

August 9, 2023

VIA E-MAIL

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Re: June 12, 2023 Notice of Violation

Mr. Rosenblitt:

Gibson, Dunn & Crutcher LLP and First Liberty Institute represent Rabbi Levi Illulian, the current resident of the property located at [REDACTED] Beverly Hills, CA 90210-3329 (the “Home”). Rabbi Illulian retained Gibson Dunn and First Liberty after receiving a June 12, 2023, “Notice of Violations” letter sent by the City of Beverly Hills (“the City”), in which the City ordered Rabbi Illulian to “terminate *all* religious activities” that include “non-residents.” Please direct all future communications regarding this issue to me, my firm, or to First Liberty.

As more fully explained below, Rabbi Illulian’s right to engage in religious exercise at his Home with family or friends, free from government burden and interference, is fully protected by the First and Fourteenth Amendments of the United States Constitution and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc *et seq.* (“RLUIPA”). Thus, the City’s “Notice of Violations” letter and proposed civil and criminal proceedings against Rabbi Illulian violate the U.S. Constitution and federal law.<sup>1</sup> We hereby demand that the City immediately withdraw its June 12, 2023, “Notice of Violations” letter and acknowledge in writing that Rabbi Illulian is within his legal rights to engage in religious activities at the Home with family and friends.<sup>2</sup>

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<sup>1</sup> Upon information and belief, the City is also surveilling Rabbi Illulian’s home with aerial drones without obtaining a warrant. In addition to the legal and constitutional claims outlined in this letter, we reserve the right to bring a claim that this warrantless physical intrusion into Rabbi Illulian’s property violates his rights under the Constitution and other applicable statutes.

<sup>2</sup> The “Notice of Violation” letter included a section entitled “Unpermitted Alteration to the Accessory Structure” discussing the installation of windows on a structure at the property. Although Gibson Dunn and First Liberty don’t represent Rabbi Illulian in connection with that matter, we understand that all issues related to the installation of those windows have been handled in accordance with the City’s ordinances and the matter is therefore closed.

Steven H. Rosenblit  
Dapeer Rosenblit Litvak LLP  
August 9, 2023  
Page 2

## **Factual Background**

Rabbi Illulian and his family currently live at the Home and have done so since October 2022. Because it is his *home*, Rabbi Illulian has bound a Mezuzah to the entry door, consistent with the biblical command to write God’s Word “upon the doorposts of thy house and upon thy gates.” Deuteronomy 6:9. Mezuzahs are affixed to the doors of Jewish *dwellings*, to protect the inhabitants and remind them that the Jewish faith isn’t confined to synagogues but should be lived daily. Rabbi Illulian thus, as a devout Orthodox Jew, believes he has a religious obligation to make his home a sanctuary and temple for God. Exodus 25:8. He therefore hosts a variety of religious gatherings throughout the week to meet the religious needs of his family, neighbors, and friends. Significantly, Rabbi Illulian’s gatherings are open only to those who are invited into Rabbi Illulian’s home as guests and not the general public.

One of the intimate gatherings Rabbi Illulian hosts is Shabbat prayers and dinner. As most well know, the Orthodox Jewish faith requires adherents to keep holy the Sabbath—the Jewish day of rest that lasts from sundown on Friday evening through nightfall on Saturday night. During Shabbat, adherents traditionally join their family and friends to recite Jewish prayers and for meals prepared in accordance with the Jewish beliefs. During this time, adherents of the Orthodox Jewish faith must “make the Shabbat a delight” and thus cannot work or drive. For this reason, many members of the Orthodox Jewish community will gather at the home of one family member or friend.

Rabbi Illulian hosts Shabbat for his family and friends so that they may, as their religion requires, make the Shabbat a delight and participate in the requisite prayers, customs, and rituals. Indeed, his Shabbat gathering began as a means of supporting an aging, home-ridden Holocaust survivor. This widely-celebrated and well-known tradition is what officers and complainant(s) appear to have often observed on Friday evenings and Saturday mornings.

Rabbi Illulian also hosts Jewish holiday celebrations at his home, like Purim and Passover, that are no different than a Christmas, Easter, or Halloween celebration. Purim, for example, is a Jewish holiday that commemorates the deliverance of the Jewish people from an extermination plot, as described in the Book of Esther. Superficially similar to Halloween but with a different message, it is a festive holiday in which many guests wear costumes to signify that the miracle of Purim was disguised because God was “working in the background.” This year, Rabbi Illulian hosted a Purim celebration for his family and friends on March 7, 2023, which an officer appears to have observed.

Similarly, Rabbi Illulian had friends and family over to celebrate Passover. Passover commemorates the deliverance of the Jewish people from slavery in Egypt. Passover this year lasted from April 5 to April 15, 2023, and May 5, 2023, so celebrations occurred over multiple

Steven H. Rosenblit  
Dapeer Rosenblit Litvak LLP  
August 9, 2023  
Page 3

days. Further, it is customary for Orthodox Jews to gather the Saturday before Passover, as the Great Sabbath or Shabbat HaGadol. Prayers in connection with this familiar holiday appear to have been observed by an officer during his intense surveillance.

Rabbi Illulian and his wife, Devorah, also operate an Orthodox Jewish ministry known as One Lev. A primary focus of Rabbi Illulian's ministry is outreach to members of his community. To that end, Rabbi Illulian serves as a chaplain for both the jails and hospitals in his community, and he regularly visits those facing difficult situations in both institutions to provide hope and support where it is most needed. For example, in his role as hospital chaplain, Rabbi Illulian sometimes encounters a member of the Jewish faith who has lost a loved one. In providing spiritual comfort, Rabbi Illulian has offered to perform at his home the mourner's Kaddish, one of the most sacred and central prayers of the Jewish faith. The prayer praises God and shows that even when grief tests the mourner's faith, the mourner stands firm in God's greatness. The prayer is recited each day for 11 months—the period of time that the Jewish faith traditionally believes that the deceased is sitting under Divine judgment—with a final prayer occurring on the anniversary of the death of the loved one. Importantly, these prayers must be said in the presence of 10 Jewish males over the age of 13, a minyan. A minyan supports the mourner as he reaffirms his adoration of God. So during this time of intimate mourning, non-residents are (indeed must be) present in Rabbi Illulian's home. A Kaddish is typically recited at the morning prayer meetings reported at the Rabbi's home and apparently observed by the officer and complainant(s).

During any of his religious gatherings, Rabbi Illulian strives to be respectful of the community and the City's law. He therefore instructs his guests to be courteous to neighbors and has even told them to park further away from his home in order to avoid inconveniencing his neighbors in any way. He also makes sure all guests are aware of any City ordinances related to parking.<sup>3</sup> Moreover, Rabbi Illulian has no plans for his gatherings to grow beyond what the Home can comfortably and safely accommodate. As stated above, Rabbi Illulian intentionally seeks to create an intimate religious gathering, and continued growth would be contrary to that goal. Many of the individuals present at his Shabbat gatherings and holiday celebrations are blood relations, as his father and several of his uncles, siblings, nieces, and nephews live within walking distance.<sup>4</sup> He also strives to make sure only invitees attend his gatherings; the gatherings aren't open to the general public. The majority of Rabbi Illulian's

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<sup>3</sup> Rabbi Illulian understands the City has the right to enforce these parking ordinances and expects enforcement to occur neutrally and without discrimination.

<sup>4</sup> As one of eight children, Rabbi Illulian is blessed with a large extended family, many of whom are his neighbors.

Steven H. Rosenblit  
Dapeer Rosenblit Litvak LLP  
August 9, 2023  
Page 4

guests have an established, regular synagogue that they attend as their primary religious congregation.

For months, Rabbi Illulian operated his intimate religious gatherings at the Home without incident. All of that changed, however, in early February 2023 when the City received a complaint from a private citizen regarding Rabbi Illulian's religious gatherings. The concerns raised by this individual were allegedly related to parking, noise, and trash filling up the receptacles behind the Home. After spending nearly a month investigating the complaints, the City initially (and correctly) concluded that the alleged violations were unfounded and closed its case.

That hiatus was short-lived, with the City reopening its investigation at the end of March 2023 after a disgruntled resident complained again regarding religious activities at the Home. Instead of disregarding what it had already determined to be unfounded complaints from a handful of residents who are hostile to Rabbi Illulian's religious exercise, the City renewed its investigation with increased vigor at the end of March 2023. Invoking Orwellian tactics usually reserved for serious criminal investigations, City personnel engaged in multiple stakeouts of the Home over many hours. City officials not only tallied the number of individuals and cars coming and going from the Home, but also photographed Rabbi Illulian's guests.

Even though nothing had changed since the City initially concluded in March 2023 that no violations were occurring at the Home and that Rabbi Illulian had the right to host religious gatherings, the City has now puzzlingly issued a "Notice of Violation" letter prohibiting *all* religious activity at the Home *with non-residents*. That prohibition is as overbroad as it is wrong.

### Legal Analysis

The City's Notice of Violation threatens Rabbi Illulian with civil and criminal proceedings for his "religious activity" at his home with "non-residents," despite allowing social gatherings of similar size and character to occur in the same neighborhood unmolested. When Rabbi Illulian's neighbors can invite friends and family into their homes for a card game or dinner party but the City notices Rabbi Illulian for inviting his friends and family to pray or celebrate Shabbat, neither the First Amendment nor RLUIPA tolerates this kind of unequal treatment.

Steven H. Rosenblit  
Dapeer Rosenblit Litvak LLP  
August 9, 2023  
Page 5

**I. The Free Exercise Clause of the First Amendment protects Rabbi Illulian’s exercise of religion in his home.**

The Free Exercise Clause prohibits government action that burdens an individual’s sincere religious practice with a policy that isn’t neutral or generally applicable. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421–22 (2022). The City’s threats fall squarely within this prohibition, and Rabbi Illulian reserves his right to enforce that prohibition. *See* 42 U.S.C. § 1983.

**A. The City’s enforcement action burdens Rabbi Illulian’s religious exercise under policies that aren’t generally applicable or neutral.**

The U.S. Supreme Court has held that government actions that burden a sincere religious practice and aren’t neutral towards religious exercise or generally applicable suffice to establish a violation of the First Amendment. *See Kennedy*, 142 S. Ct. at 2421–22; *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 718 (1981).

There can be no question that Rabbi Illulian “seeks to engage in a sincerely motivated religious exercise.” *Kennedy*, 142 S. Ct. at 2422. An essential part of Rabbi Illulian’s religious activities involves maintaining the Sabbath, celebrating Jewish holidays, and engaging in communal prayer with family and friends. Some of these activities, as described, require the presence of non-residents. Indeed, certain prayers, like the Kaddish, cannot occur without 10 Jewish males over the age of 13, a minyan, present. The City’s threats seek to burden Rabbi Illulian’s faithful exercises under policies that aren’t neutral and generally applicable.

Government entities violate principles of neutrality and general applicability “whenever they treat any comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). And laws that either provide discretion to government officials or are imposed pursuant to systems of “individualized exemptions” aren’t generally applicable. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877–78 (2021) (applying strict scrutiny to a law that gave city officials the “sole discretion” to determine exemptions from the law).

Moreover, government entities must also treat religious activity in a neutral manner, and action “that targets religious conduct for distinctive treatment” is equally subject to strict scrutiny. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). When analyzing whether a government action is neutral, courts “meticulously” scrutinize both the action itself and the circumstances surrounding the action to ensure the action doesn’t unlawfully suppress religious exercise. *Id.* at 534. Thus, the fact that the City might articulate a facially neutral reason for its enforcement actions “is not determinative.” *See id.*

Steven H. Rosenblit  
Dapeer Rosenblit Litvak LLP  
August 9, 2023  
Page 6

The Free Exercise Clause also “forbids subtle departures from neutrality” and “covert suppression of particular religious beliefs.” *Id.* (internal quotation marks omitted); *see also Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm’n*, 138 S. Ct. 1719, 1731 (2018). Thus, to protect “against governmental hostility which is masked” courts examine “the historical background of the decision under challenge, the specific series of events leading to the [government action] in question, and the . . . administrative history, including contemporaneous statements made by members of the decisionmaking body.” *Lukumi*, 508 U.S. at 534, 540.

Here, Rabbi Illulian’s religious gatherings are, by design, small, intimate, not open to the public, and conducted in accordance with the Jewish faith. The number of individuals in attendance are comparable to other gatherings that regularly occur in the neighborhood. For example, on information and belief, poker nights of similar size to Rabbi Illulian’s prayer meetings occur on a regular basis in the neighborhood, undisturbed by threat of civil and criminal proceedings. And larger parties (like Christmas parties) are likely to have occurred of similar size to his larger gatherings for major Jewish holidays.

Yet the City has targeted Rabbi Illulian’s home with an overly aggressive interpretation of its zoning code while failing to enforce a similarly aggressive position against other private gatherings in neighboring homes. Like the State of California in *Tandon*, here the City is allowing small and medium-sized gatherings of a secular nature while prohibiting small gatherings of a religious nature. *See Tandon*, 141 S. Ct. at 1297. This simply doesn’t constitute neutral application of the law.

Further, upon information and belief, the City maintains the discretion to grant variances on the zoning requirements that it is overzealously enforcing against Rabbi Illulian.<sup>5</sup> The City appears to have complete discretion on the question of whether or not to grant these variances. As the Supreme Court explained in *Fulton*, the law isn’t generally applicable where it allows for a system of individualized exceptions, especially where, as here, those exceptions are completely discretionary. *See Fulton*, 141 S. Ct. at 1877.

In sum, the circumstances surrounding the zoning proceedings against Rabbi Illulian raise more than a “slight suspicion” that the proceedings unlawfully “stem from animosity to religion” and are therefore subject to strict scrutiny. *See Lukumi*, 508 U.S. at 547.

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<sup>5</sup> For the avoidance of doubt, Rabbi Illulian doesn’t believe any variance to host his private religious gatherings with family and friends is necessary.

Steven H. Rosenblit  
Dapeer Rosenblit Litvak LLP  
August 9, 2023  
Page 7

**B. The City’s enforcement actions fail strict scrutiny.**

Where, as here, the government substantially burdens religious exercise in a manner that is neither neutral nor generally applicable, the City bears the burden of proving its actions satisfy strict scrutiny. That is, the City must prove its actions are furthering “interests of the highest order by means narrowly tailored in pursuit of those interests.” *Tandon*, 141 S. Ct. at 1298 (internal quotation marks omitted); *see also Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) (“only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion”).

Although the City may say it’s responding to complaints by neighbors that Rabbi Illulian’s guests allegedly leave trash (in trash cans) in alleys and take up *public* street parking, any such alleged interest is undermined by the secular activities that the City continues to allow, such as weekly poker nights and personal parties, which are likely to generate similar mild disturbances in the neighborhood.

Even assuming the City’s interests were compelling—which they are not—it cannot show a permanent prohibition on all religious activity at the Home with non-residents is a narrowly tailored way to advance those interests. Government action that burdens religious exercise is narrowly tailored only if it is the “least restrictive means of achieving some compelling state interest.” *Thomas*, 450 U.S. at 718. That is, the City must “show that measures less restrictive of the First Amendment activity could not address its interest.” *Tandon*, 41 S. Ct. at 1296–97. Less restrictive measures exist here because the City may put in place additional parking restrictions, so long as they are neutrally enforced, and enforce applicable noise ordinances, although it hasn’t to this point offered any evidence that Rabbi Illulian’s gatherings have violated any applicable noise ordinance laws. Because other alternatives exist that don’t burden Rabbi Illulian’s exercise of religion, the City can’t satisfy strict scrutiny.

In sum, any attempt by the City to prevent Rabbi Illulian from engaging in religious activities in his home would violate the First Amendment, giving rise to liability for declaratory, injunctive, and compensatory relief, as well as attorney fees. *See* 42 U.S.C. §§ 1983, 1988. Furthermore, damages are available against government officials in their individual capacities when they deprive a person or group of people of rights secured by the U.S. Constitution. *See Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (“an award of damages against an official in his personal capacity can be executed . . . against the official’s personal assets.”).

Steven H. Rosenblit  
Dapeer Rosenblit Litvak LLP  
August 9, 2023  
Page 8

**II. RLUIPA protects the Home from substantially burdening this religious use of Rabbi Illulian's home.**

For the same reasons that the City's actions and interests cannot satisfy the First Amendment's strict scrutiny test, it also cannot satisfy RLUIPA's strict scrutiny test. RLUIPA's "Substantial Burden" provision provides in pertinent part as follows:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1). RLUIPA's "Substantial Burden" provision applies if the regulation at issue involves "individualized assessments of the proposed uses for the property involved." *Id.* § 2000cc(a)(2)(C). This is true where, as here, the City "[ook] into account the particular details of an applicant's proposed use of land when deciding to permit or deny that use." *Guru Nanak Sikh Soc. of Yuba City v. County of Sutter*, 456 F.3d 978, 986, 988–92 (9th Cir. 2006). The City has clearly evaluated the use of Rabbi Illulian's home, at times by means of hours-long stakeouts, and determined that those uses aren't allowed in a residential zone. Thus, if the City's enforcement actions substantially burden Rabbi Illulian's religious exercise as defined by RLUIPA, that action is subject to strict scrutiny.

And, as under the First Amendment, the City's threatened actions would substantially burden Rabbi Illulian's religious exercise. Religious exercise under RLUIPA is broadly defined as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc–5(7)(A). Further, RLUIPA considers the use of real property for religious exercise purposes to be religious exercise. *Id.* § 2000cc–5(7)(B). Substantial burden is often present where, as here, Rabbi Illulian has no "ready alternatives" available to him that could accommodate prayer meetings and Shabbat gatherings for family and friends. *Int'l Church of Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1068 (9th Cir. 2011) (internal quotation marks omitted) ("And when the religious institution has no ready alternatives, or where the alternatives require substantial 'delay, uncertainty, and



Steven H. Rosenblit  
Dapeer Rosenblit Litvak LLP  
August 9, 2023  
Page 9

expense,’ a complete denial of the [religious institution’s] application might be indicative of a substantial burden.” (internal quotation marks omitted)).<sup>6</sup>

That Rabbi Illulian could hypothetically relocate and worship elsewhere doesn’t alter that analysis. See *Holt v. Hobbs*, 574 U.S. 352, 361–62 (2015) (explaining the substantial burden inquiry doesn’t ask “whether [the religious adherent] is able to engage in other forms of religious exercise”). After all, “a burden need not be found insuperable to be held substantial.” *Int’l Church of Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1068 (9th Cir. 2011) (internal quotation marks omitted); see also *Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005) (holding that “delay, uncertainty, and expense” associated with relocating to another property for worship was a substantial burden).

Because the City’s prohibition of religious activities by a non-resident in the Home would substantially burden Rabbi Illulian’s religious exercise, it must prove its action is “in furtherance of a compelling governmental interest” and “the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc(a)(1). For the same reasons that the City cannot satisfy this demanding standard under the First Amendment, it also cannot satisfy the “exceptionally demanding” standard under RLUIPA. *Holt*, 574 U.S. at 364 (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014)).

RLUIPA also prevents cities from “impos[ing] or implement[ing] a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” 42 U.S.C. § 2000cc(b)(1). These “equal terms” claims can be brought as an “as-applied challenge[ ],” that is a claim that a city is “‘implementing,’ i.e., enforcing, a facially neutral ordinance in a discriminatory manner.” *New Harvest Christian Fellowship v. City of Salinas*, 29 F.4th 596, 604 (9th Cir. 2022) (cleaned up).

An as-applied equal-terms challenge to the City’s code enforcement decisions readily arises here. The City has surveilled Rabbi Illulian’s residence for weeks on end and threatened him with civil and criminal proceedings for hosting Shabbat gatherings, small prayer

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<sup>6</sup> See also *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 353 (2d Cir. 2007) (preventing religious school from expanding its facilities to engage in religious education substantially burdened its religious exercise); *DiLaura v. Ann Arbor Charter Twp.*, 30 F. App’x 501, 510 (6th Cir. 2002) (denial of zoning variance preventing individuals from assembling on land for religious purposes constituted substantial burden); *Redeemed Christian Church of God (Victory Temple) Bowie v. Prince George’s Cnty.*, 485 F. Supp. 3d 594, 604 (D. Md. 2020) (holding the denial of a water and sewer category change that prevented the development of a proposed church constituted a substantial burden).

Steven H. Rosenblit  
Dapeer Rosenblit Litvak LLP  
August 9, 2023  
Page 10

gatherings, and Jewish holiday celebrations equivalent to a neighbor's dinner party, poker game, or Christmas party. "By applying different standards for religious gatherings and nonreligious gatherings having the same impact, [Beverly Hills's enforcement action] impermissibly targets religious assemblies." *Konikov v. Orange County*, 410 F.3d 1317, 1329 (11th Cir. 2005). Indeed, the facts of this case parallel those of the Eleventh Circuit's *Konikov* decision. There, the city also attempted to shut down *minyan* prayers in a rabbi's home while allowing gatherings of a social or family-related purpose, like a cub scout meeting, game night, or birthday party. *Id.* at 1327–29. The Eleventh Circuit concluded that this zoning policy constituted an as-applied RLUIPA equal terms violation, especially because the city had failed to put forward a compelling government interest. *Id.* at 1329.

Thus, any effort to bar religious gatherings at the Home would also give rise to liability under RLUIPA.

### **Conclusion**

Because the City's threatened enforcement actions impinge Rabbi Illulian's fundamental civil rights in violation of constitutional and federal law, the City must immediately cease and desist from all efforts to prohibit Rabbi Illulian from engaging in "religious activities" with "non-residents" at the Home. Should the City nevertheless persist in its efforts to prevent these religious exercises, Rabbi Illulian will pursue all available legal options, not limited to the principles articulated herein.

Thank you for your attention to this matter. If we may be of further service or if you wish to discuss further, please do not hesitate to call or email us.

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Steven H. Rosenblit  
Dapeer Rosenblit Litvak LLP  
August 9, 2023  
Page 11

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