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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

**THE DANIEL AND FRANCINE  
SCINTO FOUNDATION,**

**Plaintiff,**

**vs.**

**CITY OF ORANGE,**

**Defendant.**

**Case No.: SA CV 15-1537-DOC  
(JCGx)**

**ORDER DENYING MOTION FOR  
SUMMARY JUDGMENT [17]**

1 Before the Court is Plaintiff The Daniel and Francine Scinto Foundation's  
2 ("Scinto Foundation" or "Plaintiff") Motion for Summary Judgment ("Motion") (Dkt.  
3 17).

4 **I. Facts<sup>1</sup>**

5 Generally, this case arises out of Plaintiff's allegations that Defendant City of  
6 Orange ("City" or "Defendant") deprived Plaintiff of and interfered with Plaintiff's use  
7 of its building, primarily by failing to keep required permits and plans for Plaintiff's  
8 building and creating the mistaken belief Plaintiff was in violation of various  
9 regulations. *See* Mot. at 1.

10 As a preliminary matter, the Court notes it has struggled to discern the facts  
11 surrounding this case. Neither Plaintiff's Motion nor the Statement of Undisputed  
12 Material Facts ("SUF") (Dkt. 14-4)<sup>2</sup> describes the facts or the timeline of events in any  
13 coherent fashion. Indeed, the Motion – which does not include any citations to the SUF  
14 – does not include a statement of facts.

15 Plaintiff is the owner of a building located at 1624 West Katella Avenue in  
16 Orange, California. Second Amended Complaint ("SAC") (Dkt. 1-1); *see also*  
17 Declaration of Daniel J. Scinto ("D. Scinto Decl.") (Dkt. 14-5) ¶¶ 1–2. Daniel and  
18 Francine Scinto, who founded Plaintiff Scinto Foundation, donated the building to  
19 Plaintiff. *See* Declaration of Francine Scinto ("F. Scinto Decl.") (Dkt. 14-8) ¶¶ 1–3.<sup>3</sup>

20 In 2012, after a routine fire inspection, "Fire personnel" from the City of Orange  
21 Fire Department ("Fire Department") reported potential Fire Code violations could exist  
22 at Plaintiff's building. Declaration of Rosalva Flores ("Flores Decl.") (Dkt. 19-2) ¶ 2.  
23 After these potential violations were identified, the matter was referred to Rosalva Flores  
24 ("Flores"), a Hazardous Material Specialist for the Fire Department, for "follow up." *Id.*

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25 <sup>1</sup> To the extent the Court relies on evidence to which the parties have objected, the Court has considered and  
26 overruled those objections. As to any remaining objections, the Court finds it unnecessary to rule on them because  
the Court did not rely on the disputed evidence.

27 <sup>2</sup> As discussed in further detail below, the Court struck the docket entry containing Plaintiff's SUF (Dkt. 16).  
Plaintiff never refiled its SUF. It is unclear whether Plaintiff is relying on the stricken SUF. Nonetheless, the Court  
will consider Plaintiff's stricken SUF.

28 <sup>3</sup> The Court struck both of these declaration and Plaintiff never refiled them. Nonetheless, the Court will consider  
the declarations.

1 ¶ 3. Flores states she “visited the property” and “found evidence the tenant [The Breath  
2 of Spirit Ministries] may have committed an unpermitted occupancy change to assembly  
3 use, there was an incomplete fire detection system and an individual was living in the  
4 attic space of the building.” *Id.* Flores further states that, after she “engaged in months of  
5 failed negotiations with the tenant to correct the alleged violations,” the tenant vacated  
6 the premises. *Id.* ¶ 4.<sup>4</sup>

7         Once the tenant moved out, Flores contacted the owner of the building, the Scinto  
8 Foundation, “to correct the remaining issues.” *Id.* Defendant asserts it had “voluminous  
9 records on file concerning the building but the records were difficult to read and/or did  
10 not explain the square footage of the building that was being used by the tenant” *Id.* ¶ 5.<sup>5</sup>  
11 Therefore, Flores requested additional information from the Scinto Foundation. *Id.*  
12 Defendant states Plaintiff’s representative, Gabrielle Yacoob (“Yacoob”) did not  
13 respond to its requests for information, but rather demanded Defendant “prove its  
14 position” regarding fire detection requirements. *Id.* ¶ 6.

15         Daniel Scinto states Yacoob informed him “a red flag was placed on the building  
16 . . . due to alleged building violations,” and therefore Plaintiff “could not occupy the  
17 building until the Foundation met certain conditions.” D. Scinto Decl. ¶ 7. According to  
18 Plaintiff, Defendant knew Plaintiff was under the impression it could not lease the  
19 building. SUF No. 1; *id.* Nos. 4–6. Defendant disputes this account.

20         In December 2015, “the property had an extensive fire,” and the Building  
21 Division of the City of Orange Community Development Department “determined it  
22 was unsafe to occupy due to the damage.” *Id.* ¶ 8. Since then, “no permits have been  
23 pulled for re-construction of the property.” *Id.*

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28 <sup>4</sup> Plaintiff asserts Defendant “forced” this tenant out. *See, e.g.*, F. Scinto Decl. ¶ 5.

<sup>5</sup> Plaintiff contends Defendant did not keep official records of applications received, permits and certificates issued, fees collected, records of inspections, and notices and orders issued. SUF No. 8.

1           **II.     Procedural History**

2           Plaintiff filed suit on February 17, 2015 in Orange County Superior Court. *See*  
3 Notice of Removal (Dkt. 1). Defendant removed the action to this Court on September  
4 23, 2015. *See id.*

5           In the SAC – the operative complaint – Plaintiff alleges the following claims  
6 against Defendant: 1) inverse condemnation, 2) nuisance, 3) interference with a  
7 contractual relationship, and 4) “discriminatory zoning laws against churches.” *See*  
8 *generally SAC.*

9           On July 1, 2016, Plaintiff filed its Motion for Summary Judgment (Dkt. 14). The  
10 Court struck the Motion for failure to comply with Local Rule 11-6 (Dkt. 16).

11           On July 6, 2016, Plaintiff refiled its Motion. Defendant opposed on July 11, 2016  
12 (Dkt. 19), and Plaintiff replied on July 18, 2016 (Dkt. 22).

13           **III.    Legal Standard**

14           Summary judgment is proper if “the movant shows that there is no genuine  
15 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”  
16 Fed. R. Civ. P. 56(a). Summary judgment is to be granted cautiously, with due respect  
17 for a party’s right to have its factually grounded claims and defenses tried to a jury.  
18 *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); *Anderson v. Liberty Lobby, Inc.*, 477  
19 U.S. 242, 255 (1986). A court must view the facts and draw inferences in the manner  
20 most favorable to the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654,  
21 655 (1992); *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1161 (9th Cir. 1992). The  
22 moving party bears the initial burden of demonstrating the absence of a genuine issue of  
23 material fact for trial, but it need not disprove the other party’s case. *Celotex*, 477 U.S. at  
24 323. When the non-moving party bears the burden of proving the claim or defense, the  
25 moving party can meet its burden by pointing out that the non-moving party has failed to  
26 present any genuine issue of material fact as to an essential element of its case. *See*  
27 *Musick v. Burke*, 913 F.2d 1390, 1394 (9th Cir. 1990).

1           Once the moving party meets its burden, the burden shifts to the opposing party  
2 to set out specific material facts showing a genuine issue for trial. *See Liberty Lobby*,  
3 477 U.S. at 248–49. A “material fact” is one which “might affect the outcome of the suit  
4 under the governing law . . . .” *Id.* at 248. A party cannot create a genuine issue of  
5 material fact simply by making assertions in its legal papers. *S.A. Empresa de Viacao*  
6 *Aerea Rio Grandense v. Walter Kidde & Co., Inc.*, 690 F.2d 1235, 1238 (9th Cir. 1982).  
7 Rather, there must be specific, admissible evidence identifying the basis for the dispute.  
8 *Id.* The court need not “comb the record” looking for other evidence; it is only required  
9 to consider evidence set forth in the moving and opposing papers and the portions of the  
10 record cited therein. Fed. R. Civ. P. 56(c)(3); *Carmen v. S.F. Unified Sch. Dist.*, 237  
11 F.3d 1026, 1029 (9th Cir. 2001). The Supreme Court has held that “[t]he mere existence  
12 of a scintilla of evidence . . . will be insufficient; there must be evidence on which the  
13 jury could reasonably find for [the opposing party].” *Liberty Lobby*, 477 U.S. at 252.

#### 14           **IV. Discussion**

15           Plaintiff moves for summary judgment on all four of its claims. *See Mot.* at 1. As  
16 a threshold matter, the Court finds it prudent to reiterate the summary judgment  
17 standard. Plaintiff asserts “Defendant has the burden to raise material issues of fact to  
18 defeat summary judgment.” *Id.* at 4–5. However, as set forth above, the moving party –  
19 here Plaintiff – bears the initial burden of demonstrating the absence of a genuine issue  
20 of material fact for trial. *Celotex*, 477 U.S. at 323; *see id.* (“[A] party seeking summary  
21 judgment always bears the initial responsibility of informing the district court of the  
22 basis for its motion, and identifying those portions of ‘the pleadings, depositions, and  
23 answers to interrogatories, and admissions on file, together with the affidavits, if any,’  
24 which it believes demonstrate the absence of a genuine issue of material fact.”) (citation  
25 omitted). If the moving party meets its burden, then the burden shifts to the opposing  
26 party – here Defendant – to set out specific material facts showing a genuine issue for  
27 trial. *See Liberty Lobby*, 477 U.S. at 248–49.

1 The Court will address Plaintiff's arguments concerning each claim below. First,  
2 however, the Court must determine whether it should decline to reach the merits of  
3 Plaintiff's Motion on the grounds that Plaintiff failed to meet and confer prior to filing  
4 its Motion.

5 **A. Failure to Meet and Confer**

6 Defendant asks the Court to deny the instant Motion on the grounds that neither  
7 Plaintiff's original nor refiled Notice of Motion references any attempt to engage in a  
8 meeting of counsel prior to the filing of the Motion as required by Local Rule 7-3.  
9 Opp'n at 4. Defendant also states Plaintiff never made any attempt to meet and confer.  
10 *Id.*

11 Pursuant to Local Rule 7-3, "counsel contemplating the filing of any motion shall  
12 first contact opposing counsel to discuss thoroughly, preferably in person, the substance  
13 of the contemplated motion and any potential resolution. The conference shall take place  
14 at least seven (7) days prior to the filing of the motion." The Court may, in its discretion,  
15 refuse to consider a motion for failure to comply with Local Rule 7-3. *See, e.g., Manning*  
16 *v. Dimech*, No. CV1505762RSWLPJWX, 2015 WL 9581795, at \*3 (C.D. Cal. Dec. 30,  
17 2015); *Reed v. Sandstone Properties, L.P.*, No. CV 12-05021 MMM VBKX, 2013 WL  
18 1344912, at \*6 (C.D. Cal. Apr. 2, 2013). "Failure to comply with the Local Rules does  
19 not automatically require the denial of a motion, however, particularly where the non-  
20 moving party has suffered no apparent prejudice as a result of the failure to comply."  
21 *CarMax Auto Superstores California LLC v. Hernandez*, 94 F. Supp. 3d 1078, 1088  
22 (C.D. Cal. 2015). The Court therefore elects to consider the merits of Plaintiff's Motion.  
23 However, the Court strongly admonishes Plaintiff of the seriousness of failure to comply  
24 with the Local Rules and cautions all parties to fully comply with all local rules when  
25 filing future motions.<sup>6</sup>

26  
27 <sup>6</sup> As set forth above, Plaintiff originally filed its Motion for Summary Judgment on July 1, 2016. However, because  
28 that filing did not comply with the local rules concerning page limits, the Court struck it and ordered Plaintiff to file  
a corrected Motion by July 6, 2016 (Dkt. 16). Defendant argues Plaintiff's refiled Motion is untimely and urges the  
Court to deny the Motion on that basis. Opp'n at 4. The Court declines to take such drastic action, however,  
especially considering Plaintiff originally filed a Motion for Summary Judgment on July 1, 2016.

1                   **B. The Alleged Failure to Keep Records**

2                   At the outset of its Motion, Plaintiff broadly argues the Court should grant  
3 summary judgment as to Plaintiff’s first three claims – inverse condemnation, nuisance,  
4 and interference with contractual relationships – based on the “uncontested fact that the  
5 Defendant[] failed to keep adequate records” as required by California Health & Safety  
6 Code § 19850 and California Building Code § 104.7.<sup>7</sup> Mot. at 2; *see* SUF No. 8 (“The  
7 Defendant[] failed [its] mandatory duty of keeping official records of applications  
8 received, permits and certificates issue[d], fees collected, reports of inspections, and  
9 notices and orders issued.”). Plaintiff fails to coherently explain how a finding that  
10 Defendant did not comply with record retention requirements relates to each specific  
11 claim and the elements of each of each claim. Nonetheless, before turning to the specific  
12 claims, the Court will address the assertion that there is no genuine dispute as to whether  
13 Defendant failed to keep required records.

14                   The Court finds there is a dispute of material fact as to whether Defendant failed  
15 to keep certain records. First, Plaintiff fails to adequately set forth what specific records  
16 Defendant failed to keep. Moreover, in support of its broad assertion concerning  
17 Defendant’s recordkeeping, Plaintiff cites only to the Deposition of Rosalva Flores  
18 (“Flores Depo.”) (Dkt. 24). In particular, Flores testified as follows:

19                   Q: “The City does not have any records of plans or permits for the  
20 second floor construction on the south side of this building.” Was  
21 that true as of January 23rd, 2014?

22                   A: Yes, to my knowledge, yes.

23                   Q: Well, you had microfiche, did you not?

24                   A: Yes.

25  
26 \_\_\_\_\_  
27 <sup>7</sup> California Health & Safety Code § 19850 provides, in relevant part: “The building department of every city or  
28 county shall maintain an official copy which may be on microfilm or other type of photographic copy, of the plans  
of every building, during the life of the building, for which the department issued a building permit.” California  
Building Code § 104.7 provides, “The building official shall keep official records of applications received, permits  
and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be  
retained in the official records for the period required for retention of public records.”

1 Q: And did that – did the microfiche reflect any form of construction  
2 as described in this e-mail on the south side of the building?

3 A: It showed the mezzanine construction, not a second floor.

4 Q: And the reason you are distinguishing second floor construction  
5 from the mezzanine area is that it's your interpretation or the  
6 position of the City that second floor construction would be an  
7 improvement of that area beyond the mezzanine area, correct?

8 A: Correct.

9 . . .

10 Q: But the walls and other improvements that in the earlier e-mail  
11 indicated had been done subsequent to 1998, in fact, were the  
12 improvements that you felt were not permitted in any way?

13 A: That's correct.

14 *Id.* at 224:23–226:2. The Court cannot conclude this testimony shows Defendant failed  
15 to keep “official records of applications received, permits and certificates issue, fees  
16 collected, reports of inspections, and notices and orders issued.” Moreover, other  
17 evidence in the record supports the Court’s conclusion there is a dispute of material fact.

18 In particular, Yacoob testified as follows:

19 Q: And when you went to the Building Department, what type of  
20 plans did you see?

21 A: I saw plans of 1624 West Katella.

22 Q: Where did you find those plans?

23 A: On the microfiche.

24 . . .

25 Q: And what plans did you find on the microfiche?

26 A: I do not recall at this time specifics.

27 Q: What do you recall finding?

28 A: Plans for 1624 West Katella.



1 Q: What more than plans? Do you recall dates of plans?

2 A: No.

3 . . .

4 A: At one point in time I tried to meet Rosie Flores to show her a  
5 certain set that showed the second floor on the microfiche.

6 Yacoop Depo. at 28:11–29:17.

7 Further, Defendant offers evidence concerning how the Community  
8 Development Department maintains records and indicating the files concerning  
9 the property at 1624 West Katella “are consistent with” Defendant’s “retention  
10 policies.” *See* Declaration of Mark Ibrahim (“Ibrahim Decl.”) (Dkt. 19-3) ¶¶ 2–4.

11 Based on the foregoing, the Court concludes there is a dispute of material  
12 fact as to whether Defendant failed to keep certain records. Thus, Plaintiff is not  
13 entitled to summary judgment on this basis.

### 14 C. Inverse Condemnation

15 Plaintiff moves for summary judgment as to its inverse condemnation claim,  
16 arguing “[t]he regulatory conduct of the Defendant has deprived the Plaintiff of the  
17 ability to rent, lease or use the building thereby substantially depriving the Plaintiff of  
18 the use of the property; thereby depriving Plaintiff of its rights pursuant to Article 1,  
19 Section 19 of the California Constitution and inversely condemning the property.” Mot.  
20 at 7–8.

#### 21 1. Legal Standard

22 Article I, § 19 of the California Constitution provides, in relevant part, that  
23 “[p]rivate property may be taken or damaged for public use only when just  
24 compensation . . . has first been paid to, . . . or for, the owner.” “Although the  
25 “California Constitutional ‘takings’ clause at art. I., § 19, ‘protects a somewhat broader  
26 range of property values than does the corresponding federal provision,’ California  
27 courts have ‘construed the clauses congruently’ and applied federal law in analyzing  
28 state law claims.” *Sanchez v. City of Los Angeles*, No. CV09-8920-SJO (RNB), 2010

1 WL 2569049, at \*17 (C.D. Cal. May 26, 2010), *report and recommendation adopted*,  
2 No. CV 09-8920-SJO (RNB), 2010 WL 2572615 (C.D. Cal. June 18, 2010) (quoting *San*  
3 *Remo Hotel v. City & Cnty. Of San Francisco*, 27 Cal. 4th 643, 663–64 (2002)).

4 “The takings clause applies to two types of government action: (a) the taking of  
5 physical possession of property or of an interest in that property for a public use; and (b)  
6 the regulatory prohibition on private use.” *Sanchez v. City of Fresno*, 914 F. Supp. 2d  
7 1079, 1105 (E.D. Cal. 2012). The second type – which is at issue here – “involves the  
8 state imposition of a regulation that prohibits or prevents property owners from using  
9 their property in a way that diminishes its value.” *Id.* (citation and internal quotation  
10 marks omitted); *see also Cty. of Alameda v. Superior Court*, 133 Cal. App. 4th 558, 566  
11 (2005).

12 California provides a state law cause of action for inverse condemnation.  
13 *Valenciano v. City & Cty. of San Francisco*, No. C 07-0845 PJH, 2007 WL 3045997, at  
14 \*6 (N.D. Cal. Oct. 18, 2007). Inverse condemnation actions “provide a vehicle for  
15 property owners to obtain ‘just compensation.’” *Regency Outdoor Advert., Inc. v. City of*  
16 *Los Angeles*, 39 Cal. 4th 507, 516, 139 P.3d 119, 123 (2006), *as modified* (Oct. 11,  
17 2006).

18 Under California law, “before a Plaintiff may establish a regulatory taking, it  
19 must first demonstrate that it has received a final decision from the land use authority  
20 regarding application of the challenged land use regulation to its property.” *Morrow v.*  
21 *City of San Diego*, No. 11-CV-1497-IEG WVG, 2012 WL 112542, at \*6 (S.D. Cal. Jan.  
22 11, 2012) (quoting *Cty. of Alameda*, 133 Cal. App. 4th at 567) (internal quotation marks  
23 omitted); *see also Meeker v. Belridge Water Storage Dist.*, No. 1:05-CV-  
24 00603OWWSMS, 2005 WL 6246803, at \*9 (E.D. Cal. May 3, 2005) (“As a general rule  
25 in California, an inverse condemnation claim based on an as-applied challenge to a  
26 regulation is not ripe until plaintiffs have exhausted the available administrative  
27  
28

1 remedies (e.g., seeking a variance).”); *Patrick Media Grp., Inc. v. California Coastal*  
2 *Com.*, 9 Cal. App. 4th 592, 607 (1992).<sup>8</sup>

3 “The property owner bears a heavy burden of showing that a regulation as applied  
4 to a particular parcel is ripe for a taking claim.” *Morrow*, 2012 WL 112542, at \*6  
5 (quoting *Cty. of Alameda*, 133 Cal. App. 4th at 567) (internal quotation marks omitted).  
6 A property owner “can show that a final decision has been made for ripeness purposes  
7 only when it can set forth facts that make a clear, complete, and unambiguous showing  
8 that the agency has drawn the line, clearly and emphatically, as to the sole use to which  
9 the property may ever be put.” *Id.* (citing *Cty. of Alameda*, 133 Cal. App. 4th at 567).  
10 Courts have concluded that, to do so, a plaintiff “must establish that it has been  
11 thoroughly rejected, and that it has submitted at least one meaningful application for a  
12 development project which has been thoroughly rejected, and that it has prosecuted at  
13 least one meaningful application for a zoning variance, or something similar, which has  
14 been finally denied.” *Id.* (citation omitted).

## 15 2. Discussion

16 The Court finds summary judgment is unwarranted on Plaintiff’s inverse  
17 condemnation claim. Plaintiff’s Motion fails to clearly set forth exactly what regulatory  
18 actions are at issue here. Plaintiff’s SUF simply refers to “regulatory conduct.” *See* SUF  
19 No. 4 (“The regulatory conduct of the Defendants deprived the Plaintiff the ability to  
20 lease the entire premise between October 2013 to on or about April 1, 2014 by the  
21

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22 <sup>8</sup> The Court is unconvinced by Plaintiff’s argument that “there is no requirement to exhaust all administrative  
23 remedies in a regulatory taking.” Reply at 6. First, the case law set forth above establishes the final decision  
24 requirement applies in the context of regulatory takings. Further, Plaintiff misrepresents the court’s conclusions in  
25 *Hensler v. City of Glendale*, 8 Cal. 4th 1, *as modified on denial of reh’g* (Sept. 22, 1994). Contrary to Plaintiff’s  
26 assertion, the *Hensler* court concluded an inverse condemnation action “may be brought immediately” “[w]hen  
27 property is damaged, or a physical invasion has taken place;” this is in contrast to the regulatory takings context,  
28 where, as the *Hensler* court made clear, requires exhaustion of remedies. *Id.* at 13–14. Finally, the court in *Patrick*  
*Media Group* rejected a challenge similar to Plaintiff’s. In that case, the plaintiff argued it was not required to  
proceed by way of administrative mandamus because it was not contesting the validity of the permit condition, but  
rather, was seeking compensation for it. 9 Cal. App. 4th at 608. The court noted it had already rejected a  
substantially similar argument when it previously held that “*First English [Evangelical Lutheran Church of*  
*Glendale v. Los Angeles Cty., Cal.*, 482 U.S. 304 (1987)] only declared that a *right to compensation existed* under  
the circumstances at issue therein, that is, where a taking was temporary. *First English* did not address the  
*procedural means* by which a claim for such compensation is asserted.” *Id.* at 609 (citing *Rosasco Holdings Inc. v.*  
*State of California*, 212 Cal. App. 3d 642, 656 (1989)).

1 Defendant allowing the Plaintiff to believe that they could not rent out the building until  
2 legally non-required conditions were met.”); SUF NO. 5 (“The regulatory conduct of the  
3 Defendants deprived the Plaintiff the ability to lease the entire second floor of the  
4 premise between on or about April 1, 2014 to on [or] about January 19, 2015.”).<sup>9</sup> As  
5 such, based on Plaintiff’s moving papers and the portions of the record cited therein, the  
6 Court concludes Plaintiff has failed to meet its burden of showing there is no genuine  
7 dispute concerning what government determinations were made concerning Plaintiff’s  
8 property. For similar reasons, the Court concludes Plaintiff also has failed to  
9 demonstrate an absence of material fact as to whether any such governmental  
10 determinations constituted final, definitive decisions such that exhaustion and ripeness  
11 requirements have been satisfied.<sup>10</sup> *See Ryan v. Zemanian*, 584 Fed. Appx. 406 (9th Cir.  
12 2014), *cert. denied*, 135 S. Ct. 2352 (2015) (“The district court properly denied  
13 [Plaintiff’s] motion for partial summary judgment because [Plaintiff] failed to meet his  
14 burden as the party moving for summary judgment to demonstrate that there was no  
15 genuine dispute as to any material fact and that he was entitled to judgment as a matter  
16 of law.”).

17 Based on the foregoing, the Court DENIES Plaintiff’s Motion as to its inverse  
18 condemnation claim.

#### 19 **D. Nuisance**

20 Plaintiff moves for summary judgment on its nuisance claim,<sup>11</sup> arguing Defendant  
21 obstructed Plaintiff’s free use of its property, unlawfully removed Plaintiff’s tenant, and  
22 reduced Plaintiff’s rental income. Mot. at 14.

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23 <sup>9</sup> In support of SUF No. 5, Plaintiff cites “Letter from [Defendant] City Attorney Wayne Winthers to Plaintiff,  
24 January 19, 2015, Exhibit 2.” Because Plaintiff fails to state the document this exhibit is attached to and identify  
25 where on the docket this exhibit can be found, the Court is left guessing as to which document Plaintiff is referring.

26 <sup>10</sup> Other than asserting “Defendant has not proposed any ‘administrative remedies’ whatsoever that are or were  
27 available to Plaintiff,” Plaintiff does not address whether the governmental decisions were final or whether pursuing  
28 any administrative remedies would be futile. *See Cty. of Alameda*, 133 Cal. App. 4th at 568 (discussing futility  
exception to the ripeness doctrine and describing it as “extremely narrow”); *see also Powell v. Cty. of Humboldt*,  
222 Cal. App. 4th 1424, 1434–35 (2014) (concluding “it would have been futile for the Powells to pursue the  
variance process the County cites as their administrative remedy” and that, “[w]ith respect to the related issue of  
ripeness, we believe the correspondence between the Powell’s counsel and the County sufficiently established a  
final, definitive decision by the County”).

<sup>11</sup> Although Plaintiff does not specify, the Court construes this as a private, rather than public, nuisance claim.

1 California law defines a nuisance, in relevant part, as “[a]nything which is . . . an  
2 obstruction to the free use of property, so as to interfere with the comfortable enjoyment  
3 of life or property.” Cal. Civ. Code § 3479; *see also Redevelopment Agency of City of*  
4 *Stockton v. BNSF Ry. Co.*, 643 F.3d 668, 672 (9th Cir. 2011) (quoting *People ex re.*  
5 *Gallo v. Acuna*, 14 Cal. 4th 1090, 1105 (1997)). “[T]o state a claim for private nuisance  
6 a plaintiff must establish three elements: (1) the plaintiff must prove an interference with  
7 his use and enjoyment of his property; (2) ‘the invasion of the plaintiff’s interest in the  
8 use and enjoyment of the land [must be] substantial, i.e., that it cause[s] the plaintiff to  
9 suffer substantial actual damage;’ and (3) ‘[t]he interference with the protected interest  
10 must not only be substantial, but also be unreasonable, i.e., it must be of such a nature,  
11 duration or amount as to constitute unreasonable interference with the use and  
12 enjoyment of the land.’” *Martinez v. Welk Grp., Inc.*, 907 F. Supp. 2d 1123, 1135 (S.D.  
13 Cal. 2012) (quoting *San Diego Gas & Electric v. Superior Court*, 13 Cal. 4th 893, 938  
14 (1996)); *see also Carr v. United States*, No. CVF 06-0372 LJO, 2006 WL 3355098, at  
15 \*4 (E.D. Cal. Nov. 17, 2006).

16 In its Motion, Plaintiff generally asserts it is undisputed that Defendant interfered  
17 with Plaintiff’s use and enjoyment of its property. Mot. at 14. Further, without citing to  
18 the record or any authority, Plaintiff argues it is “obvious” Defendant’s interference was  
19 substantial and unreasonable because “[n]o reasonable person would simply lay over and  
20 accept \$1 million or more of harm to her property of her income.” Mot. at 14–15.

21 The Court cannot conclude Plaintiff has met its burden of demonstrating there is  
22 no genuine dispute of material fact. *See Stanley v. Novartis Pharm. Corp.*, 11 F. Supp.  
23 3d 987, 994 (C.D. Cal. 2014) (“The moving party bears the initial burden of identifying  
24 the elements of the claim or defense and evidence that it believes demonstrates the  
25 absence of an issue of material fact.”) (citation omitted); *see Ryan*, 584 Fed. Appx. At  
26 406 (citing *Celotex* for the rule that, “when party moving for summary judgment bears  
27 the burden of proof on an issue at trial, the party must affirmatively demonstrate that no  
28 reasonable trier of fact could find other than for the moving party”). The only evidence

1 Plaintiff offers in support of its argument concerning this claim is Flores’ deposition  
2 testimony. In particular, when asked whether she “should have corrected the  
3 misconception that Miss Yacoob had as to the impact of the flag or red flagging of the  
4 property,” Flores answered yes. Flores Depo. at 231:23–232:3. Flores also testified she  
5 should have clearly identified there was no red flag and corrected “the misconception  
6 that that was impacting . . . their ability to lease the property.” *Id.* at 232:4–8. Plaintiff  
7 also points to Flores’ testimony that, “[a]t some point,” the Fire Department “removed”  
8 the requirement that “an automatic fire sprinkler system would be required” in the  
9 building because a “plan sheet” showed approval of “construction of the mezzanine.” *Id.*  
10 at 222:11–17. This evidence is insufficient to show Plaintiff is entitled to judgment as a  
11 matter of law on its nuisance claim

12 Even if this evidence were sufficient to show interference with Plaintiff’s use and  
13 enjoyment of its property (which the Court does not find), Plaintiff has failed to point to  
14 evidence in the record (or cite any authority) showing that the interference was  
15 substantial and unreasonable. *See W. Coast Home Builders, Inc. v. Aventis Cropscience*  
16 *USA Inc.*, No. C 04-2225 SI, 2009 WL 2612380, at \*7 (N.D. Cal. Aug. 21, 2009).<sup>12</sup>  
17 Accordingly, the Court DENIES Plaintiff’s Motion as to its nuisance claim.

### 18 **E. Interference with Contractual Relationships**

19 Plaintiff moves for summary judgment on its claim for interference with  
20 contractual relationships. From what the Court can glean, Plaintiff brings a claim for  
21 intentional, rather than negligent, interference with contractual relations. *See Mot.* at 17–  
22 18. The elements of intentional interference with contractual relations are “(1) a valid  
23 contract between plaintiff and a third party; (2) defendant’s knowledge of this contract;  
24 (3) defendant’s intentional acts designed to induce a breach or disruption of the  
25 contractual relationship; (4) actual breach or disruption of the relationship; (5) resulting  
26 damage.” *Crescent Woodworking Co. v. Accent Furniture, Inc.*, No.

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27  
28 <sup>12</sup> Further, even if it were undisputed Defendant failed to keep certain records (which, as discussed above, it is not), the Court cannot conclude this fact, standing alone, supports a finding that Plaintiff is entitled to summary judgment on its nuisance claim.

1 EDCV0401318DDPPJWX, 2007 WL 4144965, at \*6 (C.D. Cal. May 7, 2007); *see also*  
2 *Romero v. U.S. Bank, N.A.*, No. 16-CV-02286-MMC, 2016 WL 3916384, at \*5 (N.D.  
3 Cal. July 20, 2016).

4 The Court finds Plaintiff is not entitled to summary judgment on this claim. In  
5 support of argument, Plaintiff solely cites to an email from “Defendant’s officer Ian  
6 MacDonald” dated January 27, 2014. Mot. at 18; *see* Declaration of Gabrielle Yacoob  
7 (“Yacoob Decl.”) (Dkt. 14-9) Ex. 11 at 48–49.<sup>13</sup> Plaintiff includes the following quote  
8 from that email in its Motion: “If, following an inspection by the Building Division, you  
9 would like to lease the building, the Fire Department will support the leasing provided  
10 that 1) the fire sprinkler/alarm issue continues to make significant and consistent  
11 progress toward resolution, and that 2) both the fire insurance carrier and the tenant  
12 provide written acknowledgment of the lack of required sprinkler/alarm coverage.” *Id.*  
13 Plaintiff generally argues “such actions negatively affected Plaintiff’s insurance contract  
14 relationship and the freedom to contract with potential Lessees.” Mot at 18.

15 Assuming (but not deciding) the City is not immune from liability, *see* Opp’n at  
16 6–7, the Court cannot conclude Plaintiff has met its initial burden of showing an absence  
17 of material fact as to this claim. First, although Plaintiff asserts it is undisputed that a  
18 valid contract existed between Plaintiff and Amy’s Bridal” and Plaintiff and its insurer,  
19 “Farmer’s Insurance,” Mot. at 17, Plaintiff does not cite any evidence in support of this  
20 claim.

21 Second, the Court cannot conclude there is no dispute concerning whether  
22 Defendant had knowledge of these contracts. *Id.* Plaintiff merely states that – without  
23 quoting or specifically referring to any particular section of the email – the email from  
24 Macdonald “indicates knowledge of both contracts.” *Id.* This is insufficient to show  
25 Defendant had knowledge of the contracts. Based on the Court’s independent review of  
26 the email, it does not appear the email specifically refers to any contracts between  
27 Plaintiff and a third party.

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28 <sup>13</sup> The Court struck this declaration and Plaintiff never refiled it. Nonetheless, the Court will consider the  
declaration.

1 Third, the Court cannot conclude this email from MacDonald, standing alone,  
2 shows Defendant engaged in intentional acts designed to induce a breach or disruption  
3 of the contractual relationship.

4 Fourth, although Plaintiff asserts Defendant’s “actions negatively affected”  
5 Plaintiff’s contractual relationships, Plaintiff fails to direct the Court to any evidence  
6 showing an actual breach or disruption of the relationship with Amy’s Bridal, or with its  
7 insurer. Finally, Plaintiff has offered no evidence or coherent explanation concerning the  
8 alleged resulting damages.

9 Based on the foregoing, the Court DENIES Plaintiff’s Motion as to this claim.

## 10 **F. Discriminatory Zoning Laws**

11 Finally, Plaintiff moves for summary judgment on its fourth claim –  
12 “discriminatory zoning laws against churches.”<sup>14</sup> Mot. at 20. Plaintiff alleges a violation  
13 of RLUIPA and seemingly also asserts a claim under § 1983 for First Amendment  
14 violations. *See id.* at 21–22. From what the Court can discern – though Plaintiff does not  
15 specifically set forth the zoning law at issue – the “zoning laws” Plaintiff refers to is  
16 Section 17.18 of the City’s Municipal Code, which establishes “use regulations and  
17 development standards for the City’s commercial districts.”

18 The Court will first consider whether Plaintiff is entitled to summary judgment as  
19 to its RLUIPA claim.

### 20 **1. RLUIPA**

#### 21 **a. Legal Standard**

22 RLUIPA has various provisions limiting government regulation of land use: (1)  
23 the substantial burden provision, (2) the equal terms provision, (3) the nondiscrimination  
24 provision, and (4) the exclusions and limits provision. *See* 42 U.S.C. § 2000cc; *Centro*  
25 *Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1169 & n.24 (9th  
26 Cir. 2011); *see also Holy Ghost Revival Ministries v. City of Marysville*, 98 F. Supp. 3d  
27 1153, 1170–71 (W.D. Wash. 2015).

28 \_\_\_\_\_  
<sup>14</sup> In its Motion, Plaintiff refers to this claim as “discrimination on the basis of religion.” Mot. at 20.



1 From what the Court can discern, Plaintiff brings its claim under the first two  
2 provisions. *See* Mot. at 4, 24. Accordingly, the Court will address only those provisions.

3 The first provision “provides that a government land-use regulation ‘that imposes  
4 a substantial burden on the religious exercise of a [person, including a] religious  
5 assembly or institution’ is unlawful ‘unless the government demonstrates that imposition  
6 of the burden . . . is in furtherance of a compelling government interest; and is the least  
7 restrictive means of furthering that compelling governmental interest.’” *Int’l Church of*  
8 *Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1066 (9th Cir. 2011)  
9 (quoting 42 U.S.C. § 2000cc(a)(1)). Under RLUIPA, free exercise includes “any  
10 exercise of religion, whether or not compelled by, or central to, a system of religious  
11 belief.” 42 U.S.C. § 2000cc-5(7)(A). RUILPA further provides that “[t]he use, building,  
12 or conversion of real property for the purpose of religious exercise shall be considered to  
13 be religious exercise of the person or entity that uses or intends to use the property for  
14 that purpose.” 42 U.S.C. § 2000cc-5(7)(B).

15 The second RLUIPA land-use provision “prohibits a government from imposing  
16 a land use restriction on a religious assembly ‘on less than equal terms’ with a  
17 nonreligious assembly.” *Centro Familiar*, 651 F.3d at 1169 (citing 42 U.S.C.  
18 § 2000cc(b)).

### 19 **b. Ripeness**

20 Before reaching the merits of Plaintiff’s RLUIPA claim, the Court notes there are  
21 factual disputes concerning whether Plaintiff’s RUIPLA claim is even ripe for review –  
22 an issue the parties have failed to address. *See Guatay Christian Fellowship v. Cty. of*  
23 *San Diego*, 670 F.3d 957, 981 (9th Cir. 2011); *Reverge Alsemo v. Cty. of Shasta*, No.  
24 2:12-00361 WBS EFB, 2013 WL 1934175, at \*1 (E.D. Cal. May 9, 2013). “Ripeness is  
25 drawn from Article III limitations on judicial power and from prudential reasons for  
26 refusing to exercise jurisdiction.” *Guatay Christian Fellowship*, 670 F.3d at 980 (citation  
27 and internal quotation marks omitted). “As such, Article III ripeness, which is a matter  
28

1 of constitutional law, is jurisdictional, while “[p]rudential consideration of ripeness are  
2 discretionary.” *Id.* (citation omitted).

3 To determine whether a RLUIPA claim is ripe, the Ninth Circuit has applied the  
4 *Williamson County* final decision requirement to RLUIPA claims. *See id.* (citing  
5 *Williamson Cnty. Regional Planning Comm. v. Hamilton Bank of Johnson City*, 473 U.S.  
6 172 (1985)). “The *Williamson County* final decision requirement calls for a final  
7 adjudication of the injury at the local level prior to filing federal claim.” *Davis v. City of*  
8 *Selma*, No. 1:12-CV-01362-AWI, 2013 WL 3354443, at \*5 (E.D. Cal. July 3, 2013).

9 This requirement “is a ripeness consideration because it helps the court avoid  
10 entanglement in abstract disputes which could be more easily resolved at the local  
11 level.” *Id.* (citing *Guatay Christian Fellowship*, 670 F.3d at 977); *see Guatay Christian*  
12 *Fellowship*, 670 F.3d at 981 (“[W]e cannot even begin to determine that the County as  
13 definitively barred the Church from using the building as it wishes until it has had the  
14 opportunity to evaluate a completed application and has determined how it will apply its  
15 land use regulations to the Church.”).

16 Before imposing the *Williamson County* final decision requirement, “the Court  
17 must answer two threshold questions: 1) whether the Plaintiff experienced any  
18 immediate injury as a result of the City’s action, and 2) whether requiring Plaintiff to  
19 pursue additional remedies would further define Plaintiff’s alleged injuries.” *Id.*

20 Here, based on the record, the Court cannot clearly discern what immediate injury  
21 Plaintiff experienced. Nor can the Court discern exactly what government action  
22 Plaintiff contends caused the injury. Plaintiff seemingly argues its tenant, Breath of the  
23 Spirit Ministries, was forced to vacate the building. *See Reply* at 3 (“[Breath of the Spirit  
24 Ministries’] tenancy was declared illegal by Defendant as a result of discriminatory  
25 zoning laws[.]”). However, Plaintiff points to no evidence that supports this assertion. In  
26 passing, Plaintiff quotes from a letter from Defendant dated April 10, 2008 that  
27 apparently stated church services or religious assemblies are not permitted in the “CR  
28

1 zone.” Mot. at 20.<sup>15</sup> This quotation is unaccompanied by any citation to the record. As  
2 such, the Court is unable to make any determinations concerning this letter, including  
3 whether it is even in evidence. Further, the Court cannot discern from the parties’  
4 briefing whether requiring Plaintiff to pursue additional remedies would further define  
5 Plaintiff’s alleged injuries. Based on the foregoing, the Court finds there are disputes of  
6 material fact concerning both threshold inquiries.

7 Even if there were no disputes of fact concerning ripeness, the Court concludes  
8 summary judgment is also unwarranted on this claim for the reasons set forth below.

9 **c. “Substantial Burden” Provision**

10 To the extent Plaintiff brings a claim under the “substantial burden” provision of  
11 RLUIPA, the Court concludes summary judgment is not warranted. The analysis under  
12 the “substantial burden” provision “proceeds in two sequential steps.” *Int’l Church*, 673  
13 F.3d at 1066. “First, the plaintiff must demonstrate that a government action has  
14 imposed a substantial burden on the plaintiff’s religious exercise.” *Id.* “Second, once a  
15 plaintiff has shown a substantial burden, the government must show that its action was  
16 ‘the least restrictive means’ of ‘further[ing] a compelling government interest.” *Id.*  
17 (citation omitted).

18 Plaintiff claims its ability to carry out its “religious mission” was burdened  
19 because it was allegedly prohibited from renting to, and thus “supporting,” a particular  
20 tenant, Breath of the Spirit Ministries. *See* Mot. at 24. Thus, it appears Plaintiff is  
21 arguing that renting to a religious institution is the activity that was substantially  
22 burdened.

23 Even if the Court assumes (without deciding) that renting to a religious institution  
24 constitutes religious exercise under RLUIPA,<sup>16</sup> the Court cannot conclude Plaintiff has

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25 <sup>15</sup> According to section 17.18.020 of the Municipal Code “CR zone” is an abbreviation for “Commercial Recreation  
26 Zone.”

27 <sup>16</sup> One court in this Circuit held “RLUIPA’s statutory language, its legislative history, and relevant case law  
28 establish that commercial endeavors such as that here—the sale of property for the construction of market rate  
condominiums—even if undertaken by the Conference in order to fund its religious mission, do not constitute  
‘religious exercise’ protected by RLUIPA.” *California-Nevada Annual Conference of the Methodist Church v. City  
& Cty. of San Francisco*, 74 F. Supp. 3d 1144, 1154 (N.D. Cal. 2014).

1 shown “the City’s land use regulation . . . imposed a substantial burden on its religious  
2 exercise.” *Int’l Church*, 673 F.3d at 1066. The Ninth Circuit has stated that, “[f]or a land  
3 use regulation to impose a substantial burden, it must be oppressive to a significantly  
4 great extent.” *Id.* (citation and internal quotation marks omitted). “A substantial burden  
5 exists where the governmental authority puts ‘substantial pressure on an adherent to  
6 modify his behavior and to violate his beliefs.’” *Id.* (citation omitted).

7 Plaintiff fails to clearly point to any evidence showing there was a substantial  
8 burden on its free exercise. Although Plaintiff’s building at 1624 West Katella Avenue is  
9 the center of this lawsuit, Plaintiff has not cited anything in the record indicating it was  
10 precluded from carrying out its “religious mission” or “engag[ing] in, conduct[ing], and  
11 promot[ing] religious . . . activities primarily in Orange County, California,” F. Scinto,  
12 Decl. ¶ 1, at other locations or ways other than renting to a religious institution. *See San*  
13 *Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1035 (9th Cir. 2004)  
14 (“[W]hile the PUD ordinance may have rendered College unable to provide education  
15 and/or worship at the Property, there is no evidence in the record demonstrating that  
16 college was precluding from using other sites within the city.”); *Victory Ctr. v. City of*  
17 *Kelso*, No. 3:10-CV-5826-RBL, 2012 WL 1133643, at \*5 (W.D. Wash. Apr. 4, 2012)  
18 (finding the plaintiff’s contention that there was no other comparable property in the city  
19 to perform its activities unsupported and unpersuasive, and rejecting plaintiff’s general  
20 assertion the government imposes a substantial burden on religious exercise when it  
21 restricts an assembly’s ability to lease a desired space); *cf. Int’l Church*, 673 F.3d at  
22 1067 (finding a substantial burden could exist where there was testimony that “no other  
23 suitable sites exist[ed] in the City to house the Church’s expanded operations”). Because  
24 Plaintiff has failed to demonstrate that a government action has imposed a substantial  
25 burden on the plaintiff’s religious exercise, the Court need not consider whether the  
26 government’s action furthers a compelling governmental interest in the least restrictive  
27 manner possible.

1 **d. “Equal Terms” Provision**

2 Next, the Court turns to whether Plaintiff is entitled to summary judgment under  
3 the “equal terms” provision of RLUIPA. The Court concludes summary judgment is not  
4 warranted here. The statutory text of the “equal terms” provision provides: “No  
5 government shall impose or implement a land use regulation in a manner that treats a  
6 religious assembly or institution on less than equal terms with a nonreligious assembly  
7 or institution.” 42 U.S.C. § 2000cc(b)(1). The Ninth Circuit has described the elements  
8 of this prohibition as follows: “(1) there must be an imposition or implementation of a  
9 land-use regulation, (2) by a government, (3) on a religious assembly or institution,” (4)  
10 that is “on less than equal terms with a nonreligious assembly or institution.” *Centro*  
11 *Familiar*, 651 F.3d at 1170–71.

12 The Court concludes there is a dispute of material fact as to whether Plaintiff is a  
13 religious assembly or institution.<sup>17</sup> During his deposition, Daniel Scinto, testified as  
14 follows:

15 Q: . . . Is the Scinto Foundation a religious organization?

16 A: I’m not sure how to answer that. I can tell you what we were. We  
17 are a 509(a)(3) of the Internal Revenue Service Code. . . . We  
18 support religious organizations by having activities which are similar  
19 to them or the same and/or by giving them money, or donating  
20 services . . . .

21 Q: Okay. But does the Scinto Foundation hold services, religious  
22 services? A: No.

23 *See* Deposition of Daniel J. Scinto (“D. Scinto Depo.”) (Dkt. 25) at 64:19–65:8.

24 Particularly in light of this testimony, the Court cannot conclude the evidence Plaintiff

25 <sup>17</sup> Although the Ninth Circuit in *Centro Familiar* does not explicitly say so, it has indicated that, under the equal  
26 terms provision of RLUIPA, Plaintiff must be a religious assembly or institution. *See Centro Familiar*, 651 F.3d at  
27 1171 (“[O]nce the religious institution establishes a prima facie case . . . .”); *id.* (“It is undisputed that Centro  
28 *Familiar* is a religious institution . . . .”); *id.* at 1173 (“The burden is not on the church to show a similarly situated  
secular assembly . . . .”). The Third Circuit has clearly stated a plaintiff asserting a claim under this provision must  
show it is a religious assembly or institution, *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510  
F.3d 253, 270 (3d Cir. 2007), as has the Eleventh Circuit, *see Primera Iglesia Bautista Hispana of Boca Raton, Inc.*  
*v. Broward Cty.*, 450 F.3d 1295, 1307 (11th Cir. 2006).

1 cites concerning its mission is sufficient to support a finding that Plaintiff is a religious  
2 institution. *See* F. Scinto Decl. ¶ 1 (“In our Articles of Incorporation, the Seventeenth  
3 Article, paragraph 7 states the following supported mission: “The Foundation shall  
4 engage in, conduct, and promote religious, artistic, and environmental activities  
5 primarily in Orange County, California.”).<sup>18</sup>

6 Further, the Court concludes Plaintiff has failed to meet its initial burden of  
7 showing the absence of a dispute of material fact as to whether there was “an imposition  
8 or implementation of a land-use regulation” on Plaintiff by the government, and whether  
9 Plaintiff was treated on less than equal terms with a nonreligious assembly or institution.  
10 *See Victory Ctr.*, 2012 WL 1133643, at \*6.

## 11 **2. Free Exercise Clause of the First Amendment**

12 Plaintiff also appears to bring its claim for “discriminatory zoning laws” based on  
13 violations of the Free Exercise Clause of the First Amendment. *See* Mot. at 21. The First  
14 Amendment, applicable to the states through the Fourteenth Amendment, provides,  
15 “Congress shall make no law respecting an establishment of religion, or prohibiting the  
16 free exercise thereof . . . .” U.S. Const., amend. I. However, “the Free Exercise Clause  
17 does not inhibit enforcement of otherwise valid regulations of general application that  
18 incidentally burden religious conduct.” *Alpha Delta Chi-Delta Chapter v. Reed*, 648  
19 F.3d 790, 804 (9th Cir. 2011) (citation and internal quotation marks omitted). A neutral  
20 law of general application “need not be supported by a compelling government interest  
21 even when ‘the law has the incidental effect of burdening a particular religious  
22 practice.’” *Stomans, Inc. v. Wiesman*, 794 F.3d 1064, 1075 (9th Cir. 2015), *cert. denied*,  
23 No. 15-862, 2016 WL 81161 (U.S. June 28, 2016) (citation omitted). Such laws need  
24 only survive rational basis review. On the other hand, strict scrutiny applies to laws that  
25 are not neutral or not generally applicable. *Id.*

26  
27  
28 <sup>18</sup> The Court notes Plaintiff has not cited to its articles of incorporation; in its Motion, the only evidence Plaintiff points to concerning its mission, is Francine Scinto’s declaration. It is not clear whether Francine Scinto is directly quoting the articles of incorporation.

1 The Court finds summary judgment is not warranted. Plaintiff has failed to meet  
2 its initial burden of “identifying the elements of the claim . . . and evidence that it  
3 believes demonstrates the absence of material fact.” *Stanley*, 11 F. Supp. 3d at 994.  
4 Plaintiff fails to present any coherent argument as to how the undisputed facts are  
5 sufficient to establish a claim under the First Amendment. Indeed, Plaintiff does not  
6 adequately set forth or discuss the zoning regulation it challenges. Moreover, the one  
7 undisputed fact contained in the SUF concerning this claim is a legal conclusion that  
8 Plaintiff fails to support with evidence in the record. *See* SUF No. 10 (“Defendant  
9 specifically prohibited ‘the free exercise’ of religion by unreasonabl[y] and illegally  
10 refusing for a Church to be in a commercial zone that allows uses nearly identical to  
11 those of a Church.”).<sup>19</sup>

12 Based on the record before it, the Court cannot conclude, as a matter of law, the  
13 zoning regulation at issue prohibits the free exercise of religion. *See Reverage Alsemo*,  
14 2013 WL 1934175, at \*2 (“[P]laintiffs fail to explain how the Shasta County Code  
15 section 16.04.150, the basis for the stop order which plaintiffs argue violated their right  
16 to free exercise, infringes upon or restricts religious practices because of their religious  
17 motivation or is selectively applied only to conduct motivated by religious belief.”).

18 For the foregoing reasons, the Court DENIES Plaintiff’s Motion as to its claim  
19 for “discriminatory zoning laws.”

20 **V. Disposition**

21 For the foregoing reasons, the Court DENIES Plaintiff’s Motion in its entirety.

22  
23 

24 \_\_\_\_\_  
25 DAVID O. CARTER  
26 UNITED STATES DISTRICT  
27 JUDGE

28 Dated: August 3, 2016

<sup>19</sup> The only evidence Plaintiff cites in support of SUF No. 10 is “Letter from Defendant to Plaintiff’s tenant, April 10, 2008.” This is the same letter discussed above – a letter that does not even appear to be in evidence.