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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF KERN – METROPOLITAN DIVISION**

17 DEBRA MOORE, an individual,
18
19 Plaintiff,
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21 vs.
22
23 VALLEY PLAZA MALL, LP, a Delaware
24 corporation; BROOKFIELD PROPERTIES
25 RETAIL, INC, a Delaware corporation; and
26 DOES 1-10, inclusive,
27
28 Defendants.

Case No. BCV-19-101312

VERIFIED COMPLAINT

Unlimited Civil Case

Plaintiff DEBRA MOORE (hereinafter “Plaintiff” or “MOORE”) alleges as follows:

INTRODUCTION

1. This action is brought under the California Constitution to redress violations of Plaintiff’s fundamental rights to free expression at Valley Plaza Mall in Bakersfield.

PARTIES

2. Plaintiff DEBRA MOORE, a natural person, is now and at all times relevant to this complaint was an individual and citizen of the United States residing in the City of Bakersfield, County of Kern, State of California.

1 3. Defendant VALLEY PLAZA MALL, LP, is upon information and belief a Delaware
2 corporation doing business upon the property commonly known and held out to the public as Valley
3 Plaza Mall at 2701 Ming Avenue, Bakersfield, California 93304, where the principal events
4 described herein take place.

5 4. Defendant BROOKFIELD PROPERTIES RETAIL, INC. owns and/or operates
6 Valley Plaza Mall in Bakersfield where the constitutional injury occurred and continues to occur.

7 5. Plaintiff is ignorant of the true names and identities of DOES 1-10 but believes they
8 are responsible for her constitutional injury, acting either in concert with or independently from
9 Defendants. Plaintiff will amend her Complaint to include these Defendants' names and identities
10 when known.
11

12 VENUE

13 6. Venue is proper in this Court pursuant to Code of Civil Procedure §395.5 because the
14 Plaintiff resides in the County; at least one of the Defendants resides in or has its principal place of
15 business within the County; all Defendants do business within the County; and the constitutional
16 injury occurred and continues to occur on property within the County.
17

18 FACTUAL ALLEGATIONS

19 7. According to its website, www.valleyplazamall.com, VALLEY PLAZA MALL,
20 with more than 140 specialty stores and a 16-screen cinema, describes itself as the largest shopping
21 mall in the San Joaquin Valley.
22

23 8. VALLEY PLAZA MALL invites the general public onto its premises for shopping,
24 dining, entertainment and social interaction.

25 9. Like most large shopping malls of its kind, VALLEY PLAZA MALL provides
26 spacious common areas in which it offers benches and similar places for rest, conversation and
27 social interaction. These common areas are much larger than hallways and are designed to provide
28

1 more than mere ingress and egress to stores.

2 10. VALLEY PLAZA MALL has represented itself to Plaintiff as being owned and/or
3 operated by “Brookfield Properties” and “Brookfield Properties Retail.” Since neither of these
4 entities are registered with the California Secretary of State as such, they appear to be fictitious
5 names for Defendant BROOKFIELD PROPERTIES RETAIL, INC.

6 11. Defendant BROOKFIELD PROPERTIES RETAIL, INC. is registered with the
7 California Secretary of State as a Delaware corporation.

8 12. According to its website, <https://www.brookfieldpropertiesretail.com/en.html>
9 [?intcmp=about-us%3bglobalnav%3blog](https://www.brookfieldpropertiesretail.com/en.html?intcmp=about-us%3bglobalnav%3blog), BROOKFIELD PROPERTIES describes itself as a
10 global real estate operating company whose capabilities include business and capital planning,
11 leasing, marketing, property management, development, design and construction, arts and events.
12

13 13. BROOKFIELD PROPERTIES claims to own mall properties at 163 locations in 41
14 states representing approximately 148 million square feet of retail space.

15 14. Plaintiff DEBRA MOORE is a resident of Bakersfield who is active in the social and
16 religious life of the community. She volunteers her time at a local Christian school, and she is
17 active in her church.
18

19 15. On August 9, 2018, at approximately 10:45 a.m., MOORE was patronizing the
20 VALLEY PLAZA MALL during its regular hours of operation.

21 16. MOORE visits the Mall regularly for purposes of both shopping and social
22 interaction.
23

24 17. MOORE is outgoing and initiates conversations with friends and strangers alike at
25 the Mall.

26 18. Because her religious faith informs her views on a wide variety of subjects, that faith
27 is a regular aspect and topic of conversation for her.
28

1 19. As part of conversations about faith, MOORE also regularly invites those with
2 whom she is in conversation to visit her church where they can learn more about her beliefs and
3 community programs in which she is involved.

4 20. Over the years, MOORE has found it helpful to have on hand small pieces of
5 literature that include concise explanations of her beliefs and the location of her church.

6 21. She has found this to be much less cumbersome than trying to write down
7 information on an individual basis for those who might be interested in learning more about her
8 beliefs or visiting her church.

9 22. On the morning of August 9, 2018, MOORE had with her several postcard-sized
10 pieces of literature, printed on the front and back with Scripture references and identifying
11 information for her church. Such literature is sometimes collectively referred to as religious tracts
12 or gospel tracts.

13 23. MOORE does not sell these tracts. She does not solicit donations for them. She is
14 not paid anything by her church or anyone else to distribute them. Nor does she hawk them as
15 might a vendor. She simply converses with fellow patrons and, if they are interested, shares with
16 them a connection to what she has found to be life-giving.

17 24. As a central tenet of her faith, MOORE believes she is commanded by God to share
18 the grace and truth she has found in the Scriptures wherever possible with willing listeners, and not
19 to keep it to herself.

20 25. As MOORE handed her literature to fellow patrons on August 9, she was confronted
21 by a security guard, whose true name and identity is unknown to her but who was acting on behalf
22 of the Mall. This security guard told her that she could not “solicit.”

23 26. The Group Business Development Representative, Elizabeth Salinas, then
24 approached MOORE and led her to an office where she gave MOORE a “Specialty Leasing
25

1 Retailer Application.” MOORE understood Salinas to say it would cost \$250 per day for MOORE
2 to have approval to pass out her free tracts.

3 27. The Specialty Leasing Retailer Application requested numerous items of information
4 inapplicable to MOORE, such as legal name of business, federal tax ID, number of years in
5 business, business address, store locations, price points, revenue, business plan, and financial
6 statements.

7 28. The Application further specifies location options such as kiosk, store, or
8 event/show. The Application also requests “sample products” and photos of “retail set-ups or
9 brochures of product line.”

10 29. As was readily ascertainable to Mall personnel at the time, MOORE is not a retailer
11 or vendor within ordinary usage of those terms.

12 30. MOORE is a senior citizen with limited resources and mobility. She cannot afford a
13 \$250 fee to share her free literature at the Mall.

14 31. Moreover, the limitations on where the Mall would require MOORE to confine
15 herself, were she to operate under the terms of the Specialty Leasing Retailer Application, would
16 greatly diminish her ability to interact with fellow Mall patrons.

17 32. The Mall’s limitations on free expression deprive MOORE of the opportunity to
18 spontaneously interact with her fellow patrons in a more natural, conversational manner.

19 33. Indeed, the Mall’s designated areas for expression would keep MOORE away from
20 fellow patrons in the common areas for rest and repose, such as benches and other seating provided
21 by the Mall, when patrons are most in a mind frame to converse casually and socially.

22 34. Moreover, by being grouped with vendors and retailers, the Mall seeks to cast
23 MOORE’s presence as something fundamentally different than what she seeks and intends. By so
24 restricting and changing the place and appearance of her distribution of literature, the Mall imposes
25

1 a false, negative connotation on MOORE that greatly reduces her ability to convey her message.

2 35. If MOORE seeks to distribute even a single piece of her free literature without
3 subjecting herself to the Mall's conditions, she reasonably anticipates being escorted off the Mall
4 premises by security, or facing arrest.

5 36. MOORE has consulted the Mall's Code of Conduct and seeks to abide by it and all
6 other lawful rules. VALLEY PLAZA MALL's Code of Conduct is accessible at
7 <https://www.valleyplazamall.com/en/code-of-conduct.html>.
8

9 37. According to the Code of Conduct, there are six areas of activities that "will not be
10 accepted." Activities not accepted by the Mall include the following:

- 11 • Violations of the law
- 12 • Any activity that threatens the safety of our guests, tenants and/or employees
- 13 • Any activity that threatens the well-being of the property
- 14 • Any activity that disrupts our pleasant, family-oriented shopping environment
- 15 • Any activity inconsistent with the general purpose of the property, which is
- 16 shopping, dining, visiting theaters or offices for business purposes
- 17 • Any activity that would disrupt the legitimate business of the property and its
- 18 tenants.
19

20 38. The Code of Conduct then lists several specific types of activities the Mall deems
21 prohibited, including:

- 22 • Disruptive profanity, vulgar or threatening language
- 23 • Unnecessarily blocking walkways or storefronts
- 24 • Running, horseplay or disorderly conduct
- 25 • Excessive loitering
- 26 • Operating unauthorized recreational and/or personal transportation devices
27
28

- No firearms or illegal weapons [sic]

39. The Code of Conduct concludes with a warning: “The center is a privately owned property. Guests who do not act responsibly may be asked to leave. If they refuse to leave the property, they may be arrested and prosecuted for criminal trespass.”

40. MOORE was directed by mall personnel to cease her expressive activity or leave the Mall, even though she was not claimed to be in violation of any of the foregoing rules.

41. For instance, even though MOORE did not intend to nor does she believe that she actually blocked any walkway or storefront, had she been apprised she was doing so at the time, she could have easily adjusted her location to satisfy such concern. But blocking access was not mentioned to MOORE as a concern of security or management when she was ordered to stop “soliciting.”

42. In good faith, MOORE complied with the request to cease distribution and accompanied Ms. Salinas to the business office of the Mall.

43. MOORE cannot tell from the Code of Conduct what activities are deemed “pleasant” and therefore allowed, or unpleasant and therefore prohibited.

44. MOORE cannot tell what activities would be deemed by the Mall to constitute “excessive loitering” and thereby subject her to ejection and potential arrest.

45. MOORE believes it would be detrimental to her Christian witness, as well as to herself personally, to be arrested or escorted out of the mall by security. She has therefore reluctantly refrained from distributing her literature at VALLEY PLAZA MALL since the incident on August 9, 2018, to the present.

46. MOORE intends to resume her distribution of free literature at VALLEY PLAZA MALL as soon as the current restrictions are lifted either voluntarily or by judicial decree.

47. In an effort to peacefully resolve the legal conflict and restore MOORE’s rights

1 without litigation, on September 25, 2018, Plaintiff's attorney, Matthew McReynolds, sent a
2 demand letter to General Manager John Baker of VALLEY PLAZA MALL by certified mail.

3 48. In this letter, McReynolds explained the constitutional implications of Article I,
4 Section 2 of the California Constitution.

5 49. When Mall management failed to respond to this letter, Plaintiff's attorney sent
6 another demand letter dated October 25, 2018 to Baker by certified mail.

7 50. On or about November 2, 2018, McReynolds received an e-mail from Jeff
8 Stevenson, Associate General Counsel of BROOKFIELD PROPERTIES. Mr. Stevenson informed
9 McReynolds that he had been "alerted to your correspondence regarding your client." He then
10 requested, "Let me get underneath this a little and let's talk."

11 51. After more than two weeks had passed with no further response from Stevenson,
12 McReynolds followed up with him, seeking to ascertain the Mall's position "as soon as possible."
13 Stevenson responded that his colleague, Gretchen Kaplan, was now handling the matter. Kaplan
14 then responded that she was working on a response but was home sick so would not be able to send
15 a formal response until after Thanksgiving.
16

17 52. Following more inquiries from Plaintiff's counsel and several weeks of further
18 delays by Kaplan throughout the holiday season, on January 4, 2019, Kaplan emailed VALLEY
19 PLAZA MALL's response letter to McReynolds.
20

21 53. In that letter, Kaplan identified herself as writing "on behalf of Brookfield
22 Properties, the indirect owner, operator, and manager of Valley Plaza Mall, LP."

23 54. In the letter, Kaplan states BROOKFIELD's position that "we strongly disagree with
24 your claim that any actions by employees of Valley Plaza were discriminatory or unconstitutional."
25

26 55. Kaplan's letter continued, "In Accordance with California law, Valley Plaza does
27 not permit anyone to hand out literature without applying and paying a fee in advance."
28

1 56. The letter identifies the reasons for this restriction as follows: “Valley Plaza
2 enforces such restrictions to promote customer safety and convenience and to ease mall congestion.
3 Importantly, any individual wishing to hand out literature must follow these guidelines.”

4 57. As a result, MOORE’s freedom of speech at VALLEY PLAZA MALL has been
5 sharply curtailed by Defendants.

6 58. The restrictions are ongoing.

7 59. In March 2019, MOORE returned to VALLEY PLAZA MALL to obtain a current
8 Specialty Leasing Retailer Application. The only material differences between the current
9 Application and the prior one she was given in August 2018, appear to be that the Application now
10 identifies BROOKFIELD PROPERTIES RETAIL as the owner/operator, where the previous one
11 had identified General Growth Properties (GGP) as the owner/operator. The Application now also
12 lists more mall locations owned by BROOKFIELD than were owned by GGP.
13

14 60. As a result of Defendants’ action, Plaintiff has lost and continues to lose countless
15 opportunities to engage fellow Mall patrons in conversations of a religious nature.
16

17 61. MOORE was especially distressed that her expression was restricted, and her
18 attorney could not get an answer from the Mall’s ownership and attorneys as to their position,
19 during the Thanksgiving and Christmas holiday seasons. These are times when MOORE believes
20 Mall patrons may be more open to discussing the religious origins of those holidays, are most likely
21 to visit a church, and would therefore be more open to her messages and church invitations than at
22 most other times of the year.
23

24 62. The Mall’s restrictions further prevented MOORE from sharing her faith during the
25 second-most important time of the year, the weeks leading up to Easter Sunday, which in 2019 fell
26 on April 21.

27 63. The Mall’s restrictions on speech violate the California Constitution.
28

1 64. The Mall's restrictions have caused MOORE damage in an amount according to
2 proof.

3 **FIRST CAUSE OF ACTION**
4 **Violation of the California Constitution, Article I, Section 2**
5 **(As Against All Defendants)**

6 65. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of
7 this Complaint as though fully set forth herein.

8 66. Plaintiff is a person within the jurisdiction of this State.

9 67. Persons within the jurisdiction of this State are guaranteed the right to freedom of
10 speech under Article I, Section 2 of the California Constitution.

11 68. For approximately 40 years, the courts of this State have applied the guarantees of
12 Article I, Section 2 to large-scale shopping malls like VALLEY PLAZA MALL.

13 69. Both on their face and as applied to the Plaintiff, the Defendants' imposition of the
14 Specialty Leasing Retailer Application and Code of Conduct have unconstitutionally limited
15 Plaintiff's rights of free expression.

16 70. Defendants, acting through their agents and employees, requires mall visitors to
17 submit a Specialty Leasing Retailer Application and pay a fee every time they wish to engage in
18 expression such as the handing of a piece of literature to a fellow patron.

19 71. The fee and application requirement has been ratified by attorneys acting on behalf
20 of Brookfield Properties.

21 72. The application and fee requirement leave no room for spontaneous conversation
22 memorialized by the willing exchange of pre-printed contact information or inspirational thoughts.

23 73. The requirement leaves no room for the anonymous distribution of literature.

24 74. By mandating retailer applications and an accompanying fee, Defendants do not
25 permit any literature distribution to be truly free.
26
27
28

1 75. By limiting literature distribution to confined, designated, undesirable locations, the
2 fee and application requirement severely limit written expression.

3 76. The requirement is not narrowly tailored to advance a significant governmental or
4 property interest.

5 77. By greatly limiting the locations at which free religious literature may be exchanged
6 between patrons, and excluding from such locations the areas where patrons most naturally
7 congregate for social purposes, the rules do not leave open ample alternative avenues of
8 communication.

9 78. Both the requirement and Code of Conduct are substantially overbroad and sweep in
10 significant amounts of fully protected expression that should not be restricted to the same degree as
11 less-protected expression.

12 79. As applied to MOORE, the rules require her to submit an application and pay a fee
13 each and every time she enters the Mall, if she carries with her any of her pre-printed tracts so as to
14 be prepared to give them to a willing fellow patron.

15 80. On its face, the fee and application is so burdensome as to effectively prevent a
16 substantial amount of speech from taking place at the Mall.

17 81. As applied to MOORE, a single person and low-income senior citizen, the fee and
18 application are excessive and unrelated to any legitimate, much less significant or compelling,
19 interests the Defendants might otherwise have in safety, crowd control or commerce.

20 82. Moreover, the Mall's interests are outweighed by MOORE's interest in the exercise
21 of fundamental, constitutionally protected freedoms.

22 83. In that MOORE was accused by Mall personnel of soliciting, when it was clear that
23 she was not selling anything nor was she affiliated with any commercial enterprise, the term as
24 applied to MOORE is vague and unenforceable, yet it is used by the Mall as a basis to suppress
25

1 speech and threaten arrest for noncompliance.

2 84. The term “excessive loitering” as prohibited in the Code of Conduct, is vague and
3 unenforceable. Neither Moore nor another person of reasonable intelligence can ascertain when
4 their expressive activity will be deemed “excessive loitering,” thereby subjecting them to
5 embarrassing confrontations with mall personnel, exclusion and threat of arrest for non-compliance.


6 85. The term “pleasant” as used in the Code of Conduct is vague and unenforceable.
7 Neither Moore nor another person of reasonable intelligence can ascertain when their expressive
8 activity will be deemed unpleasant and therefore subject them to embarrassing confrontations,
9 exclusion and threat of arrest for non-compliance.
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- 13 1. For a declaration that Defendants have violated the California Constitution, Article I,
14 Section 2;
15 2. For general, special and exemplary damages, in an amount according to proof but not to
16 exceed \$75,000;
17 3. For a preliminary and permanent injunction;
18 4. Attorneys’ fees;
19 5. Costs of suit; and
20 6. Other relief the court deems just.
21
22

23 DATED:

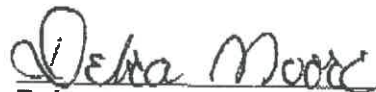
24 _____
25 /s/ 
26 Matthew B. McReynolds (SBN 234797)
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Attorney for Plaintiff
VERIFICATION

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2
3
4 I, Debra Moore, am the Plaintiff in the above-captioned matter. I have read the VERIFIED
5 COMPLAINT and am familiar with it. The contents are true and accurate and known to me by
6 personal knowledge except for those matters asserted on information and belief. As to those
7 matters, I believe them to be true.

8
9 I declare under penalty of perjury, under the laws of the United States and the State of
10 California, that the foregoing is true and correct. Executed 5/8, 2019, in the County of Kern,
11 City of Bakersfield, State of California.

12
13 
14 Debra Moore

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff demands a jury trial on all causes of action and claims to which she has a right to a
17 jury trial.

18
19 
20 Matthew B. McReynolds
21 Attorney for the Plaintiff