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FILED
LOS ANGELES SUPERIOR COURT

JAN 20 1998

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8 Attorneys for Plaintiffs

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 ANTHONY MARIO ASSENZA,) CASE NO. BC115813
12 et al.,)
13 Plaintiffs/Petitioners,) NOTICE OF MOTION AND MOTION TO
14 vs.) CORRECT AND MODIFY STIPULATED
15 CITY OF LOS ANGELES, et al.,) JUDGMENT; MEMORANDUM OF POINTS
16 Defendants/Respondents,) AND AUTHORITIES; DECLARATION
17) OF BURTON C. JACOBSON
18)
19) Date: February 4, 1998
20) Time: 8:30 a.m.
21) Dept: 15
22)
23)
24)

25 Additional Attorneys for Plaintiffs:

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29 TO ALL PARTIES and their attorneys of record, PLEASE TAKE
30 NOTICE that at the above date, time, and place, plaintiffs herein
31 shall move this Court for an order correcting and modifying the
32 judgment in this matter which was entered pursuant to stipulation on


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1 March 30, 1995. This motion is for the purpose of correcting
2 typographical and/or clerical errors, and to substitute the present
3 Chief of the Los Angeles Police Department, Bernard Parks, into this
4 action in place of his predecessor, Willie L. Williams, who was the
5 Chief of Police at the time the original judgment was entered.
6 Pursuant to the terms of the Judgment herein, this Court has
7 retained jurisdiction of the action.

8 This motion is based upon the Memorandum of Points of
9 Authorities submitted herewith, the Declaration of Burton C.
10 Jacobson; the pleadings and papers on file in this action, and
11 matters which this Court may be requested to take judicial notice
12 of.

13 Dated: Jan. 20, 1998


BURTON C. JACOBSON
Attorney for Plaintiffs

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1 prior Chief of Police so that the Court may affect its Orders
2 through its continued jurisdiction.

3
4 3. THIS COURT HAS THE POWER TO SUBSTITUTE CHIEF PARKS IN
5 PLACE OF CHIEF WILLIAMS IN THE WITHIN JUDGMENT

6 California Code of Civil Procedure, Section 368.5 provides as
7 follows:

8 "An action or proceeding does not abate by the transfer of an
9 interest in the action or proceeding or by any other transfer of an
10 interest. The action or proceeding may be continued in the name of
11 the original party, or the court may allow the person to whom the
12 transfer is made to be substituted in the action or proceeding."
13 California Code of Civil Procedure, Section 368.5 [emphasis added].

14 Penal Code Section 12050 provides that the Sheriff of a county
15 or the Chief or other head of a municipal police department is
16 empowered to issue the licenses at issue in this action. Therefore,
17 when Chief Parks became the Chief of Police for the City of Los
18 Angeles, the power to issue said licenses transferred from Chief
19 Williams to Chief Parks pursuant to that change.

20 This power constitutes the substantive interest in this action
21 and as such, pursuant to CCP §368.5 this Court is empowered to and
22 should substitute Chief Parks for Chief Williams in this action.

23
24 4. THIS COURT IS EMPOWERED TO SUBSTITUTE PARTIES PURSUANT TO
25 CCP 368.5 TRANSFERS OF INTERESTS IN GENERAL

26 "If the plaintiff or defendant in a pending action on an
27 assignable cause of action transfers an interest, 'the action may
28 be continued in the name of the original party, or the court may

1 allow the person to whom the transfer is made to be substituted in
2 the action or proceeding.'" Witkin California Procedure, Fourth
3 Edition, Pleading Section 241, Volume 4, Page 301.

4

5 5. THIS COURT HAS THE POWER TO MAKE THE SUBSTITUTION OF
6 POLICE CHIEFS UNDER THE INHERENT POWERS OF THE COURT

7 "The court also has inherent power without express
8 reservation to take steps to carry its equitable decree into
9 effect and to make changes in procedural provisions." Witkin
10 California Procedure 4th Edition, Volume 7, Judgment §83 at page
11 612 citing, inter alia, Barnes v. Chamberlain (1983) 147 C.A. 3d
12 762, 769. The substitution of the Chief is merely procedural and
13 equitable in nature since, with a new chief assigned to the "gate-
14 keeping" position of this licensing procedure, it is, and has
15 become, necessary to make this chief both nominally as well as
16 legally subject to this court's orders and subject directly to the
17 powers of this Court for enforcement of this Court's Orders.
18 Counsel herein propose to have Chief Parks duly served with an
19 updated and complete judgment in this case with all the provisions
20 included and with the correction of the clerical errors contained
21 in this motion.

22

23 6. THIS COURT HAS THE POWER TO CORRECT CLERICAL ERRORS AT
24 ANY TIME, INCLUDING POST-JUDGMENT

25 "A Court of general jurisdiction has the power, after final
26 judgment, and regardless of lapse of time, to correct clerical
27 errors or misprisions in its records, whether made by the clerk,
28 counsel or the court itself, so that the records will conform to

1 and speak the truth." Witkin California Procedure 4th Edition,
2 Volume 7, Judgment §69 at page 597. Further, C.C.P. Section 473
3 confirms this power to correct at any time by placing no time
4 limitation upon the making of such corrections.

5 When this Judgment was initially drafted by the City
6 Attorney's office, it was in the form of two separate virtually
7 identical judgments with the only substantive differences being
8 the parties involved and the Lake attorney's recovery of fees.
9 The vast majority of proofreading and editing occurred in the
10 first of the two cases to go to judgment, Lake v. City of Los
11 Angeles, et al., and it was intended that the Assenza case be
12 identical. In the clerical preparation of the Assenza case, words
13 in several areas were dropped leaving sentences which are
14 incomplete. Further, the Code Section which sets forth the
15 required training is no longer in effect having been replaced by a
16 different, though substantively identical, Code Section, i.e. 7585
17 et seq. of the Business and Professions Code in place of 7547.1 of
18 the Business and Professions Code. This judgment was intended to
19 serve as a guide to the public. The Judgment states, at paragraph
20 "F(6)" on page 9 that "All applicants shall receive a copy of
21 these guidelines along with the application form."

22 Therefore, for purposes of clarity, counsel herein requests
23 that the change in the code section be made as well as the
24 correction of the clerical errors. The changes requested do not
25 substantively alter the Judgment, rather, they harmonize this
26 Judgment with the Lake v. City of Los Angeles, et al. Judgment,
27 case number PC 008329. These changes are set out in specificity
28 below:

1 **Change #1:**

2 Text of the Assenza Judgment at page 1, line 25:

3 The Defendants described in the complaint as the "Los Angeles
4 defendants" were: CITY OF LOS ANGELES, the CITY OF LOS ANGELES
5 POLICE DEPARTMENT (herein after "LAPD"), WILLIE L. WILLIAMS,
6 CAPTAIN G. E. ORNELAS, and various members of LAPD's Board of
7 Police Commissioners.

8 Proposed Text:

9 The defendants affected by this judgment herein are: CITY OF
10 LOS ANGELES, the CITY OF LOS ANGELES POLICE DEPARTMENT (herein
11 after "LAPD"), LOS ANGELES BOARD OF POLICE COMMISSIONERS, and
12 BERNARD PARKS, CHIEF OF POLICE OF THE CITY OF LOS ANGELES POLICE
13 DEPARTMENT.

14

15 **Change #2:**

16 Text of the Assenza judgment at page 5, line 12,: "Established
17 pursuant to Section 7547.1 of the California Business and
18 Professions Code"

19 Proposed text:

20 "Established pursuant to Section 7585, et seq., of the California
21 Business and Professions Code"

22

23 **Change #3:**

24 Text of the Assenza judgment at page 6, line 16:

25 ". . . circumstances exist requiring amounts of valuable property
26 which is impractical or impracticable to entrust to the protection
27 of armored car services . . ."

28 Proposed text:

1 ". . . circumstances exist requiring him or her to transport in
2 public significant amounts of valuable property which it is
3 impractical or impracticable to entrust to the protection of
4 armored car services."

5
6 **Change #4:**

7 Text of the Assenza Judgment at page 12 line 4:

8 ". . . recommend on writing . . ."

9 Proposed text:

10 ". . . recommend in writing . . ."

11

12 Attached to the Declaration of Burton C. Jacobson, and
13 incorporated fully by reference are true and accurate copies of
14 the Judgment in Lake, et al. v. City Of Los Angeles et al., Case
15 Number PC008329 as Exhibit "1" and the Judgment in Assenza et al.
16 v. City Of Los Angeles et al. Case #BC115813 attached hereto as
17 Exhibit "2". The complete text of the proposed modified Judgment
18 is attached to the Declaration of Burton C. Jacobson as Exhibit
19 "3" and is incorporated fully by reference.


20 Dated: January 20, 1998

21

LAW OFFICES OF
BURTON C. JACOBSON

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By: 
BURTON C. JACOBSON
Attorneys for Plaintiffs

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