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MISSIONARIES OF CHARITY, BROTHERS
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 MISSIONARIES OF CHARITY,
BROTHERS,

12 Plaintiff,

13 vs.

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

16 Defendants.
17

Case No. CV-01-08511 SVW (JWJx)

PLAINTIFF'S REPLY TO OPPOSITION
TO MOTION FOR PRELIMINARY
INJUNCTION; DECLARATIONS OF
BROTHER JOSEPH McLACHLAN, M.C.
AND PATRICK A. PERRY IN SUPPORT
THEREOF

Date: October 9, 2001

Time: 11:45 a.m.

Ctrm: 6

Judge: Hon. Stephen V. Wilson
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1 **I. INTRODUCTION.**

2 The Court should grant Plaintiff's motion for a preliminary
3 injunction because the City has failed to establish any
4 compelling arguments in opposition. Instead, the City argues
5 erroneously that it has not imposed a substantial burden on
6 Plaintiff's ministry because Plaintiff's ministry consists of
7 nothing more than a "homeless shelter" that can easily be
8 relocated to a nearby commercial zone. On the contrary,
9 Plaintiff's ministry provides a truly home-like environment in a
10 residential setting for short periods of time where those forced
11 to live on the streets can come for spiritual as well as physical
12 nourishment. These same services cannot be provided effectively
13 in a commercial setting.

14 The City also argues erroneously that Plaintiff cannot
15 prevail on the merits of its claim because Plaintiff's ministry
16 constitutes a public nuisance, yet the City has not provided any
17 definitive evidence that Plaintiff's ministry creates a public
18 nuisance. Nor has the City, in nine years, cited Plaintiff even
19 once for maintaining a public nuisance on Plaintiff's Property.
20 Contrary to the City's assertions, City officials and members of
21 the Police Department have stated that Plaintiff's activities at
22 the Property do not contribute to incidence of crime and do not
23 have a detrimental effect on the neighborhood. The City
24 therefore does not have a compelling interest in abating
25 Plaintiff's ministry as a public nuisance, and Plaintiff has a
26 strong likelihood of prevailing on the merits.

27 Finally, the City has provided no compelling arguments as to
28 why the Court should abstain from hearing Plaintiff's claims.

1 **II. PLAINTIFF'S RIGHT TO FREE EXERCISE OF RELIGION WILL BE**
2 **SUBSTANTIALLY BURDENED.**

3 As an initial matter, the City continues to mischaracterize
4 Plaintiff's ministry as a "homeless shelter," despite Plaintiff's
5 repeated explanations of the nature of its ministry. Plaintiff's
6 ministry is not a homeless shelter; it is not a rescue mission,
7 nor is it a soup kitchen. Section 12.03 of the Los Angeles
8 Municipal Code ("LAMC") defines a Shelter for the Homeless as
9 "[a] residential facility . . . which provides temporary
10 accommodations to homeless persons and or families The
11 term 'temporary accommodations' means that a homeless person or
12 family will be allowed to reside at the shelter for a time period
13 not to exceed six months."¹ Plaintiff does not and has never
14 operated a shelter for the homeless on the Property. Homeless
15 persons and families do not reside at the Property. Plaintiff
16 conducts its ministry for only fifteen hours per week, from 9:30
17 a.m. until 2:30 p.m. on Mondays, Wednesdays, and Fridays. At all
18 other times a caretaker family resides on the second floor of the
19 Property. (McLachlan Declaration, ¶ 4). The City's description
20 of the Property as a homeless shelter is therefore erroneous and
21 should be disregarded.

22 Plaintiff instead operates a church and philanthropic
23 institution. The LAMC does not contain a definition of a church;
24 however, Section 12.03 of the LAMC defines a philanthropic
25 institution as "[a] nonprofit, charitable institution devoted to
26 the housing, training or care of children, or of the aged,
27

28 ¹ The definition of "Shelter for the Homeless" contained in the
LAMC is attached hereto as Exhibit A.

1 indigent, handicapped or underprivileged persons, but not
2 including the following: . . . organizations devoted principally
3 to distributing food, clothing or supplies on a charitable
4 basis."² Plaintiff is a nonprofit charitable institution devoted
5 to the care of the indigent and underprivileged. Moreover,
6 although Plaintiff does distribute food and clothing, Plaintiff
7 is principally devoted to providing love and acceptance to an
8 often overlooked segment of society. (McLachlan Declaration, ¶
9 4). The Property has been blessed to serve as a consecrated
10 location for the celebration of the Mass. A priest is frequently
11 available to hear confessions, and the Mass is celebrated at the
12 Property on a periodic basis. (McLachlan Declaration, ¶ 5).
13 Plaintiff's ministry should not be trivialized as a homeless
14 shelter or a rescue mission that can just as easily be operated
15 from a vacant storefront in a commercial zone around the corner
16 on Pico Boulevard.

17 A. The City's Actions Substantially Burden Plaintiff's
18 Established and Ongoing Ministry.

19 The City relies on Christian Gospel Church, Inc. v. City and
20 County of San Francisco, 896 F.2d 1221 (9th Cir. 1990), to support
21 its contention that denial of a use permit for worship in a
22 residential zone does not impose a substantial burden on
23 religious uses. The City's reliance on Christian Gospel Church,
24 Inc. v. City and County of San Francisco is misplaced because the
25 plaintiff in Christian Gospel Church was a religious congregation
26 that was seeking to establish a church in a single family
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28 ² The definition of "Philanthropic Institution" contained in the
LAMC is attached hereto as Exhibit B.

1 residence. Plaintiff is not seeking to establish its ministry at
2 the Property. Plaintiff is seeking instead to preserve its
3 ministry at the Property.

4 At the time of its application for a use permit, the
5 plaintiff congregation in Christian Gospel Church was meeting in
6 a rented hotel banquet room. Here, Plaintiff has been conducting
7 its ministry at the Property for nine years. In denying the
8 requested relief in Christian Gospel Church, the court stated
9 that "[i]t is difficult for us to find a significant burden on
10 religious practice if the Church had not previously been
11 practicing home worship. The burden on religious practice is not
12 great when the government action, in this case the denial of a
13 use permit, does not restrict current religious practice but
14 rather prevents a change in religious practice." Christian
15 Gospel Church, Inc. v. City and County of San Francisco, 896 F.2d
16 at 1224 [emphasis added]. The denial of the conditional use
17 permit and zone variance requested by Plaintiff will clearly
18 restrict Plaintiff's current religious practice. Plaintiff's
19 situation is therefore similar to that in Western Presbyterian
20 Church v. Board of Zoning Adjustment, 849 F.Supp. 77 (D.D.C.
21 1994), in which the court issued a preliminary injunction to
22 preserve a homeless ministry that had been established for ten
23 years. The Court should therefore disregard the City's arguments
24 and grant Plaintiff's motion for preliminary injunction.

25 **B. Plaintiff's Use of the Property Does Not Constitute a**
26 **Public Nuisance.**

27 The City argues unconvincingly that Plaintiff cannot prevail
28 on the merits because the City has a compelling interest in

1 abating Plaintiff's ministry as a public nuisance. In the first
2 place, in nine years the City has never cited Plaintiff as a
3 public nuisance. Section 12.27.1 of the LAMC sets forth
4 procedures for the abatement of public nuisances, which include
5 notice and a public hearing.³ The City has never implemented
6 these procedures in connection with Plaintiff's use of its
7 property. The City has also never set forth any documented
8 evidence that Plaintiff's use of the Property constitutes a
9 public nuisance.

10 Officer Smith of the Los Angeles Police Department ("LAPD")
11 testifies in her Declaration in support of the City's Opposition
12 to Plaintiff's Motion for Preliminary Injunction that there is a
13 high incidence of crime in the immediate neighborhood, much of
14 which takes place in the public park across the street from
15 Plaintiff's property.⁴ Officer Smith does not, however, provide
16 any documentation to establish that Plaintiff's ministry
17 contributes in any way to crime in the park or in the
18 neighborhood. On the contrary, Sergeant Dan Bunche of the LAPD
19 testified at the Zoning Administrator's hearing on May 10, 2001,
20 that on the basis of his inspection of incident reports for the
21 past two years, he was unable to establish any connection between
22 Plaintiff's property and the incidence of crime.⁵

23 Inspector Meyer testifies in his Declaration in support of
24 the City's Opposition to Plaintiff's Motion for Preliminary
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26 ³ See City of Los Angeles' Opposition to Plaintiff's Application
27 for Preliminary Injunction, Exhibit C.

28 ⁴ See City of Los Angeles' Opposition to Plaintiff's Application
for Preliminary Injunction, Exhibit B, ¶¶ 5-8.

⁵ See Plaintiff's Memorandum of Points and Authorities in Support
of Its Motion for Preliminary Injunction, Exhibit B, p. 5.

1 Injunction that he observed one person who may have been drinking
2 in the park walk from the park to Plaintiff's property and return
3 to the park 11 minutes later.⁶ This hardly amounts to conduct
4 justifying an action for abatement of a public nuisance.

5 Moreover, City officials have determined in at least two
6 other documents that Plaintiff's activities have no detrimental
7 effect on the neighborhood. In the Staff Report prepared in
8 connection with Plaintiff's application for the conditional use
9 permit and zone variance, Zoning Analyst Sterling Barnes observed
10 that Plaintiff's use of the property did not adversely affect the
11 welfare of the community.⁷ Similarly, the proposed mitigated
12 negative declaration that was prepared by Los Angeles City
13 Planning Department in connection with Plaintiff's application
14 for the conditional use permit and zone variance concludes that
15 with the imposition of mitigation measures, any potential impacts
16 of Plaintiff's use of the property would be mitigated to less
17 than significant level.⁸

18 There is, therefore, no consensus among City officials or
19 members of the LAPD that Plaintiff's use of the Property
20 constitutes a public nuisance. The City's argument that it has a
21 compelling interest in abating Plaintiff's ministry as a public
22 nuisance is not well founded and should be disregarded. Even if
23 the City could establish that Plaintiff's ministry constitutes a
24 public nuisance, the City has not demonstrated that its total
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26 ⁶ See City of Los Angeles' Opposition to Plaintiff's Application
27 for Preliminary Injunction, Exhibit D, ¶¶ 8-9.

28 ⁷ A copy of the Staff Report, dated May 7, 2001, is attached
hereto as Exhibit C. See also, Perry Declaration, ¶ 3.

⁸ A copy of the Comments on Proposed MND2000-4994-CUZ, dated
March 8, 2001, is attached hereto as Exhibit C.

1 denial of Plaintiff's conditional use permit and zone variance is
2 the least restrictive means of furthering the City's compelling
3 interest in abating the alleged public nuisance. In fact, the
4 mitigated negative declaration prepared by the City indicates
5 that less restrictive means indeed exist to mitigate any
6 potential adverse impacts to a level of insignificance.

7 **III. THE COURT SHOULD NOT ABSTAIN.**

8 The City argues that the Court should require Plaintiff to
9 file a petition for writ of mandate in State court before
10 considering Plaintiff's claims. As set forth in Plaintiff's
11 Memorandum of Points and Authorities in Support of Its Motion for
12 Preliminary Injunction, this is tantamount to requiring Plaintiff
13 to first exhaust its state judicial remedies. "[T]he objectives
14 of the Civil Rights Act would be defeated if we decided that this
15 federal claim grounded on an alleged violation of the federal
16 constitution would have to stagnate in the federal court until
17 some nebulous or nonexistent remedy was pursued like a will-o'-
18 the-wisp in the state court." Canton v. Spokane School District
19 # 81, 498 F.2d 840, 846 (9th Cir. 1974) (quoting Wright v. McMann,
20 387 F.2d 519, 525 (2d Cir. 1967)). The Court should therefore
21 not abstain.

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1 **IV. CONCLUSION.**

2 For each and all of the foregoing reasons, the Court should
3 grant Plaintiff's motion for preliminary injunction.

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5 Dated: October 8, 2001

ALLEN MATKINS LECK GAMBLE &
MALLORY LLP
ANTHONY J. OLIVA
PATRICK A. PERRY

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8 By: _____

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