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David H. ... Clerk of the Superior Court
County of Santa Clara, California

D. Mancini
Deputy Clerk

James A. Sonne, State Bar No. 250759
jsonne@law.stanford.edu
Zeba A. Huq, State Bar No. 261440
zebahuq@law.stanford.edu
Trevor W. Ezell, Student Bar Certification No. 39557
ezellt@stanford.edu
Olga E. Musayev, Student Bar Certification No. 454632
olgam@stanford.edu
Stanford Law School Religious Liberty Clinic
Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305
Phone: (650) 723-1422
Fax: (650) 723-4426

Counsel for Plaintiff

**SUPERIOR COURT
OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

INTERNATIONAL SOCIETY FOR
KRISHNA CONSCIOUSNESS OF
SILICON VALLEY

Plaintiff,

v.

COUNTY OF SANTA CLARA,

Defendant.

Case No.: **16CV292947**

COMPLAINT FOR REFUND OF
PROPERTY TAXES

1. Violation of Sections 207 and 5097 of the California Revenue and Taxation Code
2. Violation of Article I, Section 4 of the California Constitution
3. Violation of the First Amendment to the Constitution of the United States

Introduction

1
2 1. California state law exempts from local property tax any property “used
3 exclusively for religious purposes.” (Rev. & Tax. Code, § 207.)¹
4

5 2. Furthermore, both the federal and state constitutions broadly forbid local
6 governments from discriminating among religious sects. (See *Everson v. Board*
7 *of Education* (1947) 330 U.S. 1, 15 [“The ‘establishment of religion’ clause of
8 the First Amendment means at least this,” neither a state nor the Federal
9 Government “can pass laws which . . . prefer one religion over another”]; *Sands*
10 *v. Morongo Unified School Dist.* (1991) 53 Cal.3d 863, 883 [emphasizing similar
11 provisions in the California Constitution].)
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15 3. But when plaintiff International Society for Krishna Consciousness of
16 Silicon Valley (“ISV”) purchased property in Mountain View for the sole
17 purpose of using it as a Hare Krishna Temple, defendant Santa Clara County
18 refused to provide that exemption.
19

20 4. After purchasing the property, ISV held religious services and opened the
21 Temple for private worship. It also undertook renovations necessary to fulfill the
22 requirements of the Hare Krishna faith. ISV never used the property for a
23 nonreligious use.
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28 ¹ All further statutory references are to the Revenue and Taxation Code
unless otherwise indicated.

1 5. Nonetheless, the County tax assessor denied ISV's claim for a tax refund
2 on the grounds that the "property [was] not put to *regular* exempt use within 90
3 days from 1st of month after purchase date." (Exh. A, Declaration of Adam
4 Bernstein exh. 5, italics added.)
5

6 6. "Regularity," however, is not a requirement under section 207 of the
7 Code. And the County does not have the power to add to the statute's
8 requirements.
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10 7. Moreover, imposing a "regularity" requirement violates the California
11 and United States Constitutions by discriminating against new congregations and
12 religions not centered on regular formal services.
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15 8. While newly-formed or small congregations may use a space exclusively
16 for worship, their small numbers may mean they wouldn't worship "regularly"
17 enough to satisfy the County. And even larger, established congregations may not
18 satisfy the County simply because their worship is centered on private, self-
19 directed meditation—which is more common in eastern, than in western,
20 religions.
21
22

23 9. At bottom, the County either misinterpreted the statute or acted outside
24 the scope of its authority when it added a new "regularity" requirement. What's
25 more, the County violated the California and United States Constitutions by
26 imposing a criterion that screens out certain congregations and religious sects.
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1 10. ISV asks for a tax refund in the amount of \$17,640.01 plus interest from
2 the date of payment. (See Rev. & Tax. Code, § 5151.)
3

4 **Jurisdiction and Venue**

5 11. This Court has jurisdiction under section 5140 of the Code, as this matter
6 concerns a claim by a taxpayer to recover property taxes that a county board of
7 supervisors has refused to refund.
8

9 12. The case is brought as an unlimited civil case, as it involves the legality
10 of a tax. (See Code Civ. Pro., § 86.)
11

12 13. ISV has fulfilled all prerequisites to suit. It applied to the tax assessor for
13 reconsideration of the initial denial of the refund (Exh. A, A. Bernstein Decl.
14 ¶ 26), and once reconsideration was denied (*Ibid.*), it filed a timely application for
15 refund with the County Board of Supervisors (Exh. B, Claim Against the County
16 of Santa Clara (June 2, 2015)), which was also denied (Exh. C, Letter from Mark
17 F. Bernal, Deputy County Counsel, Santa Clara County, to ISKCON of Silicon
18 Valley (Oct. 5, 2015)). It now brings this suit within six months of the Board's
19 refusal to grant the refund. (See Rev. & Tax. Code, § 5140.)
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22 14. Venue is proper, because the property at issue is in Santa Clara County
23 and the County is the Defendant. (See Code Civ. Pro., §§ 394–395; Rev. & Tax.
24 Code, § 5148.)
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Parties

15. Plaintiff ISV is a California nonprofit corporation, classified under sections 509(a)(1) and 170(b)(1)(A)(i) of the Internal Revenue Code. (Exh. A, A. Bernstein Decl. exh. 1.) It is located at 1965 Latham Street, Mountain View, CA, 94040.

16. Defendant Santa Clara County is a political subdivision of the State of California.

Statement of Facts

17. Plaintiff ISV is the local congregation of the International Society for Krishna Consciousness (“ISKCON”), known colloquially as the Hare Krishna religion.

18. Founded in 1966, ISKCON belongs to a centuries-old monotheistic tradition in Hindu culture, devoted to the worship of Lord Krishna. That worship includes the reverence of various Deities, who are direct manifestations of Krishna himself at different times in different personalities.

19. Among other articles of faith, adherents of the Hare Krishna religion are called to own or maintain a temple building, a “holy place of transcendental pastimes devoted to the personality of Lord Krishna.” (Exh. D, Letter from ISV to Bd. of Supervisors of Santa Clara County (June 2, 2015) p. 1.) And no matter its initial state, the Hare Krishna temple must be fashioned according to

1 “Vastu”—a Vedic form of geomancy—as far as practical. (Exh. A, A. Bernstein
2 Decl. ¶ 10.) It should also be capable of preparing and administering “prasadam,”
3 or meals offered to the Deities. (Exh. A, A. Bernstein Decl. ¶ 8.) After being
4 consecrated, the holy food is then shared among the congregation, like
5 communion.
6
7

8 20. ISV began performing local services in 1998 in a home in San Jose.
9 (Exh. A, A. Bernstein Decl. ¶ 5.) The congregation grew quickly, and in 1999
10 ISV rented a storefront property in San Jose. (*Ibid.*) That property soon became
11 too small for the growing number of adherents. In 2005, after years of
12 fundraising, ISV moved to a larger rental space on Bascom Avenue in San Jose.
13 (*Ibid.*) That property also became insufficient to hold the expanding
14 congregation.
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18 21. On April 20, 2012, therefore, ISV bought the property at 1965 Latham
19 Street, Mountain View, CA, to serve as its temple. (Exh. A, A. Bernstein Decl.
20 ¶ 6.) The property was previously used as Gnostic sanctuary. (*Ibid.*)
21

22 22. Within a month of taking possession, ISV began the process of
23 remodeling the Mountain View property to more fully meet its religious calling.
24 (Exh. A, A. Bernstein Decl. ¶ 9.) A committee of congregants drew up plans in
25 accordance with Vastu geometry. And to ensure administering prasadam would
26 satisfy local health and safety rules, the committee included a commercial grease
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1 trap, a hood with sprinklers, and a rated firewall. (Exh. A, A. Bernstein Decl.
2 ¶¶ 9–10.) During this same period, ISV also retained an architect and began
3 fundraising for the desired changes. (Exh. A, A. Bernstein Decl. ¶ 11.)
4

5 23. While construction was being planned, ISV actively welcomed members
6 to come and pray at the New Temple and opened the facility for private worship.
7 (Exh. A, A. Bernstein Decl. ¶ 14.)
8

9 24. Moreover, from February 2012 (before even closing on the property) to
10 June 2012, ISV conducted weekly tours of the property, during which current and
11 prospective congregants repeatedly chanted the Hare Krishna mantra—“hare
12 krishna hare krishna, krishna krishna hare hare, hare rama hare rama, rama rama
13 hare hare”—and meditated to purify the space and welcome Lord Krishna’s
14 presence. (Exh. E, Declaration of Deepak Chandani ¶¶ 4–6; Exh. F, Declaration
15 of Hari Haran Iyer ¶¶ 2–5.)
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19 25. Other congregants entered the Temple to pray and meditate
20 independently. For example, Julie Bernstein, one of ISV’s Board members, came
21 to the Temple “almost every day of the spring, summer, and fall of 2012” to open
22 it for others and then chant herself for two hours, as required by her faith. (Exh.
23 G, Declaration of Julie Bernstein ¶ 3.) From May 2012 to November 2012,
24 Sudhir Saini also came to meditate in the Temple, where he saw others pray as
25 well. (Exh. H, Declaration of Sudhir Saini ¶¶ 2–4.) A group of students even
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1 moved next door to be close to the Temple in June 2012, frequently borrowing
2 keys to worship at the property at their convenience. (Exh. H, Saini Decl. ¶ 3.)
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4 26. Hare Krishna followers believe that Deities made of jewels, stone, wood,
5 or mind are direct manifestations of Krishna himself, rather than symbolic
6 representations. Adherents are encouraged to pray and chant in a temple where
7 the Deities are located. In this spirit, ISV dedicated one of its Deities at the
8 Mountain View property: a painting of Sri Pancha Tattva—the five incarnate
9 aspects of Lord Krishna. (Exh. A, A. Bernstein Decl. ¶ 14.)
10
11

12 27. Beginning in April 2012, ISV congregants prayed and meditated before
13 the Deity, performing ritual chants, or “japa” meditations, by repeating the Hare
14 Krishna mantra while counting beads on a rosary-like “japa mala.” (Exh. A, A.
15 Bernstein Decl. ¶ 16.) Other Deities remained at the San Jose property so they
16 would not be subjected to unsacred renovation disturbances. (Exh. A, A.
17 Bernstein Decl. ¶ 15.)
18
19

20 28. More formal religious services also took place at the Mountain View
21 temple amid planning and refurbishment. For example: on June 9, 2012, a
22 visiting spiritual scholar B.V. Madhava Swami led a morning worship service,
23 which was attended by more than 50 people (Exh. A, A. Bernstein Decl. ¶ 19)
24 and publicly touted (Exh. A, A. Bernstein Decl. exh. 2); on June 10, 2012, a
25 memorial service was held for Purussottambhai Patel, a devout member of the
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1 congregation, and attended by 60 to 100 people (Exh. A, A. Bernstein Decl.
2 ¶ 20); and on September 15, 2012, a visiting spiritual leader Radhanatha Swami
3 led an evening service attended by over 200 people (Exh. A, A. Bernstein Decl.
4 ¶ 21).

5
6 29. At no point during ISV's ownership was the Mountain View property
7 used for a nonreligious purpose.
8

9 30. The California tax year runs July to June. When closing on the property
10 on April 20, 2012, ISV paid a prorated amount of \$2,487.61 in taxes for the
11 remainder of the 2011–2012 tax year. (Exh. A, A. Bernstein Decl. exh. 9.)
12

13 31. Adam Bernstein, ISV's corporate secretary and a lawyer, then filed a
14 timely application for a religious-use tax exemption with the Santa Clara County
15 Tax Assessor on May 18, 2012. (Exh. A, A. Bernstein Decl. exh. 3.) Because the
16 Temple would not be open to the wider public until renovations were complete,
17 he mistakenly indicated religious use would not begin until October 2012. (*Ibid.*)
18 In fact, and as described above, it had begun both before and immediately after
19 closing.
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23 32. On September 23, 2012, and while awaiting a determination on its
24 exemption application, ISV further paid (under protest) \$15,152.40 in taxes for
25 the 2012–2013 tax year. (Exh. A, A. Bernstein Decl. exhs. 7–8.)
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1 33. On September 26, 2012, Mr. Bernstein submitted a revised, corrected
2 exemption application, showing religious use had in fact begun earlier than
3
4 October 2012, noting specifically the formal religious services held on June 9,
5 June 10, and September 15, 2012. (Exh. A, A. Bernstein Decl. exh. 4.) Based on
6 his updated understanding of the law's exclusivity requirement, he was confident
7
8 the revised application would be granted.

9 34. Unfortunately, on January 2, 2013, the County tax assessor denied ISV's
10 application on the purported grounds that the "Property [was] not put to *regular*
11 exempt use within 90 days from 1st of month after purchase date." (Exh. A, A.
12 Bernstein Decl. exh. 5, italics added.) The assessor did not dispute that ISV's use
13
14 of the property was exclusively religious. (*Ibid.*)

15
16 35. In a follow-up e-mail exchange with Mr. Bernstein in July 2013, an
17 investigator from the assessor's office indicated the office recognized the more
18 formal worship services in June and September as "religious" use, but that those
19 activities were not "regular" enough for exemption. (Exh. A, A. Bernstein Decl.
20
21 exh. 6.) The investigator further observed—but without citing any legal authority
22 or explaining why it was legally relevant—that, because ISV also held services at
23
24 its prior facility in San Jose, "occasional services held at the [Mountain View]
25 facility . . . are considered to be incidental usage." (*Ibid.*)
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1 36. Mr. Bernstein asked the assessor's office for reconsideration but was
2 verbally denied during a phone call in June 2014. (Exh. A, A. Bernstein Decl.
3 ¶ 26.)
4

5 37. ISV filed a timely claim for a refund with the County Board of
6 Supervisors on June 2, 2015, raising all of the facts and legal claims presented in
7 this Complaint. (Exh. B, Claim Against the County of Santa Clara.)
8

9 38. The County Board of Supervisors rejected the claim. It gave no
10 explanation. (Exh. C, Letter from Mark F. Bernal, Deputy County Counsel, Santa
11 Clara County, to ISKCON of Silicon Valley.)
12

13 39. Meanwhile, the County had exempted the Temple for the 2013–2014 tax
14 year, but only after ISV's faith-based renovations were complete and the Temple
15 was opened to the wider public.
16

17 40. The property taxes ISV paid in 2012–2013 and 2013–2014 for the
18 Temple have been improperly collected and should be refunded.
19

20 **Count I**
21 **Violation of Sections 207 and 5097 of the**
22 **California Revenue and Taxation Code**

23 41. ISV re-alleges and incorporates by reference the preceding paragraphs of
24 this Complaint.
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1 42. California law provides that “[a]ny taxes paid before or after
2 delinquency shall be refunded if they were . . . erroneously or illegally collected.”
3
4 (Rev. & Tax. Code, § 5097(b).)

5 43. The County erroneously and/or illegally collected the 2012–2014 taxes
6 on ISV’s Temple by augmenting the statutory requirements for the religious-use
7 exemption. Namely, the County improperly construed section 207 of the Code,
8 which exempts property “used exclusively for religious purposes,” to
9 comprehend only property “used exclusively *and regularly* for religious
10 purposes.”
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13 44. The religious-use tax exemption requires only that the property be used
14 *exclusively* for religious purposes. The statute has no “regularity” requirement,
15 nor does it mandate the worship be open to the public or limited to one property
16 per congregation. (See Rev. & Tax. Code, § 207.)
17
18

19 45. ISV satisfied section 207 because it used the Temple only for religious
20 purposes, including formal services, private congregant visits, and self-directed
21 worship, as well as undertaking renovations mandated by the Hare Krishna faith.
22

23 46. The County does not have power to impose new requirements. A tax
24 exemption “is not a personal grant of the assessor but a legal right conferred by
25 constitution and statute.” (*Goodwill Industries v. County of L.A.* (1953) 117
26 Cal.App.2d 19, 26.)
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1 47. Moreover, even if “regularity” were an interpretation of existing law—
2 and it is not—it deserves no deference because the statute is unambiguous. (See
3 *Bonnell v. Medical Board* (2003) 31 Cal.4th 1255, 1261 [holding that where “the
4 language of the statute is not ambiguous, the plain meaning controls” [quoting
5 *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th
6 911, 919]].)

9 48. Finally, even if the statute were ambiguous—and it is not—the County’s
10 refusal to acknowledge private worship or occasional religious ceremonies as
11 religious use is unpersuasive because it lacks any reasoning, contradicts earlier
12 interpretations, and risks an unconstitutional application by limiting the
13 exemption to only certain religious sects. (See *Yamaha Corp. of America v. State*
14 *Bd. of Equalization* (1998) 19 Cal.4th 1, 12–13 [analogizing California’s
15 deference to administrative agencies to federal *Skidmore* deference].)

19 **Count II**
20 **Violation of Article I, Section 4 of the California Constitution**

21 49. ISV re-alleges and incorporates by reference the preceding paragraphs of
22 this Complaint.
23

24 50. Article I, section 4 of the California Constitution guarantees the
25 enjoyment of religion “without discrimination or preference.” This No Preference
26 Clause is broader than the federal Constitution, prohibiting not just governmental
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28

1 preference, but even the appearance of such preference. (*Sands v. Morongo*
2 *Unified School Dist.*, *supra*, 53 Cal.3d at p. 883.)

3
4 51. The No Preference Clause applies to counties. (See, e.g., *American*
5 *Family v. City & County of San Francisco* (9th Cir. 2002) 277 F.3d 1114.)

6
7 52. But Santa Clara County's decision to limit tax exemption to religions
8 that hold "regular" services creates an unmistakable appearance of preference.
9 While formal communal worship, like Sunday services or Friday prayer, is
10 central to many western religions, it is secondary in many eastern ones. For
11 instance, Buddhism's path to personal enlightenment emphasizes individual
12 meditation, chanting, and pilgrimage. (Keown, *Buddhism: A Very Short*
13 *Introduction* (2000) p. 84 ["meditation is the principal Buddhist strategy for
14 making oneself what one wishes to be"].) It often lacks formal services, and even
15 when it has them they are secondary to individual worship. (*Id.* at pp. 5-7 [noting
16 that the "ritual dimension is less pronounced in Buddhism than in faiths of a
17 strongly sacramental kind, such as Judaism and Orthodox Christianity"].)
18 Sikhism, likewise, is centered on individual meditation on God's name, or *nam*
19 *simaran*, rather than formal religious lectures or sermons. (McLeod, *Historical*
20 *Dictionary of Sikhism* (1995) pp. 146-147 [describing how Sikh meditation on
21 the *nam* "lies at the heart of [Sikh] teaching"].)
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1 53. Similarly, the Hare Krishna faith is devoted to the cultivation of love for
2 Lord Krishna through practiced meditation, or “bhakti yoga.” Even though
3 ISKCON holds formal communal services, self-directed yoga meditation is the
4 primary method of cultivating that love for Krishna. (Kaviraja, Chaitanya
5 Charitamrita (1486) 1.14.143–1.14.147 [“the only means for deliverance is the
6 chanting of the names of Hari. There is no other way, there is no other way, there
7 is no other way”].) A “regularity” requirement disregards this aspect of the Hare
8 Krishna faith and demonstrates an apparent preference for western-style ways of
9 worship.
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12
13 54. This appearance of preference is exacerbated by the fact that Hare
14 Krishna devotees have often been subject to unjust social stigma. (See, e.g., U.S.
15 Com. on Internat. Religious Freedom, Kazakhstan: USCIRF Denounces
16 Demolition of Hare Krishna Property and Moves Against Religious Freedom;
17 Calls on the U.S. Government to Reject Kazakhstan’s Bid to Become OSCE
18 Chair in 2009 (Nov. 30, 2006) <<http://1.usa.gov/1S6Z9Ic>> [as of Mar. 17,
19 2016].) The County’s refusal to treat ISV’s exemption application on equal terms
20 subjects an already disfavored group to disfavored treatment.
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23

24 55. At the same time, a “regularity” requirement discriminates against less-
25 established religions. Although mainstream religions may easily find enough
26 adherents to regularly come together, new religions or small congregations may
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1 be limited to a few devoted members who gather informally or less frequently to
2 perform worship on their own time.

3
4 56. Founded in the 1960s, ISKCON is a relatively young religion even
5 though it is rooted in the centuries-old Hindu tradition. Accordingly, any
6 expansion of its congregations invariably occurs in places that do not have a large
7 number of existing adherents. Requiring “regularity” would deny ISKCON a tax
8 exemption simply because it is not popular or well-established in a particular
9 area. This discriminates among religious sects based on the size of religious
10 congregations.
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14 **Count III**
15 **Violation of the First Amendment of the United States Constitution**

16 57. ISV re-alleges and incorporates by reference the preceding paragraphs of
17 this Complaint.

18 58. The First Amendment mandates that Congress shall make no law
19 “respecting an establishment of religion.” (U.S. Const., 1st Amend.) The
20 Establishment Clause of the First Amendment was incorporated against the States
21 by the Fourteenth Amendment (*Cantwell v. Connecticut* (1940) 310 U.S. 296,
22 303), and applies likewise to counties (see *Memorial Hospital v. Maricopa*
23 *County* (1974) 415 U.S. 250, 263).
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1 59. As a county of the state of California acting under the direction of a
2 California statute, Santa Clara County must comply with the Establishment
3 Clause.
4

5 60. Congress has provided a statutory vehicle to bring challenges to First
6 Amendment violations by state actors. Under 42 U.S.C. § 1983, a person has a
7 private right of action against any person who, under color of state law, deprives
8 another of “any rights, privileges, or immunities secured by the Constitution.”
9 This private right of action includes “an action at law” and a “suit in equity.” (*Id.*)
10
11

12 61. The Establishment Clause prohibits state and federal governments from
13 passing laws that “prefer one religion over another.” (*Everson v. Board of*
14 *Education, supra*, 330 U.S. at p. 16.) For instance, the United States Supreme
15 Court upheld a New York statutory exemption under the Establishment Clause
16 where it did not “single[] out one particular church or religious group,” but
17 instead “granted [the] exemption to all houses of religious worship within a broad
18 class of property.” (*Walz v. Tax Commission* (1970) 397 U.S. 664, 673.)
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22 62. The County’s limitation of the religious-use exemption to exclusive *and*
23 “regular” religious worship effects a preference for some religions over others.
24 Rather than granting the exemption “to all houses of religious worship,” the
25 County would limit the religious-use exemption to just those religious groups that
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1 satisfy its own definition of “regular.” What’s more, this notion of “regularity”—
2 because pulled out of thin air—is arbitrary and undiscernible.
3


4 **Remedies and Prayer for Relief**

5 63. WHEREFORE, ISV prays that this Court:


- 6 a. Order the County to refund the taxes illegally collected for the years
7 2011–2012 (partial) and 2012–2013 (full), with interest as required by
8 section 5151 of the Code; and
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10 b. Order such other and further relief as the Court deems just and proper.
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1 Dated: March 18, 2016

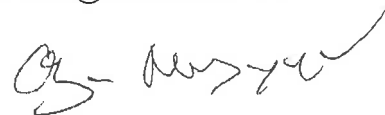
2 Respectfully submitted,

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4 
5 _____

6 James A. Sonne
7 Zeba A. Huq
8 Stanford Law School
9 Religious Liberty Clinic
10 559 Nathan Abbott Way
11 Stanford, CA 94305
12 (650) 723-1422
13 jsonne@law.stanford.edu

14 
15 _____

16 Trevor W. Ezell
17 *Certified Law Student*
18 Stanford Law School
19 Religious Liberty Clinic
20 559 Nathan Abbott Way
21 Stanford, CA 94305
22 (650) 723-1422
23 ezellt@stanford.edu

24 
25 _____

26 Olga E. Musayev
27 *Certified Law Student*
28 Stanford Law School
Religious Liberty Clinic
559 Nathan Abbott Way
Stanford, CA 94305
(650) 723-1422
olgam@stanford.edu

Counsel for Plaintiff