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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

INTERNATIONAL CHURCH OF THE
FOURSQUARE GOSPEL,

Plaintiff(s),

No. C 07-3605 PJH

v.

**CASE MANAGEMENT ORDER;
ORDER DISMISSING CLAIMS**

CITY OF SAN LEANDRO,

Defendant(s).

The parties appeared for a case management conference on January 5, 2012, following remand by the Court of Appeal for the Ninth Circuit. This court had previously granted defendant's motion for summary judgment on all claims raised in plaintiff's complaint including those arising under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc ("RLUIPA") and under the First and Fourteenth Amendments pursuant to 42 U.S.C. § 1983. Defendant appealed this court's judgment on all claims, but the Ninth Circuit reached only one claim, reversing and remanding the substantial burden claim under RLUIPA for further proceedings, but not addressing the equal terms claim under RLUIPA or the five constitutional claims.

A conference was convened to discuss what those further proceedings would be and to address the parties' and the court's interest in avoiding piecemeal litigation in view of footnote 2 of the Ninth Circuit opinion which permits plaintiff to raise again on appeal, should it not prevail on remand, its challenge to that portion of this court's judgment disposing of the claims the circuit did not reach. Based on this discussion and the stipulation of the parties, the court orders as follows:

1. Plaintiff voluntarily dismissed all constitutional claims brought under 42 U.S.C. § 1983. Accordingly, the claims for violation of plaintiff's First Amendment rights of

1 free exercise, free speech and free assembly/association, and for violation of plaintiff's
2 Fourteenth Amendment right to equal protection and due process are DISMISSED with
3 prejudice.

4 2. Pursuant to the agreement of the parties, they may file cross-motions
5 for summary judgment or adjudication of the two RLUIPA claims in view of the developing
6 nature of the case law on this relatively new statute and in light of recent Ninth Circuit
7 authority that was not available when this matter was adjudicated in 2008. The parties
8 specifically wish to address the standards set forth on the substantial burden question in
9 the opinion remanding this case, Int'l Church of the Foursquare Gospel v. City of San
10 Leandro, et al., 634 F.3d 1037 (9th Cir. 2011), and the standards set forth on the equal
11 terms question in the opinion in Centro Familiar Cristiano Buenas Nuevas v. City of Yuma,
12 651 F.3d 1163 (9th Cir. 2011).

13 3. In addition to these two issues, the parties' motions shall address
14 whether there is a right to a jury trial under RLUIPA, and if so, as to which issues,
15 specifically setting forth which matters must be decided by the court and which matters
16 must be decided by a jury, should the cross-motions for summary judgment or adjudication
17 not dispose of plaintiff's claims.

18 4. Lastly, the parties' cross-motions shall also address the scope and
19 type of damages allowable under RLUIPA, including whether they are to be decided by the
20 court or by a jury.

21 The parties shall meet and confer about a briefing schedule and submit a stipulation
22 to the court. To the extent that plaintiff wishes to seek modification of the pretrial schedule
23 so that discovery can be reopened, plaintiff shall file a motion seeking that relief in
24 accordance with the local rules.

25 **IT IS SO ORDERED.**

26 Dated: January 9, 2012



27 _____
28 PHYLLIS J. HAMILTON
United States District Judge