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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FAITH CENTER CHURCH
EVANGELISTIC MINISTRIES, et al.,

Plaintiffs,
v.

FEDERAL D. GLOVER, et al.,

Defendants.

CASE NO. C-04-3111 JSW

JOINT CASE MANAGEMENT STATEMENT

1 The parties to the above-entitled action jointly submit this Case Management Statement and
2 Proposed Order and request the Court to adopt it as its Case Management Order in this case.

3 **1. Jurisdiction and Service:**

4 This Court has subject-matter jurisdiction over this case because the case presents a federal
5 question (28 U.S.C. § 1331), and is brought pursuant to the congressional authorizing statute for
6 constitutional claims (42 U.S.C. § 1983). There are no issues regarding personal jurisdiction or
7 venue, and all parties have been served.

8 **2. Facts:**

9 Plaintiffs, a nonprofit religious organization and its leader, sought to rent a meeting room for
10 two meetings in a library under the Defendant officials' control. The Contra Costa County policy on
11 the use of library facilities generally allows nonprofit organizations to rent library facilities to
12 "encourage the use of library meeting rooms for educational, cultural and community related
13 meetings, programs, and activities." However, after Plaintiffs' first meeting, library officials
14 informed Plaintiffs that they were no longer able to use the meeting room because of the library's
15 religious use policy, which at the time prohibited the use of library meeting rooms for "religious
16 purposes" and which now provides that library meeting rooms shall not be used for "religious
17 services."

18 **3. Legal Issues:**

19 Defendants believe that the chief legal issue is: does the First Amendment require rented
20 government facilities to be open to "religious services or activities" to the same extent they are open
21 to other nonprofit activities; or does the Establishment Clause require those government facilities to
22 be closed to "religious services or activities"? Defendants further believe the Ninth Circuit resolved
23 this issue in its opinion reversing in part, vacating in part, and remanding this Court's order granting
24 plaintiff's motion for a preliminary injunction. The Ninth Circuit held that prohibiting Plaintiffs'
25 religious worship services from the Antioch library meeting room is a permissible exclusion of a
26 category of speech that is meant to preserve the purpose behind the limited public forum.

27 Plaintiffs agree that the chief legal issue is whether the library facilities must be open to
28 "religious services or activities" to the same extent they are open to other nonprofit activities, and

1 add that this issue implicates not only the First Amendment's Free Speech Clause, but also the Free
2 Exercise Clause, the Establishment Clause, and the Fourteenth Amendment's Equal Protection
3 Clause. The Ninth Circuit only preliminarily addressed the Plaintiffs' claim under the Free Speech
4 Clause, and did not address the Plaintiffs' additional claims, *see Faith Center Church Evangelistic*
5 *Ministries v. Glover*, 480 F.3d 891, 906 n.7 (9th Cir. 2007). Therefore, Plaintiffs believe that the
6 Ninth Circuit's opinion does not fully resolve the legal issues in this case.

7 **4. Motions:**

8 On June 7, 2007, Plaintiffs filed a petition for a writ of certiorari with the U.S. Supreme
9 Court in response to the U.S. Court of Appeals for the Ninth Circuit's opinion reversing in part,
10 vacating in part, and remanding this Court's order granting plaintiff's motion for a preliminary
11 injunction.

12 Defendants filed their brief in opposition with the U.S. Supreme Court on August 7, and
13 Plaintiffs filed their reply brief on August 17. The Supreme Court denied Plaintiffs' petition, which
14 fully disposed of all matters on appeal in this case.

15 Defendants' current counsel substituted in on October 30, 2007. The attorneys for
16 Defendants who were involved in prior proceedings before this Court and at the Ninth Circuit are no
17 longer employed with the Office of County Counsel.

18 No motions are pending.

19 **5. Amendment of Pleadings:**

20 No parties, claims, or defenses are expected to be added or dismissed.

21 **6. Evidence Preservation:**

22 In Defendants' view, all evidence necessary to the final resolution of this case is in the
23 record. Fed. R. Civ. P. 65(a)(2). Plaintiffs' counsel has advised their clients to preserve all evidence
24 relevant to the issues reasonably evident in this action.

25 **7. Disclosures:**

26 The parties exchanged initial disclosures in compliance with Fed. R. Civ. P. 26.

27 **8. Discovery:**

28 No discovery has been taken to date.

1 In light of the Ninth Circuit's ruling, and considering that Plaintiffs seek only nominal
2 damages, Defendants believe no discovery is necessary.

3 Plaintiffs believe some discovery is necessary. Plaintiffs expect to conduct written discovery
4 and notice depositions related to the use of the Library meeting room and Defendants' interpretation
5 and enforcement of the meeting room policy.

6 Plaintiffs do not propose any limitations or modifications of discovery imposed under the
7 discovery rules.

8 **9. Class Actions:**

9 This is not a class action.

10 **10. Related Cases:**

11 No related cases or proceedings are pending.

12 **11. Relief:**

13 Plaintiffs seek injunctive relief, declaratory relief, and nominal damages as a vindication of
14 their constitutional rights. Plaintiffs also seek attorneys' fees and costs.

15 **12. Settlement and ADR:**

16 The parties previously stipulated to ENE as their ADR method because the primary issues are
17 legal rather than monetary or factual.

18 The parties have briefly discussed settling this case. In light of the Ninth Circuit's ruling, and
19 considering that Plaintiffs seek only nominal damages, Defendants believe a stipulated permanent
20 injunction and judgment would be appropriate following the entry of a preliminary injunction. Any
21 proposed settlement would have to be approved by the Contra Costa County Board of Supervisors.

22 Plaintiffs believe a stipulated injunction would be premature in part because of Plaintiffs'
23 remaining constitutional claims that have yet to be addressed by the Court.

24 If the parties are unable to settle this case, both parties anticipate filing for summary
25 judgment.

26 **13. Consent to Magistrate Judge for All Purposes:**

27 The parties do not consent to the assignment of the case to a magistrate judge.
28

1 **14. Other References:**

2 The parties agree that this case is not suitable for reference to binding arbitration, a special
3 master, or the Judicial Panel on Multidistrict Litigation.

4 **15. Narrowing of Issues:**

5 Defendants believe the primary legal issue in this case has been resolved by the Ninth Circuit
6 and no material issues of fact remain.

7 Plaintiffs believe that there are still issues of fact that need to be resolved before this Court
8 can make a final determination on each of their claims, and note that the Ninth Circuit's opinion did
9 not address several of Plaintiffs' constitutional claims. As such, Plaintiffs do not believe that any
10 issues can be narrowed prior to conducting any discovery. However, if the case proceeds to trial, the
11 parties anticipate the use of stipulated facts to a large, if not total, degree.

12 Neither party requests that any issues, claims, or defenses be bifurcated at this time.

13 **16. Expedited Schedule:**

14 The parties agree that this case is not appropriate for an expedited schedule.

15 **17. Scheduling:**

16 Given that the parties disagree on whether discovery is necessary, the parties at this time are
17 not proposing dates for designation of experts, discovery cutoff, hearing of dispositive motions,
18 pretrial conference and trial. Should the Court decide that discovery is necessary, the parties will be
19 prepared to discuss dates at the case management conference scheduled for November 30, 2007.

20 **18. Trial:**

21 The parties agree that this case is not likely to go to trial, but should be resolved with either a
22 stipulated injunction or at summary judgment. However, should the case go to trial, the parties
23 anticipate it would last between two and three days. The case will be tried to the Court.

24 **19. Disclosure of Non-party Interested Entities or Persons:**

25 Plaintiffs: The Plaintiffs included the required disclosure in the Amended Verified
26 Complaint. There are no non-party interested entities or persons to report.

27 Defendants: Civil L.R. 3-16 does not apply to government entities.
28

The parties briefly discussed the scope of a preliminary injunction but have not agreed on language for a proposed preliminary injunction. In accordance with the Ninth Circuit’s opinion, Defendants believe the injunction must allow Plaintiffs to engage in secular activities that express a religious viewpoint but exclude Plaintiffs’ religious worship services.

Plaintiffs believe that the injunction may only prohibit “pure religious worship.” A prohibition on worship services in general may include discussions of the Bible and other religious books, teaching, praying, singing, sharing testimonies, sharing meals, and discussing social and political issues—which the Ninth Circuit said are permissible activities that “convey a religious perspective on subjects that are or have been permitted in the Antioch Library meeting room.” *See Faith Center*, 480 F.3d at 914. Plaintiffs further believe that the injunction should be limited to self-disclosed “pure religious worship,” as government officials are not competent to distinguish between religious worship and other forms of religious speech. *Id.* at 918.

By: s/ Timothy D. Chandler
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By: s/ Cynthia A. Schwerin
Cynthia A. Schwerin, Deputy County Counsel
Attorney for Defendants

I hereby attest that I have on file all holograph signatures for any signatures indicated by a “conformed” signature (s/) within this efiled document.

By: s/ Timothy D. Chandler
Attorney for Plaintiffs