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6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**
8

9 **MISSION GATHERING CHRISTIAN**
10 **CHURCH**

11 Plaintiff,

12 v.

13 **CITY OF SAN DIEGO**, a public entity;
and **DOES 1 through 10**, inclusive,

14 Defendants.
15

Case No.: '19CV1967 BEN KSC

COMPLAINT FOR VIOLATION OF
42 U.S.C. §2000cc et. seq.; THE
UNITED STATES CIVIL RIGHTS
ACT; INJUNCTIVE RELIEF; AND
DECLARATORY RELIEF

16 COMES NOW Plaintiff MISSION GATHERING CHRISTIAN CHURCH
17 (hereinafter, “Plaintiff” or “Church”) hereby brings this complaint against the CITY
18 OF SAN DIEGO, a municipal corporation acting under the laws of the State of
19 California (hereinafter, the “City”) and DOES 1 through 10, inclusive (collectively,
20 “Defendants”). Plaintiff in this above-entitled matter brings this matter by its attorney
21 and alleges as follows:

22 **PARTIES – MISSION GATHERING CHURCH**

23 1. Plaintiff MISSION GATHERING CHRISTIAN CHURCH is apart of a
24 Progressive Church Planting Movement of the Christian Church (Disciples of Christ).

25 2. The Church was founded in 2001 with the intent that the church would serve
26 the San Diego community by welcoming all walks of life, providing a homeless
27 outreach, and by providing a means for the community’s youth to congregate in a safe
28 environment.

1 3. The Church is located at 3090 Polk Ave, San Diego, CA 92104, APN 446-321-
2 32-00 (hereinafter, the “Property”). The Property is owned by Christian Church,
3 (Disciples of Christ) of the Pacific Southwest Region, a California non-profit religious
4 corporation, and Mission Gathering Christian Church, with Mission Gathering as a
5 tenant.

6 4. The Church desires to continue its use of the Property, including holding
7 religious services, outreaches, fundraisers, and re-opening its homeless outreach.
8 However, due to the City’s recent citations and actions, the Church’s uses are now in
9 question.

10 **PARTIES – DEFENDANTS**

11 5. Defendant, the CITY OF SAN DIEGO, is a municipal corporation, and has
12 authority over the Church and Property.

13 6. The City is a “government” as defined by 42 U.S.C. section 2000cc-5(4).

14 7. The City is responsible for the actions related to the enforcement of ordinances
15 as challenged herein.

16 **VENUE AND JURISDICTION**

17 8. This action arises under the Religious Land Use and Institutionalized Persons
18 Act (hereinafter, “RLUIPA”) 42 U.S.C. section 2000cc 1, et seq. This Court has
19 jurisdiction over the subject matter of this action by virtue of 28 U.S.C. section 1331
20 (federal question); 28 U.S.C. section 2201 (declaratory relief); and 28 U.S.C. 2202
21 (injunctive relief).

22 9. Venue is proper in the Southern District of California pursuant to 28 U.S.C.
23 1391(b). The Church, Property, and City are all located within the judicial boundaries
24 of the Southern District of California. All of the acts and events giving rise to this
25 Complaint occurred within the judicial boundaries of the Southern District of
26 California.

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1 **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

2 10. The Church has operated in the City of San Diego for more than a decade.
3 Since its inception, Plaintiff has operated without encountering any issues or disputes
4 with the City.

5 11. Since 2001, the Church has expanded its operations to further serve the local
6 community. These operations include the provision of a homeless outreach, and the
7 opening of “The Irenic”, a means to provide a safe outreach to the local youth in effort
8 to steer them towards meaningful and upstanding activities.

9 12. The Church carries on its homeless outreach pursuant to its well established
10 religious tenet which encourages churches and their congregations to reach out to the
11 local community to aid the homeless. (Deuteronomy 15:7.) As this Court may know,
12 Jesus met the needs of others including the feeding the hungry and tending to the sick.
13 (Matthew 8:2-4, 14:14-21, 15:29-34.) Under their religious tenet, Churches are called
14 to follow in Jesus’ teachings by tending to the homeless within their local
15 communities. (Matthew 28:35-36.) The Church’s pious activities are undertaken
16 pursuant to these tenets with the intent that they tend to the needs of the growing
17 homeless population in the City of San Diego.

18 13. The Property is a permissible and compliant use pursuant to the Property’s
19 designation as RM-3-7 (hereinafter, “Designation”) under the San Diego Municipal
20 Code (hereinafter, “SDMC”). Pursuant to SDMC section 131.0422, Homeless
21 Facilities including congregate meal facilities, emergency shelters, homeless shelters,
22 and the like are permitted in the Designation upon acquisition of a Conditional Use
23 Permit (“CUP”). But, the Church is permitted to operate a homeless facility as an
24 accessory use for thirty (30) days a year pursuant to a well-defined religious institution
25 exception under SDMC section 141.0412.

26 14. Like many other religious organizations, the Church is traditionally recognized
27 as a place of religious assembly where a congregation attends to participate in musical
28 performances and assemble for the purpose of discussing religious doctrine. Indeed,

1 music is heavily integrated into the foundation of the Christian Faith. (*See* Exodus 15;
2 1 Chronicles 6:31-32, 16:42; Matthew 26:30; and Colossians 3.) Moreover, SDMC
3 section 141.0602 implicitly acknowledges the musical uses by a place of religious
4 assembly by including assembly and entertainment with religious assembly uses
5 under the same provisions in the code. The SDMC does not make an attempt to
6 distinguish the religious uses from the musical and entertainment uses.

7 15. For further context, SDMC section 15.2.0104 defines “Religious Assembly” as
8 a “Facilit[y] for religious worship and incidental religious education.” The code’s use
9 of the broad word “worship” permits a wide variety of uses, including the use of music
10 which is traditionally used within the Christian religion. (2 Chronicles 29:28, [“The
11 whole assembly bowed in worship, while the musicians played and the trumpets
12 sounded.”].)

13 16. Pursuant to its religious beliefs and the religion’s deeply grounded foundation
14 in music, the Church opened “The Irenic” as a means to provide the community with
15 a religious outreach.

16 17. The Irenic offers a wide variety of performances from musical artists, including
17 non-religious performances. The non-religious performances are provided with the
18 intent that the performances will establish a local outreach to attract individuals who
19 would otherwise avoid the Church due to their predispositions related to Christianity.
20 The Church believes that providing these non-religious performances is crucial to
21 uphold its religious tenet to be “ ‘in’ the world, not ‘of’ the world...” (*See* John 15:19,
22 17:14-16; 1 John 2:15; 1 Corinthians 5:9-10; Romans 12:2; and James 1:27.)

23 18. Despite its decade long service to the local communities, the Church came
24 under City scrutiny in the summer of 2019 for its activities. On or about July 31,
25 2019, the City sent inspectors to the Property to assess the ongoing operations. On
26 August 29, 2019, the City issued numerous citations and fines which, in the aggregate,
27 could devastate an otherwise upstanding and positive part of the San Diego
28 Community.

1 19. The City issued approximately twenty-six (26) violations (hereinafter, the
2 “Violations”). Notably, each violation carries a penalty rate pursuant to the SDMC
3 sections 12.0801-12.810 in the amount of \$300.00 per violation per day.
4 Cumulatively, the penalty amounts to \$7,800 per day.

5 20. The City has threatened to enforce this unconscionable fine against the Church,
6 its Pastor, and the congregation in order to prevent their continuing use of the Property
7 and deter future uses.

8 21. The Church is informed, believes, and hereupon alleges that the City issued the
9 Violations in a discriminatory manner in effort to dissuade the Church from
10 continuing its legal use of the Property. The numerous Violations included a demand
11 by the City that the Church immediate cease the impermissible use of the Property
12 until it was brought into compliance.

13 22. As further set forth below, the City’s actions violate the United States
14 Constitution, the Federal Civil Rights laws, and RLUIPA. Plaintiffs come now and
15 respectfully request this Court to issue an appropriate judgement ordering the City to
16 cease its actions.

17 **FIRST CAUSE OF ACTION**
18 **(Violation of 42 U.S.C. §2000cc et. seq.)**
19 **Against All Defendants**

20 23. The allegations contained in paragraphs 1-22 are incorporated by reference as
21 if set forth in full herein.

22 24. RLUIPA prohibits the implementation on the religious exercise of a person or
23 religious assembly or institution. (42 U.S.C. § 2000cc(a)(1).)

24 25. Plaintiff is informed, believes, and thereupon alleges that the City’s
25 discriminatory application of the SDMC amounts to an imposition of a substantial
26 burden on the Church’s rights under the First Amendment to the United States
27 Constitution which cannot be justified by a demonstration that such actions were in
28 furtherance of any compelling government interest.

1 26. The City's implementation of the SDMC places a substantial burden on the
2 Church as it unjustifiably imposes Violations for permitted activities, such as the
3 incidental operation of a homeless shelter, under the SDMC. Now, through the
4 implementation of the SDMC by the City, the Church is forced to take additional steps
5 and acquire permits which it is not required to obtain under the SDMC.

6 27. In addition, the Violations related to the use of music substantially burden the
7 Church's free exercise of religion as the City's acts effectively prohibit the use of
8 music for purposes of worship pursuant to the religious tenet of religious assemblies.
9 The use of music for purposes of worship is crucial for the day-to-day operations of
10 the Church. The City's position that the Church must cease the use of music for
11 worship and outreach places a significant and substantial burden on the Church's free
12 exercise of religion as it inhibits the Church's ability to worship.

13 28. Plaintiff is further informed, believes, and thereupon alleges that the City's acts,
14 Violations, and cessation demands are not the least restrictive means of furthering an
15 identifiable governmental interest.

16 **SECOND CAUSE OF ACTION**

17 **(Violation of 42 U.S.C. §2000cc et. seq. – Equal Terms)**

18 **Against All Defendants**

19 29. The allegations contained in paragraphs 1 through 28 are incorporated by
20 reference as set forth in full herein.

21 30. The SDMC, as applied by the City, violates the equal terms requirements of
22 RLUIPA because the City implements the code in a way which treats religious
23 assemblies, like the Church, on less than equal terms to non-religious entities which
24 are permitted to operate in the RM-3-7 zones for Active Recreation, Residential Care
25 facilities, Transitional Housing, Assembly uses, and Entertainment uses.

26 31. Plaintiff is informed, believes, and thereupon alleges that the City's issuance of
27 Violations against the Church violates RLUIPA as it prevents the Church from
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1 participating in musical entertainment while simultaneously allowing similar
2 properties with identical RM-3-7 zoning to engage in similar activities.

3 32. By treating churches on less than equal terms with non-religious entities
4 providing entertainment, the SDMC and its subsequent unequal applications violates
5 RLUIPA's equal terms provisions.

6 **THIRD CAUSE OF ACTION**

7 **(Civil Rights Violations)**

8 **Against All Defendants**

9 33. The allegations contained in paragraphs 1-32 are incorporated by reference as
10 set forth in full herein.

11 34. Plaintiff is informed, believes, and thereupon alleges that this lawsuit arises
12 under the First, Fifth, and Fourteenth Amendments to the United States Constitution
13 and Article I, Section 4 of the California Constitution.

14 35. Plaintiff is further informed, believes, and thereupon alleges that Defendants
15 acts violated such amendments.

16 **FOURTH CAUSE OF ACTION**

17 **(Violation of 42 U.S.C. 1983)**

18 **Against All Defendants**

19 36. The allegations contained in paragraphs 1-35 are incorporated by reference as
20 set forth in full herein.

21 37. Plaintiff is informed, believes, and thereupon alleges that the City violated
22 Plaintiff's civil and constitutional rights under the First, Fifth, and Fourteenth
23 amendments to the Constitution of the United States.

24 38. Plaintiff is further informed, believes, and thereupon alleges that the City failed
25 to apply the code in a neutral, equal, and impartial way by restricting the Church's
26 use of music as an outreach source to engage with the local community.

27 39. Plaintiff believes the City acted with the sole purpose of deterring Plaintiff from
28 its continuous exercise of its constitutional rights as provided by the Free Exercise

1 Clause of the First Amendment.

2 40. Plaintiff further believes and alleges that the City’s willful ignorance of the
3 homeless shelter exception for Religious Organizations is indicative of the City’s
4 motivation for discriminating against the Church. The Church’s acts are well within
5 the rights and obligations provided by the SDMC as the SDMC allows the Church to
6 operate an incidental homeless shelter for thirty (30) days per year.

7 41. Plaintiff alleges on information and belief that the City’s acts stem from a
8 concealed desire to deter Plaintiff from pursuing outreach through music or otherwise
9 providing for the homeless community according to their religious tenet.

10 42. Plaintiff is further informed, believes, and thereupon alleges that Defendants
11 permit music and similar entertainment uses on similarly zoned properties as the RM-
12 3-7 zoning permits entertainment uses including uses by Religious Assemblies.

13 **JURY DEMAND**

14 Plaintiff hereby demands a jury trial in this above-entitled matter.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for relief as to all causes of action as follows:

- 17 A. Declaratory Relief that the applicable provisions of the SDMC, as applied,
- 18 violates the Religious Land Use & Institutionalized Persons Act, 42 U.S.C.
- 19 section 2000cc, et seq.;
- 20 B. For an injunction prohibiting the City from levying civil penalties against the
- 21 Church and Property if the Church continues its current use;
- 22 C. For compensatory damages according to proof;
- 23 D. Cost of suit incurred herein;
- 24 E. Attorneys’ fees according to proof at trial pursuant to 42 U.S.C. section 1988(b)
- 25 and other applicable law;
- 26 F. Pre- and post-judgement interest at the statutory prevailing rate; and

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1 G. For any other and further relief that this Court may deem just and proper.

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DATED: October 10, 2019

TYLER & BURSCH, LLP

By: /s/ Jennifer Bursch
Jennifer Bursch, Esq.
Attorneys for Mission Gathering Christian
Church