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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION - RIVERSIDE**

15 LOU ANN HART; and SHERYL
16 CARONNA,
17
18 Plaintiffs,

19 v.

20 GARY TOMACK, MATT MONICA,
21 JIM KOEDYKER, MICHAEL
22 DURAN, and DONALD B.
23 GRIFFITH, all individually and in
24 their official capacities as members of
25 the Desert Sands Unified School
26 District Board of Education;
27 SHARON MCGEHEE, individually
28 and in her official capacity as
Superintendent of the Desert Sands
Unified School District; PATRICK
WALSH, individually and in his
official capacity as Principal of Palm
Desert High School; and SABRA
BESLEY, individually and in her
official capacity as interim Principal
of Palm Desert High School,

Defendants.

CASE NO. _____

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

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JURISDICTION AND VENUE

1. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, and under federal law, particularly 28 U.S.C. § 2201, 2202 and 42 U.S.C. §§ 1983 & 1988.

2. This Court is vested with original jurisdiction over these federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

3. This Court is vested with authority to grant the requested declaratory relief by operation of 28 U.S.C. §§ 2201 *et seq.*

4. This Court is vested with authority to grant the requested injunctive relief pursuant to 42 U.S.C. § 1983 and Rule 65 of the Federal Rules of Civil Procedure.

5. This Court is also authorized to award damages under 28 U.S.C. § 1343(4).

6. This Court is authorized to award reasonable attorneys' fees and expenses pursuant to 42 U.S.C. § 1988.

7. Venue is proper in the United States District Court for the Central District of California under 28 U.S.C. § 1391(b), in that the events giving rise to this action occurred therein.

INTRODUCTION

8. Defendants have instituted a Policy and practice that created a forum for community speech through a fund-raising effort for Palm Desert High School. Defendants allowed members of the public to purchase brick pavers inscribed with a message of that person's choosing that will be placed in a walkway at the new Palm Desert High School campus currently under construction. Pursuant to this Policy and practice, Defendants have allowed hundreds of private messages on the brick pavers but have censored Plaintiffs' religious message.

1 9. Plaintiff Lou Ann Hart, who purchased five 4x8 inch brick pavers,
2 was denied the right to inscribe her brick pavers with the following quotations:

- 3 1) TELL EVERYONE ABOUT GOD'S POWER. PSALM 68:34
- 4 2) NO ONE CAN SERVE TWO MASTERS. LUKE 17:13
- 5 3) IF GOD IS FOR US, WHO CAN BE AGAINST US? ROMANS 8:31
- 6 4) ..THE OLD LIFE IS GONE. A NEW ONE HAS BEGUN 2CO. 5:17
- 7 5) ...BE KIND TO EACH OTHER...FORGIVE ONE ANOTHER. EPH
8 6:32

9 10. Plaintiff Sheryl Caronna, who purchased one 8x8 inch brick paver,
10 was likewise denied the right to inscribe her brick paver with the quotation:

11 "TRUST IN THE LORD WITH ALL YOUR HEART & LEAN NOT
12 ON YOUR OWN UNDERSTANDING" PROVERBS 3:5 THE
13 CARONNA FAMILY

14 11. Defendants have allowed hundreds of other private messages to be
15 inscribed on brick pavers for inclusion in the walkways, including:

16 BE THE CHANGE THAT YOU WANT TO SEE IN THE WORLD.
17 GANDHI
18 SI SE PUEDE PHIL.4:13
19 GOD BLESS YOU BABE
20 DREAM BIG
21 MAKE IT HAPPEN
22 WISHING YOU A MOST AMAZING JOURNEY THROUGHOUT YOUR
23 LIFE
24 BUILD YOUR DREAMS AND GET 'ER DONE!
25 THE MOZINGOS WERE HERE
26 TO YOUR FUTURE
27 "SHOWTIME"

1 BE GOOD HUMANS...
2 THE RENKER BOYS ARE THE BEST
3 PAVING THE ROAD TO SUCCESS
4 GO AZTECS
5 PROUD PARENTS OF _____
6 YOU DESERVE A BRICK TODAY!
7 LUV U,MOM,DAD, BEE
8 SYLVESTER WAS HERE BUT NOW HE'S NOT!
9 FOLLOW YOUR DREAMS
10 EDUCATION PAYS!
11 AZTEC PRIDE!
12 OMG YOU DID IT 2007
13 CARPE DIEM
14 IN LOVING MEMORY
15 BE YOUR OWN BOSS
16 A SEASON TO REMEMBER
17 ON TIME ON BUDGET DONE RIGHT SINCE 1997
18 FOR OUR FRIEND...IN CELEBRATION OF HER BIRTHDAY WE
19 LOVE YOU!
20 IN HONOR OF _____
21 MAKE THE WORLD SMILE!
22 *BELIEVE*
23 THANK YOU FOR ALL YOUR HARD WORK
24 THANKS FOR THE MEMORIES
25 BECOME WHO YOU ARE
26 YOU ARE ALWAYS WRIGHT WITH US!
27 SUCCESS IS NOT GAINED BY FALLING BUT IN RISING AFTER YOU

1 FALL
2 PEACE~HEART LOGO~HAPPINESS
3 CONGRATULATIONS
4 CLASS OF 2009
5 LOVE MOM AND DAD

6 12. The brick pavers would be installed in walkways at the new Palm
7 Desert High School campus currently under construction.

8 13. Defendants have final authority and control over the construction,
9 operation, and maintenance of the Palm Desert High School campus and over all
10 installations at the new campus.

11 14. Defendants likewise have final authority and control over which
12 speech, whether verbal, written, or inscribed on brick pavers, to allow at the new
13 campus.

14 15. Defendants have created a Policy regarding the brick pavers, which
15 is challenged herein by the Plaintiffs, whereby community members are allowed
16 to inscribe a message of their choosing on each brick paver purchased, including
17 messages that:

- 18 - Honor a graduate, class or alumnus
- 19 - Pay tribute to a loved one or pet
- 20 - Create a legacy for yourself or your family
- 21 - Promote your business, club or organization
- 22 - Commemorate a birth, wedding or special event
- 23 - Give a wonderful and very memorable gift

24 16. Defendants have made a part of this Policy a restriction prohibiting
25 any brick pavers inscribed with "religious verbiage" or "religious quote[s]" from
26 being placed on the walkway at the new Palm Desert High School Campus.

1 17. Defendants have enacted additional policies and practices giving them
2 authority and control over all school-related fundraising activities.

3 18. Policy AR 1230 states:

4 Any program, fund-raiser or other activity sponsored by
5 parent/guardian clubs shall be authorized and conducted according to
6 Board policy, administrative regulations and school rules.

7 19. Policy AR1230 further states:

8 Any parent/guardian club...desiring to support one or more curricular
9 or extracurricular activities of any district school must request
10 recognition by the Government Board, present the Board with a
11 written bylaw specifying the organization's purpose and reflecting the
12 nature and degree of school district direction and supervision of the
13 organization's activities, and describe the methods by which the
14 organization will raise money.

15 20. Policy AR 1230 also requires parent/guardian clubs to submit the
16 “[n]ames of boosters who will be working with students or involved in supporting
17 curricular or extracurricular activities...to the Educational Services Office for
18 Board approval as volunteers.”

19 21. Policy BP 1230 provides that:

20 [I]n order to help the Board fulfill its legal and fiduciary
21 responsibility to manage district operations, any school-connected
22 organization that desires to raise money to benefit any district student
23 shall submit a request for authorizations to the Board, in accordance
24 with Board policy and administrative regulation. In addition, the
25 Superintendent or designee shall establish appropriate internal
26 controls for the relationship between school connected-organizations

1 and the district.

2 22. Finally, Policy BP 1230 also requires that “[a]ctivities by school-
3 connected organizations shall not conflict with law, Board policies, administrative
4 regulations, or any rules of the sponsoring school.”

5 23. Pursuant to their Policy and practice, Defendants denied Plaintiffs
6 Hart’s and Caronna’s brick pavers due to their religious messages.

7 24. Pursuant to their Policy and practice, Defendants failed to prohibit the
8 Palm Desert High School Parent Teacher Organization (“PTO”) from denying
9 religious brick pavers even though the Defendants had the authority and an
10 affirmative obligation to do so.

11 25. Pursuant to their Policy and practice, Defendants likewise failed to
12 perform an act that they are legally required to do by failing to reverse the denial
13 of Plaintiffs Hart’s and Caronna’s brick pavers, resulting in a violation of
14 Plaintiffs’ constitutional rights.

15 **IDENTIFICATION OF PARTIES**

16 **Plaintiffs**

17 26. Plaintiff Lou Ann Hart is an adult citizen of the United States, and at
18 all times relevant to this Complaint, is and was a resident of Palm Desert,
19 California in the Central District of California.

20 27. Plaintiff Sheryl Caronna is an adult citizen of the United States, and
21 at all times relevant to this Complaint, is and was a resident of Rancho Mirage,
22 California in the Central District of California.

23 28. Plaintiffs Hart and Caronna, pursuant to their sincerely held religious
24 beliefs, desire to purchase brick pavers inscribed with quotations from the Bible
25 in order to provide a message of hope and inspiration from the Bible to individuals
26 who read the brick pavers.

1 35. Defendant Board Members are also responsible for authorizing
2 school-connected organizations, including the PTO, to raise money for the benefit
3 of students at Palm Desert High School.

4 36. Defendant Board Members are responsible for the enactment,
5 enforcement, and existence of the Policy and practice related to access by
6 community groups, businesses, public entities, community members, parents, and
7 students to the brick paver forum, in which community groups, businesses, public
8 entities, community members, parents, and students are permitted to purchase brick
9 pavers inscribed with a message of their choosing and have the brick pavers placed
10 in the walkways at the new Palm Desert High School campus currently under
11 construction.

12 37. Defendant Board Members prohibited Plaintiffs Hart and Caronna
13 from having their inscribed brick pavers placed in the walkways at the new Palm
14 Desert High School campus pursuant to their Policy and practice.

15 38. Defendant Board Members denied Plaintiffs from having inscribed
16 brick pavers placed in the walkway pursuant to their unconstitutional Policy and
17 practice challenged herein.

18 39. Defendant Board Members likewise prohibited Plaintiffs Hart and
19 Caronna from having their inscribed brick pavers placed in the walkways at the
20 new Palm Desert High School campus pursuant to their Policy and practice,
21 through implementation by the PTO, and otherwise.

22 40. Defendant Board Members are responsible for the implementation and
23 application by Defendant McGehee, Defendant Walsh, and Defendant Besley of
24 its Policy and practice pertaining to fundraising activities conducted by school-
25 connected organizations.

26 41. Defendant Board Members are similarly responsible for delegating to
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1 Defendant McGehee, Defendant Walsh, and Defendant Besley final authority as
2 to the approval of fundraising activities conducted by school-connected
3 organizations and for ensuring that the activities of all school-connected
4 organizations comply with federal and state law, Board policies, administrative
5 regulations, or any rules of Palm Desert High School.

6 42. Defendant Board Members, upon learning of the denial of Plaintiffs’
7 brick pavers based upon their religious message, are responsible for failing to
8 correct this violation of the Plaintiffs’ constitutional rights after receiving notice
9 of said violation.

10 43. Defendant Dr. Sharon McGehee is the Superintendent of the Desert
11 Sands Unified School District.

12 44. Defendant McGehee is responsible for “establish[ing] appropriate
13 internal controls for the relationship between school-connected organizations and
14 the district.”

15 45. Defendant McGehee possesses responsibility, final authority, and
16 discretion, as delegated by the Board Members, as to the administration of
17 Defendants’ Policy as it relates to the fundraising activities of school-connected
18 organizations, including the brick paver fundraiser and denial of the Plaintiffs’
19 brick pavers as challenged in this action

20 46. Defendant McGehee possesses responsibility, final authority, and
21 discretion, as delegated by the Board Members, as to the administration of the
22 brick paver forum.

23 47. Defendant McGehee denied Plaintiffs Hart’s and Caronna’s brick
24 pavers in violation of the Plaintiffs’ constitutional rights.

25 48. Defendant McGehee denied Plaintiffs from having inscribed brick
26 pavers placed in the walkway pursuant to the Defendants’ unconstitutional Policy

1 and practices challenged herein.

2 49. Defendant McGehee is responsible for the actions of Defendant Walsh
3 and Defendant Besley and for, upon learning of the denial of Plaintiffs' brick
4 pavers based upon their religious message, failing to correct this violation of the
5 Plaintiffs' constitutional rights after receiving notice of said violation.

6 50. Defendant Patrick Walsh was the Principal of Palm Desert High
7 School during the time of the denial and was responsible for consulting with
8 school-connected organizations, such as the PTO, to determine school needs and
9 priorities.

10 51. Defendant Walsh was also responsible for approving the content of
11 each brick paver purchased for inclusion in the walkways at the new Palm Desert
12 High School campus.

13 52. Defendant Walsh possessed responsibility, authority, and discretion,
14 as delegated by the Board Members, as to the administration of Defendants' Policy
15 and practice.

16 53. Defendant Walsh also possessed responsibility, authority, and
17 discretion, as delegated by the Board Members, as they relate to the brick paver
18 forum, in which community groups, businesses, public entities, community
19 members, parents, and students are permitted to purchase brick pavers inscribed
20 with a message of their choosing placed in the walkways at the new Palm Desert
21 High School campus currently under construction.

22 54. Defendant Walsh denied Plaintiffs Hart's and Caronna's brick pavers
23 in violation of the Plaintiffs' constitutional rights.

24 55. Defendant Walsh denied Plaintiffs from having inscribed brick pavers
25 placed in the walkway pursuant to the Defendants' unconstitutional Policy and
26 practices challenged herein.

1 56. Defendant Sandra Besley is the interim Principal of Palm Desert High
2 School and is responsible for consulting with school-connected organizations, such
3 as the PTO, to determine school needs and priorities.

4 57. Defendant Besley is also responsible for approving the content of each
5 brick paver purchased for inclusion in the walkways at the new Palm Desert High
6 School campus.

7 58. Defendant Besley possesses responsibility, authority, and discretion,
8 as delegated by the Board Members, as to the administration of Defendants' Policy
9 and practice.

10 59. Defendant Besley also possesses responsibility, authority, and
11 discretion, as delegated by the Board Members, as they relate to the brick paver
12 forum.

13 60. Defendant Besley denied Plaintiffs from having inscribed brick pavers
14 placed in the walkway pursuant to the Defendants' unconstitutional Policy and
15 practice challenged herein.

16 61. All Defendants are sued both in their individual capacities and in their
17 respective official capacities.

18 62. Upon information and belief, Defendants Board Members, McGehee,
19 Walsh, and Besley reside in the Central District; all Defendants reside within the
20 State of California.

21 63. All of the activities that are the subject of this action, specifically the
22 denial of Plaintiffs' speech, occurred within the Central District.

23 64. The Desert Sands Unified School District and Palm Desert High
24 School are located within the Central District.

25 **STATEMENT OF FACTS**

26 65. Defendants, pursuant to their policies, approved the PTO to create a

1 fund-raising system in order to raise funds for the Class of 2010 graduation and
2 other senior class activities.

3 66. In order to raise these funds, Defendants approved the PTO's request
4 to organize an effort to provide "[p]arents, community members and even students
5 ... the opportunity to purchase bricks and benches that will have a permanent place
6 in the brand new PDHS campus due for completion in 2012." Palm Desert High
7 School PTO Newsletter - Issue 4 - February 2010 at 6.

8 67. The PTO's fundraiser was also approved by Defendant Walsh, who
9 appeared at the December 3, 2009 meeting of the PTO to discuss the fundraiser.

10 68. At the December 3 meeting, Defendant Walsh "clarified the logistics
11 of the brick placement they will be mortared in to the sidewalk and he mentioned
12 that this will be a traditional fundraiser to carry on in future years [sic]."

13 69. Defendants Board Members and McGehee were aware of the PTO's
14 fundraising activities and approved such actions under their authority to supervise
15 and approve the activities of the PTO pursuant to policies AR 1230 and BP 1230.

16 70. The PTO sold brick pavers of varying sizes to the community: a 4x8
17 inch brick paver for \$100.00, and an 8x8 inch brick paver for \$250.00.

18 71. Under the Defendants' Policy regarding the brick pavers, which is
19 challenged herein by the Plaintiffs, community members were allowed to inscribe
20 a message of their choosing on each brick paver purchased, including messages
21 that:

- 22 - Honor a graduate, class or alumnus
- 23 - Pay tribute to a loved one or pet
- 24 - Create a legacy for yourself or your family
- 25 - Promote your business, club or organization
- 26 - Commemorate a birth, wedding or special event

1 - Give a wonderful and very memorable gift

2 72. The only limitation on the message was that it be a maximum of three
3 lines and 18 characters per line for 4x8 inch brick pavers and a maximum of six
4 lines and 21 characters per line for 8x8 inch brick pavers.

5 73. There were no other restrictions on the content of the message
6 inscribed on the brick pavers until the Defendants added the restriction on religious
7 messages.

8 74. In February 2010, Plaintiff Lou Ann Hart submitted a request to
9 purchase five brick pavers with the following inscriptions:

- 10 1) TELL EVERYONE ABOUT GOD'S POWER. PSALM 68:34
- 11 2) NO ONE CAN SERVE TWO MASTERS. LUKE 17:13
- 12 3) IF GOD IS FOR US, WHO CAN BE AGAINST US? ROMANS 8:31
- 13 4) ..THE OLD LIFE IS GONE. A NEW ONE HAS BEGUN 2CO. 5:17
- 14 5) ...BE KIND TO EACH OTHER...FORGIVE ONE ANOTHER. EPH
15 6:32

16 75. Plaintiff Hart also submitted the required payment.

17 76. In the spring of 2010, Plaintiff Sheryl Caronna likewise submitted a
18 request to purchase one brick paver with the inscription "TRUST IN THE LORD
19 WITH ALL YOUR HEART & LEAN NOT ON YOUR OWN
20 UNDERSTANDING" PROVERBS 3:5 THE CARONNA FAMILY.

21 77. Plaintiff Caronna likewise submitted the required payment.

22 78. Pursuant to their sincerely-held religious beliefs and in accordance
23 with Defendants' Policy, Plaintiffs desired to create a lasting legacy of their
24 family's religious faith.

25 79. Pursuant to their sincerely-held religious beliefs and in accordance
26 with Defendants' Policy, Plaintiffs also wanted to pay tribute to their faith in God.

1 80. Plaintiffs also desired to leave a lasting message of encouragement,
2 inspiration, and guidance from the Bible to students at Palm Desert High School
3 in hopes that the Scriptures would provide help and guidance to students facing
4 difficult situations in their lives.

5 81. Plaintiffs' messages fit within all of the requirements of the Policy
6 (except that they violated the prohibition on religious messages).

7 82. Plaintiffs' brick pavers were thereafter inscribed with their desired
8 religious messages and made ready for installation in the walkways.

9 83. However, on August 12, 2010, before the Plaintiffs' brick pavers were
10 installed, Karen Rohrbaugh from the PTO sent an e-mail to Defendant Walsh
11 seeking approval of Plaintiffs' inscribed brick pavers.

12 84. Ms. Rohbaugh expressed concern over the "religious verbiage" and
13 the "religious quote[s]" on the Plaintiffs' brick pavers.

14 85. Ms. Rohrbaugh also attached a picture of Plaintiff Caronna's brick
15 paver with its inscription to Defendant Walsh.

16 86. On August 28, 2010, pursuant to the Defendants' Policy, Defendant
17 Walsh responded to Ms. Rohrbaugh and denied the Plaintiffs' brick pavers from
18 inclusion in the walkways at the new high school campus.

19 87. Defendant Walsh stated that "[w]e need to respectfully decline the
20 donation of bricks quoting scriptures from the bible. I'm sure most parents will
21 understand the constitutional protections regarding the separation of church and
22 state."

23 88. Pursuant to the Defendants' Policy and in response to Defendants'
24 instructions, representatives from the PTO thereafter contacted Plaintiffs Hart and
25 Caronna and informed them that their brick pavers were denied for inclusion in the
26 walkways because of their religious content and the "separation of church and
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1 state.”

2 89. Plaintiffs Hart’s and Caronna’s inscribed brick pavers were given to
3 them and were not installed in the walkways at the new campus.

4 90. Furthermore, neither Plaintiff received a refund of their payment for
5 the brick pavers they purchased.

6 91. In response to the denial, Plaintiffs, through their counsel, then sent
7 a letter to all of the Defendants on November 9, 2010 informing them that the
8 denial of Plaintiffs’ brick pavers violated the Plaintiffs’ constitutional rights and
9 requesting, pursuant to California’s Public Record Act, copies of the Defendants’
10 policies relating to the purchase and approval of brick pavers, all communications
11 regarding the denial of Plaintiffs’ brick pavers, and a list of the inscriptions on all
12 other brick pavers approved for inclusion in the walkways.

13 92. On November 24, 2010, Defendants responded to the Plaintiffs’
14 request. However, Defendants refused to provide Plaintiffs with the list of
15 inscriptions on the other brick pavers which had been approved by the Defendants.

16 93. Plaintiffs’ counsel sent a second letter on December 8, 2010 again
17 requesting to be provided with the list of other inscriptions approved by the
18 Defendants.

19 94. On December 21, 2010, Defendants responded and again refused to
20 disclose the requested list of other inscriptions.

21 95. In sum, Defendants have in effect a certain Policy and practice
22 governing the inscriptions on brick pavers that permits community members to
23 have any message they want inscribed on a brick paver, including messages that
24 “pay tribute to a loved one” or “create a legacy for yourself or your family,” but
25 that prohibits any messages that contain “religious verbiage.”

26 96. Under this Policy, Defendants denied Plaintiffs from having their
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1 bricks inscribed with quotations from the Bible included in the walkway.

2 97. Despite Defendants' Policy and practice used to deny Plaintiffs' brick
3 pavers, religious messages have been permitted on other brick pavers to be
4 included in the walkway. For example, Defendants permitted a brick paver
5 inscribed with a quote from religious leader Mahatma Gandhi stating "Be the
6 change that you want to see in the world" and also permitted a brick paver
7 inscribed with "Si se puede Phil.4:13," which translates "Yes, it is possible" and
8 references Philippians 4:13.

9 98. Further, hundreds of community messages have also been permitted
10 that are similar to Plaintiffs' message, including inspirational messages, messages
11 offering guidance and advice, messages giving thanks to people, messages in
12 memory of others, descriptive messages, popular sayings, and the like.

13 99. Plaintiffs have a continuing desire to have their purchased brick
14 pavers inscribed with a religious message used in the walkways at the new Palm
15 Desert High School campus.

16 100. Defendants have enacted and enforced their Policy and practice that
17 excludes religious messages on the brick pavers.

18 101. All Defendants have denied Plaintiffs' religious message pursuant to
19 this unconstitutional Policy and practice.

20 102. Defendant Walsh denied Plaintiffs from having their brick pavers
21 inscribed with religious messages from being included on the walkway at the Palm
22 Desert High School Campus.

23 103. Defendant Board Members and Defendant McGehee were aware of
24 Defendant Walsh's denial of Plaintiffs' religious speech and failed to take any
25 action to correct this violation of Plaintiffs' constitutional rights even though
26 Defendants Board Members and McGehee are legally required to remedy
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1 violations of constitutional rights caused by Defendant Walsh and the PTO.

2 **ALLEGATIONS OF LAW**

3 104. Defendants have created a Policy that permits community members
4 to purchase brick pavers inscribed with a message of that person's choosing that
5 will be placed in a walkway at the new Palm Desert High School campus currently
6 under construction, but have included in that Policy a prohibition on religious
7 messages.

8 105. All the relevant acts of Defendants and their agents toward Plaintiffs
9 in this case were done and are continuing to be done under the color of state law.

10 106. Plaintiffs have no adequate or speedy remedy at law to redress the
11 deprivations of Plaintiffs' rights by Defendants.

12 107. Unless and until Defendants' Policy and practice are struck down and
13 Defendants are enjoined from enforcing their unlawful Policy and practice,
14 Plaintiffs will continue to suffer irreparable injury to their rights.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF THE FREE SPEECH CLAUSE**
17 **OF THE FIRST AMENDMENT**

18 108. Plaintiffs re-allege and incorporate herein, as though fully set forth
19 herein, all previous paragraphs of this Complaint.

20 109. Pursuant to their Policy and practice, Defendants have created a
21 designated public forum by allowing members of the community to purchase
22 message-bearing brick pavers, having the brick pavers inscribed with a message
23 of the citizen's choosing, and placing them in a walkway at the new Palm Desert
24 High School campus currently under construction.

25 110. Defendants' creation of this designated public forum has resulted in
26 the purchase of hundreds of brick pavers – and hundreds of personal messages –
27 for placement in the forum.

1 111. In a designated public forum, government may not discriminate on the
2 basis of the content of the speaker's speech absent a compelling interest.

3 112. Religious speech is protected by the First Amendment.

4 113. Discrimination against religious speech is content-based
5 discrimination.

6 114. By opening the forum to any message of the buyer's choosing, but
7 specifically rejecting Plaintiffs' religious messages, Defendants have engaged in
8 unconstitutional content-based discrimination in violation of the First Amendment.

9 115. Defendants cannot present a compelling state interest to justify this
10 content-based discrimination.

11 116. Regardless of the type of forum, government may not discriminate on
12 the basis of the viewpoint of the speaker's speech.

13 117. Discrimination against a religious viewpoint is unconstitutional.

14 118. Pursuant to their Policy and practice, Defendants' permitted brick
15 pavers inscribed with messages intended to "pay tribute to a loved one."

16 119. However, Defendants denied Plaintiffs' brick pavers inscribed with
17 a religious message intended to pay tribute to God.

18 120. Pursuant to their Policy and practice, Defendants' permitted brick
19 pavers inscribed with messages intended to "create a legacy for yourself or your
20 family."

21 121. Yet Defendants denied Plaintiffs' brick pavers inscribed with a
22 religious message that Plaintiffs intended to create a legacy of their family's
23 Christian faith and reliance on God.

24 122. Defendants have also accepted brick pavers inscribed with
25 inspirational messages intended to provide encouragement and guidance to staff,
26 students, and visitors at Palm Desert High School from a non-religious viewpoint.

1 123. However, pursuant to their unconstitutional Policy and practice,
2 Defendants denied Plaintiffs' brick pavers inscribed with religious inspirational
3 messages intended to provide encouragement and guidance to staff, students, and
4 visitors at Palm Desert High School.

5 124. By denying Plaintiffs' religious message, Defendants have engaged
6 in unconstitutional viewpoint-based discrimination in violation of the First
7 Amendment.

8 125. Defendants cannot present a compelling state interest to justify this
9 viewpoint-based discrimination.

10 126. A ban on speech before it is delivered constitutes an unconstitutional
11 prior restraint on otherwise protected speech.

12 127. A prior restraint without narrow, objective, and definite standards to
13 guide government officials can result, and has resulted, in discriminatory
14 enforcement and unbridled discretion.

15 128. Defendants' Policy possesses no narrow, objective, and definite
16 standards with which to approve the content of messages inscribed on brick pavers
17 for placement in the walkway at the new Palm Desert High School campus.

18 129. Consequently, Defendants' denial of Plaintiffs' brick pavers cannot
19 survive the constitutional requirements of strict scrutiny.

20 130. Defendants' Policy and practice additionally impose an
21 unconstitutional prior restraint because they vest the Defendants with unbridled
22 discretion to permit or refuse protected religious speech by community members.

23 131. This Policy, both on its face and as applied, gives the Defendants,
24 including Principal Walsh and interim Principal Besley, unbridled discretion to
25 prohibit certain community members from having their brick pavers included in the
26 walkway at the new high school while allowing other community members to have
27

1 access to the brick paver forum.

2 132. Defendants' Policy and practice subject all inscriptions to the
3 unbridled discretion of the Defendants and do not contain any guidelines or
4 procedures to restrict the discretion of the Defendants.

5 133. Defendants' Policy and practice are additionally overbroad because
6 they sweep within their ambit protected First Amendment expression.

7 134. The overbreadth of Defendants' Policy and practice chills the speech
8 of community members who might seek to engage in private religious expression
9 through the inscriptions on the brick pavers.

10 135. Defendants' Policy and practice chill, deter, and restrict Plaintiffs
11 from freely expressing their religious beliefs.

12 136. Defendants' Policy, as interpreted and applied by them to prohibit
13 religious speech, is not the least restrictive means necessary to serve any
14 compelling interest which Defendants seek thereby to secure.

15 137. Defendants' Policy and practice are not reasonably related to any
16 legitimate government interest.

17 138. Censoring community members' religious speech per se is not and
18 cannot be a legitimate government interest.

19 139. Defendants' Policy and practice, both facially and as-applied, therefore
20 constitute a violation of Plaintiffs' rights under the Free Speech Clause of the First
21 Amendment to the United States Constitution as incorporated and applied to the
22 States through the Fourteenth Amendment.

23 140. Plaintiffs further allege that the foregoing allegations demonstrate that
24 their constitutional rights have been violated by the Defendants' actions and that
25 no adequate remedy at law exists. Accordingly, unless their request for injunctive
26 relief is granted, Plaintiffs will suffer irreparable harm because the United States
27

1 Supreme Court has held that “*the loss of First Amendment freedoms, even for*
2 *minimal periods of time, unquestionably constitutes irreparable harm.*” *Elrod v.*
3 *Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976)(emphasis
4 added).

5 WHEREFORE, Plaintiffs respectfully pray for relief as set forth more
6 particularly in the Prayer for Relief.

7 **SECOND CAUSE OF ACTION**

8 **VIOLATION OF THE EQUAL PROTECTION CLAUSE**
9 **OF THE FOURTEENTH AMENDMENT**

10 141. Plaintiffs re-allege and incorporate herein, as though fully set forth
11 herein, all previous paragraphs of this Complaint.

12 142. The Equal Protection Clause requires that the government treat
13 equally all persons similarly situated.

14 143. The Equal Protection Clause forbids discrimination based on the
15 exercise of a fundamental right such as free speech.

16 144. Defendants’ denial of equal access to the brick pavers, and the Policy
17 on which the denial is based, on the basis of Plaintiffs’ religious speech and
18 religious exercise constitutes a violation of the Equal Protection Clause of the
19 Fourteenth Amendment.

20 145. By subjecting Plaintiffs to disparate treatment solely on account of
21 their religious speech, Defendants have discriminated against Plaintiffs in the
22 exercise of a fundamental right and cannot assert a compelling state interest to
23 justify such discrimination.

24 146. Defendants have allowed and continue to allow similarly situated
25 persons to access the brick pavers for personal messages, both religious and non-
26 religious.

27 147. No rational basis exists for such discrimination.

1 148. The Policy and practice, both facially and as-applied, thus constitute
2 a violation of Plaintiffs' rights under the Equal Protection Clause of the Fourteenth
3 Amendment to the United States Constitution.

4 149. Plaintiffs further allege that the foregoing allegations demonstrate that
5 their constitutional rights have been violated by the Defendants' actions and that
6 no adequate remedy at law exists. Accordingly, unless their request for injunctive
7 relief is granted, Plaintiffs will suffer irreparable harm because the United States
8 Supreme Court has held that "*the loss of First Amendment freedoms, even for*
9 *minimal periods of time, unquestionably constitutes irreparable harm.*" *Elrod v.*
10 *Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976)(emphasis
11 added).

12 WHEREFORE Plaintiffs respectfully pray for relief as set forth more
13 particularly in the Prayer for Relief.

14 **THIRD CAUSE OF ACTION**

15 **VIOLATION OF THE FREE EXERCISE CLAUSE
16 OF THE FIRST AMENDMENT**

17 150. Plaintiffs re-allege and incorporate herein, as though fully set forth
18 herein, all previous paragraphs of this Complaint.

19 151. Defendants' denial of Plaintiffs' proposed brick paver inscriptions,
20 and the Policy upon which the denial is based, violate Plaintiffs' right to free
21 exercise of religion.

22 152. The Free Exercise Clause prohibits discrimination against religious
23 beliefs or conduct undertaken for religious reasons.

24 153. Government may not discriminate against a person based on that
25 person's religious speech.

26 154. Plaintiffs' brick pavers inscribed with religious messages represent the
27 exercise of their sincerely-held religious beliefs.

1 155. Pursuant to Defendants' Policy, Defendants have prevented Plaintiffs
2 from exercising their sincerely-held religious beliefs, solely for the reason that
3 Plaintiffs' proposed speech is religious.

4 156. Pursuant to Defendants' Policy, Defendants have discriminated
5 against Plaintiffs based on their religious speech.

6 157. Defendants' prohibitions on speech are not neutral, nor generally
7 applicable and therefore Defendants' denial of Plaintiffs' speech places a
8 substantial burden on Plaintiffs.

9 158. The choice of exercising their religious speech and being denied
10 access to the brick pavers or silencing their religious speech in order to have their
11 brick pavers included on the walkway places a substantial and excessive burden
12 on Plaintiffs.

13 159. Defendants' Policy and practice, in addition to infringing Plaintiffs'
14 free exercise rights, violate several other rights of Plaintiffs, including free speech,
15 and equal protection, and therefore gives rise to a hybrid claim.

16 160. No compelling government interest exists to justify Defendants'
17 discriminatory Policy and practice.

18 161. The Policy and practice, singling out religion for discrimination, are
19 not the least restrictive means necessary to serve any legitimate interest Defendants
20 might claim to possess.

21 162. Defendants cannot justify this infringement upon Plaintiffs' religious
22 beliefs and conduct undertaken for religious reasons.

23 163. The Policy and practice, both facially and as-applied, thus constitute
24 a violation of Plaintiffs' rights under the Free Exercise Clause of the First
25 Amendment to the United States Constitution as incorporated and applied to the
26 States through the Fourteenth Amendment.

1 164. Plaintiffs further allege that the foregoing allegations demonstrate that
2 their constitutional rights have been violated by the Defendants' actions and that
3 no adequate remedy at law exists. Accordingly, unless their request for injunctive
4 relief is granted, Plaintiffs will suffer irreparable harm because the United States
5 Supreme Court has held that "*the loss of First Amendment freedoms, even for*
6 *minimal periods of time, unquestionably constitutes irreparable harm.*" *Elrod v.*
7 *Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976)(emphasis
8 added).

9 WHEREFORE Plaintiffs respectfully pray for relief as set forth more
10 particularly in the Prayer for Relief.

11 **FOURTH CAUSE OF ACTION**

12 **VIOLATION OF THE DUE PROCESS CLAUSE**
13 **OF THE FOURTEENTH AMENDMENT**

14 165. Plaintiffs re-allege and incorporate herein, as though fully set forth
15 herein, all previous paragraphs of this Complaint.

16 166. Defendants' Policy and practice allegedly prohibit only "religious
17 verbiage."

18 167. The Policy does not define what constitutes "religious verbiage" or
19 which words or phrases can be deemed "religious."

20 168. In practice, religious words and words of inspiration, guidance, and
21 encouragement have been included on brick pavers.

22 169. Defendants permitted brick pavers engraved with a reference to the
23 Bible in Spanish and permitted a quotation from Hindu religious leader Mahatma
24 Gandhi.

25 170. Plaintiffs do not, and cannot, reasonably know when private speech
26 will be deemed "religious verbiage" in violation of Defendants' Policy and
27 practice.

1 171. There are no objective standards or guidelines in the Policy to
2 determine when private speech violates the Policy's prohibition against religious
3 messages.

4 172. The Policy, both facially and as-applied, is therefore impermissibly
5 vague and constitutes a violation of Plaintiffs' rights under the Due Process Clause
6 of the Fourteenth Amendment to the United States Constitution.

7 173. Plaintiffs further allege that the foregoing allegations demonstrate that
8 their constitutional rights have been violated by the Defendants' actions and that
9 no adequate remedy at law exists. Accordingly, unless their request for injunctive
10 relief is granted, Plaintiffs will suffer irreparable harm because the United States
11 Supreme Court has held that "*the loss of First Amendment freedoms, even for*
12 *minimal periods of time, unquestionably constitutes irreparable harm.*" *Elrod v.*
13 *Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976)(emphasis
14 added).

15 WHEREFORE, Plaintiffs respectfully request that the Court grant the relief
16 set forth in the Prayer for Relief below.

17 **FIFTH CAUSE OF ACTION**

18 **VIOLATION OF THE ESTABLISHMENT CLAUSE**
19 **OF THE FIRST AMENDMENT**

20 174. Plaintiffs re-allege and incorporate herein, as though fully set forth
21 herein, all previous paragraphs of this Complaint.

22 175. Defendants' Policy and practice and denial of Plaintiffs' proposed
23 brick pavers pursuant thereto violates the Establishment Clause because they single
24 out religious speech for hostility.

25 176. Defendants' Policy and practice entangle government in the
26 determination of what is religious speech by private persons.

27 177. Defendants' denial of Plaintiffs' brick pavers is not justified by any

1 compelling governmental interest, nor is it the least restrictive means available to
2 secure any compelling interests.

3 178. Plaintiffs' brick pavers would not violate the Establishment Clause;
4 Plaintiffs are private speakers applying to speak in a public forum open to
5 hundreds of other private speakers.

6 179. The Policy and practice, both facially and as-applied, thus constitute
7 a violation of Plaintiffs' rights under the Establishment Clause of the First
8 Amendment to the United States Constitution as incorporated and applied to the
9 States through the Fourteenth Amendment.

10 180. Plaintiffs further allege that the foregoing allegations demonstrate that
11 their constitutional rights have been violated by the Defendants' actions and that
12 no adequate remedy at law exists. Accordingly, unless their request for injunctive
13 relief is granted, Plaintiffs will suffer irreparable harm because the United States
14 Supreme Court has held that "*the loss of First Amendment freedoms, even for*
15 *minimal periods of time, unquestionably constitutes irreparable harm.*" *Elrod v.*
16 *Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976)(emphasis
17 added).

18 WHEREFORE, Plaintiffs respectfully pray for relief as set forth more
19 particularly in the Prayer for Relief.

20 **PRAYER FOR RELIEF**

21 Based on the foregoing, Plaintiffs Lou Ann Hart and Sheryl Caronna
22 respectfully pray that this Court grant relief pursuant to the applicable provisions
23 of law, including 42 U.S.C. §1983, as follows:

24 1. That the Court render a Declaratory Judgment declaring that
25 Defendants' Policy and practice of denying religious speech are invalid under the
26 United States Constitution and striking down the Policy both facially and as-

1 applied.

2 2. That the Court make a finding that Plaintiffs have no adequate remedy
3 at law and that Plaintiffs will suffer irreparable harm if a temporary restraining
4 order, preliminary injunction, and permanent injunction are not issued;

5 3. That the Court issues a temporary restraining order, preliminary
6 injunction, and/or permanent injunction restraining and enjoining Defendants from
7 enforcing the Policy and practice in all respects challenged herein and instruct
8 Defendants to include Plaintiffs' brick pavers inscribed with religious messages as
9 requested.

10 4. That the Court award Plaintiffs damages.

11 5. That the Court award Plaintiffs their costs and expenses in this action,
12 including an award of reasonable attorneys' fees in accordance with 42 U.S.C. §
13 1988 and other law.

14 6. That this Court adjudge, decree, and declare the rights and other legal
15 relations of the parties as to the subject matter contested herein, in order that such
16 declarations have the force and effect of final judgment.

17 7. That the Court grant such other relief as the Court deems equitable,
18 just, and proper.

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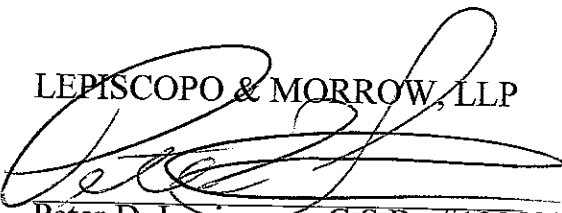
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1 Respectfully submitted this 18th day of January, 2011.

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3 ALLIANCE DEFENSE FUND

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10 * Applications for admission pro hac vice submitted herewith.

11 *Attorneys of Record for Plaintiffs Hart and Caronna*

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VERIFICATION

I, Lou Ann Hart, verify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have reviewed the foregoing Complaint and the facts contained therein are true and correct.

Executed this 16th day of January, 2011, in Palm Desert, California.

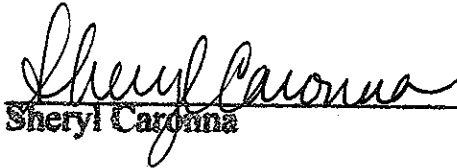
Lou Ann Hart
Lou Ann Hart

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VERIFICATION

I, Sheryl Caronna, verify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have reviewed the foregoing Complaint and the facts contained therein are true and correct.

Executed this 16th day of January, 2011, in Rancho Mirage, California.



Sheryl Caronna