announce any decisions at this meeting, but they said that they would present the information to
6 their superiors and get back with Plaintiffs.

7 37. On or about February 11, 2015, Mr. Park sent a letter to Plaintiffs stating, in
8 relevant part, "[W]e are not prepared to alter our rules to accommodate your request. In
9 particular, we will not permit the grisly photographs which you want to use (in the form of 3' x
10 4' color posters)."

11 38. On or about February 13, 2015, Plaintiff Cunningham sent an email to Mr. Park
12 stating the following: "We are in receipt of your message rejecting the two abortion-related
13 photos we had proposed for display in your clients' malls. Please thank them for the courteous
14 and thoughtful meeting they hosted regarding this matter and ask them if they would be willing
15 to approve the following sign:



22 39. On or about February 14, 2015, Plaintiff Cunningham sent a follow-up email to
23 Mr. Park regarding Plaintiffs' latest sign proposal, stating, "Our objective will be to urge
24 EVERY passerby to accept personal responsibility and watch the abortion video on their cell
25

1 phone—and those who decline will be asked ‘If abortion is too terrible to watch, should you
2 give your money to businesses which support it?’”

3 40. On February 28, 2015, Mr. Park responded via email to Plaintiff Cunningham’s
4 latest proposal, stating: “Mr. Cunningham: we have carefully considered [your recent]
5 suggestion . . . as to the signage. While creative, it is equally problematic. While not obviously
6 as grisly, instead what it does is invite our young patrons (who are all quite ‘tech savvy’) to go
7 find these videos. In sum, we just cannot agree to other than what I suggested in my letter of
8 February 11, 2015. Thank you.”

9 41. Consequently, Defendant will not permit Plaintiffs to picket a targeted store
10 within the Irvine Spectrum Center or Fashion Island with hand-held signs depicting an image of
11 a seven-week-old living human embryo, an image of an eight-week-old dead human embryo, or
12 an image of a QR code because of the content and viewpoint conveyed by the signs.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Liberty of Speech – California Constitution Art. I, § 2)**

15 42. Plaintiffs incorporate all allegations as though fully set forth herein.

16 43. Article I, section 2 of the California Constitution provides: “Every person may
17 freely speak, write and publish his or her sentiments on all subjects, being responsible for the
18 abuse of this right. A law may not restrain or abridge liberty of speech or press.”

19 44. The California Constitution’s liberty of speech clause explicitly provides a
20 “right” to freedom of speech.

21 45. The Irvine Spectrum Center and Fashion Island are public forums in which
22 Plaintiffs are permitted to exercise their right to free speech under Article I, section 2 of the
23 California Constitution.

1 46. Plaintiffs’ right to free speech under the California Constitution includes the
2 right to urge customers at the Irvine Spectrum Center and Fashion Island to boycott certain
3 stores within these malls.

4 47. The California Supreme Court recognizes that citizens have a strengthened
5 interest under the California Constitution in speech that presents a grievance against a
6 particular business in a privately owned shopping center, including speech that advocates a
7 boycott.

8 48. A content restriction on speech that does not favor either side of a political
9 controversy is nonetheless impermissible because the California Constitution’s hostility to
10 content-based restrictions extends to a prohibition of public discussion of an entire topic or
11 subject matter. Indeed, a ban on “gruesome” images in the abortion context is not only a
12 content-based restriction, it is viewpoint based.

13 49. Plaintiffs’ anti-abortion sign displays as set forth in this Complaint constitute
14 speech that is fully protected by the California Constitution.

15 50. Defendant’s restrictions on Plaintiffs’ speech as set forth in this Complaint are
16 not reasonable limitations as to time, place, or manner.

17 51. Defendant’s restrictions on Plaintiffs’ speech, facially and as applied as set forth
18 in this Complaint, are content and viewpoint based.

19 52. Defendant’s Rules, facially and as applied to restrict Plaintiffs’ speech as set
20 forth in this Complaint, grant Defendant, its officers, agents, and employees unbridled
21 discretion such that their decision to limit speech is not constrained by objective criteria, but
22 may rest on ambiguous and subjective reasons in violation of the California Constitution.

23 53. Defendant’s Rules, facially and as applied to restrict Plaintiffs’ speech as set
24 forth in this Complaint, are unconstitutionally vague in violation of the California Constitution.
25

1 Defendant's application of its Rules to restrict such activity as set forth in this Complaint
2 comply with the law. Consequently, absent an appropriate declaration of rights, there will
3 continue to be disputes and controversy surrounding Defendant's speech restrictions and the
4 application and validity of its Rules.

5 **FOURTH CAUSE OF ACTION**

6 **(Injunctive Relief – Cal. Code Civ. Pro. § 526)**

7 69. Plaintiffs incorporate all allegations as though fully set forth herein.

8 70. Defendant's speech restrictions and enforcement of its Rules as set forth in this
9 Complaint are causing great, immediate, and irreparable injury to Plaintiffs and members of the
10 public. Among other things, Defendant's unlawful actions limit or prevent Plaintiffs and
11 members of the public from exercising their constitutionally protected free speech right to
12 present information to the public concerning matters of great public interest.

13 71. As a proximate result of Defendant's actions as set forth in this Complaint,
14 including the promulgation and enforcement of its Rules, Plaintiffs and members of the public
15 are either unable to exercise their constitutionally protected right to free speech or are forced to
16 exercise those rights under the constant threat of physical removal or litigation.

17 72. Unless Defendant is restrained by an injunction, Plaintiffs and members of the
18 public will continue to suffer severe and irreparable harm in that they will be prohibited
19 from exercising their constitutionally protected right to free speech and will therefore be
20 prohibited from expressing their constitutionally protected messages at the Irvine Spectrum
21 Center and Fashion Island.

22 73. Unless the Court grants the requested injunctive relief, Defendant will continue
23 to engage in its unlawful conduct as set forth in this Complaint, thereby continuing to cause
24 irreparable harm.

1 B. An award of attorney's fees pursuant to California Civil Code section 52.1 and
2 for costs of suit incurred herein;

3 C. For statutory damages of \$25,000 per incident as provided by California Civil
4 Code section 52(b)(2);

5 D. Such other and further relief as the Court deems just and proper.

6 **ON THE THIRD CAUSE OF ACTION**

7 A. A declaration that Defendant's restrictions on Plaintiffs' right to free speech as
8 set forth in this Complaint violate Article I, section 2 of the California Constitution;

9 B. A declaration that Defendant's restrictions on each of Plaintiffs' anti-abortion
10 signs as set forth in this Complaint violate Article I, section 2 of the California Constitution;

11 C. A declaration that Defendant's Rules, facially and as applied to restrict
12 Plaintiffs' right to free speech as set forth in this Complaint, violate Article I, section 2 of the
13 California Constitution;

14 D. An award of attorney's fees pursuant to California Code of Civil Procedure
15 section 1021.5 and for costs of suit incurred herein;

16 E. Such other and further relief as the Court deems just and proper.

17 **ON THE FOURTH CAUSE OF ACTION**

18 A. A preliminary and permanent injunction prohibiting Defendant, its officers,
19 agents, and employees from restricting Plaintiffs' right to free speech as set forth in this
20 Complaint;

21 B. A preliminary and permanent injunction enjoining Defendant's unlawful Rules
22 as set forth in this Complaint;

23 C. An award of attorney's fees pursuant to California Code of Civil Procedure
24 section 1021.5 and for costs of suit incurred herein;

25 D. Such other and further relief as the Court deems just and proper.

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Respectfully submitted,

AMERICAN FREEDOM LAW CENTER



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EXHIBIT A

RULES FOR NON-COMMERCIAL EXPRESSIVE ACTIVITIES AT FASHION ISLAND SHOPPING CENTER

The Irvine Company (the "Owner") recognizes that from time to time various individuals and groups ("Applicants") may desire to use the Fashion Island Shopping Center ("Center") for Non-Commercial Expressive Activities. To accommodate Applicants in a manner, which is appropriate to the primary commercial purposes of the Center, the Owner has adopted the following rules and guidelines in order to regulate the use of the Center.

"Non-Commercial Expressive Activity" is activity which is designed to obtain signatures on petitions directed to a governmental body or official, to register voters, and/or to familiarize individuals with non-commercial subjects and which is anticipated to result in individual or one-on-one communications as opposed to communications intended for a group of people simultaneously.

The following are examples of activities which are not permitted as Non-Commercial Expressive Activity:

- (a) demonstrations or performances;
- (b) solicitation and/or acceptance of money;
- (c) sales of products or services;
- (d) communications which mention either the Center or tenants at the center;
- (e) surveys that may be used for commercial purposes;
- (f) invitations, demonstrations, passes or coupons giving recipient anything that is otherwise available at the Center.

1. **Application.** Applications are available at the Fashion Island Shopping Center Management Office, 401 Newport Center Drive, Suite A150, Newport Beach, CA 92660, Monday through Friday excluding legal holidays, between the hours of 8:30 A.M. and 5:30 P.M., only. Applications must be completed in full and submitted not less than five (5) days nor more than twenty (20) days prior to date and time requested for activity. Applications must be received in the Management Office during business hours.

The following schedule sets forth the applicable deadlines for receiving applications:

<u>Proposed Activity Date:</u>	<u>Submission Date:</u>
Monday	preceding Wednesday
Tuesday	preceding Thursday
Wednesday	preceding Friday
Thursday	preceding Friday
Friday	preceding Friday
Saturday	preceding Monday
Sunday	preceding Tuesday

Attached to these Rules is the application. All Applicants are required to attach a photocopy of all materials that they intend to disseminate while engaged in the [activityActivity](#) which is the subject of the application, including, but not limited to, petitions, literature, audio-visual materials and leaflets, the text or photographs of any signs and the text or photographs of any displays. Failure to include all aforementioned materials with the application at the time of its submission is grounds for denying the Applicant and/or Participant use of materials not submitted.

2. **Multiple Days.** An Applicant may request use of the Center's property for up to two (2) consecutive days per application. An Applicant may submit multiple applications for successive or subsequent periods of two (2) consecutive days or less. Each application must comply with paragraph #1 above.
3. **Review of Application and Applicant Notification.** Upon receipt of a completed application, the Center's management will review the application to ensure that the proposed Activity is permitted pursuant to these Rules. To ensure equal access, the Center will determine the availability of Designated Areas some time after the application cut-off date, as set forth in paragraph one (1) of these Rules, but at least twenty-four (24) hours prior to the first date requested by the Applicant. After its review, Center management will make one attempt to advise Applicant of an approved application. However, it shall be the responsibility of the Applicant, approximately twenty-four (24) hours prior to the date and time of the proposed Activity, to telephone the Center's Management Office to inquire as to whether its application has been approved.

If the application is approved but a Designated Area is not available for the date(s) and time(s) requested, the Applicant will be advised of the first alternate date and time following the requested date(s) when a Designated [areaArea](#) is available. If the Applicant wishes to engage in the requested Activity on the alternate date(s), it must confirm its intent within two (2) business days after being notified of the alternate available date(s). In the event the Applicant fails to [so](#) confirm its intent to use the alternate date(s) or time(s), the Center will treat the application as having been denied, and will return the application to the Applicant by mail along with a notification indicating the denial and the reason for the denial.

All applications which are rejected for being incomplete or denied will be returned to the Applicant by mail.

4. **Activities.** Applicants shall engage solely in those [activitiesActivities](#) for which permission is granted and they shall comply with all of the written rules and regulations of the Owner and/or its representatives pertaining thereto.
5. **Location of Activity.** Applicants engaged in Non-Commercial Expressive Activities shall use only that approximately 100 square foot portion of the Center expressly designated on the attached Exhibit A ("Designated Area"). The

Designated Areas are available on a first-choice, first available basis based upon availability at the time the Applicant is notified that its application has been approved. The Applicant must select a Designated Area in the application. If it fails to do so, the Center Management will select a Designated Area for the Applicant. If a particular Designated Area is made unavailable by a Center sponsored activity, by construction or remodeling, or because of use by another Applicant who has previously selected the Area, the Applicant may elect any other available Designated Area set forth on Exhibit A and should state alternate areas by order of preference on the Application.

6. **Number of Applicants.** All Applicants must be listed on the application. No more than two (2) individuals engaged in Non-Commercial Expressive Activities may occupy the Designated Area at one time.
7. **Timing.** Activity permitted under these Rules shall only be allowed during the hours that the businesses nearest the Applicant's Designated Area are open for business to the public. The Owner has designated thirty (30) days during each calendar year as peak traffic days when all Non-Commercial Expressive Activity is prohibited. No applications for access on these days will be approved.

A list of the peak traffic days is attached as Exhibit B. Center management reserves the right to amend this list, but in any event all peak traffic days will be designated at least thirty (30) days in advance of the next new peak traffic day.

8. **Cleanup.** The location of the Non-Commercial Expressive Activities must be surrendered in the same condition of cleanliness, repair and sightliness as it was upon the commencement of use. Expenses incurred by the Center to keep the area clean and free from rubbish will be borne by Applicants.
9. **Signs.** Signage shall not exceed more than two (2) signs each not greater than 22" by 28" in dimension. Signage, signs and posters shall be affixed to the table permitted in the Designated ~~area~~Area and in no other location. In no event shall the Applicant place signage so that it blocks the view of any store or display within the Center. Further, signage shall not include any commercial statement or speech, or in any fashion suggest that the ~~owner~~Owner of the Center supports the views of the Applicants. All such signs must be strictly temporary and easily removed at the end of each day and they shall not be affixed to any portion of the Center other than the table in the Designated Area. Signs shall not contain words which are of an inflammatory nature, obscene, or are fighting words that contain gruesome pictures or displays. Placement of fliers and/or handbills of any sort on automobiles located in the Center parking lot is strictly prohibited.

The Owner reserves the right to place on the Applicant's table or in Applicant's Designated Area a sign stating that the position being advocated by the Applicant is not the position of the Owner or the Center.

10. **Furniture.** In order to maintain the appearance of the Center and to guard against undue congestion or interference with Center business, Applicants will be entitled to one table and two chairs. Said items will be furnished by the Owner and only the furniture provided by the Owner shall be used. Applicants shall indicate on the accompanying application if they desire to use the furniture provided for herein. At least one Participant must be present in the area where the table and chairs, if any, are placed at all times that the table and chairs are present. "Participant(s)" are the individual(s) who engage in the Activity pursuant to the application. Each reference to Applicant in the Rules shall encompass each Participant identified in the Applicant's approved application. If the table and chairs are left unattended for more than thirty (30) minutes, they will be removed and not replaced during the same day.
11. **Representations.** Applicants shall make no express or implied representation, to any person within the Center or on Center property that either the Owner or the Center sponsors or supports any view, belief, or request contained in a petition, statement or literature being disseminated or exhibited by Applicants on Center property.
12. **Lights/Loudspeakers.** No lights, loudspeakers, musical instruments, sound amplification devices, sound reproduction devices or other electrical or mechanical equipment, devices or appliances shall be used for any purpose by Applicants on Center property. The Center will not provide electricity to Applicants.
13. **Insurance.** If the nature of Applicants activity creates the risk of injury or property damage, the Center may require that Applicants provide the Owner, prior to commencing any activity, the name and address of their insurance company, the insurance policy number, a certificate naming the Owner, the Center, The Center's Merchant's Association, and The Irvine Company, as additional insured and must further agree to comply with all other reasonable requests made by the Owner prior to the Owner granting Applicants a Permit.
14. **Deposit.** If the Activity poses a risk of damage to property, although not one sufficient to necessitate that the Applicant must obtain insurance as set forth under paragraph ~~4213~~ of these Rules, the Center may require a deposit sufficient to protect the Center from the potential damage. All deposits shall be made by certified funds or cashier's check. Deposits, less any expense incurred by the Center for cleanup or repair, will be refunded (or the original check or money order will be returned) approximately two (2) weeks after the Activity has ended.

15. **No Contributions.** Applicants shall not solicit or accept contributions or donations from anyone within the Center, nor shall they engage in the sale, peddling, or vending of any items, services, merchandise, tickets, pamphlets, books or other materials whatsoever on or in the Center.
16. **Interference.** Applicants shall not impede or interfere with the business of any Center tenants, employees or personnel, nor shall Applicants detain or in any way impair or interfere with the smooth flow or free passage of Center patrons, customers, or personnel to the access ways of the Center. If a patron of the Center chooses not to listen, accept literature, or sign a petition, he or she shall not be harassed into doing so.
17. **Obligations of Applicants.** Applicants shall conduct themselves with proper decorum and will refrain from loud or raucous activity that may annoy or offend the public or any tenant of the Center. Applicants may not engage in the direct use of physical force, abusive or obscene language, or threats toward or against any other person, or engage in any other unreasonable form of behavior which is likely to cause significant public inconvenience, alarm or annoyance. Any Applicants engaging in Non-Commercial Expressive Activities who deface, damage, or otherwise abuse Center property shall be subject to immediate removal and legal action. Applicants must be fully clothed, including shoes and shirts.

Participants shall keep all personal items such as purses, briefcases, supplies and extra materials under the table in a safe, neat and orderly manner. Participants not using a table shall not place or leave personal items on the Center property.

No property may be deposited with the Center management, maintenance or security. All personal property left unattended for more than thirty (30) minutes shall be removed and treated as abandoned property according to state laws. The Center shall not be responsible for injury, loss or damage to any Applicants or Participants in the requested Activity or to their property.

18. **Reasonable Requests.** Applicants must comply with reasonable requests of the Owner and its representatives in the Center.
19. **Check-in/Check-out Procedures.** To ensure compliance with the Rules, all Participants shall be required to notify the Center at the Concierge Desk at Atrium Court upon their commencement of the Activity for that day. A check-in sheet shall be completed by all Participants upon their arrival at the Center. The check-in process requires the Participants to identify themselves and to confirm in writing that they agree to abide by the Rules. All Participants shall be required to check-in and check-out at the Concierge Desk each and every time they participate in the Activity.

20. **Indemnification.** Applicants agree to indemnify, defend (with counsel approved by The Irvine Company) and hold Owner, Center, and the Center's Merchant Association harmless from any and all liability in connection with the activities engaged in individually or by the group or organization on Center property including, but not limited to all claims for damages, bodily injury and property damage on behalf of Applicants, tenants of the Center or members of the public, and including attorney's fees, litigation costs, and expenses.
21. **Scope of Rules/Amendments.** These ~~rules~~Rules shall not grant to the public greater rights to the use of the Center than are required by the Constitutions and laws of the United States and of California. These ~~rules~~Rules shall in no way be construed or interpreted as a waiver of the private property rights of the Owner. To retain the ability to adapt to new or changing circumstances, the Owner reserves the continuing right, without the necessity of advance notice or hearing, to alter, amend, modify, change or terminate these ~~rules, Rules,~~ or any of them, and/or to make new or different ~~rules, Rules.~~ When any Applicant's activity is or will be affected by any change in these Rules, any then-approved Applicant will be promptly notified of such changes and be given a copy of any new or modified Rule or Rules.
22. **Limited Validity of Permits.** A permit for Non-Commercial Expressive Activities shall be valid for no longer than two consecutive days. Any additional activities must be applied for separately and shall be subject to availability as if a new request had been made upon expiration of the previous permit. No permit is transferable and any attempt to transfer a permit will void that permit.
23. **No Assumption of Liability.** The Irvine Company and the Center shall not be responsible for the theft or damage to any property brought into the Center property by Applicants.
24. **Failure to Comply with Rules.** All Applicants must comply with these requirements. Failure to comply with ~~the guidelines~~these Rules may result in various consequences to the Applicants, including, but not limited to, revocation of the permit, denial of future permits, dismissal from the Center, and/or physical removal from the Center.