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12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14

15 THE LEAGUE OF RESIDENTIAL  
NEIGHBORHOOD ADVOCATES,  
16 et al.,

17 Plaintiffs,

18 v.

19 CITY OF LOS ANGELES, et al.,

20 Defendants.  
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CASE NO. CV03-04890-CAS

**DEFENDANT CONGREGATION ETZ  
CHAIM'S RESPONSE TO BRIEF ON  
THE INVALIDITY OF THE  
SETTLEMENT AGREEMENT  
UNDER THE OPINION OF THE  
CALIFORNIA COURT OF APPEAL  
IN TRANCAS V. CITY OF MALIBU**

Date: August 14, 2006

Time: 10:00 a.m.

Place: Courtroom 5

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1 **I. INTRODUCTION**

2 As this Court is well aware, Plaintiffs brought this action seeking to  
3 invalidate the Settlement Agreement entered into between the City of Los Angeles  
4 (the “City”) and Congregation Etz Chaim (the “Congregation”) in Congregation  
5 Etz Chaim v. City of Los Angeles, Case No. CV 97-5042 (the “Prior Action”).

6 This case has been remanded by the Ninth Circuit for consideration of the effect of  
7 Trancas v. City of Malibu, 138 Cal. App. 4th 172 (2006), on this Court’s prior  
8 determination that the Settlement Agreement is valid and does not violate any law.

9 In its previous rulings upholding the validity of the Settlement  
10 Agreement, this Court made several determinations relevant here. First, this Court  
11 held that “the City did not delegate its broader legislative and executive powers in  
12 violation of the California Government Code.” See July 15, 2004 Order Granting  
13 Motion to Dismiss Second Amended Complaint (“July 15, 2004 Order”) at 14.

14 Second, this Court found that the Settlement Agreement is not a conditional use  
15 permit (“CUP”) or “de facto CUP,” and thus rejected Plaintiffs’ contention that the  
16 Settlement Agreement granted the Congregation the right to conduct religious  
17 activities at 303 South Highland Avenue (the “Residence”) without the notice and  
18 hearing required by Los Angeles Municipal Code (“LAMC”) §§ 12.08 and 12.24.

19 See July 15, 2004 Order at 8; December 22, 2004 Order re: Defendant  
20 Congregation Etz Chaim’s Motion to Dismiss (“December 22, 2004 Order”) at 7  
21 (“Since the settlement agreement does not create a CUP within the meaning of the  
22 zoning acts, all of the deficiencies alleged against it fail.”). Third, because the  
23 Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C.

24 §§ 2000cc *et seq.* (“RLUIPA”) raised doubt as to whether the zoning code could  
25 lawfully be applied to the Congregation, “the City properly exercised its discretion  
26 to settle litigation pursuant to Los Angeles Charter § 273.” See July 15, 2004  
27 Order at 10; December 22, 2004 Order at 6 (“The court concludes that the City has  
28 power to reach such a compromise agreement.”).

1            Trancas has no effect on these prior rulings by this Court because  
2 Trancas is readily distinguishable from this case. While Trancas held that certain  
3 specific provisions of the settlement agreement at issue in that litigation  
4 impermissibly bargained away the city’s police power, the Settlement Agreement  
5 here merely specified certain use conditions applicable to the Residence in  
6 exchange for the Congregation’s release of claims. Unlike Trancas, the Settlement  
7 Agreement was entered into in accordance with all applicable law, and the City  
8 retained its police power. Nothing in Trancas provides any basis to revisit these  
9 prior rulings – indeed, this Court has already applied the very same legal theories  
10 relied upon in Trancas to the facts of this case and upheld the validity of the  
11 Settlement Agreement. This Court’s ruling has been confirmed by recent  
12 California authority holding that a settlement agreement that does not surrender or  
13 abrogate a city’s police power is valid.

14            Moreover, Trancas is inapposite because it did not consider the effect  
15 of RLUIPA, on the zoning code. RLUIPA expressly preempts state and local law  
16 to the extent they are inconsistent with RLUIPA’s requirements. Faced with the  
17 preemptive effect of RLUIPA, the City properly exercised its discretion to settle  
18 the litigation brought by the Congregation.

19            Accordingly, Trancas is limited by the facts of that case and has no  
20 effect on the Settlement Agreement here. This Court’s prior ruling that the  
21 Settlement Agreement is valid is entirely correct and is rooted in legal principles  
22 that remain unchanged by Trancas. It should be re-affirmed in all respects.

23 **II. THE SETTLEMENT AGREEMENT DOES NOT ABROGATE THE**  
24 **CITY’S ZONING AUTHORITY**

25 **A. Trancas Is Distinguishable From This Action**

26            Plaintiffs’ Opening Brief is noteworthy for its absence of all but the  
27 most superficial discussion of the facts in Trancas. The reason for this is obvious –  
28 Trancas is very different and readily distinguishable from this case. While certain

1 provisions of the settlement agreement in Trancas violated California law, nothing  
2 in the Settlement Agreement violated the law on the facts of this case.

3           Trancas arises out of the longstanding attempts to develop a multi-  
4 family condominium project on a parcel of land zoned for low-density single  
5 family housing in Malibu. 138 Cal. App. 4th at 176. The County of Los Angeles  
6 approved two tentative subdivision maps for the property in 1985, six years before  
7 Malibu was incorporated. Id. The tentative tract maps indicated a proposed  
8 subdivision of 15 single-family lots on an approximately 26.5-acre tract, and 52  
9 condominium town houses on the remaining 8.5 acre tract, but were subject to  
10 various conditions for approval. Id. Eight years later, Trancas-PCH LLC  
11 submitted proposed final subdivision maps to the City of Malibu. However,  
12 Malibu rejected the maps on the grounds that the preliminary maps had temporally  
13 expired. Id.

14           Trancas-PCH sued Malibu, and the court determined that the time to  
15 file final maps had been tolled. Id. Malibu subsequently resisted further  
16 processing of the final maps because of apparent failures to satisfy the tentative  
17 map conditions, and Trancas-PCH sued Malibu to enjoin it from disapproving the  
18 maps. Id. at 177. Trancas-PCH's requests for a temporary restraining order and  
19 preliminary injunction were denied, leaving Malibu free to act pending trial. Id.  
20 Malibu then adopted a resolution disapproving the applications for approval of the  
21 final maps, citing numerous failures to satisfy the tentative map conditions. Id.

22           Contemporaneous with the resolution, representatives of Malibu and  
23 Trancas-PCH recommended discussions to explore settling the lawsuit and the  
24 overall subdivision matter. Id. at 178. The city council met in closed session, and  
25 following this session, Malibu's mayor and a Trancas-PCH representative executed  
26 a "Deal Memo." Trancas-PCH agreed to dedicate the larger tract of approximately  
27 26.5 acres, Malibu agreed to permit up to 32 units on the approximately 8.5 acre  
28 tract, four of which would be sold to low or moderate-income families, and the

1 units were to be “built in conformance with development standards of the City’s  
2 zoning code, except density.” Id. The city council subsequently met in closed  
3 session and approved a settlement agreement. In addition to the key points agreed  
4 to in the “Deal Memo,” the settlement agreement provided that Malibu would not  
5 enact “zoning or other ordinances applicable to the property that prohibit the  
6 construction of the residential units depicted in the final map, as limited by the  
7 terms of the covenant...” Id. at 179. In response, plaintiffs brought suit seeking a  
8 writ of mandate requiring Malibu to set aside its approval of the settlement  
9 agreement. Id.

10 In holding that the settlement agreement was invalid, the court took  
11 issue with two specific provisions of the settlement agreement and held that those  
12 provisions constituted improper “commitments to take or refrain from regulatory  
13 actions regarding the zoning of Trancas’ development project.” Id. at 180. First,  
14 Malibu agreed that it would not enact “zoning or other ordinances applicable to the  
15 property that prohibit the construction of the residential units depicted in the final  
16 map, as limited by the terms of the covenant...” Id. at 181. This provision was a  
17 promise by Malibu to refrain from exercising its police power in the future which,  
18 under existing Supreme Court precedent (see Avco Community Developers, Inc. v.  
19 South Coast Regional Com., 17 Cal. 3d 785 (1976)), was invalid and  
20 unenforceable as contrary to public policy. Malibu was not permitted to grant the  
21 developer immunity from future zoning changes. Id. (“This promise to abjure  
22 legislative zoning action was unlawful.”).

23 Second, the settlement agreement provided that the revised  
24 development project would conform to Malibu’s zoning code as of the recording of  
25 Trancas’ development covenant “except any limitations on density which vary  
26 from the terms of the covenant.” Id. This provision was most likely occasioned by  
27 the fact that the existing density of the property allowed only one residence per  
28 five acres, while the settlement agreement provided for 32 units on approximately

1 8.5 acres. Id. This density-exemption constituted an impermissible agreement by  
2 the city not to exercise its police power in the future. Id. (finding that this  
3 “contractual exemption from an element of the city’s zoning is indistinguishable  
4 from the one condemned by Avco”). The court also found that the provision  
5 “functionally resembles a variance.” Id. However, Malibu never held hearings on  
6 any application for a variance; thus, its grant by contract was unlawful. Id.

7 Trancas is distinguishable from this action on several key grounds.  
8 First, unlike Trancas, nothing in the Settlement Agreement here surrendered or  
9 abrogated the City’s zoning authority. Second, unlike the “functional variance”  
10 granted in Trancas, the Settlement Agreement here is not a conditional use permit  
11 (“CUP”) or “de facto CUP.” Third, Trancas did not consider the effect of  
12 RLUIPA, a federal statute which preempted the application of the very same laws  
13 that Plaintiffs here claim were violated.

14 1. The Settlement Agreement Did Not Surrender or Abrogate the  
15 City’s Zoning Authority

16 In sharp contrast to Trancas, this case does not involve an agreement  
17 by the City to take action or to refrain from taking action in the future. Rather, the  
18 Settlement Agreement specified certain use conditions applicable to the Residence  
19 in exchange for the Congregation’s release of federal claims. Unlike Trancas, the  
20 City did not make any promises that it would not enact future zoning changes. The  
21 Congregation is subject to all future zoning changes as is any other landowner.  
22 Nor did the Settlement Agreement contain any exemption from existing laws or  
23 immunity from enforcement of the zoning code. The City remains free to enforce  
24 the zoning code against the Congregation as it is against any other landowner.

25 Indeed, this Court has already considered and rejected these very  
26 same legal theories relied upon by Trancas to invalidate the settlement agreement  
27 in that action. Trancas did not announce any new legal doctrine in holding that the  
28 settlement agreement impermissibly contracted away Malibu’s right to exercise its

1 police power, nor did it extend existing law. Rather, Trancas simply applied  
2 established California law to the facts of that particular case. Specifically, Trancas  
3 relied primarily on the decision in Avco Community Developers, Inc. v. South  
4 Coast Regional Com., 17 Cal. 3d 785 (1976), and found that certain provisions of  
5 the settlement agreement – in particular, the agreement by Malibu not to enact  
6 future zoning ordinances and the exemption from density requirements – were  
7 unlawful under Avco. See Trancas, 138 Cal. App. 4th at 181-83. Trancas applied  
8 Avco in a straightforward manner to the facts of that case, and did not consider an  
9 issue of first impression or announce any new legal principles.

10 This Court has already considered the very same legal authority and  
11 theories applied in Trancas and determined that, on the facts of *this* case, the  
12 Settlement Agreement was valid and did not impermissibly delegate the City’s  
13 police powers. See July 15, 2004 Order at 12-14 (analyzing Avco and holding that  
14 “the City did not delegate its broader legislative powers and executive powers in  
15 violation of the California Government Code”). Having already considered these  
16 legal theories, there is no reason to revisit and reverse this finding. Nothing in  
17 Trancas changes or casts doubt on this prior decision.

18 As this Court has previously noted, the Ninth Circuit considered  
19 similar arguments and held that a similar settlement agreement did not  
20 impermissibly contract away land use authority in Stephens v. City of Vista, 994  
21 F.2d 650 (9th Cir. 1993); see July 15, 2004 Order at 13-14. In Stephens, while a  
22 state court action was pending as a result of the City’s decision to lower an access  
23 road to plaintiff’s property, the City rezoned plaintiffs’ property to reduce the  
24 permissible density of housing units. 994 F.2d at 652. Plaintiffs sued in federal  
25 court alleging violations of their civil and constitutional rights, and the parties  
26 subsequently settled the action with the City agreeing to approve a rezoning of the  
27 property to allow a higher density in exchange for a release of claims. Id. When  
28 the City Council refused to approve the rezoning, the Ninth Circuit held that

1 plaintiffs were entitled to damages for breach of the settlement agreement,  
2 rejecting an argument that the settlement agreement impermissibly contracted  
3 around zoning requirements. Id. at 655. The court held that the “City could have  
4 contracted with the Stephenses for a guaranteed density of 140 units and exercised  
5 its discretion in the site development or the Q overlay process without surrendering  
6 control of its land use authority.” Id. at 655; see also Morrison Homes Corp. v.  
7 City of Pleasanton, 58 Cal. App. 3d 724, 734 (1976) (noting that while a City “may  
8 not ‘contract away’ its legislative and governmental functions...[t]he effect of this  
9 rule, however, is to void only a contract which amounts to a city’s ‘surrender,’ or  
10 ‘abnegation,’ of its *control* of a properly municipal function.”).

11 Here, the City exercised its discretion in settling the litigation and in  
12 specifying certain use conditions for the Residence. The City may still enforce the  
13 zoning code against the Congregation, and may enforce the terms of the Settlement  
14 Agreement. The City’s land use authority remains fully intact.

15 2. The Settlement Agreement Is Not a CUP or de facto CUP

16 While Trancas held that the specific density exemption contained in  
17 the settlement agreement was a variance approved without public hearings, the  
18 Settlement Agreement at issue here is not a CUP or a “de facto CUP.” Two federal  
19 district court judges have so held.<sup>1</sup> See July 15, 2004 Order at 8-9; December 22,

20 <sup>1</sup> Plaintiffs cite Judge Aldisert’s dissent in Congregation Etz Chaim v. City of  
21 Los Angeles, 371 F.3d 1122 (9th Cir. 2004), for the proposition that the Settlement  
22 Agreement is de facto CUP. However, they fail to note the majority’s response to  
Judge Aldisert:

23 The dissent advances an argument that was not made by  
24 any of the parties to this case – that the settlement  
25 agreement “was tantamount to a deemed-approved  
26 conditional use [permit.]” ... This position is nowhere  
27 supported in the record, the briefs, or the oral argument  
28 on behalf of the parties. In short, the dissent seeks to  
bind the parties to an agreement that not even they  
contend was made, hence use of the term “tantamount.”  
We elect in the majority opinion to address the settlement  
agreement that was actually agreed upon by the parties  
and approved by the court.

1 2004 Order at 5-7. Accordingly, the laws requiring public notice and hearings for  
2 issuing CUPs did not apply to the Settlement Agreement. Nothing in Trancas  
3 mandates a finding that specifying certain use conditions for a property in the  
4 context of a Settlement Agreement is improper or illegal *per se*.

5           The density exemption in Trancas, which the court found  
6 “functionally resembles a variance,” is fundamentally different from the limited  
7 use permission granted by the Settlement Agreement. Unlike a CUP or a variance,  
8 the Settlement Agreement does not run with the land and instead attaches  
9 personally to the Congregation. See December 22, 2004 Order at 6 (the Settlement  
10 Agreement “is not a CUP which runs with the land”). In contrast, the settlement  
11 agreement in Trancas permitted the developer to record a covenant with an  
12 allowable density that deviated from the existing zoning code. 138 Cal. App. 4th  
13 at 178. This provision was indistinguishable from a variance and could not be  
14 enacted without administrative proceedings and public hearings. Id. at 182.

15           Moreover, despite Plaintiffs’ contentions, the Congregation is not  
16 operating a synagogue. The Settlement Agreement spells out precisely the scope  
17 and nature of the activities permitted at the Residence. The Settlement Agreement  
18 also clearly specifies that the residential character of the Residence must be  
19 maintained, stating, “The single family use of the property located at 303 South  
20 Highland Avenue, Hancock Park, shall be restored and maintained, including the  
21 residential character and architecture.” See Settlement Agreement at Part VI.A.  
22 The residential character of a property is not mutually exclusive with religious use,  
23 particularly when the religious use is strictly limited in a manner that falls far short  
24 of the full scope and range of activities typically permitted at a synagogue and is  
25 akin to book clubs, fundraisers and other uses typically found at residences. To the  
26 extent the Congregation does not maintain the residential character of the property

27  
28 371 F.3d at 1125 n.1 (citation omitted).

1 and adhere to the restrictions contained in the Settlement Agreement, the City may  
2 enforce the Settlement Agreement against the Congregation.

3           Because the Settlement Agreement is not a CUP or “de facto CUP,”  
4 the zoning laws and notice and hearing procedures that Plaintiffs claim were  
5 violated did not apply to the Settlement Agreement. The Congregation and the  
6 City complied with all legal requirements from initial application through litigation  
7 and settlement. The Congregation went through the administrative process  
8 pursuant to the City ordinances in connection with its original CUP application,  
9 including complying with notice and hearing requirements, and Plaintiffs do not  
10 contend otherwise. The Settlement Agreement was executed and approved  
11 pursuant to the City’s authority under City Charter § 273(c) to settle litigation. See  
12 Los Angeles City Charter § 273(c) (“The [City] Council shall have the authority to  
13 approve or reject settlement of litigation that does not involve only the payment or  
14 receipt of money, subject to veto of the Mayor, and Council override of the  
15 Mayor’s veto by a two-thirds vote of the Council.”); see also Los Angeles  
16 Administrative Code § 5.173(c) (same). The City complied with all procedural  
17 requirements to settle the litigation, and again, Plaintiffs do not and cannot contend  
18 otherwise. There is no violation of the law. Thus, Plaintiffs’ attack on the  
19 Settlement Agreement fails for the simple reason that no state or municipal law  
20 was violated or circumvented by the Settlement Agreement.

21           3.     RLUIPA Provides a Lawful Basis for the Settlement  
22                     Agreement

23           Trancas is inapposite for the more fundamental reason that it does not  
24 consider the effect of RLUIPA on the Settlement Agreement. Unlike Trancas, this  
25 case addresses the question of whether the City had authority to settle colorable  
26 federal RLUIPA claims asserted against it. This critical difference renders Trancas  
27 irrelevant to this case.

28           RLUIPA expressly preempts state and local laws to the extent they are

1 inconsistent with RLUIPA's requirements. See 42 U.S.C. § 2000cc(a)(1) ("No  
2 government shall impose or implement a land use regulation in a manner that  
3 imposes a substantial burden on the religious exercise of a person, including a  
4 religious assembly or institution" unless the government can show a compelling  
5 governmental interest and least restrictive means). 42 U.S.C. § 2000cc-3(e)  
6 expressly provides that:

7           A government may avoid the preemptive force of this  
8           chapter by changing the policy or practice that results in  
9           a substantial burden on religious exercise, by retaining  
10          the policy or practice and exempting the substantially  
11          burdened religious exercise, or by any other means that  
12          eliminates the substantial burden.

13 42 U.S.C. § 2000cc-3(e).

14           Thus, the Congregation has a right under RLUIPA to be free of the  
15          substantial burden on the exercise of its religion that would be imposed by the  
16          zoning laws if the Congregation was not permitted to pray in the Residence. Under  
17          42 U.S.C. § 2000cc-3(e), the City has broad discretion to eliminate this burden by  
18          "exempting the substantially burdened religious exercise, or by any other means  
19          that eliminates the substantial burden." The City exercised this discretion in  
20          settling the litigation. RLUIPA "preempts certain laws and practices that  
21          discriminate against or substantially burden religious exercise, and it leaves all  
22          other policy choices to the states. The state may eliminate the discrimination or  
23          burden *in any way it chooses*, so long as the discrimination or substantial burden is  
24          actually eliminated." 146 Cong. Rec. S 7774 (emphasis added).

25           Accordingly, even assuming that the Settlement Agreement granted  
26          the Congregation "use permission" within the scope of the zoning law, this "use  
27          permission" is lawful if RLUIPA barred the application of the City's ordinances to  
28          deny the Congregation their right to worship. The Court's November 27, 2000  
29          Order in the Prior Action concluded that genuine issues of material fact existed as  
30          to whether the application of the City's zoning ordinances to the Congregation

1 violated RLUIPA. See July 15, 2004 Order at 9-10 (noting that even assuming the  
2 Settlement Agreement granted “use permission” under Section 12.08, that  
3 permission would be lawful if City’s application of zoning law violated RLUIPA).  
4 In the face of colorable claims that the City’s application of its ordinances to the  
5 Congregation would violate federal law, the City was entitled to exercise its  
6 discretion to settle litigation pursuant to Charter § 273(c). The Settlement  
7 Agreement is a proper means for the City to eliminate the substantial burden on  
8 religious exercise under RLUIPA. See 42 U.S.C. § 2000cc-3(e).

9           The fatal flaw in Plaintiffs’ argument is that it completely ignores  
10 RLUIPA, and the effect RLUIPA has on local zoning laws that substantially  
11 burden the exercise of religion. Instead, Plaintiffs argue that RLUIPA applies only  
12 if it preempts state *contract* law. This argument is nonsensical. RLUIPA is a  
13 federal law that was enacted to remedy widespread discrimination against religious  
14 groups arising from discretionary *land use* decisions, which, even if arbitrary and  
15 discriminatory, are virtually immune from challenge under state law. The  
16 Congregation brought RLUIPA claims on the basis that the City’s denial of a CUP  
17 imposed a substantial burden on the Congregation’s religious exercise, and it was  
18 these claims that were settled by the Settlement Agreement.

19           Plaintiffs acknowledge that “RLUIPA affects only land use  
20 regulations.” Opening Brief at 16 (emphasis in original). This is precisely the  
21 issue. Plaintiffs assert that the Settlement Agreement is invalid because it was not  
22 ratified in accordance with certain land use regulations applicable to the issuance  
23 of CUPs, but ignore RLUIPA’s effect on those very land use regulations. The City  
24 faced colorable claims under RLUIPA that those very same land use regulations  
25 were unlawful as applied to the Congregation. While the City could have chosen  
26 to continue to fight, it was not required to do so. Faced with colorable RLUIPA  
27 claims the City properly exercised its discretion to settle the litigation against it.  
28 What the City could not do was precisely what Plaintiffs suggest – ignore a valid

1 federal law and apply its zoning code as if it did not exist.<sup>2</sup> Such a course of action  
2 is barred by the Supremacy Clause of the Constitution. U.S. Const. Art. VI (“[T]he  
3 Laws of the United States...shall be the supreme Law of the Land...any Thing in  
4 the Constitution or Laws of any State to the Contrary notwithstanding.”). Plaintiffs  
5 provide no authority for the extension of Trancas – which did not involve  
6 settlement of federal claims – to the facts of this case. There is none.

7 **B. Recent California Authority Confirms the Settlement Agreement**  
8 **Is Valid**

9 A recent decision of the California Court of Appeals affirmed a  
10 municipality’s ability to make concessions involving its land use laws in the  
11 context of a settlement agreement. See 108 Holdings, Ltd. v. City of Rohnert Park,  
12 136 Cal. App. 4th 186 (2006).

13 In 108 Holdings, a landowner brought suit against the City of Rohnert  
14 Park claiming that Rohnert Park violated the California Environmental Quality Act  
15 (CEQA) in certain respects in adopting Rohnert Park’s General Plan and in  
16 certifying the Environmental Impact Report (EIR) for the General Plan. Rohnert  
17 Park considered and adopted a settlement agreement and stipulated judgment of the  
18 landowner’s suit in closed session. Under the terms of the settlement agreement,

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19  
20 <sup>2</sup> Plaintiffs may argue that RLUIPA’s constitutionality was questionable, and  
21 thus the City was required to apply state and local law. However, there is no basis  
22 for such a position. The Supreme Court’s decision in Lemon v. Kurtzman, 411  
23 U.S. 192 (1973), makes clear that the City may rely on a valid statute prior to a  
24 determination of its unconstitutionality. 411 U.S. at 208-09 (officials were entitled  
25 to rely on the validity of a statute even during the pendency of the suit attacking  
26 the constitutional validity of that statute); Chicot County Drainage Dist. v. Baxter  
27 State Bank, 308 U.S. 371, 374 (1940) (“[t]he actual existence of a statute, prior to  
28 [a determination of unconstitutionality], is an operative fact and may have  
consequences which cannot justly be ignored.”). The Settlement Agreement will  
not be subject to challenge if RLUIPA is subsequently held unconstitutional. See  
Anita Foundations, Inc. v. ILGWU Nat’l Ret. Fund, 902 F.2d 185, 189-90 (2d Cir.  
1990) (“[A] settlement payment, made when the law was uncertain, cannot be  
successfully attacked on the basis of any subsequent resolution of that uncertainty.  
This apposite statement is consistent with the established rule that a change in the  
law does not render an agreement void.”) (citing Lemon) (internal citations  
omitted).

1 Rohnert Park “bound itself to interpret and apply its General Plan in a manner  
2 specified in the Stipulated Judgment.” Id. at 191. Further, Rohnert Park agreed to  
3 apply for an amendment of its sphere of influence affecting the property, and to  
4 interpret and apply certain policies concerning groundwater conservation,  
5 community design, and traffic in a manner set forth in the agreement. Id.

6 Plaintiffs brought suit challenging the settlement agreement and  
7 asserting claims remarkably similar to those asserted here. Plaintiffs claimed the  
8 settlement agreement was an *ultra vires* act by Rohnert Park, and argued that the  
9 city was “prohibited from surrendering or impairing [its] delegated power, or that  
10 of successor legislative bodies either by ordinance or by contract.” Id. Plaintiffs  
11 further asserted that Rohnert Park “could not amend its General Plan by contract  
12 without complying with CEQA or the statutory requirements governing the  
13 adoption of general plans,” and set forth a number of statutory provisions that  
14 Rohnert Park allegedly contravened in amending its General Plan. Id.

15 The court rejected plaintiffs’ claims and upheld the validity of the  
16 settlement agreement. First, the court noted that the city has the power to resolve  
17 land use litigation by means of a stipulated judgment or settlement agreement. Id.  
18 at 195. Second, the court confirmed the rule that a contract with a municipality is  
19 invalid as contrary to public policy only where the contract “amounts to a  
20 municipality’s ‘surrender’ or ‘abnegation’ of its control of a municipal function.”  
21 Id. (citing County Mobilehome Positive Action Com., Inc. v. County of San Diego,  
22 62 Cal. App. 4th 727 (1998)). The court then analyzed cases holding that a  
23 government entity surrendered its police power, and found them distinguishable  
24 because Rohnert Park did not limit the city’s ability to alter or amend its General  
25 Plan in the future, and did not grant any other parties veto power over future  
26 General Plan amendments. See id. at 195-97 (distinguishing County Mobilehome  
27 and Alameda County Land Use Assn v. City of Hayward, 38 Cal. App. 4th 1716  
28 (1995)). In contrast to these cases, the court found that “nowhere in the Stipulated

1 Judgment does the City agree to refrain from legislating in the future on matters  
2 that are the subject of the Stipulated Judgment. *Nothing in the Stipulated*  
3 *Judgment suggests that the City has given up its authority to alter or amend its*  
4 *General Plan as future circumstances may dictate.” Id. at 195 (emphasis added).*

5 As in 108 Holdings, nothing in the Settlement Agreement here  
6 suggests that the City has given up its authority to alter or amend the zoning code  
7 as future circumstances may dictate. The City is free to make changes to the  
8 zoning code and apply them to the Congregation as it would to any other  
9 landowner. Accordingly, 108 Holdings supports this Court’s prior ruling that the  
10 Settlement Agreement did not delegate its legislative or executive powers in  
11 violation of California law. See July 15, 2004 Order at 12-14 (distinguishing  
12 Alameda County Land Use Assn).

13 More significantly, 108 Holdings demonstrates the limited reach of  
14 Trancas. Far from invalidating all settlement agreements that grant land use rights,  
15 Trancas simply adopts an existing line of cases holding that municipality may not  
16 surrender its police power by limiting its ability to make future legislative changes  
17 to its land use law. Where, as here, a settlement agreement falls short of the  
18 “surrender” or “abnegation” of the municipality’s police power, 108 Holdings  
19 confirms that the settlement agreement is valid.

20 **C. Extending Trancas to this Case Would Undermine Important**  
21 **Public Policies**

22 The thrust of Plaintiffs’ arguments is that in order for the City to settle  
23 the Prior Action, it must go through the very same process alleged to have violated  
24 federal law. Such a rule would mean that federal land use litigation could *never* be  
25 settled because repeating the same process would give rise to the very same action  
26 that was settled in the first place. This position is without support in the law,  
27 contrary to the very purpose of RLUIPA, and against fundamental public policy.

28 As discussed above, the Congregation went through the required

1 public hearing process in connection with its original application. Repeating the  
2 same administrative process to settle the litigation would add nothing. At best,  
3 repeating the hearing process would be a mere formality as the City takes  
4 unnecessary steps to re-ratify an already valid action. At worst, the process would  
5 cause delay and disruption to the final settlement, and would give rise to the very  
6 same action that was resolved by the Settlement Agreement in the first place – *i.e.*,  
7 the arbitrary denial of lawful religious use. In either event, this procedural exercise  
8 in futility would result in a never-ending loop of litigation. No authority – neither  
9 Trancas nor any other authority under California law – requires this process to be  
10 repeated in order to settle litigation. Indeed, Plaintiffs cite none.

11           While Plaintiffs attempt to use the denial of the original application as  
12 evidence that the Settlement Agreement is unlawful (see Opening Brief at 7-8),  
13 they fail to acknowledge that it was precisely this denial of the Congregation’s  
14 application that gave rise to the Congregation’s lawsuit in the first place. The City  
15 properly exercised its discretion to settle these claims. Plaintiffs cannot rely on the  
16 City’s previous decision to deny the permit to attack the City’s settlement of the  
17 lawsuit challenging that very decision. The result would be the very same action  
18 filed by the Congregation.

19           Plaintiffs’ arguments, taken to their logical extreme, would mean that  
20 parties could *never* settle land use litigation. According to Plaintiffs’ theory, if  
21 applicants go through the land use approval process and lose, then bring a lawsuit  
22 alleging that the denial of approval violates their rights, they cannot settle the  
23 litigation. Plaintiffs’ position would require every case to be adjudicated. This  
24 itself is against public policy. See, e.g., Ahern v. Central Pacific Freight Lines,  
25 846 F.2d 47, 48 (9th Cir. 1988) (“[T]here is an overriding public interest in settling  
26 and quieting litigation.”). There is no authority for such an extreme position.  
27 Certainly, Trancas does not make such a radical change in the law. To the  
28 contrary, California law confirms that land use litigation can be settled so long as

1 the settlement does not amount to a surrender or abnegation of the City’s authority.  
2 See 108 Holdings, 136 Cal. App. 4th at 195-97.

3           Moreover, allowing the Settlement Agreement to be invalidated by the  
4 same laws that were alleged to be unlawful as applied to the Congregation would  
5 eviscerate the purpose of RLUIPA. The purpose of RLUIPA is to remove  
6 impediments to religious exercise caused by local governments using their  
7 discretionary authority under land use regulation to deny the right to worship.  
8 Congress sought to remedy discrimination against religious land uses “in the  
9 highly individualized and discretionary process of land use regulation.” 146 Cong.  
10 Rec. S 7774 (July 27, 2000) (Remarks by Sen. Hatch and Kennedy). RLUIPA  
11 clearly preempts local laws that substantially burden religious exercise, and  
12 empowers the City to avoid this preemptive effect by “exempting the substantially  
13 burdened religious exercise, or by any other means that eliminates the substantial  
14 burden.” 42 U.S.C. § 2000cc-3(e). The Settlement Agreement accomplished  
15 precisely this goal. Plaintiffs cannot undo RLUIPA by insisting on the application  
16 of the very same laws that gave rise to the Congregation’s RLUIPA claims.  
17 Requiring the City to apply the same law and exercise the same discretion that the  
18 Congregation claims violated their rights would contradict the intent of Congress.

19           In a similar case arising under the federal Telecommunications Act  
20 (“TCA”), the First Circuit rejected claims that state law required a new round of  
21 public notice and hearing in order to issue a permit pursuant to a settlement.  
22 Brehmer v. Planning Bd., 238 F.3d 117 (1st Cir. 2001). In Brehmer, a citizen’s  
23 group claimed that the issuance of a previously denied permit pursuant to a consent  
24 decree in a prior suit arising under the TCA was unlawful because it “failed to  
25 follow the procedural strictures of Massachusetts zoning law.” Id. at 118. The  
26 First Circuit held that local zoning ordinances were preempted by the TCA, which  
27 prevents local governments from relying on potential environmental effects to  
28 reject permit applications for telecommunications facilities. Id. at 121. The First

1 Circuit found that there was “no practical benefit to sending the matter back to the  
2 Planning Board in order to have that body hold a hearing destined to result in the  
3 issuance of the special permit.” Id. The Court further stated that “a remand for  
4 further hearings, which appellants claim Massachusetts law requires, would  
5 accomplish nothing more than opening up for public debate the issue of whether  
6 the Planning Board should comply with the terms of the settlement agreement it  
7 had entered into.” Id. Thus, the Court held that “Massachusetts law requiring a  
8 remand for further proceedings under these circumstances (if, indeed, such is the  
9 law) stands as an obstacle to the accomplishment and execution of the full  
10 purposes and objectives of Congress . . . and is consequently preempted by the  
11 TCA.” Id. (internal quotations omitted). Accord, Lucas v. Planning Bd., 7 F.  
12 Supp. 2d 310 (S.D.N.Y. 1998) (refusing to vacate consent judgment between  
13 planning board and telecommunications provider “simply because it is alleged that  
14 the Town was unable to, or did not, adhere precisely to its own state’s procedures”  
15 because to do so would allow every locality to rely on state law “to frustrate the  
16 clear mandates of the [TCA]”).

17 Similarly, Plaintiffs here cannot claim that the Settlement Agreement  
18 is unlawful because it “failed to follow the procedural strictures” of Los Angeles or  
19 California zoning law. Brehmer, 238 F.3d at 118. Requiring the CUP process to  
20 be repeated would frustrate RLUIPA’s purpose of preventing discrimination  
21 against religious activity and violate public policy.

### 22 **III. THE SETTLEMENT AGREEMENT DOES NOT VIOLATE THE** 23 **BROWN ACT**

24 The Settlement Agreement was adopted in accordance with, and did  
25 not violate, the Brown Act. Again, Trancas is distinguishable from this case, and  
26 nothing in Trancas suggests that the Brown Act was violated in this action.

27 First and foremost, Plaintiffs have not and cannot assert a claim under  
28 the Brown Act to declare the Settlement Agreement null and void. This action was

1 filed on July 10, 2003, nearly two years after the Settlement Agreement was  
2 approved. However, prior to pursuing a judicial determination that an action in  
3 violation of the Brown Act is null and void, an interested person shall make a  
4 demand on the city within 90 days from the date the action was taken to cure or  
5 correct the action. Cal. Govt. Code § 54960.1(b)-(c). The city then has 30 days to  
6 cure or correct the action or inform the demanding party of its decision not to do  
7 so. Govt. Code § 54960.1(c)(2). The demanding party must then file suit within  
8 15 days of receiving written notice of the city’s decision, or within 15 days of the  
9 expiration of the cure period, whichever is earlier. Govt. Code § 54960.1(c)(4).  
10 Plaintiffs’ action was filed well after the limitations period. Having failed to file  
11 suit within the required time frame under the Brown Act, Plaintiffs cannot now  
12 undo the Settlement Agreement by claiming that the Brown Act was violated. See  
13 County of Del Norte v. City of Crescent City, 71 Cal. App. 4th 965, 978-79 (1999)  
14 (refusing to consider Brown Act theory where complaint was filed outside of the  
15 time frame under Govt. Code § 54960.1).

16           Second, as discussed above, this case is distinguishable from Trancas.  
17 In Trancas, the court analyzed the scope of the litigation exception to the Brown  
18 Act and held only that a governing entity may not “decide upon or adopt in closed  
19 session a settlement that accomplishes or provides for action for which a public  
20 hearing is required by law, without such a hearing.” 138 Cal. App. 4th at 187.  
21 Thus, the court found that Malibu could not grant a density exemption without  
22 compliance with the substantive law that requires a public hearing for such  
23 exemptions. Id. at 186 (the Brown Act exemption for litigation settlements  
24 “cannot be construed to empower a city council to take or agree to take, as part of a  
25 non-publicly ratified litigation settlement, action that by substantive law may not  
26 be taken without a public hearing and an opportunity for the public to be heard.”).

27           Significantly, nothing in Trancas holds that all settlement agreements  
28 – or even all settlement agreements involving land use litigation – must be ratified

1 in open session. Indeed, Trancas acknowledges that cities may discuss settlement  
2 proposals with counsel in closed session, and “they generally may agree to such  
3 terms and settlements in closed session” *so long as the cities do not take an action*  
4 *for which a public hearing is required.* 138 Cal. App. 4th at 187. Such is the case  
5 here. In this action, this Court has already determined that no CUP was issued, and  
6 that the laws requiring notice and hearings for the issuance of CUPs did not apply  
7 to the Settlement Agreement. See July 15, 2004 Order at 8-12, 14; December 22,  
8 2004 Order at 5-7. As discussed above, nothing in Trancas changes this finding.  
9 More fundamentally, any required hearings were held in connection with the  
10 Congregation’s original CUP application, which provided full notice and public  
11 participation and was subjected to full judicial review. Plaintiffs do not contend  
12 otherwise. Therefore, in settling the litigation, the City was not taking an “action  
13 that by substantive law may not be taken without a public hearing and an  
14 opportunity for the public to be heard.” Trancas, 138 Cal. App. 4th at 186. Rather,  
15 the City was exercising its authority and discretion to settle litigation pursuant to  
16 the City Charter. See July 15, 2004 Order at 10-12. Because no applicable  
17 substantive law required public hearings to settle the Prior Action, the Brown Act  
18 was not violated.

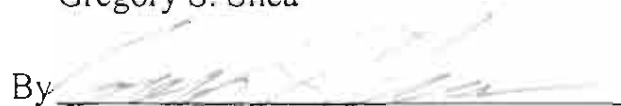
19 **IV. CONCLUSION**

20 For the foregoing reasons, nothing in Trancas alters this Court’s prior  
21 ruling that the Settlement Agreement was valid. This Court should reject Plaintiffs  
22 arguments and uphold the validity of the Settlement Agreement.

23 Dated: July 24, 2006

Respectfully submitted,

24 LATHAM & WATKINS LLP  
25 Susan S. Azad  
26 Gregory S. Shea

27 By   
28 Gregory S. Shea  
Attorneys for Defendants  
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To: Marci A. Hamilton, Esq. Fax: (215) 493-1094 Tel: (215) 353-8984

From: Gregory S. Shea, Esq.

Re: The League of Residential Neighborhood Advocates, et al. v. City of Los Angeles, et al.; Case No. CV03-04890-CAS

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