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18 UNITED STATES DISTRICT COURT
 19 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 20 SOUTHERN DIVISION

21 MICAH’S WAY,
 22 Plaintiff,
 23 v.
 24 CITY OF SANTA ANA,
 25 Defendant.

Case No. 8:23-cv-00183-DOC-KES

**STATEMENT OF INTEREST IN
 OPPOSITION TO DEFENDANT’S
 MOTION TO DISMISS PLAINTIFF’S
 COMPLAINT**

Date: June 5, 2023
 Time: 8:30 a.m.
 Courtroom: 10-A

Hon. David O. Carter
 United States District Judge

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9 **Legislative History**

10 146 Cong. Rec. S6689 (daily ed. July 13, 2000)8

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I. STATEMENT OF INTEREST OF THE UNITED STATES

Pursuant to 28 U.S.C. § 517, the United States respectfully submits this Statement of Interest to the Court relating to the Defendant City of Santa Ana’s (“City”) Motion to Dismiss (“Motion” or “Mot.”), ECF No. 16.¹ This case raises important questions involving the application of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. §§ 2000cc *et seq.* In addition to creating a private cause of action, RLUIPA charges the Attorney General with enforcing its provisions. *See* 42 U.S.C. § 2000cc-2(f). Because this litigation implicates the proper interpretation and application of RLUIPA, the United States has a strong interest in the issues raised by the City’s Motion and believes that its participation will aid the Court. The scope of the United States’ Statement of Interest is limited to what constitutes religious exercise and whether Plaintiff has sufficiently alleged a substantial burden claim under RLUIPA. As Plaintiff has plausibly alleged a violation of RLUIPA, the City’s Motion to Dismiss Plaintiff’s RLUIPA claim should be denied.

II. BACKGROUND

According to the Complaint (“Compl.”), ECF No. 1, Micah’s Way (“MW”), is a “faith-based organization” named after the “‘Micah Mandate’ set forth in Micah 6:8 in the Bible.”² Compl. ¶5. The “Micah Mandate” requires followers “[t]o act justly, and to love mercy, and to walk humbly with your God.” *Id.* MW describes itself as a

¹ Under 28 U.S.C. § 517, “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

² A court must, on a motion to dismiss, assume the truth of the well-pleaded allegations of the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Co. v. Twombly*, 550 U.S. 544, 555 (2007)). For this reason, the United States treats the Plaintiff’s allegations as true in this Statement of Interest. The United States takes no position on the merits of Plaintiff’s claims, including whether the City has violated RLUIPA.

1 “Christian ministry” that follows the teachings of Jesus Christ, and particularly the
2 words of Matthew 25:35-40, which state, “For I was hungry and you gave me something
3 to eat, I was thirsty and you gave me something to drink . . .” *Id.* ¶4. Consistent with
4 this mandate, MW provides charitable services to homeless individuals, including by
5 providing light food and beverages, to persons who come to their Resource Center. *Id.*
6 ¶7. In particular, MW believes it “has a religious duty to help the homeless that come to
7 it . . . including by providing a cup of coffee and a muffin if a client is hungry.” *Id.* ¶27.

8 Since early 2016, MW’s Resource Center has been located at 1517 East Fourth
9 Street in Santa Ana, California. Compl. ¶51. MW describes this as an “excellent
10 location” because it is only half a mile from the Department of Motor Vehicles
11 (“DMV”), facilitating its ID voucher services.³ *Id.* ¶52. MW has paid yearly fees to the
12 City for a business license, but does not have a Certificate of Occupancy (“COO”). *Id.*
13 ¶¶10, 54-56.

14 In early 2020, MW began providing snacks and beverages outdoors in response to
15 the COVID-19 pandemic. Compl. ¶57. Around this same time, a needle exchange
16 program operated by the American Addiction Institute began operations two doors down
17 from MW. The exchange was associated with increased neighborhood complaints of
18 drug use, trespassing, littering, and loitering. *Id.* ¶¶58-60, 64-67.

19 In November 2021, the City’s mayor received a complaint “begging” him to “do
20 something about the homeless houses” after individuals “dump[ed] trash and bleach” on
21 a local resident’s door. Compl. ¶64. In response, the mayor instructed various city
22 departments “to devise whatever measures they could come up with to compel MW and
23 the Needle Exchange to move out of the 4th Street neighborhood or, at the very least, to
24 severely curtail their operations.” *Id.* ¶¶67, 68, 74.

25
26 ³ MW assists homeless persons fill out ID vouchers, which allows them to obtain a free
27 California photo ID from the DMV. MW also assists homeless persons in obtaining
28 birth certificates so that they can qualify for various government benefits, including
housing assistance. Compl. ¶52.

1 On November 29, 2021, the City issued an Administrative Citation to MW for
2 “engaging in unpermitted food distribution” and “conducting business operations
3 without a valid COO.” Compl. ¶79. The following day, the City held a community
4 meeting regarding its “enforcement efforts” against MW. *Id.* ¶¶98-104. The mayor
5 stated that MW and the needle exchange were “not in the right location,” and that a
6 solution was possible only if they were “open-minded about finding relocation.” *Id.*
7 ¶¶103-04. His intention was “to correct what’s happening here, but also prevent it from
8 happening anyplace else in the City.” *Id.* ¶102.

9 MW applied for a COO in December 2021, but was denied in January 2022.
10 Compl. ¶12. MW reapplied in February 2022, but was denied again “on the grounds that
11 MW was engaged in food distribution activities that were allegedly not permitted in the
12 Professional district.” *Id.* In March 2022, MW informed the City that its refusal to grant
13 a COO permitting it to provide food and beverages to poor and homeless individuals was
14 a violation of RLUIPA. *Id.* ¶107. On June 7, 2022, the City informed MW that it would
15 “take all appropriate action,” including the “issuance of administrative fines, criminal
16 prosecution and/or civil remedies such as injunctions and penalties,” if MW continued
17 operating without a COO. *Id.* ¶13.

18 MW administratively appealed the City’s second COO denial in August 2022.
19 Compl. ¶14. Following a hearing, the administrative hearing officer concluded that the
20 City had failed to adequately “address the RLUIPA issues.” *Id.* ¶16. MW subsequently
21 met with City officials and offered to return to its pre-pandemic practice of providing
22 food and drink indoors rather than from its garden courtyard. *Id.* ¶112. However, the
23 City rejected this offer. *Id.* ¶113. Regardless, MW reverted to its pre-pandemic
24 procedures and currently only distributes food and beverages inside its Resource Center.
25 *Id.* ¶29. Although MW informed the City in writing of this policy change, on January
26 11, 2023, the City notified MW that it would not permit MW to “provid[e] any food or
27 beverages of any kind to any clients or any other members of the public (whether rich or
28 poor), either inside or outside MW’s Resource Center.” *Id.* ¶¶31-32, 35. Accordingly,

1 MW remains “subject to potential fines, injunctions, and criminal prosecution” from the
2 City. *Id.* ¶31; *see also id.* ¶13.

3 On January 30, 2023, MW filed this suit, alleging *inter alia* that the City’s actions
4 violated RLUIPA by imposing a substantial burden on its religious exercise. Compl.
5 ¶¶116-27. On March 22, 2023, the City moved to dismiss MW’s claims. Mot. at 2.
6 Specifically, the City argues that MW’s “use of its property, as alleged in the Complaint,
7 does not constitute a religious exercise under RLUIPA,” and that its denial of MW’s
8 COO application does not impose a substantial burden on MW’s religious exercise
9 because food and drink distribution is merely “incidental” to MW’s practices. *Id.*

10 **III. ARGUMENT**

11 RLUIPA provides that “[n]o government shall impose or implement a land use
12 regulation in a manner that imposes a substantial burden on the religious exercise of a
13 person, including a religious assembly or institution” unless the government
14 demonstrates that the imposition of that burden is the least restrictive means of furthering
15 a compelling governmental interest. 42 U.S.C. § 2000cc(a)(1). Here, MW has plausibly
16 alleged a violation of RLUIPA because its Complaint asserts that (1) providing food and
17 drink to homeless individuals is a part of its “religious exercise,” and (2) the City’s
18 outright ban on this practice “imposes a substantial burden on its religious exercise.”

19 **A. MW plausibly alleged that its distribution of food and drinks to** 20 **homeless individuals is “religious exercise” under RLUIPA.**

21 RLUIPA broadly defines “religious exercise” as “any exercise of religion, whether
22 or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-
23 5(7)(A). This definition is deliberately far-reaching, as evidenced by Congress’ intent to
24 distinguish RLUIPA “from traditional First Amendment jurisprudence” by “expand[ing]
25 the reach of the protection to include ‘any religious exercise.’” *Greene v. Solano Cnty.*
26 *Jail*, 513 F.3d 982, 986 (9th Cir. 2008) (citing *Cutter v. Wilkinson*, 544 U.S. 709, 715
27 (2005)). Indeed, RLUIPA itself demands that it be “construed in favor of a broad
28 protection of religious exercise, to the maximum extent permitted by the terms of this

1 chapter and the Constitution.” 42 U.S.C. § 2000cc-3(g).

2 Consistent with this broad mandate, courts have routinely found that providing
3 charity to homeless individuals—including by offering food and drink—can constitute
4 “religious exercise” under RLUIPA. *See, e.g., Harbor Missionary Church Corp. v. City*
5 *of San Buenaventura*, 642 F. App’x 726, 727-29 (9th Cir. 2016) (finding that the
6 church’s homeless ministry, which included offering food, was “an integral part of its
7 religious exercise”); *World Outreach Conf. Ctr. v. City of Chicago*, 591 F.3d 531, 537
8 (7th Cir. 2009) (holding that the City’s denial of a permit impeded the church’s
9 “religious mission of providing living facilities to homeless and other needy people”);
10 *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570, 574-75 (2d. Cir.
11 2002) (finding that operating a homeless shelter constitutes religious exercise); *see also*
12 *W. Presbyterian Church v. Bd. of Zoning Adjustment of D.C.*, 862 F. Supp. 538, 544
13 (D.D.C. 1994) (noting that, in the Religious Freedom Restoration Act context, the
14 “concept of acts of charity as an essential part of religious worship is a central tenet of all
15 major religions,” including by providing “clothing for the naked, *food for the hungry,*
16 and benevolence to the needy”) (emphasis added).⁴

17 Here, MW alleges that providing food and drink to poor and homeless individuals
18 is an integral part of its religious exercise. MW asserts that it is a Christian “faith-based
19 organization” named after the “Micah Mandate,” as set forth in the Bible. Compl. ¶5.
20 Feeding homeless persons is part of its “Christian ministry.” *Id.* ¶¶4, 19, 26, 42-43.
21 MW feeds homeless persons because it believes it “has a religious duty to help the
22 homeless that come to it . . . including by providing a cup of coffee and a muffin if a
23 client is hungry.” *Id.* ¶27. This belief is rooted in “heeding and implementing the

24 _____
25 ⁴ These rulings are consistent with RLUIPA’s legislative intent, which aimed to protect
26 organizations like MW that exercise their faith through charity, including by distributing
27 food to homeless individuals. During RLUIPA’s legislative process, a sponsoring
28 senator specifically cited a “meals program for the homeless and the working poor” as a
type of land use that should receive protection as religious exercise. *See* 146 Cong. Rec.
S6689 (daily ed. July 13, 2000) (statement of Sen. Kennedy).

1 following words of Jesus Christ: ‘For I was hungry and you gave me something to eat, I
2 was thirsty and you gave me something to drink’ (Matthew 25:35-40).” *Id.* ¶4.
3 Indeed, MW “takes great solace in the fact that providing charitable assistance to persons
4 in need is a practice that is embraced by every major religion in the world,” and MW
5 believes it is doing “God’s work” by “providing food to the hungry, drink to the thirsty,
6 clothing to the needy, and shelter to the homeless.” *Id.* ¶42.

7 This type of faith-based outreach is akin to *Harbor Missionary Church Corp*,
8 where the Ninth Circuit found that a city’s denial of a conditional use permit, which
9 prevented the plaintiff “from conducting its homeless ministry, an integral part of its
10 religion,” violated RLUIPA’s substantial burden provision. 642 Fed. App’x at 729.
11 Similar to MW, the Church in *Harbor Missionary* used its property to provide “basic
12 needs to the City’s homeless men and women,” such as food, clothing, showers, and
13 counseling. *Id.* at 727. The Church cited “the Bible at Matthew 25:34-46” as a source
14 for its “belief that its homeless ministry is part of its religious duty to feed the hungry
15 and clothe the naked,” and that “sharing meals with homeless men and women—when
16 done within the walls of the Church under a religious mandate—constitute[d] sacred
17 duties.” *Id.* at 728-29. MW’s religious beliefs are similarly rooted in religious text.
18 Compl. ¶¶4, 25. And like *Harbor Missionary*, MW’s practice of distributing food and
19 beverages to people in need is an act of religious exercise.

20 The City claims that MW’s food and drink distribution is not religious exercise
21 because it is “merely an incidental use of *minor significance*.” Mot. at 10 (emphasis
22 added). But MW’s Complaint makes clear that food and drink distribution is an integral
23 part of its religious exercise and not of “minor significance.” Compl. ¶¶4, 27, 42.
24 Moreover, the City’s argument runs counter to the plain language of RLUIPA, which
25 protects *any* religious exercise, “whether or not compelled by, or central to, a system of
26 religious belief.” 42 U.S.C. § 2000cc-5(7)(A) . In other words, the centrality or
27 significance of the belief or conduct at issue does not dictate whether it is “religious
28 exercise” under RLUIPA. *See Cutter*, 544 U.S. at 725 n.13 (noting that RLUIPA “bars

1 inquiry into whether a particular belief or practice is ‘central’ to” an individual’s
2 religion). Indeed, in *Johnson v. Baker*, the Ninth Circuit rejected a similar argument,
3 finding that the defendant “grossly miss[ed] the mark” by insinuating that an
4 incarcerated individual’s particular religious practice—using scented oils before
5 prayer—was “not *really that important* to his worship practice.” 23 F.4th 1209, 1215
6 (9th Cir. 2022) (emphasis in original). *Johnson* also emphasized that a plaintiff need
7 only demonstrate that a “particular facet” of his religious practice has been burdened
8 under RLUIPA, and that “it makes no difference” that a plaintiff may still practice his
9 “religion as a whole” under the government’s restrictions. *Id.* at 1214-15. As alleged in
10 its Complaint, MW’s feeding homeless individuals is an important part of its ministry
11 and is, at the very least, a “particular facet” of its religious expression. Compl. ¶¶4, 7-8,
12 27, 31, 38-39. Accordingly, the City cannot prohibit MW’s distribution of food and
13 drink by erroneously branding it of “minor significance” to its overall religious practice.

14 Citing to MW’s many *other* services, such as providing ID vouchers and hygiene
15 products, the City argues that MW’s operations “are purely administrative and are not
16 religious in nature.” Mot. at 10. However, as the City acknowledges in its motion, it
17 denied MW’s COO because MW distributed food and drink, not because it provided ID
18 vouchers or hygiene products. Mot. at 4. While MW’s other activities are also part of
19 its religious mission, Compl. ¶¶ 6, 52, they are not at issue in this litigation. Rather, the
20 conduct in question is providing food and drink to the needy, and the City’s Motion
21 simply ignores the Complaint’s many allegations that MW has a “religious duty” to feed
22 homeless persons. *See, e.g., id.* ¶27; *see also Int’l Church of Foursquare Gospel v. City*
23 *of San Leandro*, 673 F.3d 1059, 1069 (9th Cir. 2011) (holding that district court may not
24 reject the plaintiff’s “characterization of its core beliefs”).

25 Moreover, the premise of the City’s argument—that certain activities are
26 intrinsically secular and therefore not religious exercise—has been repeatedly rejected
27 by courts. For example, in *World Outreach Conf. Ctr.*, the Seventh Circuit found that
28 “even the recreational and other nonreligious services provided at the community center

1 are integral to the World Outreach’s religious mission Souls aren’t saved just in
2 church buildings.” 591 F.3d at 535; *see also First Lutheran Church v. City of St. Paul*,
3 326 F.Supp.3d 745, 753, 761 (D. Minn. 2018) (finding that Church’s nonprofit day-
4 shelter and community center focused on “providing hospitality and practical assistance
5 to the disadvantaged, homeless, or lonely” is “a form of . . . religious exercise”).⁵

6 Cases cited by the City reinforce the point that religious exercise is not limited to
7 traditional houses of worship and can include seemingly lay or “administrative” pursuits.
8 For example, in *Scottish Rite Cathedral Association of Los Angeles*, the court
9 acknowledged that RLUIPA protections have “been applied to activities as divergent as
10 religiously affiliated schools . . . nonprofit hospitals . . . and faith-based crisis centers.”
11 156 Cal.App.4th at 118. And in *Mintz v. Roman Catholic Bishop*, the court found that a
12 proposed “parish center,” which would “house an office for religious education and
13 would serve as a meeting place for the parish council,” fell “well within the definition of
14 ‘religious exercise.’” 424 F.Supp.2d 309, 319 (D. Mass. 2006). Undoubtedly, operating
15 meeting places, schools, offices, hospitals, and crisis centers requires significant amounts
16 of administrative work; nevertheless, these uses constitute religious exercise when
17 operated for a religious purpose. And considering that offering food to the hungry
18 cannot reasonably be mistaken as a rote administrative task, but rather has spiritual
19 foundations and is a “central tenet of all major religions,” MW’s practice of feeding
20 homeless individuals is unquestionably religious exercise. *See W. Presbyterian Church*,

21
22 ⁵ Some courts have found that when a religious organization engages in purely
23 commercial conduct, like leasing its property to a commercial enterprise, that activity is
24 not “religious exercise” for the purposes of RLUIPA. *See, e.g., Scot. Rite Cathedral*
25 *Ass’n of Los Angeles v. City of Los Angeles*, 156 Cal.App.4th 108, 118-120 (Cal. App.
26 2007) (finding that City’s actions in prohibiting masonic temple from renting its building
27 to for-profit commercial activities, including a boxing match, did not infringe on
28 temple’s religious exercise). However, here, the City does not contend that the
challenged conduct—feeding homeless persons—is commercial or that MW somehow
financially profits from it. In fact, the City concedes that “Plaintiff is not operating a
commercial use.” Mot. at 9.

1 862 F. Supp. at 544) (noting that one of the “five Pillars of Islam” includes giving “alms
2 to the poor”; one of Hinduism’s “five daily obligations of worship” includes “giving
3 food or aid to the poor”; and that religious worship in Judaism includes tendering “food
4 for the hungry[] and benevolence to the needy”).

5 **B. MW plausibly alleged that the City’s complete refusal to allow it to**
6 **provide food or drinks to homeless individuals “imposes a substantial**
7 **burden” on its religious exercise under RLUIPA.**

8 Government conduct that “impose[s] a significantly great restriction or onus upon
9 [religious] exercise” may create a substantial burden in violation of RLUIPA. *San Jose*
10 *Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004). A land use
11 regulation may impose a substantial burden if it exerts “substantial pressure on an
12 adherent to modify his behavior and to violate his beliefs.” *Guru Nanak Sikh Soc. of*
13 *Yuba City v. County of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006) (citing *Thomas v.*
14 *Review Bd. of the Ind. Employment Sec. Div.*, 450 U.S. 707, 717-18 (1981)).

15 Whether a land use regulation substantially burdens religious exercise is a highly
16 fact-dependent question that requires examining the “totality of the circumstances.”⁶
17 *New Harvest Christian Fellowship v. City of Salinas*, 29 F.4th 596, 602 (9th Cir. 2022),
18 *cert. denied*, 143 S. Ct. 567 (2023). “[D]etermining whether a burden is substantial . . .
19 is ordinarily an issue of fact.” *Acad. of Our Lady of Peace v. City of San Diego*, No.
20 09CV962-WQH-AJB, 2010 WL 1329014, at *11 (S.D. Cal. Apr. 1, 2010) (quoting
21 *World Outreach Conf. Ctr.*, 591 F.3d at 539)).

22 Here, MW has pleaded sufficient facts to plausibly show that the City has imposed
23 a substantial burden on MW’s religious exercise by denying its COO. Under the City’s
24

25 ⁶ Indeed, cases cited by the City underscore that a substantial burden analysis is a fact-
26 specific inquiry that requires examination of a complete record. *See New Harvest*
27 *Christian Fellowship v. City of Salinas*, 29 F.4th 596, 599 (9th Cir. 2022), *cert. denied*,
28 143 S. Ct. 567 (2023) (appeal of grant of summary judgment); *San Jose Christian*, 360
F.3d at 1027 (same); *Scot. Rite Cathedral Ass’n of Los Angeles*, 156 Cal. App. 4th at 114
(appeal of denial of writ of administrative mandamus).

1 demands, MW would be completely prohibited at its current location from distributing
2 food and beverages to homeless individuals who come to its doors, a service that MW
3 believes it has a “religious duty” to perform. Compl. ¶¶ 4, 8, 27, 31-32, 38. The City
4 has also threatened to fine and criminally prosecute MW unless it ceases this practice.
5 *Id.* ¶¶ 3, 13, 31, 39. This conduct is sufficient to establish a “substantial burden” on
6 religious exercise in violation of RLUIPA. *See Johnson*, 23 F.4th at 1215-16 (noting
7 that “government action that threatens ‘punishment[] to coerce a religious adherent to
8 forgo her or his religious beliefs’” may amount to a substantial burden) (quoting
9 *Warsoldier v. Woodford*, 418 F.3d 989, 996 (9th Cir. 2005)); *see also Wisconsin v.*
10 *Yoder*, 406 U.S. 205, 218 (1972) (holding that a “threat of criminal sanction[] to perform
11 acts undeniably at odds with fundamental tenets of their religious beliefs” burdened
12 religious exercise).

13 The City’s decision to deny MW’s COO and to threaten monetary and criminal
14 consequences is not a “mere inconvenience,” as the City argues. Mot. at 12, 13. Rather,
15 the City has inflicted “substantial pressure” to compel MW to modify its behavior by
16 ceasing to perform “act[s] of charity in providing . . . food and beverage items to the
17 poor and homeless persons.” Compl. ¶8. In banning MW’s practice, the City imposes a
18 substantial burden on MW’s religious exercise. *See Guru Nanak*, 456 F.3d at 988;
19 *Greene*, 513 F.3d at 988 (holding that “an outright ban on *a particular religious exercise*
20 is a substantial burden on that religious exercise”) (emphasis added).

21 As discussed earlier, the City’s assertion that there is no substantial burden on
22 MW’s religious exercise because food and drink distribution is “merely incidental” to
23 MW’s operations, Mot. at 12, is both legally and factually incorrect. *See* Sec. III.A
24 *supra*. The City’s argument ignores the plain language of RLUIPA, which expressly
25 protects “any” religious exercise regardless of whether it is “compelled by, *or central to,*
26 a system of religious belief.” 42 U.S.C. § 2000cc-5(7) (emphasis added). It is therefore
27 irrelevant how “central” food distribution is to MW’s religious beliefs in assessing
28 whether the City’s conduct has substantially burdened religious exercise in violation of

1 RLUIPA. *See also First Lutheran Church*, 326 F.Supp.3d at 761-62 (holding that 20-
2 person capacity limitation and “No Trespassing” sign requirement imposed a substantial
3 burden in violation of RLUIPA on church’s religious exercise because it interfered with
4 efforts to assist homeless persons). In any event, the Complaint contains ample facts
5 establishing that food distribution to homeless persons is an important part of MW’s
6 religious exercise and is not “merely incidental.” Compl. ¶¶4, 27, 42. And MW’s facts
7 must be accepted as true, and all reasonable inferences drawn in favor of MW, on a
8 motion to dismiss. *Murguia v. Langdon*, 61 F.4th 1096, 1106 (9th Cir. 2023).

9 Further, although not required at the pleading stage, MW alleges that it lacks
10 readily available alternatives and that it is effectively precluded from changing
11 locations.⁷ For example, MW alleges that moving locations would be “impossible” due
12 to the costs and unlikelihood of finding a landlord willing to rent to an organization that
13 serves homeless individuals, and that it cannot relocate without experiencing significant
14 uncertainty, delay, or expense, or otherwise violating its religious purpose. Compl. ¶39.
15 These allegations further support plaintiff’s substantial burden claim under RLUIPA.
16 *See New Harvest*, 29 F.4th at 602-04 (evidence that other available properties are
17 unsuitable because of “size, configuration, safety, or current uses” can support
18 substantial burden finding); *Int’l Church of Foursquare Gospel*, 673 F.3d at 1067
19 (finding evidence of lack of other suitable sites in the city to house the church’s
20 expanded operation supported substantial burden claim).

21 Moreover, MW has also plausibly alleged that the City could apply the same
22 reasoning to deny any future COO applications, even if MW were to relocate. In 2021,
23 the mayor directed various staff and departments to identify a basis for removing MW

24
25 ⁷ While the City makes passing reference to “ready alternatives” as a factor in the
26 substantial burden analysis, the City cites no case where a RLUIPA plaintiff was
27 *required* to plead that it lacked adequate alternative locations to withstand a motion to
28 dismiss. Cases discussing the availability of alternative locations have done so in the
context of summary judgement. *See, e.g., New Harvest*, 29 F.4th at 603; *San Jose
Christian Coll.*, 360 F.3d at 1035.

1 from its location, Compl. ¶74, and stated his intent to prevent homelessness-related
2 issues “from happening *anyplace* else in the City,” *id.* ¶102 (emphasis added).
3 Accordingly, MW has plausibly alleged that “the City would [not] agree to provide a
4 COO” to MW in any location. *Id.* ¶40; *see Guru Nanak*, 456 F.3d at 989 (reasoning that
5 prior application denials “to a significantly great extent lessened the possibility that
6 future [] applications would be successful”).

7 The City has informed MW that it “will not entertain” any conditions short of MW
8 shuttering its food and beverage service. Compl. ¶32. MW ceased distributing food and
9 beverages outside of the office and moved this activity indoors in order to address the
10 City’s concerns, but these actions have not appeased the City. *Id.* ¶¶27-29, 112. The
11 City’s complete prohibition on allowing MW to feed homeless individuals at its
12 Resource Center under any circumstances further supports MW’s claim that the City has
13 violated RLUIPA by imposing a substantial burden on its religious exercise. *See Guru*
14 *Nanak*, 456 F.3d at 991 (upholding substantial burden finding in part because defendant
15 refused to accept mitigation conditions offered by plaintiff or suggest what conditions it
16 would accept to permit religious temple).

17 **IV. CONCLUSION**

18 MW’s Complaint alleges sufficient facts plausibly showing (1) that its food and
19 beverage distribution to homeless individuals is religious exercise protected by RLUIPA,
20 and (2) that the City’s denial of its COO application substantially burdens its religious
21 exercise in violation of RLUIPA. Therefore, the City’s motion to dismiss MW’s
22 RLUIPA claim should be denied.

23
24
25 Dated: May 9, 2023

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the United States, certifies that this brief contains 5,120 words, which complies with the word limit of L.R. 11-6.1.

Dated: May 9, 2023

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