

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange
11/22/2017 at 02:45:16 PM
Clerk of the Superior Court
By: Christa Dawson, Deputy Clerk

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 28 2017

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

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.: 30-2015-00786580-CU-CR-CJC

Hon. Randall J. Sherman
Dept. C-24

~~PROPOSED~~ JUDGMENT

Trial Information:

Date: October 23, 2017

Time: 9:00 a.m.

Department: C-24, Central Justice Center

Action Filed: May 5, 2015

The above entitled matter came on regularly for purposes of trial on October 23, 2017, at 9:00 a.m., in Department C-24 of the above entitled court, the Honorable Randall J. Sherman, judge presiding. Appearances having been made by Robert J. Muise and David Yerushalmi of the American Freedom Law Center on behalf of plaintiffs, and by Ernie Zachary Park of Bewley, Lassleben and Miller, on behalf of defendant, evidence having been adduced and the matter submitted,

The court hereby enters judgment as follows:

- 1 -

~~PROPOSED~~ JUDGMENT ~~[PLAINTIFFS]~~

1 1. As to plaintiffs’ request for declaratory relief and injunctive relief as to the
2 provisions of defendant’s Rules for Non-Commercial Expressive Activity (collectively the
3 “Rules”) at Fashion Island Shopping Center and the Irvine Spectrum Center (collectively the
4 “Centers”) pertaining to “Designated Areas,” the court determines as follows:

5 A. The provisions of the Rules as to Designated Areas constitute a
6 permissible, content-neutral restriction under Article I, § 2 of the California Constitution and
7 defendant did not violate plaintiffs’ rights under said provision by requiring compliance with
8 these provisions of the Rules; and,

9 B. The plaintiffs failed to prove that the areas where they sought to engage in
10 their proposed activity constituted “public fora” within the meaning of *Ralph’s Grocery Co. v.*
11 *United Food & Commercial Worker’s Union* (2012) 55 Cal. 4th 1083.

12 Accordingly, plaintiffs shall take nothing by way of their complaint as to this issue.

13 2. As to plaintiffs’ request for declaratory relief and injunctive relief as to the “black-
14 out” days within the Rules, the court declares that defendant’s rules do not constitute a
15 permissible, content-neutral rule under Article I, § 2 of the California Constitution and it is
16 enjoined from enforcing the same. Excepted from the foregoing determination is the provision
17 of the subject rule at the Fashion Island Shopping Center pertaining to black-out days in the
18 Bloomingdale’s Court related to the defendant’s Christmas tree display.¹

19 3. As to plaintiffs’ request for declaratory relief and injunctive relief as to proposed
20 signage at the Centers, the court declares and orders as follows:

21 A. The court finds that defendant’s restriction on “grisly or gruesome”
22 imagery as set forth in the Rules is a content-based restriction. Therefore, the court applies strict
23 scrutiny when ruling on this issue.

24
25 _____
¹ Said provision is found at Exhibit 32, p. 12.

1 B. As to plaintiffs' use of abortion-related imagery as set forth in Exhibits 10
2 and 11 ("Living 7 week human embryo moments before abortion" sign) and Exhibit 18 (QR code
3 sign), the court determines that the application of the Rules to restrict the content of this signage
4 violates Article I, § 2 of the California Constitution and defendant is enjoined from enforcing the
5 same.

6 C. As to plaintiffs' use of abortion-related imagery as set forth in Exhibits 13
7 and 14 ("Dead 8 week human embryo moments after abortion" sign), the court determines that
8 the content of said signage constitutes "grisly or gruesome" imagery under *H-CHH Associates v.*
9 *Citizens for Representative Government* (1987) 193 Cal. App. 3d 1193, and, in accordance with
10 said decision, defendant properly restricted the content of this sign under its Rules.

11 4. As to plaintiff's request for the use of body cameras, the court determines that
12 plaintiffs do not have a constitutional right under Article I, § 2 of the California Constitution to
13 videotape patrons of the Centers to whom plaintiffs are expressing their opinions. The court
14 finds that plaintiffs' proposed use of body cameras is not expressive activity. Accordingly,
15 plaintiffs shall take nothing by way of their complaint as to this issue.

16 5. As to plaintiffs' request for relief under C.C. § 52.1, plaintiffs shall take nothing
17 by way of this cause of action.

18 6. The court does not address whether plaintiffs' challenge to prior versions of the
19 Rules is moot. Rather, the court views the issue as follows: if the court says that defendant can
20 (or cannot) have certain restrictions against plaintiffs, then that ruling applies whether such
21 restrictions are found in old versions of the Rules, the current version of the Rules, or any future
22 version of the Rules. And as the court ruled above, plaintiffs do not have a basis for money
23 damages.

24 /// REVEN: DECEMBER 28, 2017



25 ///

Randall J. Sherman