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11 **CLERK, U.S. DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

12 BY

13 **THE LEAGUE OF DEAF AND**
NEIGHBORHOOD ADVOCATES,
14 etc., et al.,

15 Plaintiffs,

16 vs.

17 THE CITY OF LOS ANGELES, et al.,
18 Defendants.

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CASE NO. 03-4890-CAS (Ex)

PLAINTIFFS' OPPOSITION
CONGREGATION ETZ CHAIM'S
RESPONSE TO PLAINTIFF'S
FURTHER MEMORANDUM IN
OPPOSITION TO THE CITY
DEFENDANTS' MOTION TO
DISMISS

Hearing Date: No Hearing Date Set
Time: None
Ctroom: 5
Honorable: Christina Snyder

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1 Plaintiffs hereby respond to the brief submitted by the Congregation Etz
2 Chaim addressing Plaintiffs' April 5, 2004 further memorandum opposing the
3 motion to dismiss brought by the City defendants.

4 **I. THIS COURT IS NOT BOUND BY JUDGE HUPP'S ORDER**

5 In opposing the City's motion, Plaintiffs addressed the argument (re-asserted
6 here again by the Congregation), that this Court is bound by Judge Hupp's order. As
7 Plaintiffs noted, in *Amarel v. Connell*, 102 F.3d 1494 (9th Cir. 1996), the Court held
8 that,

9 . . . the interlocutory orders and rulings made pre-trial by a district judge are
10 subject to modification by the district judge at any time prior to final
11 judgment, and may be modified to the same extent if the case is re-assigned to
12 another judge [citation]. There is 'no imperative duty to follow the earlier
13 ruling – only the desirability that suitors shall, so far, as possible, have
14 reliable guidance how to conduct their affairs.

15 102 F.3d at 1515. The Congregation is incorrect that this Court is bound by Judge
16 Hupp's order under the doctrine of "law of the case". In fact, this Court possesses
17 ". . . inherent procedural power to reconsider, *rescind*, or modify an interlocutory
18 order for cause seen by it to be sufficient." *City of Los Angeles, etc. v. Santa Monica*
19 *Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001) (emphasis in original). The "law of
20 the case" doctrine is ". . . discretionary, not mandatory and is in no way a limit on [a
21 court's] power" to re-consider prior rulings." *Id.* at 888. In the words of the Court in
22 *In Re Cajun Power Co-Op*, 791 F.2d 353 (5th Cir. 1986), "A court may reconsider
23 its own rulings to avoid perpetuating error. To hold otherwise would be to elevate
24 consistency over justice" at 365. *See Pareto v. FDIC*, 139 F.3d 696 n.1 (9th Cir.
25 1998) (law of the case doctrine does not require an erroneous ruling to be followed).

26 At the March 29, 2004 hearing on its motion to dismiss, the City suggested
27 that this Court should decline to consider the issues in this case, because it is likely
28 to be appealed. It is respectfully submitted that this Court should not require
Plaintiffs to appeal a question this Court believes should not have been determined
against Plaintiffs. *See United States v. Martin*, 226 F.3d 1042, 1049 (9th Cir. 2000),

1 (the authority of district courts to reconsider their own orders before they become
2 final allows them to correct mistakes "rather than waiting for the time consuming,
3 costly process of appeal"). As held in *Castner v. First Nat. Bank*, 278 F.2d 376 (9th
4 Cir. 1960), if after examination of the record and the law, this Court is convinced
5 that an error of law has been committed,

6 "The second judge must conscientiously carry out his judicial function in a
7 case over which he is presiding. He is not doing so if he permits what he
believes to be an erroneous ruling to control the case . . ."

8 278 F.2d at 380.

9 This Court has discretion to follow the law as it understands it, regardless of
10 any previous ruling in this case and this Court is not bound by rulings this Court
11 determines to be erroneous.

12 **II. THE SETTLEMENT AGREEMENT VIOLATES PLAINTIFFS'**
13 **CONSTITUTIONAL AND STATUTORY RIGHTS AND THE**
14 **REQUIREMENTS OF APPLICABLE ZONING LAWS**

15 The Congregation argues (as does the City) that the use permission granted by
16 the Settlement Agreement is excepted from: (a) all US and Federal Constitutional
17 protections applicable to use permission; (b) applicable provisions of the California
18 Government Code; and (c) all applicable provisions of the Los Angeles Municipal
19 Code. However, it is incontrovertible that the Congregation's use of the Highland
20 Property as a synagogue is an improper non-conforming use under *LAMC* §12.08. It
21 is also incontrovertible that such non-conforming use can be permitted *only* by a
22 statutorily authorized conditional use permit granted under *LAMC* §12.08. These
23 unavoidable statements of the law are conveniently ignored by the Congregation and
24 the City.

25 The Congregation repeatedly states that the zoning laws, and the
26 Constitutional protections that go with them, are inapplicable because no CUP was
27 granted (based on the non-transferability provision of the Settlement Agreement).
28 However, the Congregation itself admits that the use permission granted by the

1 Settlement Agreement is ". . . *the same use that was sought in the permit*
2 *application.*" (Congregation brief, p. 2, line 28 to p. 3, line 1) (emphasis added).
3 This is a stunning admission that the use permission contractually granted by the
4 Settlement Agreement is the *same* use permission sought and denied when the
5 statutory procedures contained in the zoning laws were applied. The arguments the
6 Congregations offers are thus a clear attempt to elevate form over substance. Where,
7 as here, protection of the public's rights is at issue, especially those embodied in the
8 California and United States Constitutions, a court must look through form to
9 substance. *Pool v. U.S.*, 344 F.2d 943, 944-45 (9th Cir. 1965). California courts
10 refuse to elevate form over substance where the result (as here) is to circumvent
11 statutes framed for protection of the public. *See, e.g., Epstein v. Hollywood*
12 *Entertainment Dist., etc.*, (2001) 87 Cal.App.4th 862, 872.¹

13 This brief now turns to the following theories the Congregation offers in
14 support of their argument that zoning laws and the protections that follow lose their
15 force simply because the City enters into a contract that violates those laws.

16 **A. The "Does Not Run With The Land" Argument Is Without Merit:**

17 The Congregation argues that the Settlement Agreement's use permission
18 need not comply with applicable Constitutional, statutory and ordinance based
19 requirements because it "does not run with the land". This argument was fully
20 addressed in Plaintiffs' April 5 further memorandum where Plaintiffs fully
21 explained why the "run with the land" argument is invalid.² The Congregation's
22 brief simply re-states the "run with the land" argument and utterly ignores all of the
23

24 ¹ It is, by now a truism that zoning laws are enacted for the public's protection.
25 *See, e.g., Consolidated Rock Prod. Co. v. City of Los Angeles*, (1962) 57 Cal.2d 524
(primary purpose of comprehensive zoning is protection of the general public).

26 ² Plaintiffs argued, inter alia, that the non-transferability provision is void.
27 Even assuming it is not, the "run with the land" argument lacks merit.
28

1 counter-arguments made by Plaintiffs in their April 5 brief. This silence speaks
2 volumes that the "run with the land" argument is frivolous.³

3 In effect, the Congregation argues that their agreement to contractually limit
4 the time duration of Settlement Agreement's use permission, somehow validates the
5 use permission's Constitutional and statutory violations. The Congregation cites no
6 authority for such a proposition. The argument is specious. A violation of
7 Constitutional and statutory rights is no less a violation because it may last only
8 until the property is transferred – if ever. The Congregation utterly fails to respond
9 to Plaintiffs' argument that they are arguing (in effect) that cities may agree to
10 discriminate against minorities, so long as they do so by contract.

11 The City *lacks the power* to waive or consent to the violation of its zoning
12 laws. *Hansen Bros. Enterp., Inc. v. Board of Supervisors*, (1996) 12 Cal.4th 533,
13 564; *See Strong v. County of Santa Cruz*, (1975) 15 Cal.3d 720, 727 (government
14 may not waive the requirements of an ordinance enacted for the public benefit).
15 Because the City lacks the power to consent to a violation of the zoning laws or to
16 waive such laws, *a fortiori* the City lacks the power to consent to a violation or grant
17 a waiver for an indeterminate duration – including as long as the Congregation
18 decides the violations of the zoning laws serve its purpose. Where, as here, a
19 sovereign lacks power, the sovereign may not exercise that power for a day, a finite
20 period, or for an infinite time. It certainly cannot take power it does not have for the
21 singular benefit of a private entity.

22
23 ³ The plain language of *LAMC* §12.08 and §12.24, which govern non-
24 conforming use permission in R1 zones, covers all permissions for non-conforming
25 use, with no limitation to permission that "runs with the land" and no exception for
26 non-transferable permission. This Court may not insert such an exemption into the
27 City's ordinances under the guise of statutory construction. *See, e.g., Jeffrey v.*
28 *Superior Court*, (2000) 102 Cal.App.4th 1, 8 (courts may not insert into a statute
that which is omitted).

1 The City's misconduct is exacerbated by the fact that the City has delegated to
2 the Congregation the power to decide when the ongoing zoning violations will be
3 terminated (through its unilateral power to transfer the property). *See Friedman v.*
4 *Pacific Outdoor Advertising Co.*, (1946) 74 Cal.App.2d 946, 952 ("One cannot
5 delegate to another an act which he is by law forbidden himself to do"). Thus, the
6 City has granted power it does not have to the Congregation, and thereby harmed on
7 a day-to-day basis Plaintiffs and the Hancock Park community.⁴ Because the City
8 has no authority to permit a non-conforming use - determinate or indeterminate -
9 outside its statutory and constitutional obligations, it cannot delegate to the
10 Congregation the authority to determine the length of time the non-conforming use
11 will continue.

12 **B. City Charter Sec. 273 Does Not Invest the City Or the**
13 **Congregation With the Power to Contract In Violation of the Law:**

14 First, The Congregation asserts that City Charter Sec. 273 grants the City the
15 authority to settle litigation. However, as Plaintiffs have briefed to this Court, it is
16 absurd, unreasonable and legally impermissible to construe Sec. 273 as authority to
17 ignore the City's own zoning ordinances, state law and Constitutional law by the
18 simple expedient of making a contract.⁵ Settled California law permits cities to
19 grant use permits only in accordance with statutes. *Metzenbaum v. City of Carmel-*
20 *by-the-Sea*, (1965) 234 Cal.App.2d 62, 64 (use permits may be granted only as
21

22 ⁴ The demonstrated detriment is established by the City's own findings, when
23 its procedures were followed, that use of the Highland Property as a synagogue is
24 *not* in the neighborhood's interest (first amended complaint ¶12).

25 ⁵ Indeed, the state law requirements for non-conforming use permission are
26 mandated to apply to Charter cities. *Government Code* § 65804, et seq. Thus the
27 City, through its Charter, does not have the right to contractually evade the
28 requirements which state law imposes for non-conforming use.

1 authorized by ordinance); *See Smith v. City and County of San Francisco*, (1990)
2 225 Cal.App.3d 38, 55 (agreement permitting development without applying land
3 use regulations invalid and unenforceable as contrary to public policy).

4 The Congregation also ignores that both the California Supreme Court and the
5 Ninth Circuit have held that statutes and regulations cannot be evaded or
6 circumvented by private contracts. *See, e.g., Alpha Beta, etc. v. Retail Clerks, etc.*,
7 (1955) 45 Cal.2d 764, 771 (gov't regulations cannot be varied, evaded by private
8 contract); *Bright v. Bechtel Petroleum, Inc.*, 780 F.2d 766, 772 n. 7 (9th Cir. 1986).
9 As held in *Friedman v. Pacific Outdoor, supra*, "Public policy requires that duties
10 imposed by statute be discharged and that those who are affected cannot suspend the
11 operation of the law either by waiver or by express contract." 74 Cal.App.2d at 953.
12 Plaintiffs do not assert the City cannot settle litigation. Rather, the City cannot settle
13 litigation in a manner which violates and circumvents Constitutional rights, state law
14 and the City's own ordinances.

15 It is axiomatic that the City cannot skirt Constitutional mandates by contract.
16 *See, e.g., Barenblatt v. U.S.*, 360 U.S. 109, 112 (1959) (all branches of gov't must
17 exercise powers subject to the limitations placed by the Constitution on gov't
18 action); *Katzberg v. Regents*, (2002) 29 Cal.4th 300, 306 (all branches of gov't are
19 required to comply with Constitutional directives). By the same token, no contract –
20 including the Settlement Agreement – can validate use permission which is granted
21 in contravention of state law or the City's own ordinances. *See, e.g., Timney v. Lin*,
22 (2003) 106 Cal.App.4th 1121, 1127 (although there is a strong public policy
23 favoring settlement, this policy does not excuse illegal or unjust-clauses). As held in
24 *Warner Co. v. Sutton*, 644 A.2d 656 (N.J. Sup.Ct. App. Dept. 1994),

25 A municipality has no power to circumvent [a zoning's laws]
26 substantive powers and procedural safeguards by contract with a
27 private property owner. A zoning ordinance may not be amended or
28 repealed "by any act of a governing body of less dignity than that
which created the ordinance in the first place." [citation]. If a
municipality desires to allow a deviation from the permitted uses under
the zoning ordinance, it must either amend the ordinance "or follow the

1 necessary procedures for granting a variance; it cannot short cut these
2 procedures and permit the ... use by means of ... a contract with the
3 landowner." [citation]. In other words, the municipality's exercise of its
4 police power to serve the common good and general welfare of all its
5 citizens "may not be surrendered or curtailed by bargain or its exercise
6 controlled by the considerations which enter into the law of contracts.
7 [citations]. Such "contract zoning" is *ultra vires*, and "all proceedings
8 to effectuate it ... [are] utterly void.

9 644 A.2d at 659-60.

10 It is respectfully submitted that the City cannot do by contract that which it is
11 forbidden to do by statute.

12 **C. Illegal Contract Provisions Are Not Made Legal Because They Are**
13 **Contained In A Settlement Agreement:**

14 The Congregation asserts that unless the Settlement Agreement is upheld,
15 land use litigation can never be settled (Congregation brief, p. 6, lines 8-10). This
16 argument is nothing more than an attempt to justify the illegal use permission
17 allowed in this case. Such an argument is contrary to the settled law that settlement
18 agreements do not justify illegal clauses, they are not exalted over the law, and the
19 law (including that governing use permission) cannot be evaded by private
20 agreement. These principles are the backbone of the rule of law, which exists to
21 prevent the sort of arbitrary and unilateral government action reflected in this case.

22 The fact that litigation cannot be settled by an illegal contract provision does
23 not mean settlement is impossible – rather it means that settlement agreements must
24 comply with the law in the same manner as any other contract. This is the settled
25 law of California. *See, e.g., Folsom v. Butte County Assn. of Gov'ts*, (1982) 32
26 Cal.3d 668, 677 (settlement agreements are governed by the same standards
27 applicable to all contracts); *Adams v. Johns-Manville Corp.*, 876 F.2d 702, 704 (9th
28 Cir. 1989) (under California law, settlement agreements are governed by general
principles of contract law).

Under the Congregation's view of the world, every land use decision,
including those which have become final after exhaustion of all administrative and

1 Under the Congregation's view of the world, every land use decision,
2 including those which have become final after exhaustion of all administrative and
3 legal appeals (as in this case), are subject to later reversal and modification
4 whenever the City government unilaterally determines, in its own self-interest, to
5 settle continuing litigation. Under the Congregation's view, not only may the City
6 arbitrarily reverse prior decisions, it may do so even if the prior decision concluded
7 that the applicant's request violated the public interest. This is nothing more than a
8 naked waiver by the City of the zoning laws and their public purpose – something
9 the California Supreme Court has expressly held is improper. *Hansen Bros. Enterp.,*
10 *Inc. v. Board of Supervisors, supra*, 12 Cal.4th at 564; *Strong v. County of Santa*
11 *Cruz, supra*, 15 Cal. 3d at 727 (ordinance enacted for the public benefit cannot be
12 waived by gov't); *Consolidated Rock Prods. Co. v. City of Los Angeles, supra*, 57
13 Cal.2d at 524 (primary purpose of comprehensive zoning is protection of the general
14 public).

15 The Congregation also argues that the Settlement Agreement is valid because
16 the City complied with the "process" necessary to settle litigation (Congregation
17 brief, n. 1; page 5, lines 20-23). This is the ultimate argument for putting form over
18 substance. It is irrelevant whether the City complied with the procedures necessary
19 to approve the Settlement Agreement because the Settlement Agreement's
20 substantive term - use permission - is not valid. Any improper agreement is not
21 made proper because it is approved in accordance with procedure.

22 Finally, it should not be overlooked that there is nothing in the first amended
23 complaint, or any request for judicial notice, which reflects that any of the Plaintiffs
24 were given any notice, or that there was any opportunity to be heard, in connection
25 with the City's grant of use permission in the Settlement Agreement. To the
26 contrary, the requests for judicial notice establish that the City considered and
27 approved the Settlement Agreement in closed session without informing Plaintiffs or
28 the community of the City's intention to grant a permission to use the Highland

1 Property as a Settlement Agreement.⁶

2 Although the City may be entitled to consider the terms and conditions of a
3 settlement in litigation in closed session, such a power does not allow the City to
4 make secret land use decisions and secretly grant permission for non-conforming
5 uses in direct contravention of the City's own ordinances and contrary to the City's
6 own prior extensive findings. Such a result makes a mockery of California's zoning
7 law and the City's own statutes. As stated in *Penn-Co v. Board of Supervisors*,
8 (1984) 158 Cal.App.3d 1072, where the Court concluded that affected property
9 owners cannot be excluded from conditional use permit proceedings,

10 *There is a clear policy in this state to involve the public and affected*
11 *property owners at every level of the process when land use decisions are*
12 *being made . . . "[t]he Legislature recognizes the importance of public*
13 *participation at every level of the planning process. It is therefore the policy*
14 *of the state and the intent of the Legislature that each state, regional, and*
15 *local agency concerned in the planning process involve the public through*
16 *public hearings, informative meetings, publicity and other means available to*
17 *them, and that at such hearings and other public forums, the public be*
18 *afforded the opportunity to respond to clearly defined alternative objectives,*
19 *policies, and actions.*

20 (emphasis added) 158 Cal.App.3d at 1078. Obviously, the observance of this public
21 policy is ignored if a City can make its land use decisions in closed-door sessions,
22 based on the City's own self-interest rather than that of the community or the
23 neighbors, which in this case are the Plaintiffs.

24 ⁶ In its April 12, 2004 further memorandum, the City acknowledges that its
25 meetings about, and consideration of, the Settlement Agreement occurred in closed
26 session (City's brief, pages 5-6). It is therefore astounding that the Congregation
27 stands before this Court and asserts that Plaintiffs "could have attended the City
28 Council hearings and voiced their opinions on the settlement" (Congregation brief,
p. 2, lines 9-11) when this is clearly not so. There was no procedure for them to do
so, and the *terms* of the Settlement Agreement, which are the subject of this case,
were never made public until after the City had entered into its private deal with the
Congregation. Moreover, and this is critical for this Court's ruling on the
Congregation's and the City's motions to dismiss on the pleadings, there is nothing
in the first amended complaint to support the Congregation's assertion.

1 **D. The Settlement Agreement Is Not Validated By Claimed**
2 **Compliance With The Brown Act:**

3 Without supporting authority, the Congregation cites the City's claimed
4 compliance with the Brown Act as if it is a "cure all" for the constitutional, statutory
5 and ordinance based violations argued by Plaintiffs. The Brown Act is not a filter
6 which cleanses prior constitutional and statutory violations. The purpose of the
7 Brown Act is to ensure the public's right to attend public agency meetings. *See, e.g.,*
8 *Freedom Newspapers, Inc. v. Orange County Employees*, (1993) 6 Cal.4th 821, 825.
9 It is not a panacea to relieve the government from the violation of independent
10 statutory duties. It is a perversion of this statute and its purpose to assert that it
11 validates the violation of other provisions of state law or municipal ordinances (as
12 described herein) which mandate specific notice and an opportunity to be heard in a
13 public, open hearing before a non-conforming use can be granted.

14 The Brown Act plainly was not enacted in order to shield the City from its
15 statutory and constitutional obligations. To treat the Brown Act as a statute which
16 cures the violation of all other statutory requirements would require this Court to re-
17 write California law and exempt government entities from all statutory requirements
18 as long as there is, at some point in the process, compliance with the Brown Act. It
19 is respectfully submitted that this Court cannot and should not engage in such a
20 wholesale revision of California law. As held in *California Teachers Assn. v.*
21 *Governing Bd. of Rialto Unified School Dist.*, (1977) 14 Cal.4th 627,

22 It cannot be too often repeated that due respect for the political branches of
23 our government requires us to interpret the laws in accordance with the
24 expressed intention of the Legislature. This court has no power to rewrite the
statute so as to make it conform to a presumed intention which is not
expressed.

25 14 Cal.4th at 633. To accept Defendants' argument, this Court must re-write the
26 statute to insert provisions that do not appear. Especially when the statute is argued
27 to have the power to nullify existing law, the courts should be particularly loathe to
28 read in terms that are not explicit. *See, e.g., Lewis v. McAdam*, 762 F.2d 800, 804

1 (9th Cir. 1985) (courts have no authority to re-write statutes); *Swanson v. St. John's*
2 *Regional Medical Center*, (2002) 97 Cal.App.4th 245, 248.⁷

3 The notice and public hearing requirements set forth in *LAMC* §12.24 are not
4 optional; they are mandated by *Gov't Code* §§65905 and 65091. Section 65901
5 requires that notice must be *mailed or delivered* at least 10 days in advance of the
6 public hearing to local agencies and all owners of property within 300 feet of the
7 subject property *and* posted on the property or published in a newspaper of general
8 circulation at least 10 days before the hearing. This required notice must include the
9 date, time and place of the public hearing. *Gov't Code* §65094. Compliance with
10 these provisions of the Government Code is mandatory. *Drum v. Fresno County,*
11 *etc.*, (1983) 144 Cal.App.3d 777, 783.⁸ There is nothing in the Government Code
12 which excuses compliance with these statutes because there is compliance with the
13 Brown Act. There is also nothing in the City's ordinances that validates a non-
14 conforming use because of claimed compliance with the Brown Act. Again, this
15 Court would need to re-write the City's zoning ordinances to reach the result
16 suggested by the Congregation.

17 **E. RLUIPA Provides No Safe Harbor:**

18 The Congregation's attempt to defend the indefensible through the Religious
19 Land Use and Institutionalized Act (RLUIPA) is also unavailing. RLUIPA was
20

21 ⁷ The Congregation is incorrect when it argues that it and the City "complied
22 with all laws" (Congregation brief, p. 3, lines 21-22). When the City and the
23 Congregation complied with the zoning laws, the use permission the Congregation
24 sought was *denied*. Only when that statutorily authorized result was circumvented
by a contract, was the previously denied use permission made available.

25 ⁸ Nothing made part of any judicial notice request meets the requirements of
26 *Gov't Code* §65094, no notice was provided as mandated by *Gov't Code* §65091,
27 and nothing cited references any public hearing expressly required by *Gov't Code*
28 §65905.

1 never intended to displace zoning requirements. It provides no immunity from the
2 process. Moreover, RLUIPA simply does not apply unless the religious landowner
3 can prove that the imposition of the land use law results in a "substantial burden" on
4 its religious exercise. RLUIPA made "substantial burden" the threshold issue and
5 grandfathered in the definition of "substantial burden" as that term had been
6 understood prior to its passage. Substantial burden always has been a difficult
7 burden to bear, and it continues to be difficult for those asserting the protections of
8 RLUIPA. *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024 (9th
9 Cir. 2004); *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752,
10 761 (7th Cir. 2003); *Konikov v. Orange County*, 302 F.Supp.2d 1328 (M.D. Fla.
11 2004 (finding synagogue in residential neighborhood could not prove substantial
12 burden under RLUIPA or the Free Exercise Clause). The Congregation cannot
13 show a substantial burden, making RLUIPA unavailable to justify the City's
14 decision to arbitrarily reverse its previous land use determinations with respect to
15 the Congregation.

16 **F. Plaintiffs Were Not Required To Intervene:**

17 The Congregation asserts that Plaintiffs should be foreclosed because of their
18 failure to intervene in the underlying litigation between the City and the
19 Congregation (Congregation brief, p. 2, lines 8-11). If this was the basis of Judge
20 Hupp's order, that conclusion is clearly erroneous. The concept that a stranger is
21 obligated to intervene in litigation has been repeatedly rejected by the United States
22 Supreme Court. *Richards v. Jefferson County*, 517 U.S. 793, 799 n. 5 (1996);
23 *Martin v. Wilks*, 490 U.S. 755, 765 (1989) (joinder as a party, rather than knowledge
24 of litigation and an opportunity to intervene, is the method by which potential
25 parties become subject to judgments or decrees). In *Green v. City of Tucson*, 255
26 F.3d 1086 (9th Cir. 2001), following the teachings of *Richards*, the Ninth Circuit
27 expressly found a person has no "burden of voluntary intervention in a suit to which
28 he is a stranger." 255 F.3d at 1101. *Accord, Saga Intern., Inc. v. John D. Brush*, 984

1 F.Supp. 1283, 1286 (C.D. Cal. 1997) (Circuit Judge Tashima; *Hoover v. Wagner*, 47
2 F.3d 845, 848 (7th Cir. 1995) (there is no duty to intervene to stave off the use of a
3 case as res judicata); *Perez-Guzman v. Garcia*, 346 F.2d 229, 237 (1st Cir. 2003).
4

5 Respectfully submitted,

6 MARCI A. HAMILTON, ESQ.
7 VAN ETTEN SUZUMOTO & BECKET LLP
8

9 By: 

10 _____
11 Leslie M. Werlin
12 Attorneys for Plaintiffs
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over
4 the age of eighteen years and not a party to the within action; my business address is
1620 26th Street, Suite 6000 North, Santa Monica, California 90404.

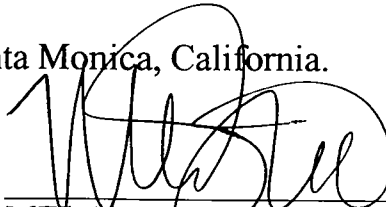
5 On April 14, 2004, I served the following document(s) described as
6 **PLAINTIFFS' OPPOSITION CONGREGATION ETZ CHAIM'S RESPONSE**
7 **TO PLAINTIFF'S FURTHER MEMORANDUM IN OPPOSITION TO THE**
8 **CITY DEFENDANTS' MOTION TO DISMISS** on the interested parties in this
action by placing true copies thereof enclosed in sealed envelopes addressed as
follows:

9 **SEE ATTACHED LIST**

- 10 **BY MAIL:** I am "readily familiar" with the firm's practice of collection and
processing correspondence for mailing with the United States Postal Service.
11 Under that practice, it would be deposited with the United States Postal
Service that same day in the ordinary course of business. Such envelope(s)
12 were placed for collection and mailing with postage thereon fully prepaid at
Santa Monica, California, on that same day following ordinary business
13 practices. (C.C.P. § 1013 (a) and 1013a(3))
- 14 **BY FACSIMILE:** At approximately _____, I caused said document(s) to be
transmitted by facsimile pursuant to Rule 2008 of the California Rules of
15 Court. The telephone number of the sending facsimile machine was (310)
315-8210. The name(s) and facsimile machine telephone number(s) of the
16 person(s) served are set forth in the service list. The document was
transmitted by facsimile transmission, and the sending facsimile machine
17 properly issued a transmission report confirming that the transmission was
complete and without error.
- 18 **BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or
other facility regularly maintained by the overnight service carrier, or
19 delivered such document(s) to a courier or driver authorized by the overnight
service carrier to receive documents, in an envelope or package designated by
20 the overnight service carrier with delivery fees paid or provided for,
addressed to the person(s) served hereunder. (C.C.P. § 1013(d)(e))
- 21 **BY HAND DELIVERY:** I delivered such envelope(s) by hand to the office
22 of the addressee(s). (C.C.P. § 1011(a)(b))

23 I declare under penalty of perjury under the laws of the United States that I
24 am employed in the office of a member of the bar of this Court at whose direction
the service was made.

25 Executed on April 14, 2004, at Santa Monica, California.

26 
27 _____
28 MELANIE SAULO

SERVICE LIST

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3 Jeri L. Burge
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