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U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT WORTH DIVISION

2007 DEC -6 AM 9:48

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

CLERK OF COURT

**JOSE MERCED, PRESIDENT,
TEMPLO YORUBA OMO
ORISHA TEXAS, INC.,
Plaintiff,**

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vs.

Civil Action No. 4-06CV-891-A

**THE CITY OF EULESS,
Defendant.**

DEFENDANT'S RULE 56 MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW THE CITY OF EULESS, Defendant and files their Rule 56 Motion for Partial Summary Judgment, and would respectfully show the Court:

I. INTRODUCTION

1. This action is brought, in part, pursuant to 42 USC §2000cc, The Religious Land Use and Institutionalized Persons Act (RLUIPA), claiming that the Defendant's prohibition of "blood sacrifice" is violative of the protections afforded persons under that Act.

III. GROUNDS FOR SUMMARY JUDGMENT

2. Pursuant to FED. R. Civ. P. 56(b), Defendants move to dismiss all Plaintiff's RLUIPA claims, based on the following grounds.

3. Plaintiff cannot establish that a land-use regulation of the City of Euless imposes a substantial burden upon the religious exercise of any person. The term "land-use regulation" is defined in §8, 42 U.S.C. §2000cc (the Religious Land Use and Institutionalized Persons Act); "RLUIPA" as "a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the

claimant has an ownership, leasehold, easement, servitude or other property interest in the regulated land or a contract or option to acquire such an interest.”

4. No land-use regulation as defined by RLUIPA is challenged by the Plaintiff. Therefore, RLUIPA does not apply. Plaintiff’s claims based upon that statute must be dismissed.

IV. SUMMARY JUDGMENT STANDARD

5. Rule 56(e) of the Federal Rules of Civil Procedure Summary Judgment provides that judgment “shall be entered” against the nonmoving party unless the affidavits or other evidence “set forth specific facts showing that there is a genuine issue for trial.” Initially, the movant bears the burden for the motions and the elements of the causes of action upon which the non-movant will be unable to establish a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323(1986). The burden then shifts to the non-movant to come “forward with specific facts showing that there is a genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). A fact is “material if its resolution is outcome determinative. *Ginsbeg v. Cadle Co.*, 39 F.3d 528, 531 (5th Cir. 1994). “A dispute about a material fact is ‘genuine’ if the evidence is such a that reasonable jury could return a verdict for the nonmoving party.” *Bodenheimer v. PPG Indus. Inc.*, 5 F.3d 955, 956 (5th Cir. 1993).

6. However, “[t]he object of [Fed. R. Civ. P. 56] is not to replace conclusory allegations of the complaint ...with the conclusory allegations of an affidavit.” *Lujan v. National Wildlife Fedn’n.*, 497 U.S. 871, 888 (1990); cf. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Conclusory allegations unsupported by specific facts will not prevent an award of summary judgment; the plaintiff cannot rest on his allegations to get to a jury without any significant probative evidence tending to support the complaint. *Nat’l Assn. of Gov’t. Employees v. City Public Service Bd. of San Antonio*, 40 F.3d 698, 7143 (5th 1994). “The mere existence of

a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252.

V. SUMMARY JUDGMENT EVIDENCE

7. In support of this Motion for Summary Judgment, Defendant relies on and incorporate by reference, the following evidence attached hereto:

- a. Exhibit "A": Excerpts from the Oral Deposition of Jonathan Merced
- b. Exhibit "B": Excerpts from the Oral Deposition of Margaret Donnelly
- c. Exhibit "C": Excerpts from the Oral Deposition of Sylvia Merced
- d. Exhibit "D": Excerpts from the Oral Deposition of Omar Osuna
- e. Exhibit "E": Excerpts from the Oral Deposition of Ventura Santana
- f. Exhibit "F": Sec. 10-3, Slaughtering Animals, Code of Ordinances of the City of Euless
- g. Exhibit "G": Sec. 10-65, Animal Care, Code of Ordinances of the City of Euless

8. These exhibits are filed in a separate appendix concurrently with this Motion, but are incorporated herein and are made part of the summary judgment evidence.

V. ARGUMENT & AUTHORITIES

9. Plaintiff has challenged state laws and city ordinances that apply throughout the corporate limits of the City of Euless, and which do not in any way constitute land use regulations. Plaintiff seeks to be exempted from laws and ordinances which prohibit the killing and slaughtering of livestock within the city limits, which regulate the use of animals and the disposal of animal wastes and remains. Such laws and ordinances do not regulate the use of land, but

apply to all property within the corporate limits of the city.

10. Indeed, in paragraph number 15 of the Amended Complaint, Plaintiff admits that “the language of the statutes upon which Defendant relies is universal. . . .” City of Euless ordinances cited as examples by Plaintiff in that paragraph are §10-3, Slaughtering Animals and §10-65, Animal Care. Neither of these ordinances, nor any other to which Plaintiff has referenced, are “land use regulations” as that term is defined by RLUIPA.

11. The deposition testimony of each witness who claims to be a member of Plaintiff’s religious group or an adherent of the Santeria religion, has stated unequivocally that geographical location at which rituals and ceremonies are conducted is unimportant to the exercise of the religion. Such rituals and ceremonies can be conducted in any suitable structure where members gather. Therefore, land-use regulations cannot be at issue in this case. The use of a particular piece of property in a particular place is not necessary to the exercise of the religion. Such exercise can occur in many different locations and types of places. See excerpts from the Oral Deposition of Jonathan Merced, attached hereto as Exhibit “A,” (P.9, L.15 – P.11, L.24; P.13, L. 6 – 23; P.15, L.5 – P.17, L.7; P.52, L.19 – P.54, L.8; P.64, L.15 – 22; P.69, L.20 – P.71, L.22 – P.87, L.14 – P.88, L.7; P.89, L.25 – P.91, L.1); See also excerpts from the Oral Deposition of Margaret Donnelly, attached hereto as Exhibit “B,” (P.13, L.15 – 25; P.14, L.1-4; P.17, L. 20-25; P.18, L. 1-11); See also excerpts from the Oral Deposition of Sylvia Merced, attached hereto as Exhibit “C,” (P.9; P.10, L.19 – 22; P.11, L. 2-5); See also excerpts from the Oral Deposition of Omar Osuna, attached hereto as Exhibit “D,” (P.8, L.16 – 18; P.11, L.5-21; P.55, L.11 – P.56, L.7; P.48, L.10 – P.49, L.7; P.60, L.13 – P.61, L.1; P.67, L.7 – P.68, L.5); See also excerpts from the Oral Deposition of Ventura Santana, attached hereto as Exhibit “E,” (P.6, L.10 – P.7, L.25; P.16, L.20 – P.19, L.25; P.23, L.20 – P.24, L.8; P.43, L.10 – 23; P.45, L.3 – P.46, L.9; P.48, L.15

– P.50, L.5; P.66, L.11 – 25; P.75, L.16 – P.76, L.16).


12. The City of Euless zoning and subdivision regulations contained in the Unified Development Code are not at issue. No provision of those ordinances either permit or deny the killing of livestock, the disposal of animal remains, animal cruelty, or violations of public health protections. Those matters are governed by Texas state laws and City ordinances that do not regulate land use. The laws and ordinances at issue here are of general application throughout the corporate limits of the City. See Exhibits “F” and “G”.

13. Any attempt to broaden the reach of RLUIPA to apply to general city ordinances and regulations outside of land-use regulation would run directly afoul of the holding by the United States Supreme Court in the case of *City of Boerne v. Flores*, 508 U.S. 521 (1997) (holding *inter alia* that Congress exceeded its power under §5 of the 14th Amendment by enacting overbroad remedial legislation).

WHEREFORE, PREMISES CONSIDERED, no genuine issues of material facts exist to any of Plaintiff’s RLUIPA claims against Defendant, who is entitled to judgment as a matter of law, and Defendant prays that this Fed. R. Civ. P. 56(b) Partial Motion for Summary Judgment be granted, that Plaintiff’s claims under RLUIPA be dismissed with prejudice, and that Defendant be awarded all such other relief to which it may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 5, 2007, a complete and correct copy of the foregoing pleading was served upon the following counsel of record in accordance with the Federal Rules of Civil Procedure:

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