

1 THOMAS E. PEREZ
 Assistant Attorney General
 2 Civil Rights Division
 STEVEN H. ROSENBAUM
 3 Chief
 ERIC TREENE
 4 Special Counsel
 HOLLY C. LINCOLN
 5 Trial Attorney
 Housing and Civil Enforcement Section
 6 Civil Rights Division
 U.S. Department of Justice
 7 950 Pennsylvania Avenue, N.W. – G St.
 Washington, DC 20530
 8 Phone: (202) 514-0553
 Fax: (202) 514-1116
 9 Email: holly.lincoln@usdoj.gov

10 Attorneys for United States of America

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA
 13

14 CONGREGATION ETZ CHAIM, an
 unincorporated association and the
 15 individual members thereof;
 CONGREGATION ETZ CHAIM OF
 16 HANCOCK PARK, a California non-
 profit corporation,
 17

18 Plaintiffs,

19 v.

20 CITY OF LOS ANGELES,

21 Defendant.
 22

CASE NO. CV 10-01587 (CAS) (Ex)

**UNITED STATES OF AMERICA'S
 STATEMENT OF INTEREST IN
 SUPPORT OF PLAINTIFFS'
 MOTION FOR PARTIAL
 SUMMARY JUDGMENT AND IN
 OPPOSITION TO DEFENDANT'S
 MOTION FOR SUMMARY
 JUDGMENT OR, IN THE
 ALTERNATIVE, PARTIAL
 SUMMARY JUDGMENT**

The Hon. Christina A. Snyder
 Courtroom: 5
 Date: May 2, 2011
 Time: 10:00 a.m.

23
 24
 25
 26
 27
 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

- I. STATEMENT OF INTEREST OF THE UNITED STATES..... 1
- II. BACKGROUND..... 1
- III. SUBSTANTIAL BURDEN 2
 - A. The City’s Two Denials of a CUP for the Congregation Constitute a Substantial Burden..... 2
 - B. The City Has Not Shown a Narrowly Tailored Compelling Interest 7
- IV. EQUAL TERMS 9
 - A. General Framework 9
 - B. Standard for Determining Violations of the Equal Terms Provision..... 12
 - C. The City Has Violated the Equal Terms Provision 16
 - 1. Facial Discrimination 16
 - 2. As-applied Discrimination..... 18
- V. CONCLUSION 23

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cases:	Page
<i>Centro Familiar Cristiano Buenas Nuevas v. City of Yuma</i> , 615 F. Supp. 2d 980 (D. Ariz. 2009), No. 09-15422 (9th Cir. argued April 15, 2010).....	13, 18
<i>Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah</i> , 508 U.S. 520, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993)	8, 10, 11, 12, 15
<i>Cottonwood Christian Ctr. v. Cypress Redev. Agency</i> , 218 F. Supp. 2d 1203 (C.D. Cal. 2002).....	11
<i>Digrugilliers v. Consol. City of Indianapolis</i> , 506 F.3d. 612 (7th Cir. 2007).....	15
<i>The Elijah Group, Inc. v. City of Leon Valley</i> , 2009 U.S. Dist. LEXIS 92249 (W.D. Tex. Oct. 2, 2009), No. 10-50035 (9th Cir. argued Dec. 8, 2010).....	13
<i>Emp't Div. v. Smith</i> , 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990)	10
<i>Freedom Baptist Church v. Twp. of Middletown</i> , 204 F. Supp. 2d 857 (E.D. Pa. 2002).....	12
<i>Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal</i> , 546 U.S. 418, 126 S. Ct. 1211, 163 L. Ed. 2d 1017 (2006)	7, 18
<i>Good News Club v. Milford Cent. Sch.</i> , 546 U.S. 418, 126 S. Ct. 1211, 163 L. Ed. 2d 1017 (2001)	11
<i>Grace Church v. City of San Diego</i> , 555 F. Supp. 2d 1126 (S.D. Cal. 2008)	4, 8
<i>Guru Nanak Sikh Soc'y v. County of Sutter</i> , 456 F.3d 978 (9th Cir. 2006)	2, 3, 4, 5, 6
<i>Int'l Church of the Foursquare Gospel v. City of San Leandro</i> , 2011 U.S. App. LEXIS 2909 (9th Cir. Feb. 15, 2011).....	3, 6

1	<i>Konikov v. Orange County,</i>	
2	410 F.3d 1317 (11th Cir. 2005)	14, 19
3	<i>Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.,</i>	
4	508 U.S. 384, 113 S. Ct. 2141, 124 L. Ed. 2d 352 (1993)	12
5	<i>Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch,</i>	
6	510 F.3d 253 (3d Cir. 2007)	10, 14, 15
7	<i>Midrash Sephardi, Inc. v. Town of Surfside,</i>	
8	366 F.3d 1214 (11th Cir. 2004)	2, 6, 10, 12, 13, 14, 15
9	<i>Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County,</i>	
10	450 F.3d 1295 (11th Cir. 2006)	14, 18
11	<i>River of Life Kingdom Ministries v. Vill. of Hazel Crest,</i>	
12	611 F.3d 367 (7th Cir. 2010)	13, 15, 19
13	<i>Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin,</i>	
14	396 F.3d 895 (7th Cir. 2005)	5
15	<i>San Jose Christian College v. City of Morgan Hill,</i>	
16	360 F.3d 1024 (9th Cir. 2004)	3, 6
17	<i>Third Church of Christ, Scientist v. City of New York,</i>	
18	626 F.3d 667 (2d Cir. 2010)	19
19	<i>Westchester Day Sch. v. Vill. of Mamaroneck,</i>	
20	504 F.3d 338 (2d Cir. 2007)	3, 7, 18
21	Statutes:	Page
22	28 U.S.C. § 517	1
23	Los Angeles Municipal Code § 12.08.....	16
24	Los Angeles Municipal Code §§ 12.24.....	16
25	Religious Land Use and Institutionalized Persons Act,	
26	42 U.S.C. § 2000cc et seq	<i>passim</i>
27		
28		

	Page
1 Other Authorities:	
2 146 Cong. Rec. E1563 (daily ed. Sept. 22, 2000).....	11
3 146 Cong. Rec. S7774 (daily ed. July 27, 2000)	10, 12, 17
4	
5 Black’s Law Dictionary (7th ed. 1999).....	13
6 H.R. Rep. 106-219 (1999).....	11, 17, 20
7	
8 Webster’s 3d New Int’l Unabridged Dictionary (1993)	13
9 http://www.latennisclub.com	20, 21
10 http://merriam-webster.com	17
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

1 **I. STATEMENT OF INTEREST OF THE UNITED STATES**

2
3 The United States respectfully submits this Statement of Interest, pursuant to
4 28 U.S.C § 517, because this litigation implicates the proper interpretation and
5 application of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C.
6 § 2000cc *et. seq.* (“RLUIPA”). The Department of Justice has authority to enforce
7 RLUIPA and to intervene in proceedings involving RLUIPA. 42 U.S.C. § 2000cc-
8 2(f). The United States thus has a strong interest in the issues raised in these
9 motions, and believes that its participation will aid the court in their resolution.
10 The United States previously submitted a statement of interest in this case on
11 November 1, 2010. (ECF No. 39.)

12
13 **II. BACKGROUND**

14
15 Because the parties’ earlier briefings in the current lawsuit, as well as the
16 parties’ respective Uncontroverted Facts and Conclusions of Law (“Def.’s UF,”
17 ECF No. 82; “Pls.’ UF,” ECF No. 84), thoroughly state the factual background of
18 this case, the United States respectfully refers the Court to these documents and
19 will not repeat the detailed facts of the case here.

20 In the instant Statement of Interest, the United States addresses the proper
21 standards for analyzing claims under the substantial burden and equal terms
22 provisions of RLUIPA.¹ As argued below, the United States asserts that, through
23 its land-use regulations and its actions toward the Congregation, Defendant has
24 violated these provisions of RLUIPA. Accordingly, the United States urges the
25 Court to grant partial summary judgment for Plaintiffs and deny summary
26 judgment for Defendant.

27
28

¹ The United States takes no position on Plaintiffs’ nondiscrimination claim under
Section 2(b)(2) of RLUIPA.

1 **III. SUBSTANTIAL BURDEN**

2
3 RLUIPA’s substantial provision, Section 2(a), provides that

4 [n]o government shall impose or implement a land use regulation in a
5 manner that imposes a substantial burden on the religious exercise of
6 a person, including a religious assembly or institution, unless the
7 government demonstrates that imposition of the burden on that
8 person, assembly, or institution (A) is in furtherance of a compelling
9 governmental interest; and (B) is the least restrictive means of
10 furthering that compelling governmental interest.

11 42 U.S.C. § 2000cc(a)(1). If a plaintiff meets its burden to establish that the
12 defendant’s regulation causes a substantial burden, then the burden of proof shifts
13 to the defendant to show that the regulation was narrowly tailored to accomplish a
14 compelling government interest. Id. § 2000cc-2(b).²

15 **A. The City’s Two Denials of a CUP for the Congregation Constitute**
16 **a Substantial Burden**

17 For government action to be a substantial burden it “must place more than an
18 inconvenience on religious exercise.” Guru Nanak Sikh Soc’y v. County of Sutter,
19 456 F.3d 978, 988 (9th Cir. 2006) (quoting Midrash Sephardi, Inc. v. Town of
20 Surfside, 366 F.3d 1214, 1227 (11th Cir. 2004)). A land use regulation is a

21
22 ² RLUIPA applies where “the substantial burden is imposed in the implementation
23 of a land use regulation or system of land use regulations, under which a
24 government makes, or has in place formal or informal procedures or practices
25 that permit the government to make, individualized assessments of the proposed
26 uses for the property involved.” 42 U.S.C. § 2000cc(a)(2)(C). The parties do not
27 dispute that RLUIPA is applicable to the instant case, in which the City had the
28 authority to take into account the “particular details” of the Congregation’s
 “proposed use of land” when deciding to deny the Congregation’s conditional use
 permit (“CUP”) application. See Guru Nanak Sikh Soc’y v. County of Sutter,
 456 F.3d 978, 986 (9th Cir. 2006).

1 substantial burden on religious exercise under RLUIPA if it “impose[s] a
2 significantly great restriction or onus upon such exercise.” Id. at 988 (quoting San
3 Jose Christian College v. City of Morgan Hill, 360 F.3d 1024, 1034 (9th Cir.
4 2004)). Substantial burden must be evaluated by examining all of the particular
5 surrounding facts, including the procedural history of a congregation’s efforts to
6 locate a place of worship. Id. at 989. As the Ninth Circuit held recently, “when
7 the religious institution ‘has no ready alternatives, or where the alternatives require
8 substantial ‘delay, uncertainty, and expense,’ a complete denial of [an] application
9 might be indicative of a substantial burden.” Int’l Church of the Foursquare
10 Gospel v. City of San Leandro, 2011 U.S. App. LEXIS 2909, at *24 (9th Cir. Feb.
11 15, 2011) (quoting Westchester Day Sch. v. Vill. of Mamaroneck, 504 F.3d 338,
12 349 (2d Cir. 2007)) (citations omitted).

13 Plaintiffs have demonstrated a substantial burden on their religious exercise.
14 The Congregation has provided ample evidence that many of its congregants
15 would be physically unable to walk farther to another location, as required by their
16 religion. (Pls.’ UF ¶¶ 1-9, 77, 85, 124, 137-150.) At this point in the long history
17 of this dispute, many congregants have moved into the neighborhood to live within
18 walking distance to the congregation, in reliance on the (now-defunct) settlement
19 agreement entered into with Defendant City of Los Angeles (“City”). The fact that
20 the Congregation practices a unique Chassidic sect of Judaism, and that the
21 Congregation’s rabbi is the only Witznitzer Rebbe in the country, means that the
22 congregants and the rabbi will be particularly burdened if the Congregation is not
23 permitted to continue operating at its current location. (Pls.’ UF ¶¶ 125-132.)

24 Moreover, the procedural history of this case and the Congregation’s
25 mitigation efforts support a finding of substantial burden under Ninth Circuit
26 precedent. In Guru Nanak, the Ninth Circuit held that a county’s complete denial
27 of two successive conditional use permits (“CUPs”) constituted a substantial
28 burden, relying on two central factors that are applicable here as well: (1) the

1 county's reasons for denying the CUPs could easily apply to every future CUP
2 application by the congregation, so it appeared there was little chance that the
3 county would ever approve the congregation's use; and (2) the congregation had
4 agreed to the mitigation measures suggested by the county, yet the county still
5 denied the use. 456 F.3d at 989. See also Grace Church v. City of San Diego, 555
6 F. Supp. 2d 1126, 1137 (S.D. Cal. 2008) (finding a substantial burden where the
7 city's denial demonstrated "hostility and disapproval regarding [the congregation]
8 receiving any CUP at all").

9 Similarly, here, the zoning officials rejected the Congregation's first CUP
10 application because the City did not want to allow a precedent for religious uses.
11 (Pls.' UF ¶ 36.) Under the terms of a settlement agreement entered into by the City
12 and the Congregation, the Congregation made expensive and significant changes to
13 the property to comply with the City's requirements, including reducing the
14 number of parking spaces, to make the property fit in with its residential neighbors.
15 (Id. ¶¶ 56, 60-61, 71, 89.) After the neighbors successfully challenged that
16 settlement agreement in court, the City denied the Congregation's second CUP for
17 the same reasons it denied the first application – that it wanted to avoid a precedent
18 for religious uses, that the use would infringe on the historic residential nature of
19 the neighborhood, and that the use raised parking and traffic concerns. (Id. ¶¶ 89-
20 91, 99-100.) The City also found that the property now did not have sufficient
21 parking spaces, despite the fact that the City had required their removal. (Id. ¶¶
22 104-05.) As a result, despite the fact that the municipal code expressly provides a
23 way by which churches can locate in the R1 zone – by obtaining a CUP – the City
24 has made abundantly clear that it will not allow a religious use to ever successfully
25 obtain a CUP to locate in the R1 zone of Hancock Park, much like the futility
26 emphasized by the Ninth Circuit in finding a substantial burden in Guru Nanak.
27 RLUIPA was enacted to prevent exactly such actions.

28 The mitigation efforts undertaken by the Congregation here are also similar

1 to those of the Sikh congregation in Guru Nanak. When the parties entered the
2 settlement agreement, the Congregation complied with all changes requested by
3 the City, and limited its uses to those agreed to by the terms of the settlement
4 agreement. (Pls.' UF ¶¶ 52-55, 61.) Yet, during the second CUP application
5 process, the City stated the same reasons for denial – traffic, parking, and
6 preserving the residential zone – despite the mitigation measures employed by the
7 Congregation for the past several years. As discussed above, the City even used
8 one mitigation measure – the reduced parking spaces – as a reason for denying the
9 CUP.

10 The City's attempts to distinguish Guru Nanak are unpersuasive. The fact
11 that the congregation in Guru Nanak sought CUPs at two different locations,
12 whereas the Congregation here twice sought CUPs at the same location is legally
13 inconsequential – the point is that the facts in both cases demonstrate the futility of
14 further applications. 456 F.3d at 989. Second, the undisputed evidence belies the
15 City's contentions that the Congregation did not attempt to mitigate its land-use
16 effects. Third, the argument that the Congregation's compliance with the
17 settlement agreement does not demonstrate a cooperative mitigation effort because
18 the settlement agreement was later struck down is illogical; the good faith of the
19 Congregation to mitigate the City's concerns was manifest regardless of the fate of
20 the settlement.

21 The Congregation is not required to show that there are no other locations
22 suitable for its use in order to prevail on a substantial burden claim. The Ninth
23 Circuit has held that “to prove a substantial burden under RLUIPA, a religious
24 group need not ‘show that there was no other parcel of land on which it could build
25 its church.’” Guru Nanak, 456 F.3d at 989 (quoting Saints Constantine & Helen
26 Greek Orthodox Church, Inc. v. City of New Berlin, 396 F.3d 895, 899-900 (7th

1 Cir. 2005)).³

2 During the CUP process, the City did not identify any alternative locations,
3 but simply stated that the Congregation should locate in the commercial zone,
4 where churches are permitted by right, without needing a permit. (Pls.' UF ¶ 96.)
5 The fact that the City has now identified what it claims are alternative locations –
6 locations that have not been demonstrated to be suitable for the Congregation's
7 needs – does not defeat the City's substantial burden claim. "RLUIPA does not
8 contemplate that local governments can use broad and discretionary land-use
9 rationales as leverage to select the precise parcel of land where a religious group
10 can worship." Guru Nanak, 456 F.3d at 992 n.20. Under the reasoning in
11 International Church, the existence of alternative locations that would cause the
12 Congregation substantial delay, uncertainty, or expense still constitute a substantial
13 burden. As described above, congregants have moved to be close to the

14
15 ³ The City's reliance on San Jose Christian College v. City of Morgan Hill, 360
16 F.3d 1024 (9th Cir. 2004), for the proposition that the existence of alternative
17 locations precludes a finding of substantial burden, is misplaced. (See Def.'s
18 Mot. at 6; Def.'s Opp'n to Congregation's Mot. Summ. J. at 7.) In San Jose, the
19 city denied a religious college's two rezoning applications because they were
20 incomplete. 360 F.3d at 1027-28. Although the court noted that there was "no
21 evidence in the record demonstrating that [the] College was precluded from using
22 other sites within the city," id. at 1035, it held that RLUIPA did not exempt the
23 religious college from complying with zoning processes, and that there was no
24 evidence that a completed application would have been denied. Id.
25 Consequently, that case is distinguishable from the instant case, where it is
26 undisputed that the Congregation complied with the relevant zoning processes by
27 submitting two complete CUP applications, which the City denied on their
28 merits.

24 Also, in contrast to the Ninth Circuit's standard, the Eleventh Circuit has
25 held that in certain circumstances it is not a substantial burden to require a
26 religious entity to find another location in a neighboring zoning district. Midrash
27 Sephardi, 366 F.3d at 1228. Midrash Sephardi is distinguishable from the instant
28 case, however, because the congregation there was not subject to a long history
of municipal efforts to block it from the community. See Guru Nanak, 456 F.3d
at 989. In any event, in light of the clear Ninth Circuit precedent on this point,
there is no reason to look to other circuits.

1 Congregation, which practices a rare sect of Judaism led by the only rabbi of this
2 type in the United States. These facts demonstrate substantial delay, uncertainty,
3 and expense, and therefore constitute a substantial burden.

4
5 **B. The City Has Not Shown a Narrowly Tailored Compelling**
6 **Interest**

7 The City has not met its burden to show that denying two CUPs to the
8 Congregation is in furtherance of a narrowly tailored compelling interest. The City
9 states that its overall interests are public health, safety, and welfare – but more
10 specifically, the City lists parking, traffic, and preservation of Hancock Park’s
11 residential community. Def.’s Mot. Summ. J. or, in the Alternative, Partial Summ.
12 J. (“Def.’s Mot.”) at 11-12.

13 Citing such interests in the abstract, however, is not a compelling interest
14 justifying a substantial burden on religious exercise. Westchester Day Sch., 504
15 F.3d at 353. Rather, the government must show that it has a compelling interest in
16 achieving that interest through the particular restriction at issue, such as safety
17 interests in regulating traffic flow on the particular street at issue. Id. at 353; see
18 also Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418,
19 423, 126 S. Ct. 1211, 163 L. Ed. 2d 1017 (2006) (in Religious Freedom
20 Restoration Act challenge to drug laws by religious group using hallucinogenic tea
21 for sacramental use, government could not point to general compelling interest in
22 restricting illegal drugs, but had to show compelling interest in preventing this
23 specific use). The City has not shown that that any traffic or parking concerns
24 actually existed, nor that such concerns could not be mitigated in such a way as to
25 allow the Congregation’s use at the subject property.

26 The City argues that the Congregation has only two parking spaces but that
27 additional spaces are required by the zoning laws, and therefore the City was
28 forced to deny the Congregation’s use in its entirety. As discussed above, the

1 Congregation removed additional parking spaces at the City's prior request;
2 therefore, the City should be precluded from denying the Congregation's use
3 because of its reliance on and compliance with the City's requirements under the
4 now-defunct settlement agreement. Furthermore, the City has not provided any
5 evidence to rebut the Congregation's evidence that it does not need additional
6 parking spaces due to the religious tenets that require its congregants to walk to
7 services on the Sabbath. Nor has the City responded to the Congregation's
8 evidence that 80,000 cars daily drive by the intersection where the Congregation is
9 located, and that therefore the Congregation's limited use does not affect the local
10 traffic. (Pls.' UF ¶ 37.) Plaintiffs have also presented undisputed evidence that the
11 Congregation spent significant money and effort to comply with the aesthetic
12 requirements set by the City in the settlement agreement. (Pls.' UF ¶¶ 52-62.)

13 It is undisputed that the Congregation has been operating at the subject
14 property since 1995 and that more than a decade passed in between the
15 Congregation's first and second CUP applications. (*Id.* ¶¶ 26, 39, 70.) Yet, in all
16 that time, the City did not gather any evidence that the Congregation has actually
17 caused any traffic or parking concerns. In its briefing on the motions now before
18 the Court, the City continues to argue these concerns in the abstract, yet fails to
19 present evidence to support them.

20 The fact that several nonresidential uses are permitted in the R1 zone of
21 Hancock Park contradicts the City's interest in preserving the community's
22 residential character. In Grace Church, the court held that "[o]ne way to evaluate a
23 claim of compelling interest is to consider whether in the past the governmental
24 actor has consistently and vigorously protected that interest." 555 F. Supp. 2d at
25 1140-41 (citing Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508
26 U.S. 520, 547, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993) ("A law cannot be
27 regarded as protecting an interest of the highest order . . . when it leaves
28 appreciable damage to that supposedly vital interest unprotected.")). Plaintiffs'

1 numerous examples of nonreligious uses in the area – schools, clubs, and other
2 religious uses – demonstrate that the City has not “consistently and vigorously
3 protected” that interest.

4 Finally, rather than outright denying the CUP applications for the
5 Congregation due to concerns about traffic, parking, historical preservation, or
6 anything else, the City could have suggested measures to mitigate these concerns
7 and effects on land use. The City’s zoning bodies have the authority directly to
8 regulate traffic, parking, and property aesthetics – and to do so in a way that does
9 not discriminate against religious entities. However, instead of proposing any such
10 measures, the City simply denied the CUP in its entirety – twice. (Pls.’ UF ¶¶ 41-
11 44, 46, 89, 97, 103, 110-112, 116.) For these reasons, the City has not shown a
12 compelling interest, much less one that is narrowly tailored. As such, Plaintiffs are
13 entitled to summary judgment on their RLUIPA substantial burden claim.

14 15 **IV. EQUAL TERMS**

16
17 The City has violated Section 2(b)(1) of RLUIPA, known as the “Equal
18 Terms” provision, both through facial discrimination in its zoning code, and in
19 discriminatory application of other aspects of its zoning code. See Compl. ¶¶ 97,
20
21 99.

22 23 **A. General Framework**

24 RLUIPA’s Equal Terms provision states that “[n]o government shall impose
25 or implement a land-use regulation in a manner that treats a religious assembly or
26 institution on less than equal terms with a nonreligious assembly or institution.”
27 42 U.S.C. § 2000cc(b)(1). This provision was enacted to address the various
28 discriminatory actions taken by local governments against religious assemblies and

1 institutions. Congressional testimony from the hearings on RLUIPA observed that
2 “[z]oning codes frequently exclude churches in places where they permit theaters,
3 meeting halls, and other places where large groups of people assemble for secular
4 purposes.” 146 Cong. Rec. S7774 (Joint Statement of Sens. Hatch and Kennedy).
5 Congress found that local governments used a myriad of reasons to justify treating
6 religious entities less favorably than secular entities:

7
8 Churches have been excluded from residential zones because they
9 generate too much traffic, and from commercial zones because they
10 don’t generate enough traffic. Churches have been denied the right to
11 meet in rented storefronts, in abandoned schools, in converted funeral
12 homes, theaters, and skating rinks – in all sorts of buildings that were
13 permitted when they generated traffic for secular purposes.

14 Id. at S7775. In response, Congress passed RLUIPA Section 2(b)(1), requiring
15 that religious assemblies and institutions be treated at least as well as their
16 nonreligious counterparts.

17 The Equal Terms provision was enacted to enforce the Free Exercise, Free
18 Speech, and Establishment Clauses of the Constitution to ensure that religious
19 assemblies and institutions are not disfavored in zoning compared to other types of
20 assemblies and institutions. More specifically, as various courts have recognized,
21 Congress intended this provision to enforce the Supreme Court’s holding in
22 Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520. See,
23 e.g., Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch, 510 F.3d 253,
24 264 (3d Cir. 2007) (“It is undisputed that, when drafting the equal terms provision,
25 Congress intended to codify the existing jurisprudence interpreting the Free
26 Exercise Clause.”); Midrash Sephardi, 366 F.3d at 1232 (“RLUIPA’s equal terms
27 provision codifies the Smith-Lukumi line of precedent.”);⁴ 146 Cong. Rec. S7774,
28 at S7776 (the equal terms provision “enforce[s] the Free Exercise rule against laws

⁴ The Smith half of Smith-Lukumi refers to Emp’t Div. v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990).

1 that burden religion and are not neutral and generally applicable”); 146 Cong. Rec.
2 E1563 (daily ed. Sept. 22, 2000) (statement of Rep. Canady); H.R. Rep. 106-219,
3 at 17 (1999); see also Cottonwood Christian Ctr. v. Cypress Redev. Agency, 218 F.
4 Supp. 2d 1203, 1224 (C.D. Cal. 2002) (holding that the Free Exercise Clause, as
5 interpreted in Lukumi, prohibits discrimination against religion in land-use
6 matters).

7 In Lukumi, the Supreme Court held that the Free Exercise Clause prohibits
8 the government from providing secular exemptions to an otherwise generally
9 applicable government policy while denying a religious exemption that would
10 cause no greater harm to the government’s interests. As the Court explained,
11 “[t]he principle that government, in pursuit of legitimate interests, cannot in a
12 selective manner impose burdens only on conduct motivated by religious belief is
13 essential to the protection of the rights guaranteed by the Free Exercise Clause.”
14 508 U.S. at 543.⁵

15 RLUIPA also enforces the Free Speech Clause principle that religious
16 speech may not be restricted in places where speech is permitted on secular
17 subjects. See Good News Club v. Milford Cent. Sch., 546 U.S. 418, 126 S. Ct.
18 1211, 163 L. Ed. 2d 1017 (2001) (school could not exclude religious youth group
19 from using space after school where various other youth and civic organizations
20

21 ⁵ The ordinances at issue in Lukumi sought to prevent the mistreatment of animals
22 and the improper disposal of carcasses. 508 U.S. at 543-45. Although the
23 ordinances had legitimate ends (protecting public health and preventing animal
24 cruelty), because they excluded from their purview almost all nonreligious
25 animal killing and disposal, they “fail[ed] to prohibit nonreligious conduct that
26 endangers these interests in a similar or greater degree” as the prohibited,
27 religiously-motivated conduct. Id. at 543. Therefore, because the ordinances
28 regulated religious activity but not other categories of activity within the same
ambit, the Court applied strict scrutiny and held the ordinances unconstitutional
under the Free Exercise Clause. Id. at 521-32. As the Court explained, “[a]ll
laws are selective to some extent, but categories of selection are of paramount
concern when a law has the incidental effect of burdening religious practice.” Id.
at 542.

1 were permitted to meet); Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.,
2 508 U.S. 384, 113 S. Ct. 2141, 124 L. Ed. 2d 352 (1993) (group wishing to show
3 Christian film in school after hours could not be excluded where various
4 community groups could use space). The Senate Report for RLUIPA noted that
5 “[t]he land use sections of the bill . . . enforce the Free Exercise and Free Speech
6 Clauses as interpreted by the Supreme Court.” 146 Cong. Rec. S7774, at S7775.
7 Likewise, RLUIPA enforces the Equal Protection Clause, see Midrash Sephardi,
8 366 F.3d at 1239, and the Establishment Clause’s requirement of neutrality toward
9 religion. As the Supreme Court stated in Lukumi, “[i]n our Establishment Clause
10 cases we have often stated the principle that the First Amendment forbids an
11 official purpose to disapprove of a particular religion or of religion in general.”
12 508 U.S. at 532 (citations omitted); see Midrash Sephardi, 366 F.3d at 1238-39;
13 Freedom Baptist Church v. Twp. of Middletown, 204 F. Supp. 2d 857, 870 (E.D.
14 Pa. 2002) (concluding that the equal terms provision of RLUIPA is “rooted in
15 Establishment Clause jurisprudence where the Supreme Court has disapproved of
16 unequal treatment of religious activities measured against secular ones”).

17 Thus the equal terms provision of RLUIPA Section 2(b)(1), both textually
18 and in its legislative purpose, stands for a very simple proposition: that the
19 government must not discriminate in zoning actions against activities and
20 expression because of their religious nature, and therefore religious assemblies and
21 institutions must be treated equally. The fact that the assembly activities are being
22 engaged in from a religious perspective, rather than a secular perspective, should
23 be of no moment in government decision-making in land-use matters.⁶

24
25 **B. Standard for Determining Violations of the Equal Terms Provision**

26
27 ⁶ The equal terms provision does not require that the regulation or regulator
28 demonstrate any discriminatory purpose, motive, or bias: unequal treatment,
even for a nondiscriminatory reason, is prohibited. See Midrash Sephardi, 366
F.3d at 1234 n.16.

1 The federal courts of appeal have differed on how equal treatment is
2 achieved through RLUIPA. The Ninth Circuit has not yet had an opportunity to
3 address this issue.⁷

4 Where a regulation is challenged on its face, the Eleventh Circuit has held
5 that the central question is whether religious assemblies or institutions are treated
6 as well as nonreligious assemblies. Midrash Sephardi, 366 F.3d at 1230-31. In
7 Midrash Sephardi, the court drew on two dictionary definitions of assembly:

8
9 An “assembly” is “a company of persons collected together in one
10 place [usually] and usually for some common purpose (as deliberation
11 and legislation, worship, or social entertainment),” WEBSTER’S 3D
12 NEW INT’L UNABRIDGED DICTIONARY 131 (1993); or “[a]
13 group of persons organized and united for some common purpose.”
14 BLACK’S LAW DICTIONARY 111 (7th ed. 1999).

15 Id. at 1230. The court likewise cited definitions of “institution” as ““an established
16 society or corporation: an establishment or foundation esp. of a public character,
17 . . . ; or ‘an established organization, esp. one of a public character’” Id. at
18 1230-31 (quoting Webster’s 3d New Int’l Unabridged Dictionary 1171 (1993) and
19 Black’s Law Dictionary 801 (7th ed. 1999), respectively).⁸

20 ⁷ As of this filing, a case involving the interpretation of the Equal Terms provision is
21 currently pending before the United States Court of Appeals for the Ninth Circuit
22 (Centro Familiar Cristiano Buenas Nuevas v. City of Yuma, 615 F. Supp. 2d 980
23 (D. Ariz. 2009), No. 09-15422) (argued April 15, 2010). A case also is pending in
24 the Fifth Circuit (The Elijah Group, Inc. v. City of Leon Valley, 2009 U.S. Dist.
25 LEXIS 92249 (W.D. Tex. Oct. 2, 2009), No. 10-50035) (argued Dec. 8, 2010).

26 ⁸ It is important to note that the term “assembly” is not infinitely expandable. For
27 example, the Eleventh Circuit’s definition of assembly would not encompass a
28 restaurant, but it would encompass a banquet hall where people gathered for a
wedding or fundraising dinner. Although the former involves people gathering, it
does not involve them gathering as a group and not for a common purpose, as the
latter does. See River of Life Kingdom Ministries v. Vill. of Hazel Crest, 611 F.3d
367, 390 (7th Cir. 2010) (Sykes, J., dissenting) (explaining why restaurants and
taverns would not constitute assemblies under the Eleventh Circuit’s definition).
Moreover, RLUIPA Section 2(b)(1) addresses categories of uses, not magnitudes

1 Using these common dictionary definitions, the court found that exclusion of
2 a Jewish congregation from gathering in a rental space above a bank in a zone in
3 which gatherings were permitted for “social, educational, or recreational purposes”
4 violated the Equal Terms provision. Id. at 1235.

5 In analyzing which assemblies and institutions are similarly situated for an
6 as-applied challenge, the Eleventh Circuit has held that the proper standard is
7 whether the religious and nonreligious assemblies have a “comparable community
8 impact.” Konikov v. Orange County, 410 F.3d 1317, 1327 (11th Cir. 2005)
9 (finding that the standard was met due to the similar frequency of meetings held at
10 the comparator properties). The Eleventh Circuit affirmed this standard in Primera
11 Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County, 450 F.3d 1295,
12 1311 (11th Cir. 2006), in which a county granted a school’s request to rezone its
13 property yet denied a church’s request for a variance, finding that the compared
14 uses were not similarly situated because “they sought markedly different forms of
15 zoning relief, from different decision-making bodies, under sharply different
16 provisions of local law.”

17 In another approach, the Third Circuit has held that “a regulation will violate
18 the Equal Terms provision only if it treats religious assemblies or institutions less
19 well than secular assemblies or institutions that are similarly situated *as to the*
20 *regulatory purpose.*” Lighthouse, 510 F.3d at 266 (emphasis in original). The
21 court in Lighthouse thus held that because the city’s redevelopment plan was
22 seeking to create a “‘vibrant’ and ‘vital’ downtown community centered on an
23 entertainment and retail district,” it could favor assemblies that were consistent
24 with that goal and exclude religious assemblies that were not, and that excluding
25 religious assemblies from such a zone did not constitute unequal treatment. Id. at

26
27 of uses. Nothing in RLUIPA prevents municipalities from placing limitations
28 based on size, traffic generated, noise, or other religion-neutral criteria. What it
requires is for religious assemblies to be treated equally to their nonreligious
counterparts.

1 270.⁹ But see id. at 272 (finding that the city’s ordinance violated the Equal Terms
2 provision because it allowed an assembly hall to locate in the zoning district at
3 issue but not a church where there was no evidence that the church would cause
4 greater harm to regulatory objectives than the assembly hall).

5 Along similar lines to the Third Circuit, the Seventh Circuit in River of Life
6 Kingdom Ministries v. Vill. of Hazel Crest, 611 F.3d 367, 373 (7th Cir. 2010), held
7 that religious assemblies and secular assemblies need only be treated the same
8 “from the standpoint of an accepted zoning criterion.” The court in Hazel Crest
9 considered a challenge to an ordinance that excluded churches and other
10 noncommercial uses from a commercial zone. While critical of the Third Circuit’s
11 focus on “regulatory purpose,” the Seventh Circuit held that religious assemblies
12 can be excluded from a zone where nonreligious assemblies are permitted if the
13 distinction is based on an “accepted zoning criterion, such as ‘commercial district,’
14 or residential district’ or ‘industrial district.’” Id. Thus where a zone excludes all
15 noncommercial activities, the court held, religious assemblies could be excluded
16 even if commercial nonreligious assemblies were permitted.

17 The courts of appeal also disagree on what level of review to apply to Equal
18 Terms challenges. The Eleventh Circuit in Midrash Sephardi held that because
19 RLUIPA is meant to enforce constitutional standards, strict scrutiny, as applied in
20 Lukumi, is the appropriate level of review. 366 F.3d at 1232. Alternatively, the
21 Third Circuit applies strict liability, Lighthouse, 510 F.3d at 269, and the Seventh
22 Circuit has rejected the Eleventh Circuit’s use of strict scrutiny, but has not
23 explicitly state what level of review applies. Hazel Crest, 611 F.3d at 370-71. The

24 ⁹ Under New Jersey law, location of alcohol-serving establishments in the zone
25 would be barred within two hundred feet of a church. This, the court found,
26 would make churches less conducive to creating such a district than other
27 assemblies, even though church offered to waive the provision. Id. at 270-71.
28 But see Digrugilliers v. Consol. City of Indianapolis, 506 F.3d. 612 (7th Cir.
2007) (state law barring alcohol serving establishments near churches was invalid
justification for denying equal treatment of churches and secular assemblies
under RLUIPA Section 2(b)(2)).

1 United States takes no position here on the appropriate level of review. This Court
2 need not reach this issue in order to rule for Plaintiffs.

3
4 **C. The City's Has Violated the Equal Terms Provision**

5 **1. Facial Discrimination**

6 On their face, the City's land-use regulations treat religious assemblies on
7 less than equal terms with nonreligious assemblies under any of the circuit court
8 approaches discussed above. In its opening brief, Defendant argues that the Los
9 Angeles Municipal Code ("LAMC") is facially neutral because "a church or
10 synagogue is not the only use not allowed by right in an R1 zone," noting that
11 several nonreligious uses are allowed in the R1 zone only by CUP, just like
12 churches. (Def.'s Mot. at 18.) This comparison, however, misconstrues the Equal
13 Terms provision. The purpose of RLUIPA's Equal Terms provision is to
14 determine whether any nonreligious assemblies or institutions are treated better
15 than religious assemblies or institutions; the fact that certain nonreligious uses may
16 be treated equally badly, or worse, is a red herring. The proper comparison is to
17 nonreligious assembly uses permitted by right in the R1 zone without requiring a
18 CUP.

19 The LAMC expressly states that "parks, playgrounds, or community centers,
20 owned and operated by a governmental agency" are permitted as of right in the R1
21 zone. LAMC § 12.08(A)(2). As stated above, churches¹⁰ must obtain a CUP to
22 locate in the R1 zone. LAMC §§ 12.08(6), 12.24(W)(9).

23 The parties do not dispute that the Congregation, at which congregants
24 regularly gather to worship and practice their faith, constitutes an assembly under
25 RLUIPA. The common dictionary definition of "community center" is "a building

26
27 ¹⁰ This provision mentions only "churches," a term that is not defined in the
28 LAMC. For purposes of this motion, the United States assumes that the term
includes other religious assemblies and institutions, including the use requested
by the Congregation.

1 or group of buildings for a community's educational and recreational activities."
2 <http://www.merriam-webster.com/dictionary/community%20center> (last visited
3 April 27, 2011).¹¹ Consequently, a government-run community center constitutes
4 a nonreligious assembly because it is a place where people gather for the common
5 purpose of educational and recreational activities. A community center is also
6 similar to the Congregation in terms of impacts on land-use interests because both
7 entities hold events that could affect traffic and parking in the neighborhood. Both
8 entities are noncommercial in nature. Thus, under any of the approaches used by
9 the various circuits discussed above, the Congregation and community centers are
10 comparable uses.

11 Furthermore, in RLUIPA's legislative history, Congress expressly stated that
12 community centers are among the nonreligious uses that are "often permitted as of
13 right in zones where churches require a special use permit, or permitted on special
14 use permit where churches are wholly excluded." H.R. Rep. 106-219, at 19-20
15 (citations omitted); see 146 Cong. Rec. S7774, at S7777 ("Testimony from across
16 the nation also has demonstrated that nonreligious assemblies are often treated far
17 better by zoning authorities than religious assemblies. For example, *recreation*
18 *centers*, health clubs, backyard barbecues and banquet halls are frequently the
19 subjects of more favorable treatment than a home Bible study, a church's homeless
20 feeding program or a small gathering of individuals for prayer.") (emphasis added).
21 Thus, because the City's regulation permits community centers as of right, but
22 requires churches to obtain a CUP, Plaintiffs have made out a prima facie case that
23 the City's regulation facially treats religious assemblies on less than equal terms.

24 At this point, under the strict liability standard used by the Third and
25 Seventh Circuits, Plaintiffs have shown that the City's zoning ordinance facially
26 violates the Equal Terms provision. The City is also liable for facial
27 discrimination under the strict scrutiny standard used by the Eleventh Circuit

28 _____
¹¹ The LAMC does not define "community center."

1 because the City cannot show a compelling governmental interest pursued through
2 the least restrictive means.¹²

3 The City frames its interests as “preserving its comprehensive zoning plan
4 and the quiet use and enjoyment of its residents” and “protecting the health, safety,
5 and welfare of the residents.” (Def.’s Mot. at 8, 12.) Citing such interests in the
6 abstract, however, is insufficient; the government must show that it has a
7 compelling interest in achieving those interests through the particular restriction at
8 issue. See, supra, Section III.B (discussing Westchester Day Sch., 504 F.3d at 353,
9 and Gonzales, 546 U.S. at 423). The City has not put forth any evidence showing
10 that permitting community centers in the R1 zone by right yet requiring churches
11 and other religious assemblies to obtain a CUP furthers the City’s interests in the
12 quiet enjoyment, health, safety, and welfare of its residents. Moreover, the City
13 has not shown that its discrimination is the least restrictive means for achieving its
14 objectives. Therefore, Plaintiffs have shown that the City’s zoning ordinance
15 violates RLUIPA’s Equal Terms provision on its face.

16 17 **2. As-applied Discrimination**

18 The City also discriminatorily applied its zoning regulations to the
19 Congregation. In cases in which the disparate treatment of assemblies occurs
20 through the application of a neutral zoning ordinance, such as where one assembly
21 is given a conditional use permit and a religious assembly is denied such a permit,
22 a court must examine all of the facts to determine whether the two assembly uses
23 were in fact treated equally or not. See Primera Iglesia, 450 F.3d at 1311

24
25 ¹² Defendant erroneously relies on Centro Familiar Cristiano Buenas Nuevas v. City
26 of Yuma, 615 F. Supp. 2d 980, 1000 (D. Ariz. 2009) for its contention that
27 rational basis review applies to Plaintiffs’ equal terms claim. (See Def.’s Mot. at
28 22-24.) First, as stated in footnote 7, supra, that case is currently on appeal.
Second, the Yuma court’s finding that the challenged law in that case was
“neutral and generally applicable” is inapposite here, where the LAMC is
discriminatory both on its face and as applied.

1 (examining various criteria to determine whether assemblies were treated equally,
2 including the type of zoning relief sought, the government decision-making bodies
3 involved, and the provisions of law that were determinative); Konikov, 410 F.3d at
4 1328 (examining whether permitted home assemblies had comparable community
5 impact to a religious gathering home that faced vigorous code enforcement).

6 The courts of appeal have applied various standards to determine which uses
7 are comparable. See Hazel Crest, 611 F.3d at 371 (7th Cir. 2010) (requiring that
8 religious and nonreligious assemblies be similarly situated with regard to their
9 “accepted zoning criteria”); Lighthouse, 510 F.3d at 266 (requiring that religious
10 and nonreligious assemblies be similarly situated with regard to their “regulatory
11 purpose”); Konikov, 410 F.3d at 1327 (analyzing whether the religious and
12 nonreligious assemblies have a “comparable community impact”); see also Third
13 Church of Christ, Scientist v. City of New York, 626 F.3d 667, 670 (2d Cir. 2010)
14 (finding that a church was comparable to a hotel because they were both subject to
15 the same city zoning law and that RLUIPA “is less concerned with whether formal
16 differences may be found between religious and nonreligious institutions – they
17 almost always can – than with whether, in practical terms, secular and religious
18 institutions are treated equally.”) Under any of these approaches, the City’s
19 actions violate RLUIPA’s Equal Terms provision.

20 Plaintiffs have met their burden to show that the City discriminated against
21 them in the application of its CUP process. Specifically, the City twice denied a
22 CUP for the Congregation to hold worship services at the subject property. In
23 contrast to the City’s treatment of the Congregation, the City admits that it has
24 allowed, and continues to allow, numerous nonreligious uses to locate in the R1
25 zone and Hancock Park, with and without CUPs. (Def.’s Mot. at 19-22; Def.’s
26 Opp’n to Congregation’s Mot. Summ. J. at 12-15.)

27 The City argues that some of these nonreligious uses are not similarly
28 situated to the Congregation because the existing nonreligious uses were approved

1 years ago (in some cases, as far back as the 1920s). However, one of the stated
2 purposes of RLUIPA was to prevent discriminating against new religious entities
3 in favor of already established religious and nonreligious entities. In fact, the
4 Congressional testimony leading up to RLUIPA specifically credited evidence that
5 some municipalities' unequal treatment of religious and nonreligious uses
6 prevented new religious uses from moving into a neighborhood:

7
8 Other testimony revealed that some land use regulations deliberately
9 exclude all new churches from an entire city. . . . [I]t is not uncommon
10 for ordinances to establish standards for houses of worship differing
11 from those applicable to other places of assembly, such as where they
12 are conditional uses or not permitted in any zone. The result of these
13 zoning patterns is to foreclose or limit new religious groups from
14 moving into a municipality. Established houses of worship are
15 protected and new houses of worship and their worshipers are kept
16 out.

17 H.R. Rep. 106-219 at 19 (internal citations and quotation marks omitted).

18 Despite the City's contentions otherwise, many of the nonreligious uses
19 allowed in the R1 zone constitute assemblies and institutions that have been treated
20 more favorably than the Congregation. For example,¹³ the Los Angeles Tennis
21 Club ("LATC"), which is located in the residential zone approximately 1.6 miles
22 from the Congregation, describes itself as a private "dynamic sporting and social
23 nexus," which offers "a wide array of first-class athletic and social amenities."
24 <http://www.latennisclub.com> (last visited April 27, 2011). By this description, the
25 Los Angeles Tennis Club is a nonreligious assembly – a group gathered for a
26 common purpose. The LATC's restaurant "serves breakfast, lunch and snacks
27 seven days a week," its bar is open every afternoon, and its website boasts that
28 members often gather to hang out, eat, or watch sporting events together.
<http://www.latennisclub.com/about> (last visited April 27, 2011). In addition to the

¹³ Due to space constraints, the United States cannot analyze each nonreligious use separately.

1 “impromptu socializing between friends who happen onto each other in our Great
2 Room, lounges or coming off the courts,” the LATC hosts “a full slate of holiday
3 parties throughout the year, dances, tennis team dinners, [] the occasional night of
4 comedy or live music,” as well as a “Fourth of July gala” and opportunities for
5 members’ children “to meet Santa or the Easter Bunny.” Id. As such, this
6 nonreligious use has the potential to cause much more significant traffic and
7 parking concerns than the Congregation, which averages 40 members for Sabbath
8 services (to which attendees walk, as required by their faith) and 10 to 15 attendees
9 for weekday services. (Pls.’ UF ¶ 28.) The land-use impacts on the community,
10 therefore, are similar. Defendant has failed to identify any zoning criteria or
11 regulatory purpose under which treating the Congregation one way and assemblies
12 like the Los Angeles Tennis Club another would not constitute unequal treatment
13 under RLUIPA Section 2(b)(1). Thus, under any of the tests used to compare
14 assemblies under the Equal Terms provision, Plaintiffs have established a prima
15 facie case. The same is true for the other assemblies detailed in the Congregation’s
16 filings.

17 At this point, if strict liability were the standard, Plaintiffs have shown that
18 the City has discriminatorily applied its zoning provisions to the Congregation.
19 Likewise, under strict scrutiny, the City has not shown that its denial of a CUP for
20 the Congregation is narrowly tailored to achieve a compelling state interest. With
21 regard to the City’s stated traffic and parking concerns (see discussion, supra, at 4,
22 citing Pls.’ UF ¶¶ 89-91, 99-100), the City allows nonreligious assemblies and
23 institutions (for example, the Los Angeles Tennis Club) in the R1 zone and
24 Hancock Park – with and without CUPs – that have a similar, or greater, effect on
25 traffic and parking. Despite the neighbors’ and the City’s concerns, the City has
26 not proffered any evidence that the Congregation has actually caused any traffic or
27 parking problems at any time during its existence. Even if parking and traffic
28 constituted compelling interests, the City has other, less onerous alternatives to

1 achieve these interests. The City can, for example, directly regulate traffic and
2 parking through a code provision that treats religious and nonreligious assemblies
3 neutrally. With regard to the City's stated interest in maintaining the historic,
4 residential nature of Hancock Park, the City here too can – and has – imposed
5 aesthetic restrictions to achieve this interest. As discussed earlier, the
6 Congregation remodeled the property to conform to the City's specific demands in
7 the now-defunct settlement agreement. (Pls.' UF ¶¶ 59-60.) Consequently,
8 whether its stated interests are compelling or not, the City has not shown that it has
9 narrowly tailored its regulation to achieve those interests.

10 Therefore, under any of the various approaches taken by the courts of
11 appeal, Plaintiffs have shown that the City discriminatorily applied its zoning
12 regulations to the Congregation in violation of RLUIPA's Equal Terms provision.

1 **V. CONCLUSION**

2 For the foregoing reasons, the Court should grant Plaintiffs' Motion for
3 Partial Summary Judgment and deny Defendant's Motion for Summary Judgment
4 or, in the Alternative, Partial Summary Judgment.

5
6 Dated: April 28, 2011

Respectfully submitted,

7 THOMAS E. PEREZ
8 Assistant Attorney General
9 Civil Rights Division

10 /s/ Holly C. Lincoln

11 STEVEN H. ROSENBAUM
12 Chief
13 ERIC TREENE
14 Special Counsel
15 HOLLY C. LINCOLN
16 Trial Attorney
17 Housing and Civil Enforcement Section
18 Civil Rights Division
19 U.S. Department of Justice
20 950 Pennsylvania Avenue, N.W. – G St.
21 Washington, DC 20530
22 Phone: (202) 514-0553
23 Fax: (202) 514-1116
24 E-mail: holly.lincoln@usdoj.gov

25
26
27
28
Attorneys for the United States of America

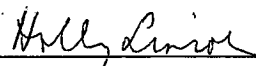
CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2011, I caused to be served a copy of the foregoing document entitled *United States of America's Statement of Interest in Support of Plaintiffs' Motion for Partial Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment*, by both e-mail and first-class mail, upon the following counsel of record:

Carmen A. Trutanic
Tayo A. Popoola
Amy Brothers
701 City Hall East
200 North Main Street
Los Angeles, CA 90012
Tayo.Popoola@lacity.org
Amy.Brothers@lacity.org

Joseph S. Fischbach
Fischbach & Fischbach
8200 Wilshire Blvd.Suite 424
Beverly Hills, CA 90211
Jsf2@fischbachlaw.com

Kathryn M. Davis
Law Office of Kathryn M. Davis
530 South Lake Avenue, No. 425
Pasadena, CA 91101
Kathryn.davis@kmdavislw.com



HOLLY/C. LINCOLN
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. – G St.
Washington, DC 20530
Phone: (202) 514-0553
Fax: (202) 514-1116
E-mail: holly.lincoln@usdoj.gov
Attorney for the United States of America