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FILED
LOS ANGELES SUPERIOR COURT

JUN 24 1998
JOHN A. CLARKE, CLERK
BY D. HARO, DEPUTY

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

| | | |
|---------------------------------|---|--------------------------------|
| 11 ANTHONY MARIO ASSENZA, |) | CASE NO. BC 115813 |
| 12 et al., |) | |
| 13 Plaintiffs/Petitioners, |) | REPLY TO DEFENDANTS' RESPONSE |
| 14 vs. |) | TO ORDER TO SHOW CAUSE RE |
| 15 CITY OF LOS ANGELES, et al., |) | CONTEMPT; MEMORANDUM OF POINTS |
| 16 Defendants/Respondents, |) | AND AUTHORITIES IN SUPPORT |
| 17 |) | THEREOF |
| |) | Date: June 26, 1998 |
| |) | Time: 10:00 a.m. |
| |) | Dept: 15 |

18 Additional Attorneys for Plaintiffs/Petitioners:

19 Don B. Kates, Jr.
20 920 Arlene Way
21 Novato, CA 94947
22 (415)883-5323

23 COMES NOW, Plaintiffs/Petitioners who submit the following
24 Memorandum of Points and Authorities in reply to Defendants'
25 Response to Order to Show Cause Re Contempt.

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27 ///
28 ///

COPY

1 Defendants ignore the words, "IT IS SO ORDERED" at the end of
2 the judgment. Plaintiffs/petitioners perceive no ambiguity there.

3 The simple answer is that this Judgment says what it says,
4 and, if it contains language that is mandatory, then that language
5 is an order. It will be shown hereinafter that, assuming
6 arguendo, the Judgment was made pursuant to a complaint solely for
7 declaratory relief, the mandatory provisions constitute valid
8 orders and, as such, are enforceable by proceedings in contempt.

9 It is incredible that the City Attorney's office would, in
10 good faith, place a Judgment and Orders, which they drafted,
11 before this Court and for your Honor's approval and signature,
12 that they intended to be unenforceable.

13

14 2. DECLARATORY RELIEF MAY GIVE RISE TO COERCIVE ORDERS

15 Defendants argue that declaratory relief cannot be coercive
16 in nature and that "declaratory judgments are not coercive." Yet
17 even the authority they cite (Lortz v. Connel (1969) 273
18 Cal.App.2d 286, 300-301) sets forth that "coercive relief may or
19 may not be requested in an action for declaratory relief."
20 California Code of Civil Procedure, Section 1060 was enacted in
21 1921 and the even the early cases, set forth below, interpreting
22 that section support the use of coercive and executory orders and
23 injunctions pursuant to actions for declaratory relief.

24 The powers of the court when acting upon declaratory relief
25 actions are interpreted to encompass any relief consistent with
26 the evidence and issues embraced by the pleadings. In Westerholm
27 v. 20th Century Ins. Co. (1976) 58 C.A. 3d 628 a cross-complaint
28 for declaratory relief only was filed in the action and that

1 request gave rise to a judgment which ordered the cross-defendant
2 to pay money. Cross-defendant raised the issue that such an order
3 was beyond the authority of the court. The appellate court, in
4 affirming the judgment on appeal, noted as follows: "An action
5 for declaratory relief is equitable, and a court of equity will
6 administer **complete relief** when it assumes jurisdiction of a
7 controversy. [Cite omitted and emphasis added] Hence, in such an
8 action it is proper for the court to grant any relief consistent
9 with the evidence and the issues embraced by the pleadings.

10 [Cites omitted] Westerholm v. 20th Century Ins. Co. (1976) 58
11 C.A. 3d 628 at 632.

12 Other cases are in accord with the principle that coercive,
13 executory and injunctive relief may be granted in actions for
14 declaratory relief. This law has been clear since at least 1952.
15 In Staley v. Board of Medical Examiners (1952) 109 C.A. 2d 1, 6,
16 the court stated: "In an action for declaratory relief an
17 injunction ancillary to the relief sought is appropriate and may
18 issue to preserve the rights of the parties (Code Civ. Proc.,
19 §1060) [Cite omitted] Both declaratory and coercive or executory
20 relief may be granted in the same action." [Cite omitted]

21 Some cases have gone even further by requiring coercive
22 relief in declaratory judgment actions. "Where a multiplicity of
23 actions would result unless the parties' rights are first declared
24 and relief given in the same action, it is an abuse of discretion
25 to deny the relief requested." (Emphasis added) Bridges v. Cal-
26 Pacific Leasing Co. (1971) 16 C.A. 3d 118 at 127 citing California
27 Bank v. Diamond, 144 Cal App.2d 387, 390.

28 ///

1 In the instant action, the Judgment both declares certain
2 rights and orders that certain actions be taken with respect to
3 those rights. Defendants seek to avoid this Court's orders and
4 subject both plaintiffs/petitioners and this Court to countless
5 individual writs of mandamus creating a disfavored multiplicity of
6 actions. Do defendants wish to abdicate their responsibilities
7 under the code to the courts? Should every concealed carry
8 applicant be required to file a lawsuit?

9 Since an action for declaratory relief may give rise to
10 coercive, executory and injunctive relief, the conclusion that a
11 judgment of declaratory relief may contain such orders is
12 inescapable. We must look to the language of the judgment to see
13 whether any given provision calls for action with mandatory
14 language.

15
16 3. SUBSTANCE GOVERNS OVER FORM

17 It is a general rule of construction that substance governs
18 over form. Defendants may argue that the form of the title of the
19 judgment somehow limits the scope of the judgment, thereby,
20 vitiating the mandatory provisions. However, there is no
21 authority for such, and they cite none. It runs contrary to
22 accepted rules of construction and would lead to the absurd result
23 of practitioners being required to place all the provisions of a
24 judgment in the title so as to not limit the judgment in any way.

25
26 4. CONTEMPT IS A REASONABLE REMEDY

27 Defendants maintain that contempt is an unreasonable remedy
28 and that mandamus must be used instead; causing a horrendous

1 multiplicity of litigation. However, a careful analysis of this
2 argument discloses a major flaw. If the Chief of Police will not
3 obey the Penal Code despite having been ordered to do so, what
4 remedy then? Mandamus would merely give rise to many more court
5 orders that the defendants would still willfully disobey.
6 Contempt is the only reasonable remedy because it is the only
7 remedy that will put an immediate and permanent stop to the
8 defendants' willful disobedience of the Penal Code and this
9 Court's lawful orders.

10 Nothing can justify the Chief supplanting the legislation set
11 forth in the Penal Code with his personal preferences. The
12 Legislature has recognized that concealed carry is necessary and
13 will deter crime, and therefore enacted Penal Code Sections
14 12025.5, 12026, 12027 and 12050. The defendants, and especially
15 the Chief, must obey the law. No one is above the law and it is
16 particularly egregious when the Chief of Police, who is sworn to
17 enforce the law, acts like he is above the law.

18 Dated: June 23, 1998

Respectfully submitted,

BURTON C. JACOBSON and
WILLIAM ARTHUR CRAWFORD

21
22 By: 

BURTON C. JACOBSON
Attorney for
Plaintiffs/Petitioners

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26 By: 

WILLIAM ARTHUR CRAWFORD
Attorney for
Plaintiffs/Petitioners

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(PROOF OF SERVICE BY MAIL--CCP 1013a, 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, JENNIFER HANSEN, declare:

I am over the age of 18 years, employed in the county of Los Angeles, and am not a party to the within action; my business address is 424 South Beverly Drive, Beverly Hills, California 90212.

On June 24, 1998, I served the foregoing document described as REPLY TO DEFENDANTS' RESPONSE TO ORDER TO SHOW CAUSE RE CONTEMPT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, with postage fully prepaid, in the United States mail at Beverly Hills, California 90212, addressed as follows:

James K. Hahn, City Attorney
Frederick N. Merkin, Senior Assistant City Attorney
Byron Boeckman, Assistant City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, CA 90012

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 24, 1998, at Beverly Hills, California.



JENNIFER HANSEN