

1 MARCI A. HAMILTON, ESQ.
36 Timber Knoll Drive
2 Washington Crossing, PA 18977
Telephone: (215) 493-1973
3 Facsimile: (215) 493-1094

4 LESLIE M. WERLIN #67994
DAVID B. VAN ETTEN #119049
5 members of
VAN ETTEN SUZUMOTO & BECKETT LLP
6 1620 26th Street, Suite 6000 North
Santa Monica, California 90404
7 Telephone: (310) 315-8200
Facsimile: (310) 315-8210

8 Attorneys for Plaintiffs
9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 THE LEAGUE OF RESIDENTIAL
NEIGHBORHOOD ADVOCATES, a
14 California non-profit corporation, LARRY
FAIGIN, THOMAS LARKIN, EDWARD C.
15 CAZIER, CYNTHIA CHVATAL, J.
LARSON JAENICKE, ELIZA LEWIS,
16 GARY J. HERMAN, SR., MARGARET
KUHNS, MADELINE WARREN,

17 Plaintiffs,

18 vs.
19

20 THE CITY OF LOS ANGELES,
CONGREGATION ETZ CHAIM, THE
RUBIN FAMILY EXEMPTION TRUST,
21 JAMES HAHN, MAYOR OF THE CITY OF
LOS ANGELES, ROCKY DELGADILLO,
22 CITY ATTORNEY OF THE CITY OF LOS
ANGELES, AND DOES 1 THROUGH 10,
23 INCLUSIVE,

24 Defendants.
25

CASE NO.

COMPLAINT:

1. TO DECLARE VOID A SETTLEMENT AGREEMENT MADE BETWEEN CERTAIN DEFENDANTS; AND
2. FOR INJUNCTIVE RELIEF: AND
3. FOR ATTORNEYS FEES AND COSTS

1 Comes now The League of Residential Neighborhood Advocates, a California non-profit
2 corporation ("LRNA"), Larry Faigin ("Mr. Faigin"), Thomas Larkin ("Mr. Larkin"), Edward C.
3 Cazier ("Mr. Cazier"), Cynthia Chvatal ("Ms. Chvatal"), J. Larson Jaenicke ("Mr. Jaenicke"),
4 Eliza Lewis ("Ms. Lewis"), Gary J. Herman, Sr., ("Mr. Herman"), Margaret Kuhns ("Ms.
5 Kuhns"), and Madeline Warren ("Ms. Warren") (collectively "Plaintiffs"), for their complaint
6 against the City of Los Angeles ("the City"), the Congregation Etz Chaim ("the Congregation"),
7 the Rubin Family Exemption Trust ("the Rubin Trust"), James Hahn, the Mayor of Los Angeles
8 ("Mr. Hahn"), Rocky Delgadillo, the City Attorney of the City ("Mr. Delgadillo"), and Does 1
9 through 10, inclusive ("the Does"), allege as follows:

10 **SUBJECT MATTER JURISDICTION**

11 1. The Court has subject matter jurisdiction of this action under 28 U.S.C. §1331.
12 This action arises in part under the First, Fifth and Fourteenth Amendments to the United States
13 Constitution and 42 U.S.C. §1983 as more fully set forth herein.

14 2. The Court has supplemental jurisdiction of certain claims as herein alleged
15 pursuant to 28 U.S.C. §1367(a). In addition, in an action entitled Congregation Etz Chaim v. City
16 of Los Angeles, CV97-5042-HJH ("the Federal Action"), this Court retained jurisdiction over the
17 subject matter of that action, including jurisdiction to modify or terminate a settlement agreement
18 entered into between the parties to that action who are among the defendants in this action. That
19 settlement agreement is the subject of this action which seeks, in part, to declare that settlement
20 agreement void or to enjoin conduct which that settlement agreement presently permits. As such,
21 Plaintiffs are informed and believe and thereon further allege that this Court also has ancillary
22 jurisdiction of certain claims herein alleged.

23 **THE PARTIES**

24 3. LRNA is a California non-profit corporation, dedicated to preserving the residential
25 character of neighborhoods including that section of the City known as Hancock Park ("the
26 Hancock Park Neighborhood"). The Hancock Park Neighborhood is a portion of the City which is
27 generally described as bordered by Highland Avenue on the west, Melrose Avenue on the north,

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1 Rossmore on the east, and Wilshire Boulevard on the south. Non-residential zoning areas are
2 immediately adjacent to those portions of the Hancock Park Neighborhood zoned residential. In
3 those areas where plaintiffs Mr. Faigin, Mr. Larkin, Mr. Cazier, Ms. Chvatal, Ms. Warren, Mr.
4 Jaenicke, Ms. Lewis, Mr. Herman, and Ms. Kuhns (collectively "The Individual Plaintiffs") have
5 their homes, the Hancock Park Neighborhood is zoned R1 or "One Family Zone" by the City.
6 Plaintiffs are each aggrieved by the conduct of defendants herein alleged. The Individual
7 Plaintiffs have each lived in Hancock Park since prior to 1999.

8 4. Pursuant to the Los Angeles Municipal Code §12.08, R1 zoning shall be used for
9 one family dwellings, parks, playgrounds, governmental community centers, truck gardens, the
10 keeping of certain animals in conjunction with the residential use of a lot, certain accessory
11 buildings such as garages or accessory living quarters, and permitted conditional uses. The
12 Hancock Park Neighborhood has been scrupulously maintained by the City as a residential R-1
13 district for over seventy-five years, despite its urban location, until the Congregation was given
14 preferential treatment. Plaintiffs are informed and believe and thereon allege that the
15 Congregation has altered and will further and continue to alter the residential character of the
16 Hancock Park Neighborhood by the planned and continued intense use of residential homes
17 located at 415 South June Street, Los Angeles, California ("the June Street Home") and 303 South
18 Highland Avenue, Los Angeles, California ("the Highland Avenue Property") by a large and
19 growing religious congregation. Plaintiffs are informed and believe and thereon allege that in
20 order to retain the residential quality of the Hancock Park Neighborhood, the City denied the
21 Congregation's request for a conditional use permit for the Highland Avenue Property. As the
22 Los Angeles Superior Court stated in response to the unsuccessful writ of mandate petition filed
23 by the Congregation challenging the City's denial, the Hancock Park Neighborhood is "in a long
24 established and well maintained single-family residential neighborhood consisting of lot sizes that
25 can not and were not intended to accommodate institutional uses that require buffering and
26 parking beyond the minimal requirements of a single-family residential zone."

27 5. The City is the municipality within which the Hancock Park Neighborhood is
28 located and within which The Individual Plaintiffs own their homes and reside. Plaintiffs are

1 **FIRST CLAIM**

2 (Against the City and the Congregation For A Declaration Of The Invalidity of A Settlement
3 Agreement Made Between The Congregation and The City And To Enjoin Use Of
4 The Highland Avenue Property As A Structure For Worship and Other Purposes Based On
5 Violation of the Fourteenth Amendme nt's Due Process Clause)

6 9. Plaintiffs refer to and incorporate ¶1-8.

7 10. Plaintiffs are informed and believe and thereon allege that the June Street Home
8 was used at one time for small prayer gatherings by the Congregation. Plaintiffs are informed and
9 believe and thereon allege that the Congregation grew in number until in 1995, the Congregation
10 sought a larger space for its religious gatherings and purchased the Highland Avenue Property for
11 its sizable congregation. Plaintiffs are informed and believe and thereon allege further that the
12 Congregation was aware that a more appropriately zoned district was well within walking distance
13 of the Highland Avenue Property. Then, in 1996, the Congregation made application to the City
14 for a conditional use permit ("CUP") and for certain zoning variances to permit the Highland
15 Avenue Property to be used as a structure for congregational religious worship and for the conduct
16 of religious services.

17 11. Plaintiffs are informed and believe and thereon allege that in October, 1996, the
18 City's Zoning Administrator denied the Congregation's application for a CUP and the requested
19 variances. The Zoning Administrator did not find that the generally applicable and neutral
20 requirements for granting a CUP had been met, because there was no evidence "the proposed
21 location will be desirable to the public convenience or welfare, is proper in relation to adjacent
22 uses or the development of the community, will not be materially detrimental to the character of
23 development in the immediate neighborhood, and will be in harmony with the various elements
24 and objectives of the General Plan." Plaintiffs are further informed and believe and thereon allege
25 that this denial was upheld by the City's Board of Zoning Appeals after a hearing and that this
26 determination was, in turn, appealed by the Congregation to the Los Angeles City Council ("the
27 City Council") who in or about July, 1997, sustained the decision of the Zoning Board of Appeals.
28 The City Council's report declared that the Congregation's proposed use of the Highland Avenue

1 Property “detracts and diminishes the residential character and experienced quality of life of a
2 significant number of the other residents of this long established single-family residential
3 neighborhood . . . [and that] the most probable result of the continuation of this use is an
4 exacerbation of the current infringement on the enjoyment of their property by the nearby
5 residents and the existing parking and traffic congestion. [The Highland Avenue Property] is
6 located in a long established and well maintained single-family residential neighborhood
7 consisting of lot sizes that can not and were not intended to accommodate institutional uses that
8 require buffering and parking beyond the minimal requirements of a single-family residential
9 zone; there is no precedent in the 75 years of the subdivision that supports the granting of this use
10 – the historical planning of this subdivision, in the context of the time, recognized and planned for
11 school sites and recreational uses within the neighborhood with church and commercial uses at the
12 perimeter, the longevity, stability and quality of this single-family residential neighborhood
13 sustains the long term intent and substance of this residential subdivision planning; this use
14 compromises and is not in proper relation to the long established and maintained intent of the
15 original subdivision planning. [T]here are no other church or institutional uses on the
16 residentially zoned properties within the notice radius for this action; this use would be precedent
17 setting and compromise the 75 year maintenance and recognized quality and sought after
18 ambience of this historical, residential neighborhood.”

19 12. In 1997, after the Congregation's request for a CUP and variances for the Highland
20 Avenue Property were denied by the City, the Congregation commenced the Federal Action. The
21 Federal Action alleged that the City's denial of the CUP and the requested variances was in
22 violation of various of the Congregation's statutory and constitutional rights.

23 13. In June, 1998, while the Federal Action was pending, the Congregation also
24 commenced an action in the Los Angeles Superior Court for a writ of mandate, seeking to
25 overturn the City's denial of the CUP and the requested variances, in an action entitled
26 Congregation Etz Chaim v. City of Angeles, Los Angeles Superior Court BC192517 ("the State
27 Court Action"). The Court in the State Court Action upheld the City's denial of the CUP and
28 variances against the Congregation and denied the Congregation's statutory and state constitutional

1 challenges to the City's decision. In so doing, the Los Angeles Superior Court stated that “[t]he
2 proposed conditional use would be a precedent setting encroachment of an institutional use in a
3 single family area. This could destabilize what has been a long standing, quality single-family
4 residential neighborhood that has through constant efforts maintained its stable, high quality
5 residential character. . . .”. The Court further held that “[a]lthough [303 So. Highland] may be
6 convenient to [the Congregation], the current unauthorized use of this single-family residence as
7 converted detracts and diminishes the residential character and experienced quality of life of a
8 significant number of the other residents of this long established single-family residential
9 neighborhood. . . . There are other locations within a reasonable walking distance from the
10 subject site which could be used as a synagogue by right without the potential to impact and
11 disturb the quiet enjoyment of the existing residential community.”

12 14. The judgment in the State Court Action was affirmed by the California Court of
13 Appeals.

14 15. Plaintiffs are informed and believe and thereon allege that on February 26, 1998,
15 the Congregations' leader, Rabbi Chaim Baruch Rubin, testified before the United States House of
16 Representatives Judiciary Committee considering the Religious Liberty Protection Act that, with
17 respect to the Highland Avenue Property, the "average Sabbath attendance (to which all
18 congregants walk) has been (40) members (with a high of sixty (60) members. . . . Within this
19 same time period there have been four bar mitzvah ceremonies (the receptions are held elsewhere).
20 . . . The only activities which take place at the residence are prayer services." The Religious
21 Liberty Protection Act did not pass. Plaintiffs are informed and believe and thereon allege that
22 both Houses of Congress passed its successor, the Religious Land Use and Institutionalized
23 Persons Act (“RLUIPA”), on July 27, 2000 and that President Clinton signed RLUIPA into law on
24 September 22, 2000.

25 16. Plaintiffs are informed and believe and thereon allege that concerns were expressed
26 that the Congregation’s plans were inconsistent with the residential character of the R-1 Hancock
27 Park neighborhood and that City officials repeatedly stated that they would oversee and take care
28 of the concerns of the Hancock Park homeowners, thereby leading the homeowners to believe they

1 did not need to institute their own action against the zoning violations of the June Street Home and
2 the Highland Avenue Property.

3 17. Plaintiffs are informed and believe and thereon allege that the Congregation
4 amended their complaint in the Federal Action to allege additional claims against the City
5 pursuant to RLUIPA which had been recently become law. Plaintiffs are informed and believe
6 and thereon allege that the RLUIPA claim was the only claim left in the Federal Action following
7 resolution of the state law claims against the Congregation in state court and following the Court's
8 dismissal of all claims except the RLUIPA claim in November, 2000. In September, 2001, while
9 the RLUIPA claims were pending, the City and the Congregation entered into a written settlement
10 agreement in the Federal Action ("the Settlement Agreement"). Plaintiffs are informed and
11 believe and thereon allege that a true copy of the Settlement Agreement is attached hereto as
12 Exhibit "A". Plaintiffs are informed and believe and thereon allege that the City notified no
13 Hancock Park homeowners of the Settlement Agreement, either while it was being negotiated or
14 upon its completion.

15 18. Plaintiffs are informed and believe and thereon allege that the Settlement
16 Agreement was reviewed and approved by the City Council and the office of Mr. Delgadillo, and
17 with Mr. Hahn's approval, it represents the City's policy regarding the Congregation's use of the
18 Highland Avenue Property.

19 19. Plaintiffs are informed and believe and thereon allege that after the Settlement
20 Agreement was made, the Congregation, without notifying the City's designated representatives
21 named in the Settlement Agreement, applied for and was granted a building permit for
22 construction at the Highland Avenue Property ("the Building Permit") of a three-story building far
23 in excess in square footage of its neighbors and beyond what was contemplated by the Settlement
24 Agreement, and that construction has commenced. Plaintiffs are further informed and believe and
25 thereon allege that, notwithstanding the Congregation's covenant in the Settlement Agreement to
26 restore and maintain the single family use and residential character and architecture of the
27 Highland Avenue Property, the Congregation has ignored this promise and consciously embarked
28 on creation of a structure that will fail to maintain the single family use, residential character or

1 architecture of this property. Plaintiffs are informed and believe and thereon allege that after
2 entering into the Settlement Agreement, the Congregation's plans changed when it was offered
3 generous financing for a much larger structure than that contemplated at the time of the Settlement
4 Agreement.

5 20. Plaintiffs are informed and believe and thereon allege that the City has asserted that
6 the Congregation's construction is, and method of obtaining the Building Permit was, in violation
7 of the Settlement Agreement, that these issues were decided against the City in the Federal Action,
8 and that this decision has been appealed by the City.

9 21. Plaintiffs are informed and believe and thereon allege that the Settlement
10 Agreement provides that which the City had appropriately denied pursuant to generally applicable
11 and neutral ordinances governing conditional use permits. The Settlement Agreement thus
12 provides a de facto CUP which purports to allow use of the Highland Avenue Property as a
13 structure for religious purposes in accordance with its terms. Plaintiffs are further informed and
14 believe and thereon allege that this de facto CUP was issued by the City in violation of its own
15 ordinances, which require, without exception, notice and a hearing before a CUP is granted
16 pursuant to Los Angeles Municipal Code §12.24. Plaintiffs are further informed and believe and
17 thereon allege that this de facto and illegally authorized CUP was issued after the Congregation's
18 CUP application was denied by the City pursuant to its generally applicable and neutral
19 conditional use permit procedures and after this denial was upheld through the City's own
20 administrative appeals process, and after review by the Los Angeles Superior Court and the
21 California Court of Appeal.

22 22. Plaintiffs are informed and believe and thereon allege that The Individual Plaintiffs
23 are entitled to procedural due process under the Fifth and Fourteenth Amendments to the United
24 States Constitution prior to the City's issuance of a CUP in the Hancock Park Neighborhood.

25 23. The Individual Plaintiffs were not given notice or provided an opportunity to be
26 heard in connection with the City's consideration of or the making of the de facto CUP embodied
27 in the Settlement Agreement. Plaintiffs are informed and believe and thereon allege that the City-
28 after the state court held that the City's denial of a conditional use was supported by substantial

1 evidence and in accord with the governing law--entered into the Settlement Agreement, which
2 effects a de facto CUP, without affording the procedural due process as required by the Fifth and
3 Fourteenth Amendments to the United States Constitution and that as a direct and proximate result
4 thereof, the City has denied and deprived The Individual Plaintiffs of their federal constitutional
5 rights under the Fifth and Fourteenth Amendments to the United States Constitution.

6 24. None of the Individual Plaintiffs were aware the City had made the Settlement
7 Agreement until in or about April or May, 2002.

8 25. Plaintiffs are informed and believe and thereon allege that the Individual Plaintiffs
9 have a protectible property and Constitutional interest in maintaining the Hancock Park
10 Neighborhood's residential character and in preventing non-conforming uses in violation of
11 applicable law, which interests have been damaged by the conduct herein alleged. The City's
12 conduct as herein alleged has caused The Individual Plaintiffs, great and irreparable injury to their
13 property and constitutional rights and has subjected them to the continuing and repeated violation
14 of their rights.

15 26. Part of LRNA's mission is to work toward the preservation and maintenance of the
16 quiet and peaceful character of residential neighborhoods, including the Hancock Park
17 Neighborhood, through the adherence to the rule of law, including the enforcement of zoning
18 ordinances. Plaintiffs are informed and believe and thereon allege that unless the Court declares
19 the Settlement Agreement to be void and grants the injunctions herein requested for the reasons
20 herein alleged, LRNA will be required to expend its resources monitoring not only the
21 enforcement of zoning ordinances for which deviations, by way of CUPs or variances, require
22 notice to the public and the opportunity to be heard, but also by attempting to monitor the
23 activities of property owners and cities and counties who will be free to circumvent zoning laws
24 by agreements and understandings which avoid the requirements of the law, including notice to
25 the public. LRNA is informed and believe and thereon allege that such activity will cause a
26 significant drain on its resources and will cause resources to be diverted from addressing requested
27 zoning changes for which notice is given and which must be decided in accordance with statute, to
28 investigating whether and on what terms zoning decisions are being made without notice and

1 which are not in accordance with statute.

2 27. Plaintiffs are informed and believe and thereon allege that the City's conduct as
3 herein alleged is a violation of 42 U.S.C. §1983.

4 28. Plaintiffs seek: (a) a declaration that the Settlement Agreement was made by the
5 City in violation of Plaintiffs' rights under the Fifth and Fourteenth Amendments to the United
6 States Constitution and is therefore void; (b) a permanent injunction barring any non-conforming
7 use of the Highland Avenue Property in violation of applicable law; and (c) attorneys fees.

8 **SECOND CLAIM**

9 (Against All Defendants To Enjoin Use Of the June Street

10 Property By The Congregation As A Structure For Religious Worship and Other Purposes
11 Pursuant To 42 U.S.C. §1983 – Violation Of The First Amendment's Establishment Clause)

12 29. Plaintiffs refer to and incorporate ¶1-28.

13 30. Plaintiffs are informed and believe and thereon allege that the Hancock Park
14 Neighborhood has been preserved for over seventy-five years and that the de facto CUP granted
15 by the City in the absence of notice and hearing to the Individual Plaintiffs and their neighbors
16 results from the City's decision to favor a religious landowner over all others. No legitimate
17 variance or CUP, granted in accordance with the requirements of the Los Angeles Municipal Code
18 or the procedural due process requirements of the Fifth and Fourteenth Amendments to the United
19 States Constitution to which The Individual Plaintiffs are entitled, has been granted to the
20 Congregation or the Rubin Trust ("the Congregation Defendants") for use of the June Street Home
21 as a structure for religious worship or use.

22 31. Plaintiffs are informed and believe and thereon allege that since approximately
23 June, 2002, the June Street Home has been used by the Congregation, with the Rubin Trust's
24 consent and approval, as a structure for religious worship which, on a regular and continuing basis
25 since that time, has accommodated regularly in excess of 50 persons for weekly religious worship
26 services. Plaintiffs are further informed and believe and thereon allege that on at least one recent
27 occasion, in excess of 250 persons attended bar mitzvah services and reception at the June Street
28 Home and on another recent occasion over 450 other persons attended bar mitzvah services and

1 a reception at the June Street Home.

2 32. Plaintiffs are informed and believe and thereon allege that Hancock Park neighbors
3 have complained repeatedly to the City that the Congregation is being permitted to use the June
4 Street Home as a structure for religious worship and large gatherings in violation of applicable
5 law. On or about April 9, 2003, various persons met with the City and were assured by the City
6 that its zoning ordinances would be enforced with respect to the June Street Home. Plaintiffs are
7 informed and believe and thereon allege that despite such complaints and the City's assurances
8 that they would enforce applicable laws, no such enforcement has occurred or will occur.

9 33. Plaintiffs are informed and believe and thereon allege that the City has adopted a
10 policy of non-enforcement of its ordinances against the use of the June Street Home as a structure
11 for religious worship and gatherings. Plaintiffs are informed and believe and thereon allege that
12 by so doing, the City is acting in violation of the First and Fourteenth Amendments to the United
13 States Constitution by preferring or endorsing the Congregation Defendants' religious purpose and
14 religious use of the June Street Home over the statutorily and Constitutionally protectible property
15 interests of The Individual Plaintiffs. Plaintiffs are further informed and believe and thereon
16 allege that the policy of non-enforcement, adopted by the City, is an arbitrary and de facto
17 exemption granted to the Congregation Defendants from enforcement of the City's zoning
18 ordinances because the Congregation Defendants' purpose and activities are religious, and that
19 such policy therefore violates the First and Fourteenth Amendments of the United States
20 Constitution.

21 34. The City's conduct as herein alleged has caused The Individual Plaintiffs great and
22 irreparable injury to their property and constitutional rights, has subjected them to the continuing
23 and repeated violation of their property and constitutional rights, and has subjected them to an
24 unconstitutional union of church and state in violation of the First Amendment's Establishment
25 Clause.

26 35. Plaintiffs are informed and believe and thereon allege that unless and until
27 restrained by order of this Court, the City will continue to refrain from enforcing relevant land use
28 laws intended to protect the public good and that the Congregation Defendants will continue to use

1 the June Street Home in violation of applicable law and in a manner that interferes with The
2 Individual Plaintiffs' rights as herein alleged.

3 **THIRD CLAIM**

4 (Against All Defendants To Enjoin Use Of the June Street Home By The
5 Congregation As A Structure for Religious Worship Pursuant To
6 42 U.S.C. §1983 – Violation Of Equal Protection Under The Fourteenth Amendment)

7 36. Plaintiffs refer to and incorporate ¶¶1-28 and 30-35.

8 37. Plaintiffs are informed and believe and thereon allege that pursuant to the City's
9 policy of non-enforcement against the Congregation Defendants as herein alleged, the
10 Congregation Defendants have been selectively and preferentially treated by the City based on the
11 religious identity of the landowner and the Congregation using the June Street Home.

12 38. As a direct and proximate result, The Individual Plaintiffs have been denied equal
13 protection under the Fourteenth Amendment of the United States Constitution and use of the June
14 Street Home by the Congregation Defendants for religious worship and for large gatherings,
15 including bar mitzvah services and receptions, should be permanently enjoined.

16 **FOURTH CLAIM**

17 (Against The City And The Congregation For A Declaration Of The Invalidity Of A Settlement
18 Agreement Made Between The Congregation And The City And To Enjoin
19 Use of the Highland Avenue Property As A Structure For Religious Worship and Other Purposes
20 Pursuant To Article I, §7 of The California Constitution)

21 39. Plaintiffs refer to and incorporate ¶¶1-26.

22 40. The Court has jurisdiction of this claim pursuant to 28 U.S.C. §1367(a) and the
23 Court's ancillary jurisdiction.

24 41. Plaintiffs are informed and believe and thereon allege that the conduct of the City
25 as herein alleged violates the procedural due process rights of the Plaintiffs under Article 1, §7 of
26 the California Constitution.

27 42. Plaintiffs seek a declaration that the Settlement Agreement was made by the City in
28 violation of The Individual Plaintiffs' rights under Article 1, §7 of the California Constitution and

1 is therefore void and that any non-conforming use permitted thereunder at the Highland Avenue
2 Property should be permanently enjoined.

3 **FIFTH CLAIM**

4 (Against All Defendants To Enjoin Use Of The June Street Home As A
5 Structure For Religious Worship and Other Purposes In
6 Violation Of Article 1, §4 of The California Constitution)

7 43. Plaintiffs refer to and incorporate ¶¶1-26, 30-35 and 40.

8 44. Plaintiffs are informed and believe and thereon allege that the City has adopted a
9 policy of non-enforcement of its ordinances against the use of the June Street Home as a structure
10 for religious worship and large gatherings, including bar mitzvah services and receptions.

11 Plaintiffs are informed and believe and thereon allege that by so doing, the City is acting in
12 violation of Article I, §4 of the California Constitution by preferring or endorsing the
13 Congregation Defendants' religious purpose and religious use of the June Street Home over the
14 protectible property interests of The Individual Plaintiffs. Plaintiffs are further informed and
15 believe and thereon allege that any such policy adopted by the City, is an arbitrary and de facto
16 exemption, granted to the Congregation Defendants, from enforcement of the City's zoning
17 ordinances because their activities are religious, and it therefore violates Article I, §4 of the
18 California Constitution.

19 45. The City's conduct as herein alleged has caused The Individual Plaintiffs great and
20 irreparable injury to their property rights, has subjected them to the continuing and repeated
21 violation of their property rights, and has subjected them to an unconstitutional union of church
22 and state in violation of the California Constitution's Establishment Clause.

23 **SIXTH CLAIM**

24 (Against All Defendants To Enjoin Use Of The June Street Home
25 As A Structure For Religious Worship and Other Purposes, For Violation Of Equal Protection
26 Under Article I, §7 of The California Constitution)

27 46. Plaintiffs refer to and incorporate ¶¶1-26, 30-35, 37, 40, 44 and 45.

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1 Agreement is supported by unlawful consideration within the meaning of California Civil Code
2 §1667 and the Settlement Agreement is also void under California Civil Code §1608.

3 55. Plaintiffs are informed and believe and thereon allege that the Settlement
4 Agreement constitutes unlawful evasion of the procedure set forth in the City's ordinances
5 governing the grant of CUPs or variances and it is also therefore void.

6 56. Plaintiffs are informed and believe and thereon allege that the procedure for the
7 City's grant of a CUP or variance is, by implication, a part of a statutorily mandated procedure for
8 the making of contracts by the City relating to rights granted by CUPs or variances. Plaintiffs are
9 further informed and believe and thereon allege that the City Defendants' failure to comply with its
10 generally applicable and neutral legal procedures causes the Settlement Agreement to be ultra
11 vires and void.

12 57. Plaintiffs are informed and believe and thereon allege that having denied the
13 Congregation a CUP in accordance with generally applicable and neutral law and that denial
14 having been upheld in the administrative appeal process, in the Superior Court Action, and by the
15 California Court of Appeals, the City Defendants were without authority to enter into the
16 Settlement Agreement and without authority to grant the Congregation a de facto CUP in violation
17 of its own ordinances. For the reasons set forth herein, the Settlement Agreement should be found
18 and declared by this Court to be void. The Congregation will thereby be required to abide by the
19 relevant land use laws that govern an R-1 residential district. Plaintiffs are informed and believe
20 and thereon allege that whatever expenses the Congregation incurred or claims to have incurred
21 are due to the illegal and void actions of itself and the City.

22 **NINTH CLAIM**

23 (Against All Defendants For An Injunction Against And To Abate A
24 Statutorily Defined Nuisance At the June Street Home)

25 58. Plaintiffs refer to and incorporate ¶¶1-26, 30-35, 37, 38, 40, 44, 45, 47, 49 and 50.

26 59. Plaintiffs are informed and believe and thereon allege that since approximately
27 June, 2002 the Congregation Defendants have been using the June Street Home as a structure for
28 religious worship and large gatherings, including bar mitzvah services and receptions, in violation

1 the conduct for which the Congregation was rightfully refused permission when its CUP and
2 variance application relating to the Highland Avenue Property was denied; (d) the City has made a
3 decision and adopted a policy not to enforce its zoning ordinances, despite the Congregation's use
4 of the June Street Home in violation of law, because the Congregation's conduct is religious rather
5 than secular in nature, (e) and any such policy adopted by the City, which is an arbitrary and de
6 facto exemption granted to the Congregation from enforcement of the City's zoning ordinances
7 because the Congregation's activities are religious, violates the First and Fourteenth Amendments
8 of the United States Constitution and Article I, §4 and §7 of the California Constitution.

9 64. Plaintiffs are informed and believe and thereon allege that they have no plain,
10 speedy, or adequate remedy at law against the City other than to compel the City to perform its
11 duty to apply the law conscientiously, equally, and fairly to all landowners, regardless of their
12 identity.

13 **ELEVENTH CLAIM**

14 (Against the City Defendants and the Congregation To Enjoin Use of The Highland Avenue
15 Property As A Structure For Religious Worship and Other Purposes Pursuant To 42 U.S.C. §1983
16 – Violation Of The First Amendment's Establishment Clause)

17 65. Plaintiffs refer to and incorporate ¶¶1-28, 41, 42 and 52-57.

18 66. Plaintiffs are informed and believe and thereon allege that upon completion of
19 construction at the Highland Avenue Property, the Congregation Defendants plan to and will
20 commence use of that structure for religious worship and large gatherings, including bar mitzvah
21 services and receptions.

22 67. Plaintiffs are informed and believe and thereon allege that based on the Settlement
23 Agreement and the policy of non-enforcement the City has adopted regarding the Congregation
24 defendants' use of the June Street Home for religious purposes, the City has a policy of non-
25 enforcement of its zoning ordinances against the Congregation Defendants' anticipated use of the
26 Highland Avenue Property for religious purposes and by so doing, the City is or will be acting in
27 violation of the First and Fourteenth Amendments to the United States Constitution by preferring
28 or endorsing the Congregation Defendants' religious purpose and religious use of the Highland

1 Avenue Property over the protectible property and Constitutional interests of the Plaintiffs.
2 Plaintiffs are further informed and believe and thereon allege that the policy of non-enforcement,
3 adopted by the City, is an arbitrary and de facto exemption granted to the Congregation from
4 enforcement of the City's zoning ordinances, without public consideration or consideration of the
5 public good, because the Congregation Defendants' purpose and activities are religious, and that
6 such policy therefore violates the First and Fourteenth Amendments of the United States
7 Constitution.

8 68. The City's conduct as herein alleged will cause The Individual Plaintiffs, great and
9 irreparable injury to their property and constitutional rights and will subject them to the continuing
10 and repeated violation of their rights unless restrained by order of this Court.

11 69. Plaintiffs are informed and believe and thereon allege that unless restrained by
12 order of this Court, the Congregation Defendants will use the Highland Avenue Property as herein
13 described in violation of applicable law and in a manner that interferes with the rights of The
14 Individual Plaintiffs.

15 **TWELFTH CLAIM**

16 (Against the City Defendants and the Congregation To Enjoin Use Of the Highland Avenue
17 Property By The Congregation As A Structure for Religious Worship and Other Purposes
18 Pursuant To 42 U.S.C. §1983 – Violation Of Equal Protection
19 Under The Fourteenth Amendment)

20 70. Plaintiffs refer to and incorporate 1-28, 41, 42, 52-57 and 66-69.

21 71. Plaintiffs are informed and believe and thereon allege that pursuant to the City's
22 policy of non-enforcement against the Congregation as herein alleged, the Congregation
23 Defendants have been selectively and preferentially treated by the City based on religious grounds.

24 72. As a direct and proximate result The Individual Plaintiffs have been denied equal
25 protection under the Fourteenth Amendment of the United States Constitution.

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THIRTEENTH CLAIM

(Against the City Defendants and the Congregation To Enjoin Use Of the Highland Avenue Property As A Structure For Religious Worship and Other Purposes, In Violation Of Article 1, §4 of the California Constitution)

73. Plaintiffs refer to and incorporate ¶¶1-26, 40, 41, 42, 52-57, 66-69, 71 and 72.

74. Plaintiffs are informed and believe and thereon allege that the City has adopted a policy of non-enforcement of its ordinances against the use of the Highland Avenue Property as a structure for religious worship and large gatherings, including bar mitzvah services and receptions. Plaintiffs are informed and believe and thereon allege that by so doing, the City is acting in violation of Article I, §4 of the California Constitution by preferring or endorsing the Congregation Defendants' planned religious purpose and religious use of the Highland Avenue Property over the protectible property interests of The Individual Plaintiffs. Plaintiffs are further informed and believe and thereon allege that any such policy adopted by the City, is an arbitrary and de facto exemption, granted to the Congregation Defendants, from enforcement of the City's zoning ordinances because their activities are religious, and it therefore violates Article I, §4 of the California Constitution.

75. The City's conduct as herein alleged will cause The Individual Plaintiffs great and irreparable injury to their property and constitutional rights and will subject them to the continuing and repeated violation of their rights, including an unconstitutional union of church and state in violation of the California Constitution's Establishment Clause, unless restrained by order of this Court.

FOURTEENTH CLAIM

(Against the City Defendants and the Congregation To Enjoin Use Of the Highland Avenue Property By The Congregation As A Structure For Religious Worship and Other Purposes, For Violation Of Equal Protection

Under Article I, §7 of The California Constitution)

76. Plaintiffs refer to and incorporate ¶¶1-28, 41, 42, 52-57, 66-69, 71, 72, 74 and 75.

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WHEREFORE, Plaintiffs pray that this Court:

1. issue an order declaring the Settlement Agreement void;
2. permanently enjoining use of the Highland Property and the June Street Home from being used as houses of worship and structures for gatherings, including bar mitzvah services and receptions, in violation of the City's zoning ordinances;
3. permanently enjoining the City's refusal or failure to enforce the zoning laws applicable to the Highland Avenue Property and the June Street Home;
4. for costs and attorney fees as provided by law;
5. for such other and further relief as the Court deems just and proper.

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

By: _____
Leslie M. Werlin
Attorneys for Plaintiffs

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