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5 MISSIONARIES OF CHARITY, BROTHERS

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 MISSIONARIES OF CHARITY,
BROTHERS,

12 Plaintiff,

13 vs.

14 THE CITY OF LOS ANGELES and DOES
15 1 through 10,

16 Defendants.

Case No.

COMPLAINT FOR:

(1) VIOLATION OF THE RIGHT TO
FREE EXERCISE OF RELIGION UNDER
THE FIRST AMENDMENT TO THE
UNITED STATES CONSTITUTION;
(2) VIOLATION OF THE RIGHT TO
FREE EXERCISE OF RELIGION UNDER
ARTICLE I, SECTION 4 OF THE
CALIFORNIA CONSTITUTION;
(3) VIOLATION OF THE RELIGIOUS
LAND USE AND INSTITUTIONALIZED
PERSONS ACT OF 2000 (42 U.S.C. §
2000cc et seq.);
(4) DECLARATORY RELIEF; AND
(5) TEMPORARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION,
AND PERMANENT INJUNCTION.

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22 Plaintiff MISSIONARIES OF CHARITY, BROTHERS ("Plaintiff"),
23 alleges as follows:

24 1. Plaintiff is a duly recognized religious order of the
25 Roman Catholic Church founded by Mother Teresa of Calcutta in
26 1963. As further detailed below, Plaintiff is a nonprofit
27 religious corporation organized and existing under the laws of
28 the State of California, and is the owner of that certain real

1 property located at 1345 Alvarado Terrace, Los Angeles,
2 California ("Property").

3 Defendant CITY OF LOS ANGELES ("City") is a charter city
4 organized under the laws of the State of California.

5 The jurisdiction of this Court over the subject matter of
6 this action is predicated on 28 U.S.C. § 1331.

7 2. Plaintiff does not know the true names or capacities,
8 whether individual, corporate, or otherwise, of those Defendants
9 named herein as Does 1 through 10. Plaintiff is informed and
10 believes and thereon alleges that said Defendants are in some
11 manner responsible for the occurrences of which Plaintiff
12 complains herein. Plaintiff will amend this Complaint to set
13 forth the true names and capacities of such fictitiously named
14 Defendants when said information has been ascertained.

15 **BACKGROUND FACTS**

16 3. Plaintiff is organized as a nonprofit religious
17 corporation pursuant to the California Nonprofit Religious
18 Corporation Law. (California Corporations Code § 9110 et seq.).
19 The Property is exempt from property taxation pursuant to the
20 provisions of Section 254.5 of the California Revenue and
21 Taxation Code which exempts property used exclusively for
22 religious or charitable purposes owned and operated by nonprofit
23 corporations organized and operated for religious or charitable
24 purposes. The Property has also been blessed in accordance with
25 the requirements of Canon Law in order to serve as a consecrated
26 location for the celebration of the Mass.

27 4. The Property is developed with a two-story Mission
28 Revival style home constructed in 1904 by Pomeroy Powers, a

1 former member of the Los Angeles City Council. The zoning
2 designation for the Property was R4-2 from at least as early as
3 1958 until 1989, at which time the Property was down-zoned to R3-
4 1. In 1971, the Property was designated as Historic-Cultural
5 Monument No. 86 by the City of Los Angeles. In 1976, the
6 Property was included in the Pico-Union II Redevelopment Project
7 Area. In 1997, the General Plan designation for the Property was
8 changed from Medium Density to Low Medium Density Residential,
9 and the Property was down-zoned from R3-1 to RD1.5-1. Churches
10 and philanthropic institutions are permitted as of right in the
11 R4 zone and are conditionally permitted uses in the R3 and RD1.5
12 zones.

13 5. Plaintiff's mission is to fulfill its religious
14 vocation to bring God's love to the poor by promoting the moral,
15 spiritual, intellectual, social, and physical interests of the
16 poor and destitute and to perform and to contribute to charitable
17 philanthropic work of all kinds. Plaintiff carries out this
18 mission at the Property by providing a place of asylum where
19 homeless young adults in the community can come for five hours a
20 day, three days a week to receive spiritual encouragement as well
21 as material assistance in the form of meals, clothing, showers,
22 and medical attention. The unique character of the Property
23 allows these services to be conducted in a non-threatening, non-
24 institutional, residential environment which would be impossible
25 to replicate in a commercial setting. A priest is frequently
26 available to hear confessions, and Mass is celebrated at the
27 Property on a periodic basis.

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1 6. The Property, which is called "Nuestro Hogar", or Our
2 Home, is open to homeless young adults, aged 18 to 27, for a
3 total of fifteen hours per week, from 9:30 a.m. until 2:30 p.m.
4 on Mondays, Wednesdays, and Fridays. At all other times, the
5 Property is occupied by a caretaker family who lives on the
6 second floor. Approximately 60 to 85 young adults typically
7 visit the Property during any given day, though the number of
8 people actually on the Property at any given time is generally no
9 more than approximately 40 to 50. All activities are conducted
10 entirely indoors, on the front veranda, or in the rear yard. No
11 one is allowed to gather in front of the Property, and everyone
12 is instructed not to remain in the immediate neighborhood after
13 leaving the Property. As befits its religious character,
14 alcohol, drugs, lewd conduct, and gang activity are strictly
15 prohibited on the Property.

16 7. Plaintiff acquired the Property in 1992, shortly after
17 the area had been scarred by the riots that took place in April
18 of that year. Plaintiff restored the Property and has conducted
19 its ministry at this location during the intervening nine years.
20 Approximately one year ago Plaintiff first became aware that its
21 use of the Property was not permitted as of right in the zone,
22 and filed an application for a conditional use permit and zone
23 variance to permit the continued use of the Property as a church
24 and philanthropic institution.

25 8. On May 10, 2001, the City's Assistant Zoning
26 Administrator conducted a public hearing to consider Plaintiff's
27 applications for the conditional use permit and zone variance.
28 On June 21, 2001, the Assistant Zoning Administrator issued his

1 determination denying Plaintiff's application for the conditional
2 use permit and zone variance. Plaintiff timely appealed the
3 Assistant Zoning Administrator's determination to the City's
4 Central Area Planning Commission.

5 9. On August 28, 2001, the Central Area Planning
6 Commission conducted a public hearing on Plaintiff's appeal and
7 denied the appeal.

8 10. Pursuant to the applicable provisions of the Los
9 Angeles Municipal Code, the Central Area Planning Commission's
10 denial of Plaintiff's appeal is not subject to further appeal.
11 Plaintiff has therefore exhausted all administrative remedies
12 available to it.

13 **FIRST CAUSE OF ACTION**

14 (For Violation of the First Amendment to the United States
15 Constitution)

16 11. Plaintiff incorporates by this reference the
17 allegations set forth in Paragraphs 1 through 10 as if
18 specifically set forth herein.

19 12. 42 U.S.C. § 1983 provides as follows:

20 Every person who, under color of any statute,
21 ordinance, regulation, custom, or usage, of any state
22 or territory or the District of Columbia, subjects or
23 causes to be subjected, any citizen of the United
24 States or other person within the jurisdiction thereof
25 to the deprivation of any rights, privileges, or
26 immunities secured by the Constitution and laws, shall
27 be liable to the party injured in an action at law,
28 suit in equity, or other proper proceeding for redress.

1 18. Plaintiff incorporates by this reference the
2 allegations set forth in Paragraphs 1 through 17 as if
3 specifically set forth herein.

4 19. The Religious Land Use And Institutionalized Persons
5 Act of 2000 (42 U.S.C. § 2000cc et seq.) provides in pertinent
6 part as follows:

7 No government shall impose or implement a land use
8 regulation in a manner that imposes a substantial
9 burden on the religious exercise of a person, including
10 a religious assembly or institution, unless the
11 government demonstrates that imposition of the burden
12 on that person, assembly, or institution—

13 (A) is in furtherance of a compelling governmental
14 interest; and

15 (B) is the least restrictive means of furthering that
16 compelling governmental interest.

17 20. In denying Plaintiff's application for the conditional
18 use permit and zone variance and in threatening to prohibit
19 Plaintiff from conducting its ministry at the Property as
20 Plaintiff has done for the past nine years, the City has imposed
21 an undue burden on Plaintiff's ability to conduct its ministry to
22 the homeless and to exercise its religious vocation to serve God
23 at the Property in the guise of the poor. The City has failed to
24 demonstrate, and cannot demonstrate, that its prohibition on the
25 continuation of Plaintiff's ministry and its refusal to grant a
26 conditional use permit or zone variance is in furtherance of any
27 compelling governmental interest. Nor has the City demonstrated
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1 that its actions are the least restrictive means of advancing any
2 governmental interest, compelling or otherwise.

3 **FOURTH CAUSE OF ACTION**

4 (For Declaratory Relief)

5 21. Plaintiff incorporates by this reference the
6 allegations set forth in Paragraphs 1 through 20 as if
7 specifically set forth herein.

8 22. Plaintiff contends that the City is obligated to grant
9 the conditional use permit or zone variance to allow Plaintiff to
10 continue its religious ministry to the homeless at the Property,
11 or the City is obligated to establish that its denial of the
12 conditional use permit or zone variance furthers a compelling
13 governmental interest and is the least restrictive means of
14 furthering that interest. On information and belief, the City
15 disagrees with that contention.

16 23. A judicial declaration of the respective rights hereto
17 under the United States and California Constitutions and the
18 Religious Land Use and Institutionalized Persons Act is necessary
19 and appropriate, and Plaintiff requests that this Court issue
20 such a declaration.

21 **FIFTH CAUSE OF ACTION**

22 (For A Temporary Restraining Order, Preliminary Injunction, and
23 Permanent Injunction)

24 24. Plaintiff incorporates by this reference the
25 allegations set forth in Paragraphs 1 through 23 as if
26 specifically set forth herein.

1 25. Unless enjoined by the Court, the City will refuse to
2 permit Plaintiff to continue its religious ministry to the
3 homeless at the Property.

4 26. Injunctive relief is necessary and appropriate to
5 prevent the City from violating the United States and California
6 Constitutions and the Religious Land Use and Institutionalized
7 Persons Act and to prevent a multiplicity of actions. Unless the
8 City is enjoined from taking the actions described above,
9 Plaintiff will be irreparably harmed in that, among other things,
10 it will be precluded from exercising its religious rights to
11 conduct its unique ministry to the poor at the Property.

12 WHEREFORE, Plaintiff prays that judgment be entered as
13 follows:

14 1. That the Court set aside the City's denial of
15 Plaintiff's application for the conditional use permit and zone
16 variance and declare that such denial is a violation of the
17 United States and California Constitutions;

18 2. That the Court set aside the City's denial of
19 Plaintiff's application for the conditional use permit and zone
20 variance and declare that such denial is a violation of the
21 Religious Land Use and Institutionalized Persons Act;

22 3. For a temporary restraining order, preliminary
23 injunction, and permanent injunction prohibiting the City from
24 taking any action against Plaintiff's continued use of the
25 Property pursuant to the City's denial of the conditional use
26 permit and zone variance;

27 4. For damages in an amount to be determined by the Court;

28 5. For attorneys' fees;

1 6. For costs of suit incurred herein; and

2 7. For such other and further relief as the Court deems
3 just and proper.

4 Dated: September 19, 2001

ALLEN MATKINS LECK GAMBLE &
MALLORY LLP
PATRICK A. PERRY

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7 By: _____
8 PATRICK A. PERRY
9 Attorney for Plaintiff
10 MISSIONARIES OF CHARITY,
11 BROTHERS

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1 PROOF OF SERVICE BY MAIL

2
3 STATE OF CALIFORNIA)
4 COUNTY OF LOS ANGELES) ss.:

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6 I am employed in the County of Los Angeles, State of
7 California. I am over the age of 18 and not a party to the
8 within action. My business address is 515 South Figueroa Street,
9 Seventh Floor, Los Angeles, California 90071-3398.

10 On September 19, 2001, I served on interested parties in
11 said action the within:

12 COMPLAINT FOR: (1) VIOLATION OF THE RIGHT TO FREE EXERCISE OF
13 RELIGION UNDER THE FIRST AMENDMENT TO THE UNITED STATES
14 CONSTITUTION; (2) VIOLATION OF THE RIGHT TO FREE EXERCISE OF
15 RELIGION UNDER ARTICLE I, SECTION 4 OF THE CALIFORNIA
16 CONSTITUTION; (3) VIOLATION OF THE RELIGIOUS LAND USE AND
17 INSTITUTIONALIZED PERSONS ACT OF 2000 (42 U.S.C. § 2000cc et
18 seq.); (4) DECLARATORY RELIEF; AND (5) TEMPORARY RESTRAINING
19 ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION.

20 by placing a true copy thereof in sealed envelope(s) addressed as
21 stated below and causing such envelope(s) to be deposited in the
22 U.S. Mail at Los Angeles, California.

23 Rockard J. Delgadillo, Esq.
24 Los Angeles City Attorney
25 Los Angeles City Attorney's Office
26 City Hall East, Room 1800
27 200 North Main Street
28 Los Angeles, CA 90012

29 I am readily familiar with this firm's practice of
30 collection and processing correspondence for mailing. Under that
31 practice it would be deposited with the U.S. postal service on
32 that same day in the ordinary course of business. I am aware
33 that on motion of party served, service is presumed invalid if
34 postal cancellation date or postage meter date is more than 1 day
35 after date of deposit for mailing in affidavit.

36 Executed on September 19, 2001, at Los Angeles, California.

37 I declare under penalty of perjury that I am employed in the
38 office of a member of the bar of this Court at whose direction
39 the service was made and that the foregoing is true and correct.

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