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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 ELSINORE CHRISTIAN CENTER, A)
17 CALIFORNIA NONPROFIT)
18 CORPORATION, and GARY)
19 HOLMES,)

20 Plaintiffs,)

21 v.)

22 CITY OF LAKE ELSINORE, A)
23 MUNICIPAL CORPORATION OF)
24 THE STATE OF CALIFORNIA,)
25 LAKE ELSINORE)
26 REDEVELOPMENT AGENCY, A)
27 MUNICIPAL CORPORATION OF)
28 THE STATE OF CALIFORNIA,)
ROBERT A. SCHIFFNER, PAMELA)
BRINLEY, DANIEL METZE, GENIE)
KELLY, KEVIN PAPE, and DOES 1-)
10 inclusive,)

Defendants.)

CASE NO. CV 01-4842 SVW
(RCX)

NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION

Date: August 11, 2003
Time: 1:30 P.M.
Courtroom: 6

Judge Stephen V. Wilson

TO EACH PARTY AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 11, 2003 at 1:30 P.M. or as soon

1 thereafter as this matter can be heard in Courtroom 6 of this Court located at 312
2 N. Spring St., Los Angeles, California, Plaintiffs, by and through counsel, will and
3 hereby do request, pursuant to Rule 7-18 of the Local Rules of the United States
4 District Court, Central District of California, and Rule 60(b) of the Federal Rules
5 of Civil Procedure, that this Court reconsider and vacate its ruling issued on June
6 23, 2003, granting Defendants summary judgment on Plaintiffs' Second Cause of
7 Action under 42 U.S.C. § 2000cc(a) and denying Plaintiffs' Motion for Partial
8 Summary Judgment.

9 This Motion is made following the telephonic conference of counsel
10 pursuant to Local Rule 7-3 which took place on July 7, 2003 between attorneys
11 Jules S. Zeman (representing Defendants) and Robert H. Tyler (representing
12 Plaintiffs).

13 Respectfully submitted this 8th day of July, 2003.

14
15 ALLIANCE DEFENSE FUND

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17 By: _____
18 Robert H. Tyler, Esq.
19 Legal Counsel
20 Alliance Defense Fund
21 A California Nonprofit Corporation
22 Attorney for Plaintiffs
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Federal Law

42 U.S.C. § 2000cc passim

1 invoked 42 U.S.C. § 2000cc(a)(2)(B) as a jurisdictional basis for that claim. *See*
2 Order Granting in Part Defendants’ Motion for Summary Judgment and Denying
3 Plaintiffs’ Motion for Partial Summary Judgment, Page 40 (stating that “Plaintiffs in
4 this case have not alleged an effect on commerce under Section (2)(a)(2)(B)” of
5 RLUIPA). As discussed below, Plaintiffs did adequately allege and place the
6 Defendants on notice that they were asserting 42 U.S.C. § 2000cc(a)(2)(B) as a
7 jurisdictional basis for their RLUIPA claim in Count 2. Moreover, because Plaintiffs,
8 despite reasonable diligence, were not put on notice by the Defendants that their
9 motion for summary judgment on Count 2 even raised the issues of whether
10 Plaintiffs’ RLUIPA claim had adequately alleged jurisdiction under 42 U.S.C. §
11 2000cc(a)(2)(B) and whether 42 U.S.C. § 2000cc(a) was a proper exercise of
12 Congress’ Commerce Clause authority, a grant of summary judgment to the
13 Defendants without providing the Plaintiffs the opportunity of further briefing would
14 be unjust.

15 **II. Plaintiffs Have Alleged Jurisdiction for Their RLUIPA Claim Under 42**
16 **U.S.C. § 2000cc(a) Based on Congress’ Commerce Clause Authority As Set**
17 **Forth in 42 U.S.C. § 2000cc(a)(2)(b)**

18 Count 2 of Plaintiffs’ Complaint alleges that Defendants violated RLUIPA, as
19 codified at 42 U.S.C. § 2000cc(a), by imposing and implementing land use
20 regulations in a manner that imposed a substantial burden on Plaintiffs’ religious
21 exercise. *See* Complaint Paragraph 46. Paragraph 3 of Plaintiffs’ Complaint alleges
22 the jurisdictional basis for this claim. Specifically, Paragraph 3, under the heading
23 “Jurisdiction and Venue,” states “[t]his Court has jurisdiction over this action
24 pursuant to . . . 42 U.S.C. §2000cc, Section 2 which confers original jurisdiction on
25 federal district courts. . . .” Section 2 of 42 U.S.C. §2000cc(a) provides federal court
26 jurisdiction for claims alleging a substantial burden on religious exercise in violation
27

1 of 42 U.S.C. §2000cc(a)(1) in three different circumstances. *See* 42 U.S.C.
2 §2000cc(a)(2)(A)-(C). Pertinent to the present motion and this case is subsection
3 (2)(B), which grants jurisdiction when “the substantial burden affects, or removal of
4 that substantial burden would affect, commerce with foreign nations, among the
5 several States, or with Indian tribes, even if the burden results from a rule of general
6 applicability.” 42 U.S.C. §2000cc(a)(2)(B).

7 By alleging jurisdiction under 42 U.S.C. §2000cc(a)(2) in Paragraph 3 of their
8 Complaint, Plaintiffs properly and adequately plead jurisdiction under *all three* of the
9 circumstances specified in 42 U.S.C. §2000cc(a)(2), including 42 U.S.C.
10 §2000cc(a)(2)(B). In other words, pleading 42 U.S.C. §2000cc(a)(2), as Plaintiffs did
11 in Paragraph 3, was sufficient to place Defendants on notice that Plaintiffs were
12 asserting 42 U.S.C. §2000cc(a)(2)(B), a subsection of 42 U.S.C. §2000cc(a)(2), as
13 a jurisdictional basis for their RLUIPA substantial burden claim. Any requirement
14 of hyper-specificity in which Plaintiffs would be required to specifically plead each
15 subsection of 42 U.S.C. §2000cc(a)(2) that they were invoking as a basis for
16 jurisdiction would contravene well-established principles of notice pleading designed
17 to minimize disputes over pleading technicalities. *See, e.g.*, FRCP Rule 1, 8(f);
18 *Conley v. Gibson*, 355 U.S. 41, 47-48, 78 S.Ct. 99, 103, 2 L.Ed.2d 80 (1957).
19 Furthermore, a narrow reading of Plaintiffs’ allegations that would preclude reading
20 Paragraph 3 of the Complaint as alleging 42 U.S.C. §2000cc(a)(2)(B), a subsection
21 of 42 U.S.C. §2000cc(a)(2), as a jurisdictional basis for their RLUIPA claim would
22 contravene the rule that pleadings are construed liberally in favor of the pleader. *See,*
23 *e.g.*, *Jenkins v. McKeithen*, 395 U.S. 411, 421, 89 S.Ct. 1843, 1849, 23 L.Ed.2d 404
24 (1969); *Gilligan v. Jamco Develop. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997).

25 Moreover, lest there was any ambiguity that Plaintiffs were asserting 42 U.S.C.
26 §2000cc(a)(2)(B) as a jurisdictional basis for their RLUIPA substantial burden claim,
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1 that was removed by Plaintiffs’ plain and unambiguous statements in Plaintiffs’
2 Motion for Partial Summary Judgment, Memorandum of Points and Authority.
3 Plaintiffs specifically stated:

4 The burden that Defendants place upon the Congregation’s religious
5 exercise substantially affects interstate commerce. The Plaintiffs will
6 rehabilitate and perform construction work on the Subject Property
7 (Complaint, page 7, ¶27; Complaint, Exhibit “A,” pages 21-24). That
8 burden directly stifles the commercial activities necessary to complete
9 the project in the short run; employing construction workers, purchasing
10 and transporting building materials and supplies, raising and transferring
11 funds, entering contract and others. Just as surely, the burden precludes
12 smaller-scale but longer-term economic activities associated with mere
13 use of the Subject Property: employment of paid staff such as janitor or
14 caretaker, as well as ongoing purchase and consumption of supplies and
15 utilities. There can be little doubt that these discriminatory burdens,
16 “taken together with . . . many others similarly situated,” would
17 “substantially affect interstate commerce.” *United States v. Lopez*, 514
18 U.S. at 556, 559; see RLUIPA § 2(a)(2)(B). In fact, the effect on
19 commerce of the ongoing use of the Subject Property alone, not to
20 mention the necessary construction, is enough to bring this case within
21 the sweep of the commerce power. See, e.g., *United States v. Grassie*,
22 237 F.3d 1199, 1208-11 & n.7 (10th Cir. 2001).

23 Plaintiffs’ Memorandum of Points and Authorities in Support of Motion for
24 Preliminary Injunction, Section VII, A, Pages 19 - 20, Lines 17 - 2.

25 Finally, Plaintiffs were not on notice (and thus could not have known with
26 “reasonable diligence”) that the issues of whether they had adequately alleged
27

1 jurisdiction under 42 U.S.C. 2000cc(a)(2)(B) and whether RLUIPA, as codified in 42
2 U.S.C. 2000cc(a), was a proper exercise of Congress' Commerce Clause authority
3 were even before the Court in connection with Defendants' Motion for Summary
4 Judgment on Count 2 of Plaintiffs' Complaint. Defendants' briefs and Motion for
5 Summary Judgment on Plaintiffs' substantial burden claim under 42 U.S.C. 2000cc(a)
6 *never* argue that Plaintiffs failed to adequately allege jurisdiction under 42 U.S.C.
7 2000cc(a)(2)(B) and *never* argue that RLUIPA was not a proper exercise of
8 Congress' Commerce Clause authority. Nor did this Court, in its request for
9 supplemental briefing concerning Plaintiffs' "substantial burden" claim under 42
10 U.S.C. 2000cc(a) raise these issues or request briefing on them.

11 For all of these reasons, reconsideration of the Court's Order of June 23, 2003
12 is appropriate.

13 **III. Vacating the Court's Prior Order Is Proper Relief**

14 The basis of the District Court's grant of summary judgment was that although
15 Defendants had violated RLUIPA, as codified at 42 U.S.C. 2000cc(a), by imposing
16 a substantial burden on Plaintiffs' religious exercise, that section of RLUIPA
17 exceeded Congress' enforcement power under Section 5 of the Fourteenth
18 Amendment. However, the Court need not even have reached the issue of whether
19 42 U.S.C. 2000cc(a) exceeded Congress' enforcement power if it had found that
20 Plaintiffs had properly alleged jurisdiction under 42 U.S.C. 2000cc(a)(2)(B) and that
21 42 U.S.C. 2000cc(a) was a proper exercise of Congress' Commerce Clause authority.
22 Courts should not unnecessarily strike down Congressional statutes as
23 unconstitutional. *See, e.g., Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg.*,
24 485 U.S. 568, 575 (1988); *Parker v. Levy*, 417 U.S. 733, 760 (1974). Here, in the
25 interest of avoiding an unnecessary ruling that a portion of RLUIPA is
26 unconstitutional, Plaintiffs respectfully request this Court to vacate its prior order and
27

1 allow further briefing on whether 42 U.S.C. 2000cc(a) can be sustained in this case
2 as a valid exercise of Congress' Commerce Clause authority.

3 **IV. Conclusion**

4 Accordingly, because Plaintiffs sufficiently alleged jurisdiction under 42
5 U.S.C. § 2000cc(a)(2)(B), Plaintiffs respectfully request that this Court reconsider its
6 Order Granting in Part Defendants' Motion for Summary Judgment, and Denying
7 Plaintiffs' Motion for Partial Judgment dated June 23, 2003 and allow the issue of
8 whether 42 U.S.C. 2000cc(a) can be sustained as constitutional in this case as a valid
9 exercise of Congress' Commere Clause authority to be briefed and argued by the
10 parties prior to a final judicial decision.

11 Respectfully submitted this 8th day of July, 2003.

12 ALLIANCE DEFENSE FUND

13 By: _____

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