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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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|------------------------------------|---|-------------------------|
| REDWOOD CHRISTIAN SCHOOLS, |) | No. C-01-4282 SC |
| |) | |
| Plaintiff, |) | ORDER GRANTING |
| |) | DEFENDANTS' MOTION |
| v. |) | FOR JUDGMENT AS A |
| |) | MATTER OF LAW: |
| COUNTY OF ALAMEDA, <u>et al.</u> , |) | UNREASONABLE |
| |) | LIMITATION AND FIRST |
| Defendants. |) | <u>AMENDMENT CLAIMS</u> |
| _____ |) | |

I. INTRODUCTION

On February 22, 2007, upon the close of Plaintiff Redwood Christian Schools' ("Plaintiff" or "Redwood") case, Defendants the County of Alameda et al. ("Defendants" or "the County") moved for Judgment as a Matter of Law under Rule 50 of the Federal Rules of Civil Procedure as to all claims except Plaintiff's Religious Land Use and Institutionalized Persons Act ("RLUIPA") Substantial Burden claim. Upon considering the submissions and arguments of counsel for both parties, the Court GRANTED Defendants' Motion as to Plaintiff's three First Amendment claims and DISMISSED those claims, but DENIED the Motion as to Plaintiff's other claims.

On February 26, 2007, upon the close of all the evidence in the case, Defendants renewed their Rule 50 Motion as to all remaining claims and the Court GRANTED Defendants' Motion as to Plaintiff's RLUIPA Unreasonable Limitation claim and DISMISSED that claim, but DENIED the Motion as it related to Plaintiff's two remaining claims, which were presented to the jury. In both

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1 instances, the Court ruled from the bench and notified the parties
2 that a written order explaining the Court's reasoning would be
3 forthcoming.

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5 **II. BACKGROUND**

6 The Court has issued numerous orders in this case explaining
7 the relevant facts; familiarity with those orders is assumed. In
8 short, Redwood applied to the County for a Conditional Use Permit
9 ("CUP") to build a 650-student combined junior-senior high school
10 on property located in an unincorporated area of Alameda County.
11 The property, in the Palomares Canyon area of Castro Valley, was
12 comprised of several individual parcels of land that Redwood had
13 purchased in a series of transactions. Redwood required a CUP to
14 develop the site. After the Alameda County Municipal Advisory
15 Committee, Planning Commission, and Board of Supervisors all
16 denied the application, Redwood sued in federal court. Six claims
17 proceeded to trial, including Redwood's claims that the CUP denial
18 violated its civil rights under the First Amendment to the United
19 States Constitution and RLUIPA.

20
21 **III. LEGAL STANDARD**

22 Federal Rule of Civil Procedure 50(a) states:

23 If a party has been fully heard on an issue during a jury
24 trial and the court finds that a reasonable jury would not
25 have a legally sufficient evidentiary basis to find for the
26 party on that issue, the court may:
27 (A) resolve the issue against the party; and
28 (B) grant a motion for judgment as a matter of law against
the party on a claim or defense that, under the controlling
law, can be maintained or defeated only with a favorable
finding on that issue.

1 Fed. R. Civ. P. 50(a). Judgment as a matter of law "is
2 proper if the evidence, construed in the light most favorable
3 to the nonmoving party, permits only one reasonable
4 conclusion. . . ." Vollrath Co. v. Sammi Corp., 9 F.3d 1455,
5 1460 (9th Cir. 1993). "If reasonable minds could differ as
6 to the import of the evidence, however, a verdict should not
7 be directed." Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
8 250-51 (1986). Indeed, "[i]f conflicting inferences may be
9 drawn from the facts, the case must go to the jury." Pierce
10 v. Multnomah County, Or., 76 F.3d 1032, 1037 (9th Cir. 1996)
11 (quoting Rutherford v. City of Berkeley, 780 F.2d 1444, 1448
12 (9th Cir. 1986)).

13 14 **IV. DISCUSSION**

15 **A. Redwood's First Amendment Claims**

16 During its case, Redwood failed to present sufficient
17 evidence such that a reasonable jury could have found in Redwood's
18 favor on any of its three First Amendment claims. Regarding all
19 three of Redwood's First Amendment claims, as the Court ruled from
20 the bench, Plaintiff failed to present any evidence of Defendants'
21 intent to violate Redwood's First Amendment rights. One of the
22 few jointly submitted proposed jury instructions included the
23 elements and burdens of proof for Plaintiff's first amendment
24 claims under 42 U.S.C. § 1983. The first element stated that
25 Redwood had the burden of proving that "the acts or omissions of
26 the County were intentional." See Docket No. 364, Part 7,
27 Plaintiff's Proposed Liability Instructions, 7. Despite this,

1 during oral argument, Plaintiff urged the Court not to grant
2 Defendants' Rule 50 Motion as to Plaintiff's First Amendment
3 claims on the ground that § 1983 does not require a showing of
4 specific intent. In support, Plaintiff cited Caballero v. City of
5 Concord for the Ninth Circuit's statement that "specific intent is
6 not a prerequisite to liability under § 1983." 956 F.2d 204, 206
7 (9th Cir. 1992). While correct, Plaintiff failed to add that the
8 state-of-mind requirements for § 1983 claims are the same as those
9 for the underlying constitutional or statutory violations. See
10 Daniels v. Williams, 474 U.S. 327, 330 (1986); Baker v. McCollan,
11 443 U.S. 137, 140 & n. 3 (1979). For First Amendment violations,
12 Redwood must prove that the County intended to interfere with
13 Redwood's First Amendment rights.

14 In order to demonstrate a First Amendment violation, a
15 plaintiff must provide evidence showing that by his actions
16 [the defendant] deterred or chilled [the plaintiff's]
political speech and such deterrence was a substantial or
motivating factor in [the defendant's] conduct.

17 Mendocino Envtl. Ctr. v. Mendocino County, 192 F.3d 1283, 1300
18 (9th Cir. 1999) (internal quotations omitted). Therefore,
19 Plaintiff's last-minute attempt to reverse its previous statement
20 regarding the intent required for the § 1983 claims was misguided.
21 See San Jose Christian College v. City of Morgan Hill, 360 F.3d
22 1024, 1031-33 (9th Cir. 2004) (discussing whether intent had been
23 shown by the plaintiff for each First Amendment claim).

24 Regarding Redwood's free exercise claim, no reasonable jury
25 could conclude that the evidence at trial demonstrated an aim by
26 the County to restrict Redwood's religious practices because of
27 their religious motivation or impose burdens only on conduct

1 motivated by religion. See id. at 1031-32. Moreover, regarding
2 Redwood's free speech claim, as in San Jose Christian:

3 The record reflects no indication that the City's action was
4 motivated by the City's disdain of College's religious
5 orientation, or by the message to be communicated to the
6 students/parishioners at the Property. Thus, no viable
7 impingement of speech claim has been asserted.

8 360 F.3d at 1032 (emphasis in original). At trial, the evidence
9 and witnesses all point to the conclusion that the County harbored
10 no disdain for Redwood's religious orientation or message. The
11 same holds true for Redwood's free association claim.

12 Redwood has thus failed to present any evidence to
13 demonstrate the requisite level of intent for each of its First
14 Amendment claims and for that reason each claim fails.
15 Additionally, each of Redwood's First Amendment claims fails for
16 reasons specific to each claim, as discussed below.

17 **1. Redwood's Free Exercise Claim**

18 Prior to trial, the Court ruled that the Alameda County
19 zoning ordinances were neutral and of general applicability. See
20 Docket No. 239; No. 351 at 9. Thus, under Supreme Court and Ninth
21 Circuit precedent, rational basis review applies. See Employment
22 Div., Oregon Dep't of Human Resources v. Smith, 494 U.S. 872, 876-
23 77 (1990); Miller v. Reed, 176 F.3d 1202, 1206 (9th Cir. 1999).
24 As the Ninth Circuit summarized, "[i]f the zoning law is of
25 general application and is not targeted at religion, it is subject
26 only to rational basis scrutiny, even though it may have an
27 incidental effect of burdening religion." San Jose Christian, 360
28 F.3d at 1031.

Despite arguing that the County abridged its First Amendment

1 right to the free exercise of religion, Redwood failed to present
2 any evidence that the challenged law was neither neutral nor
3 generally applicable. A law is neutral and generally applicable
4 "if it does not aim to 'infringe upon or restrict practices
5 because of their religious motivation,' and if it does not 'in a
6 selective manner impose burdens only on conduct motivated by
7 religious belief.'" Id. at 1031 (quoting Church of the Lukumi
8 Babalu Aye, Inc. v City of Hialeah, 508 U.S. 520, 533, 543 (1993)).
9 Similar to a prior Ninth Circuit RLUIPA case, in the record of
10 this case "there is not even a hint that [Redwood] was targeted on
11 the basis of religion for varying treatment in the City's
12 application of the ordinance." San Jose Christian, 360 F.3d at
13 1032. The County employees testified that they were solely
14 concerned with the impact of the proposed school on the land and
15 neighborhood; they were not concerned with the fact that Redwood
16 was religiously oriented. Furthermore, both Gus Enderlin and
17 Bruce Johnson from Redwood admitted on cross-examination that they
18 had seen no indication that the County denied the project due to
19 Redwood's religious goals. As such, any impact on Redwood's free
20 exercise of religion was an unintentional and incidental burden
21 and thus is subject to rational basis review.

22 Applying rational basis review, Redwood's facial attack on
23 the County's neutral ordinances fails because Redwood did not
24 present any evidence that the ordinances were not rationally
25 related to the County's stated legitimate interests in maintaining
26 a fair and coherent system of zoning laws, protecting the rural
27 character of the Palomares Canyon area, or controlling the impact
28

1 of noise and traffic.

2 **2. Redwood's Free Association Claim**

3 Redwood also asserted that the County's denial of the CUP
4 application violated its First Amendment right to free
5 association. Again, the Ninth Circuit speaks clearly in San Jose
6 Christian:

7 Admittedly, the [CUP] ordinance and the City's enforcement
8 thereof render College unable to provide education and/or
9 worship at the Property. But the fact that the church's
congregants cannot assemble at that precise location does not
equate to a denial of assembly altogether.

10 360 F.3d at 1033 (emphasis in original). Redwood's situation is
11 remarkably similar to that in San Jose Christian. Though the
12 County's denial of the CUP application prevented Redwood from
13 building a school on the Palomares Canyon property, Redwood was,
14 and still is, operating a school at the Martin Site, also located
15 in Alameda County. To this day, Redwood is able to assemble their
16 student body for various forms of religious exercise. Redwood's
17 main complaint is that they would rather assemble in a school
18 building at the Palomares Canyon property, but this does not rise
19 to the level of a free association violation. Thus, Redwood has
20 failed to present any evidence that the County's denial of the CUP
21 application caused a "significant interference with the freedom of
22 association of their members." Bates v. City of Little Rock, 361
23 U.S. 516, 523 (1960). Consistent with Supreme Court and Ninth
24 Circuit precedent, the County's actions do not equate to a
25 violation of Redwood's First Amendment right to freedom of
26 association.

27 //

3. Redwood's Free Speech Claim

1
2 Redwood also argued that the County violated Redwood's First
3 Amendment right to freedom of speech. As explained in the Court's
4 prior order denying Redwood's Motion for Reconsideration and its
5 order granting the County's Motion in Limine No. 7, the zoning
6 ordinances in question do not grant County officials unbridled or
7 standardless discretion to prohibit Redwood's expressive activity
8 and thus do not implicate the First Amendment on those grounds.
9 See Docket Nos. 239, 351.

10 In addition, Alameda County's zoning ordinances neither
11 regulate speech nor operate as a pretext for suppressing
12 expression. The ordinances are materially dissimilar from those
13 at issue in the Supreme Court's free speech jurisprudence, such as
14 City of Renton v. Playtime Theatres, where the laws prohibited a
15 particular type of speech in certain locations. See 475 U.S. 41,
16 43 (1986). The language of Alameda County's zoning ordinances and
17 CUP application criteria contain no content-based orientation and
18 Redwood presented no evidence that they are used as a pretext for
19 suppressing expression. Rather, the ordinances and criteria are
20 content-neutral "time, place and manner" restrictions, which have
21 "long been held to be permissible." San Jose Christian, 360 F.3d
22 at 1033 (quoting Howard v. City of Burlingame, 937 F.2d 1376, 1381
23 (9th Cir. 1991). If an ordinance "is content-neutral, it will be
24 upheld against a First Amendment challenge so long as it furthers
25 a substantial governmental interest and does not unreasonably
26 limit alternative avenues of communication." Johnson v. City of
27 Pleasanton, 982 F.2d 350, 353 (9th Cir. 1992), citing City of

1 Renton, 475 U.S. at 47. The zoning ordinances further the
2 County's stated substantial governmental interests in controlling
3 excessive noise and vehicular traffic, preserving the rural
4 character of the Palomares Canyon area, and maintaining a coherent
5 land use plan. The ordinances do not unreasonably limit
6 alternative avenues of communication because Redwood currently
7 operates a school at the Martin Site where it has the ability to
8 express its views, and could do so elsewhere in the County if it
9 desired.

10 Therefore, Redwood failed to present sufficient evidence
11 such that a reasonable jury could conclude that the County
12 violated Redwood's right to freedom of expression.

13 **B. Redwood's RLUIPA Unreasonable Limitation Claim**

14 After the conclusion of their case, but prior to closing
15 arguments and jury deliberations, Defendants renewed their Rule 50
16 Motion for Judgment as a Matter of Law. The Court granted
17 Defendants' Motion on the RLUIPA Unreasonable Limitation claim and
18 dismissed that claim.

19 During trial and in their jury instructions, Redwood
20 presented their RLUIPA Unreasonable Limitation claim as an
21 argument that the County's land use regulations gave unbridled
22 discretion to the Planning Commission and Board of Supervisors.
23 See Docket No. 364, Part 7, Plaintiff's Proposed Liability
24 Instructions at 11-12. Redwood asserted that the land use
25 regulations were vague and imprecise, arbitrary, and conferred
26 standardless discretion on the decision-makers. All three of
27 these arguments facially attack the regulations. Thus, Redwood

1 restated claims that this Court had already dismissed prior to
2 trial. See Docket No. 351, Order Regarding Motions in Limine, 9.
3 In addition, in this Court's Order dismissing Plaintiff's state
4 law § 1094.5 claim, the Court found that the County had given
5 Redwood due process of law by following the proper procedures and
6 making appropriate findings. See Docket No. 123.

7 Regardless of how Redwood presented its claim, however, there
8 is no evidence to support a RLUIPA Unreasonable Limitation claim
9 in this case. After extensive review of the Alameda County
10 ordinances, the Court determined that the County's land use laws
11 are facially neutral and contain narrowly drawn standards for the
12 decision-makers to use in evaluating Conditional Use Permits. See
13 Docket No. 351 at 9. The County's discretion is narrowly
14 circumscribed by the applicable zoning regulations and the four
15 criteria for granting a CUP, which set forth the various factors
16 the Alameda County regulatory bodies use in making their
17 decisions.

18 Furthermore, Redwood presented no evidence that the County's
19 regulations or actions unreasonably limited "religious assemblies,
20 institutions, or structures within a jurisdiction" as required to
21 prevail under this provision of RLUIPA. See 42 U.S.C.
22 2000cc(b)(3)(B) (emphasis added). As discussed previously, though
23 Redwood was not permitted to build at the Palomares Canyon site,
24 it operates a school at the Martin Site, also in Alameda County.
25 Redwood has been granted several CUPs to make improvements to the
26 Martin Site and would be eligible for a CUP at various other sites
27 in the County where it might choose to move in the future.

1 **V. CONCLUSION**

2 For the reasons discussed herein, at trial the Court GRANTED
3 Defendants' Rule 50 Motion for Judgment as a Matter of Law with
4 respect to Plaintiff's First Amendment claims and RLUIPA
5 Unreasonable Limitation claim and DISMISSED those four claims
6 prior to submission of the case to the jury. For each of those
7 claims, Plaintiff failed to present evidence such that a
8 reasonable jury would have a legally sufficient evidentiary basis
9 to find in Plaintiff's favor.

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11 IT IS SO ORDERED.

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13 Dated: March 8, 2007



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UNITED STATES DISTRICT JUDGE

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