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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

EMMANUEL TEMPLE, THE HOUSE)	CIVIL NO: 11-790 JMS-KSC
OF PRAISE; CARL E. HARRIS;)	
LIGHTHOUSE OUTREACH CENTER)	PLAINTIFFS' OPPOSITION TO
ASSEMBLY OF GOD; JOE HUNKIN,)	DEFENDANTS' MOTION TO
JR.)	DISMISS, FILED JULY 27, 2012;
) DECLARATION OF SHAWN A.
Plaintiffs,)	LUIZ; EXHIBIT "A"; CERTIFICATE
) OF SERVICE
vs.)	
) <u>HEARING:</u>
NEIL ABERCROMBIE, in his official)	DATE: October 1, 2012
capacity as Governor of the State of)	TIME: 10 a.m.
Hawaii; LORETTA J. FUDDY, in her)	Judge: Honorable J. Michael Seabright
official capacity as Director of Health of)	
the State of Hawaii; STATE OF)	
HAWAII,)	
)
)
Defendants.)	
_____)	

PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS, FILED JULY 27, 2012

Plaintiffs, EMMANUEL TEMPLE, THE HOUSE OF PRAISE, CARL E. HARRIS, LIGHTHOUSE OUTREACH CENTER ASSEMBLY OF GOD; and JOE HUNKIN, JR., oppose defendants' motion to dismiss filed July 27, 2012 for the following reasons:

I. Standard of Review

In evaluating a complaint pursuant to a motion to dismiss, the court must presume all factual allegations to be true and draw all reasonable inferences in favor of the non-moving party. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987); see *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974) (the complaint must be liberally construed, giving the plaintiff the benefit of all proper inferences); *Wileman Bros. & Elliott, Inc. v. Giannini*, 909 F.2d 332, 334 (9th Cir. 1990).

Conclusory allegations of law and unwarranted inferences, though, are insufficient to defeat a motion to dismiss. *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998); *In re VeriFone Securities Litigation*, 11 F.3d 865, 868 (9th Cir. 1993) (conclusory allegations and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim); *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981), cert. denied, 454 U.S. 1031, 102 S. Ct. 567, 70 L. Ed. 2d 474 (1981) (the Court does not "necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations").

Additionally, the Court need not accept as true allegations that contradict matters properly subject to judicial notice or allegations contradicting the exhibits attached to the complaint. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

Plaintiffs submitted a short and plain statement of the claim showing that the pleaders are entitled to relief. The Defendants claiming otherwise is without merit. Rule 8(a)(2) of the *Federal Rules of Civil Procedure* (FRCP) requires that a pleading contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” *FRCP* 8(a)(2). Additionally, “all pleadings shall be construed as to do substantial justice.” *FRCP* 8(F).

All that is required is that Plaintiffs set forth enough details so as to provide Defendants and the court with a fair idea of the basis of the complaint and the legal grounds claimed for recovery. *See Self Directed Placement Corp. v. Control Data Corp.*, 908 F.2d 462, 466 (9th Cir. 1990). *See also Bennett v. Schmidt*, 153 F.3d 516, 518 (7th Cir. 1998) (In a racial discrimination employment case, “I was turned down for a job because of my race” is all the complaint need to say); *Mid America Title Co. v. Kirk*, 991 F.2d 417, 421 (7th Cir. 1993) (consistent with obligation to construe complaints liberally, the pleader is not required to identify a specific legal theory, and labeling a complaint with an incorrect theory is not fatal), cert. denied, 510 U.S. 932 (1993); *Minger v. Green*, 239 F.3d 793, 799 (6th Cir. 2001)

(construing claim labeled as “negligent misrepresentation” which would have been barred by discretionary function doctrine as one for intentional misrepresentation which could go forward); Conley v. Gibson, 355 U.S. 41, 45-6 (1957) (“a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief’.)

Accordingly, Plaintiffs set forth enough details so as to provide Defendants and the Court with a fair idea of the basis of Plaintiff’s Complaint and the legal grounds claimed for recovery against Defendants, namely that the 11th amendment does not bar prospective relief in accordance with 42 U.S.C. Section 1983 claims. Since all pleadings are to be construed as to do substantial justice, the Plaintiffs adequately alleged claims against Defendants. Otherwise, Plaintiffs should be allowed to amend the complaint as the scheduling order has not even been entered. Defendant’s Motion must be denied for the following specific reasons:

II. Article III of the United States Constitution

Article III of the United States Constitution limits federal court jurisdiction to "actual, ongoing cases or controversies." Lewis v. Cont'l Bank Corp., 494 U.S. 472, 477, 110 S. Ct. 1249, 108 L. Ed. 2d 400 (1990); see also Arizonans for Official English v. Arizona, 520 U.S. 43, 67, 117 S. Ct. 1055, 137 L. Ed. 2d 170 (1997).

"[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992); see also Hein v. Freedom From Religion Found., Inc., 551 U.S. 587, 597-98, 127 S. Ct. 2553, 168 L. Ed. 2d 424 (2007). At an "irreducible constitutional minimum," standing requires the party asserting the existence of federal court jurisdiction to establish three elements: (1) an injury in fact that is (a) concrete and particularized and (b) actual or imminent; (2) causation; and (3) a likelihood that a favorable decision will redress the injury. Lujan, 504 U.S. at 560-61. In addition to these requirements, the doctrine of prudential standing requires us to consider, among other things, whether the alleged injury is more than a "'mere generalized grievance,' whether the plaintiff is asserting her own rights or the rights of third parties, and whether the claim 'falls within the zone of interests to be protected or regulated by the constitutional guarantee in question.'" Alaska Right to Life PAC v. Feldman, 504 F.3d 840, 848-49 (9th Cir. 2007), quoting Johnson v. Stuart, 702 F.2d 193, 196 (9th Cir. 1983).

III. Argument

Based upon the reasoning of the case of Awad v. Ziriya, (10th Cir. 2012), attached as Exhibit "A", the Court should deny the Motion to Dismiss. In Awad, a Muslim filed suit to enjoin certification of a constitutional ban of Sharia Law in the State Courts of Oklahoma. The U.S. District Court enjoined the certification

finding that both Article III conditions of standing and ripeness were satisfied (Awad was never directly affected by the law in any manner as the law had not taken effect). The 10th Circuit Court of Appeals affirmed the granting of the preliminary injunction by the U.S. District Court in Awad on the establishment clause grounds.

The defendants in Awad, as in the case at bar, tried to assert that Awad lacked standing and that his claims were not ripe. The 10th circuit affirmed on the establishment grounds and failed to reach the free exercise grounds. See Exhibit A, page 10.

As noted by the State in its moving papers at page 10, there are churches which allow same-sex unions; therefore Act 1, as amended through HB 2569, HD 2, SD1, CD 1, will have no negative effect on those churches. It will however, have legal consequences on Plaintiffs' in the event they turn away a same-sex couple wishing to celebrate a same-sex union on their church grounds.

As in the Awad case, Plaintiffs Harris and Hunkin, suffer personal and unwelcome contact with a State law (Act 1, as amended) that opens the door for the State Attorney General or the Civil Rights Commissioner to bring actions against their Churches for refusing to rent to same-sex couples. See HRS § 489-8. The State Attorney General and/or the Civil Rights Commissioner may bring actions in their own capacity for Plaintiffs refusing to allow their property to be

rented for civil union ceremonies based upon sexual orientation. It condemns their particular faith while allowing other faiths which freely allow same-sex couples to use their property to hold civil union ceremonies to be subjected to no legal consequences. The limited exemption of Act 1, as amended, fails to satisfy the First Amendment by placing three conditions precedent for a church needing to meet before being able to utilize the limited exemption.

As the law discriminates among religions, those that prohibit same-sex unions, and those that allow same-sex unions, Act 1, as amended does not survive strict scrutiny under the Establishment Clause.

This Honorable Court cannot with any degree of certainty, hold that Plaintiffs cannot prove any set of facts based upon the reasoning of Awad.

CONCLUSION

In conclusion, Plaintiffs respectfully request that this Honorable Court deny Defendants' Motion to Dismiss based upon the foregoing reasoning. Defendants' raised the Act 1 amendments in their moving papers, so the matter is properly before the Court. Act 1, as amended, violates Plaintiffs' First Amendment rights, privileges and immunities on establishment grounds.

Dated: Honolulu, Hawaii, August 31, 2012.

/s/ Shawn A. Luiz
SHAWN A. LUIZ
Attorney for Plaintiffs