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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

THE CHURCH OF THE HOLY LIGHT)
OF THE QUEEN, a/k/a The Santo Daime)
Church, *et al.*,)
)
Plaintiffs,)
v.)
)
MICHAEL B. MUKASEY, *et al.*,)
)
Defendants.)
_____)

CIV. NO. 08-3095-PA

DEFENDANTS' ANSWER

AFFIRMATIVE DEFENSES

First Affirmative Defense

Defendant Henry M. Paulson has no oversight over the former United States Customs Service (now the Bureau of Customs and Border Enforcement) and is therefore not a proper party-opponent. He should therefore be dismissed from this action.

Second Affirmative Defense

The Complaint does not assert a case or controversy affording Article III jurisdiction.

Third Affirmative Defense

Plaintiffs lack standing to challenge Drug Enforcement Administration (“DEA”) regulations which have not been applied to them and as to which they have failed to exhaust the administrative remedy provided by the Controlled Substances Act (“CSA”) and its implementing regulations.

Fourth Affirmative Defense

Plaintiffs’ claims are not ripe for review.

Fifth Affirmative Defense

The Complaint fails to state a claim for which relief can be granted.

Sixth Affirmative Defense

Plaintiffs’ claims are barred by the applicable statute(s) of limitations.

In response to the numbered paragraphs of Plaintiffs’ Complaint, Defendants respond as follows:

INTRODUCTION

1. This paragraph contains Plaintiffs' characterization of the action, to which no response is required. To the extent a response may be deemed to be required, denied that Defendants acted unlawfully and/or that Plaintiffs are entitled to any relief.

JURISDICTION AND VENUE

2. Denied, except to admit the existence of federal question jurisdiction.
3. Admitted that this Court has the authority to grant declaratory and injunctive relief; denied that Plaintiffs are entitled to any relief.
4. Admitted that venue is proper in this district.

PARTIES

PLAINTIFFS

5. Admitted that the Church of the Holy Light of the Queen ("CHLQ") is a religious corporation formed under the laws of the State of Oregon whose principal office is located in Ashland, Oregon, and that CHLQ has a small group in Bend, Oregon. Admitted that Plaintiffs have represented that CHLQ is a branch of Centro Eclético da Fluente Luz Universal Raimundo Irineu Serra ("CEFLURIS"). Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

6. Admitted that Jonathan Goldman is the leader of CHLQ and resides in Ashland, Oregon. Deny that Goldman has the capacity to bring this non-class action on behalf of other members of the CHLQ or as representative and agent of non-party CEFLURIS, in the United States.

6A. Admitted that Alexandra Bliss Yeager is the spiritual leader of "Céu da Divina Rosa," an association or organization located in Portland, Oregon. Defendants lack knowledge

or information sufficient to form a belief about the truth of the remaining allegations of this paragraph, including the allegation that the nonparty Church of the Divine Rose is an officially recognized branch of CEFLURIS.

7. Admitted.

8. Admitted.

9. Admitted that the Plaintiff proceeding pseudonymously as “Mary Row” is a member of CHLQ and resides in Oregon.

10. Admitted.

DEFENDANTS

11. Admitted that Michael B. Mukasey is the Attorney General of the United States and performs the duties and responsibilities of that office from a primary office location in Washington, D.C., and is the head of the United States Department of Justice (“DOJ”), of which the DEA is a component.

12. Admitted that Karen J. Immergut is the United States Attorney for the District of Oregon and performs the duties and responsibilities of that office from a primary office location in Portland, Oregon.

13. Admitted that Henry M. Paulson is the Secretary of the Treasury and performs the duties and responsibilities of that office from a primary office location in Washington, D.C. Denied that the Bureau of Customs and Border Protection is a component of the Department of the Treasury.

13a. Admitted that, to the extent any named Defendant acted with respect to Plaintiffs, he or she did so in his or her official capacity.

FACTS

14. Defendants lack knowledge or information sufficient to form a belief about the truth of the first sentence of this paragraph. The second sentence is denied, except to admit that the ayahuasca tea seized from Plaintiffs in May 1999 contained dimethyltryptamine (“DMT”), a Schedule I controlled substance under the CSA, as amended, 21 U.S.C. §§ 801, 812(c)(I)(c)(6), and the CSA’s implementing regulations, 21 C.F.R. §§ 1300 *et seq.*

15. To the extent the allegations in this paragraph purport to characterize as divine the origins of the teachings of Irineu Serra or to identify a singular “Church” as the “Santo Daime Church” emerging from Irineu Serra’s leadership and/or teachings, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph. Admitted that the doctrines of the CHLQ, emerging from the CEFLURIS tradition – itself emerging from within the broader context of Santo Daime religious practices – are syncretic, combining elements of indigenous tribal beliefs and practices from the Amazon with Afro-Brazilian religion and Christianity. Admitted that in CHLQ doctrine, the tea is called Daime, derived from the Portuguese for “give me,” as in the prayer “give me light,” “give me wisdom,” and “give me strength.” Admitted that Santo Daime means “Holy Daime.” Admitted that the broader tradition of Santo Daime was founded by Raimundo Irineu Serra, an illiterate African-Brazilian rubber tapper and member of the territorial guard who was introduced to the religious consumption of ayahuasca through his participation in various shamanistic practices and local religious groups blending the discourses of popular Catholicism, European esotericism, Afro-Brazilian, and indigenous religions. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

16. The allegations of the first sentence of this paragraph are admitted to the extent they allege that the taking of ayahuasca is a central aspect of CEFLURIS services as set forth on the

calendar of ceremonies established by that organization; denied to the extent they allege that the centrality of ayahuasca consumption is so absolutely imperative that no religious services could be conducted within the faith tradition absent consumption of ayahuasca, and to the extent they allege that each CHLQ event at which ayahuasca has been or is consumed (including non-calendared events) is “necessary” such that it is absolutely imperative to the practice of the religious tradition. Admitted that the allegations of the remaining sentences of this paragraph accurately describe the doctrines of the CHLQ, to the extent they allege that the taking of ayahuasca is a central aspect of CEFLURIS services as set forth on the calendar of ceremonies established by that organization; denied to the extent they allege that the centrality of ayahuasca consumption is so absolutely imperative that no religious services could be conducted within the faith tradition absent consumption of ayahuasca, and to the extent they allege that each CHLQ event at which ayahuasca has been or is consumed (including non-calendared events) is “necessary” such that it is absolutely imperative to the practice of the religious tradition. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph, including allegations regarding the individual beliefs and/or sincerity of religious practice of individual members or participants in CHLQ ceremonies.

17. To the extent the allegations in this paragraph purport to characterize as divine the hymns and/or hymnals used in CHLQ services, or to purport to identify a singular “Church” as the “Santo Daime Church” emerging from Irineu Serra’s leadership and/or teachings, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph. Admit that the CHLQ’s doctrine is taught, in part, through hymns purported to be received by its religious leaders, as well as through hymns purported to be received by religious leaders of CEFLURIS and from the Santo Daime tradition. Defendants lack knowledge or

information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

18. Admitted that since 2006, CHLQ has kept records of importation and distribution which have been produced in discovery and filed as evidence with the Court. The Court is referred to these CHLQ documents as the best evidence of their contents. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph, except to state that by their own admission, Plaintiffs did not keep records of importation and distribution of ayahuasca.

19. Admitted that CEFLURIS brews Daime in Brazil in a ritualized brewing process involving the boiling of *Banisteriopsis caapi* and *Psychotria viridis*. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

20. Admit that *Banisteriopsis caapi* is a tropical rainforest liana and that it contains alkaloids such as harmine and harmaline. Also admitted that harmine, harmaline, and 1,2,3,4-tetrahydroharmine are not listed in the Schedules established by the CSA. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

21. The allegations of the first sentence of this paragraph are denied, except to admit that *Psychotria viridis* is a tropical rainforest shrub and that it contains DMT. In response to the allegations of the second sentence, admitted that DMT is present in many plants and their seeds. The allegations of the third sentence of this paragraph are denied, except to admit that plant species which contain DMT are not controlled by name under the CSA. Defendants aver that all drugs or other substances which contain DMT or other controlled hallucinogens are controlled

substances within the meaning of the CSA. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

22. The allegations of the first sentence of this paragraph are denied, except to admit that DMT is a Schedule I controlled substance. The allegations of the second sentence are admitted. The allegations of the third sentence are denied, except to admit that plant species which contain DMT are not controlled by name under the CSA. Defendants aver that all drugs or other substances which contain DMT or other controlled hallucinogens are controlled substances within the meaning of the CSA.

23. Denied. DMT is a schedule I controlled substance.

24. Denied.

25. Denied, except to admit that, on or about May 13, 1999, employees of the then United States Customs Service (now the Bureau of Customs and Border Enforcement in the Department of Homeland Security) seized approximately 80 kilos of a tea which contained DMT and which was being shipped to Jane Seligson, the wife of Plaintiff Jonathan Goldman, at their residence.

26. The allegations of the first sentence are denied, except to admit that, on or about May 20, 1999, the United States District Court for the District of Oregon issued a warrant at the request of DEA Special Agent Daniel Lakin, acting with the approval of his superiors and within the scope of his DEA employment, and that the warrant authorized the search of two locations in Ashland, Oregon, including the residence of Ms. Seligson and Plaintiff Goldman. The allegations of the second sentence are denied, except to admit that the federal search warrant was executed by DEA personnel on or about May 20, 1999. The allegations of the third sentence are denied, except to admit that, pursuant to the federal search warrant, the DEA Agents seized 18

large plastic jugs and miscellaneous smaller containers which contained approximately 400 gallons of the DMT, as well as unspecified amounts of marijuana and several containers holding white powders, one of which proved to be the Schedule I hallucinogen bufotenine. Also admitted that the Agents seized miscellaneous items of non-drug evidence. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

27. Denied except to admit that the law enforcement officers who executed the federal search warrant on May 20, 1999, were armed, that Plaintiff Goldman was taken into custody, and that DEA personnel returned Plaintiff Goldman to his residence several hours later.

28. Denied except to admit that the officers who executed the search warrant seized the 80 kilos of DMT tea which had been intercepted by Customs personnel, as well as the numerous containers of DMT tea found at the residence. Defendants aver that all items retained have been destroyed pursuant to routine policies.

29. The allegations of this paragraph are denied, except to admit that DEA has closed its investigation into the criminal matter and that DOJ officials have exchanged separate correspondence with Plaintiffs' counsel regarding CHLQ's use of ayahuasca. The Court's attention is respectfully directed to the correspondence filed in this action as the best evidence of its contents. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph, including Plaintiffs' subjective fears and emotions regarding the threat of arrest arising from their illicit use of controlled substances.

30. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph, except to admit that, after the Oregon Board of Pharmacy met on November 8, 2000, it issued a letter dated November 22, 2000, to counsel for Plaintiffs.

The Court's attention is respectfully directed to that letter as the best evidence of its contents.

31. This paragraph contains conclusions of law which do not require a response.

Otherwise denied, except to admit that DEA continues to enforce the CSA as applied to DMT tea notwithstanding any ruling of any state administrative agency.

32. This paragraph contains conclusions of law which do not require a response.

Otherwise denied, except to state that Defendants possess insufficient information to form a belief as to the truth of the subjective fears of unidentified individuals.

33. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph, except to admit that a working group established by the Brazilian Federal Narcotics Council ("CONFEN"), a Brazilian governmental agency which has since been abolished, issued a final report. The Court's attention is respectfully directed to that the report as the best evidence of its contents.

Attempts to Settle and Obtain a Memorandum of Understanding with DOJ

34 - 41. Defendants respond to the allegations of each paragraph that falls under the heading "Attempts to Settle and Obtain a Memorandum of Understanding with DOJ" by averring that conduct and statements made in compromise negotiations generally are not admissible on behalf of any party. To the extent Plaintiffs refer to documents attached as Exhibits to Plaintiffs' Complaint which are admissible, the Court's attention is respectfully directed to those documents for the best evidence of their contents. Moreover, these paragraphs contain numerous conclusions of law and/or matters subject to the deliberative process privilege, to which no response is required. To the extent a response may be deemed to be required, denied.

The O Centro Espirita Beneficente Uniao do Vegetal (UDV) Decisions

42. Denied, except to admit that the O Centro Espirita Beneficente Unaio do Vegetal

(UDV) is a Brazilian religious organization.

43. Denied to the extent that these paragraphs paraphrase allegations contained in the first amended complaint in *O Centro Espirita Beneficiente Uniao Do Vegetal v. Mukasey*, case number CV 00-1647J (D.N.M.). The Court is respectfully referred to that document as the best evidence of its contents. To the extent the allegations in this paragraph purport to characterize as divine or “sacred” the teachings or doctrines of the UDV or the CHLQ, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph. To the extent the allegations in this paragraph identify a singular “Church” as the “Santo Daime Church” emerging from Irineu Serra’s leadership and/or teachings, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph. As to Plaintiffs, the allegations of the first sentence of this paragraph are admitted to the extent they allege that the taking of ayahuasca is a central aspect of CEFLURIS services as set forth on the calendar of ceremonies established by that organization; denied to the extent they allege that the centrality of ayahuasca consumption is so absolutely imperative that no religious services could be conducted within the faith tradition absent consumption of ayahuasca, and to the extent they allege that each CHLQ event at which ayahuasca has been or is consumed (including non-calendared events) is absolutely imperative to the practice of the religious tradition. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph regarding the individual beliefs and/or sincerity of religious practice of individual members or participants in CHLQ ceremonies or UDV ceremonies.

Admitted that hoasca is consumed by the UDV, that the primary ingredients of hoasca are *Banisteriopsis caapi* and *Psychotria viridis*, and that hoasca is prepared in religious rituals by the UDV in Brazil and imported into the United States. Defendants lack knowledge or information

sufficient to form a belief about the truth of the remaining allegations of this paragraph.

44. To the extent the allegations in this paragraph purport to characterize as divine or “sacred” the teachings or doctrines of the UDV or the CHLQ, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph. As to Plaintiffs, the allegations of the first sentence of this paragraph are admitted to the extent they allege that the taking of ayahuasca is a central aspect of CEFLURIS services as set forth on the calendar of ceremonies established by that organization; denied to the extent they allege that the centrality of ayahuasca consumption is so absolutely imperative that no religious services could be conducted within the faith tradition absent consumption of ayahuasca, and to the extent they allege that each CHLQ event at which ayahuasca has been or is consumed (including non-calendared events) is absolutely imperative to the practice of the religious tradition. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph regarding the individual beliefs and/or sincerity of religious practice of individual members or participants in CHLQ ceremonies. Admitted that hoasca is consumed by the UDV and that the UDV regards hoasca consumption as a sacrament in which the divine is made manifest. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

45. Denied, except to admit that, on or about May 21, 1999, one day after execution of the federal search warrant referenced in this action, federal law enforcement officers intercepted a shipment of DMT tea sent by the UDV in Brazil to the UDV-USA in care of its President to Santa Fe, New Mexico. Subject to a valid search warrant, federal officers conducted a controlled delivery of the DMT tea to the delivery address, where they seized DMT tea and records and other documents belonging to the UDV-USA and its President.

46. Defendants respond to the allegations of this paragraph by averring that conduct and statements made in compromise negotiations generally are not admissible on behalf of any party. Denied that the RFRA working group established by the Department of Justice was formed for the purpose of negotiating with the CHLQ.

47. Denied except to admit that a complaint was filed in the United States District Court for the District of New Mexico on or about November 21, 2000, on behalf of a New Mexico corporation, O Centro Espirita Beneficiente Unaio do Vegetal (UDV-USA), and several named individuals and that the complaint named as a defendant then-Attorney-General John Ashcroft. The Court is respectfully referred to the complaint as the best evidence of its contents.

48. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of this paragraph. To the extent the allegations are meant to refer to a letter to counsel for Plaintiffs, sent by the Department of Justice on February 2, 2001 (rather than January 21, 2001), Defendants refer the Court to the letter as the best evidence of its contents. In response to the allegations of the second sentence of this paragraph, denied except to refer the Court to the complaint filed on behalf of UDV-USA in the District of New Mexico as the best evidence of its contents. As to the remaining allegations, admitted that U.S. District Judge Parker granted the UDV Plaintiffs' motion for a preliminary injunction, which was affirmed by the Tenth Circuit Court of Appeals and upheld by the United States Supreme Court, which remanded the action back to the District Court for further proceedings.

49. This paragraph contains characterizations of legal arguments filed in briefs, which require no response. This paragraph contains reference to numerous letters between the CHLQ and the Department of Justice, which correspondence has been filed in this case. The Court is respectfully referred to this correspondence as the best evidence of its contents. As to the merits

brief filed by the Solicitor General of the United States in the United States Supreme Court in the *O Centro* litigation, the Court is respectfully referred to the brief as the best evidence of its contents. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

50. Denied. Defendants aver that U.S. District Judge Parker issued an Order in the *O Centro* litigation on May 31, 2001, denying Plaintiffs' motion to participate as amicus curiae and stating that "the factual circumstances relating to the consumption of hoasca tea by members of O Centro Espirita Beneficiente Uniao do Vegetal (UDV) and the government's actions in regard to that use of hoasca differ significantly from the facts involving the consumption of Daime tea by members of the Santo Daime Church, and the government's reaction to that use of Daime."

51. Denied. Defendants aver that the United States Supreme Court upheld the issuance of the preliminary injunction by the District Court of New Mexico and refer to the decision as the best evidence of its contents.

52. Denied. The District Court found that the government's interests were compelling but that, on a motion for preliminary injunction, the parties' evidence was in "equipoise." Defendants refer the Court to the District Court's order as the best evidence of its contents.

53. Admitted. There is no ruling on the merits on the question of the government's compelling interests regarding hoasca.

54. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied. Admit that the government has compelling interests in the enforcement of the Controlled Substances Act and its implementing regulations.

55. This paragraph contains conclusions of law, to which no response is required. To the

extent a response may be deemed to be required, denied.

56. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

57. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

58. Admitted that, to the extent any named Defendant acted with respect to Plaintiffs, he or she did so in his or her official capacity.

59. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

60. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

61. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

62. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

63. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

64. Denied.

65. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

66. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

67. This paragraph contains conclusions of law, to which no response is required. To the

extent a response may be deemed to be required, denied.

FIRST CLAIM FOR RELIEF

68. Defendants incorporate by reference their responses to paragraphs 1 through 67 above.

69. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

70. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

SECOND CLAIM FOR RELIEF

71. Defendants incorporate by reference their responses to paragraphs 1 through 67 above.

72. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

THIRD CLAIM FOR RELIEF

73. In response to the allegations of the first sentence of this paragraph, Defendants incorporate by reference their responses to paragraphs 1 through 67. The second sentence is denied: Defendants aver that the DMT tea seized from Plaintiff Goldman, like any other drug or substance containing the Schedule I controlled substance DMT which was acquired in violation of the CSA, is contraband per se and no property right exists in it. Defendants also aver that it was subject to summary forfeiture and destruction. *See* 21 U.S.C. §§ 881(a), (f)(1).

74. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

75. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

FOURTH CLAIM FOR RELIEF

76. Defendants incorporate by reference their responses to Paragraphs 1 through 67.

77. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

78. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

FIFTH CLAIM FOR RELIEF

79. Defendants incorporate by reference their responses to Paragraphs 1 through 67.

80. The first sentence is denied. The second sentence is denied, except to refer the Court to the terms of the preliminary injunction issued in the *O Centro* litigation.

81. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

82. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

SIXTH CLAIM FOR RELIEF

83. Defendants incorporate by reference their responses to Paragraphs 1 through 67.

84. This paragraph contains conclusions of law, to which no response is required. To the

extent a response may be deemed to be required, denied.

84. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

85. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

86. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

87. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

88. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

89. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

90. This paragraph contains conclusions of law, to which no response is required. To the extent a response may be deemed to be required, denied.

WHEREFORE, Defendants having fully answered, Plaintiffs are not entitled to any of the relief requested or to any relief whatsoever. This action should be dismissed with prejudice and Defendants are entitled to costs and such other relief as the court deems appropriate.

Dated: December 30, 2008

Respectfully submitted,

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