

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 09 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PRAISE CHRISTIAN CENTER, a
California non-profit corporation;
ANDREW DEREK ANUNCIATION,

Plaintiffs - Appellants,

v.

CITY OF HUNTINGTON BEACH;
CONNIE BOARDMAN, individually and
in her official capacity for the City of
Huntington Beach; CATHY GREEN,
individually and in her official capacity for
the City of Huntington Beach; GIL
COERPER, individually and in his official
capacity for the City of Huntington Beach;
DEBBIE COOK, individually and in her
official capacity for the City of Huntington
Beach; JILL HARDY, individually and in
her official capacity for the City of
Huntington Beach; PAM HOUCHEN,
individually and in her official capacity for

No. 06-55462

D.C. No. CV-03-01504-GPS

MEMORANDUM^{*}, ^{**}

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This appeal was originally the subject of a dispositive order filed May 11, 2009. On June 1, 2009, Appellants petitioned for panel rehearing and rehearing en banc. In an order filed contemporaneously with this opinion, we grant the petition for panel rehearing; withdraw the May 11, 2009 order; and deny the petition for rehearing en banc as moot.

the City of Huntington Beach; DAVE SULLIVAN, individually and in his official capacity for the City of Huntington Beach,

Defendants - Appellees.

Appeal from the United States District Court
for the Central District of California
George P. Schiavelli, District Judge, Presiding

Argued and Submitted February 4, 2008
Pasadena, California

Before: PREGERSON and WARDLAW, Circuit Judges, and LEIGHTON,^{**}
District Judge.

Praise Christian Center and Pastor Derek Annunciation (collectively “Praise Christian”) filed a complaint in district court alleging that the City of Huntington Beach violated the “Equal Terms” provision of the Religious Land Use and Institutionalized Persons Act by requiring Praise Christian to install a sprinkler system throughout the warehouse at 18851 Goldenwest Boulevard if it wished to continue holding religious services there. The district court granted the City of Huntington Beach’s summary judgment motion as to plaintiffs’ Equal Terms claim. Praise Christian timely appealed.

^{**} The Honorable Ronald B. Leighton, United States District Judge for the Western District of Washington, sitting by designation.

Before we decided Praise Christian's appeal, it moved out of the warehouse. In its complaint, Praise Christian requested nominal and compensatory damages with respect to its Equal Terms claim. But Praise Christian did not reiterate this request in its appeal before us. Because Praise Christian no longer uses the warehouse, and did not raise damages on appeal, we dismissed the appeal as moot.

In considering Praise Christian's petition for panel rehearing, we were persuaded that we erred in dismissing the appeal as moot. A claim for nominal damages creates the requisite personal interest necessary to maintain a claim's justiciability. *See Bernhardt v. County of Los Angeles*, 279 F.3d 862, 872 (9th Cir. 2002) ("A live claim for nominal damages will prevent dismissal for mootness."). If damages were sought in the complaint, there is a live claim for damages, even if the claim is seemingly implausible. *Id.* Praise Christian sought nominal and compensatory damages in its complaint with respect to its Equal Terms claim. Consequently, Praise Christian's Equal Terms claim was not rendered moot when Praise Christian stopped using the warehouse.

Because we conclude that the appeal was not mooted, we review the merits of Praise Christian's arguments with respect to its Equal Terms claim. We have jurisdiction under 28 U.S.C. §1292. We affirm for the reasons stated by the district court: Praise Christian has not shown disparate treatment.

AFFIRMED and REMANDED.

