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LOS ANGELES SUPERIOR COURT

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14

FOR THE COUNTY OF LOS ANGELES

15

CENTRAL DISTRICT

16

ANTHONY MARIO ASSENZA, et al.

CASE NO. BC115813

17

Plaintiffs and Petitioners,

PLAINTIFFS'/PETITIONERS' REPLY TO
RESPONDENTS' OPPOSITION TO
MOTION TO ENFORCE JUDGMENT AND
FOR MONETARY SANCTIONS IN THE
AMOUNT OF \$2,500.00

18

vs.

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THE CITY OF LOS ANGELES, et al.

Date: June 9, 2011

21

Defendants and Respondents.

Time: 8:45 a.m.

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Dept. 14

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13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF LOS ANGELES

15 CENTRAL DISTRICT

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17 Plaintiffs and Petitioners,)	PLAINTIFFS'/PETITIONERS' REPLY TO
)	RESPONDENTS' OPPOSITION TO
18 vs.)	MOTION TO ENFORCE JUDGMENT AND
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1 **I. INTRODUCTION**

2 Respondents “acknowledge that the Third Amended Judgment of Declaratory Relief,
3 signed by the Honorable Terry Green on June 11, 2010, is in effect and applies to Respondents.”
4 (Opposition Memorandum at 2:20-21.) (See also Petitioners’ Motion, Exh. 6 [Third Amended
5 Judgment].) “Respondents further acknowledge that the Honorable Alan Buckner issued an order
6 to the LAPD in July 1998.” (Opp. at 2:27-28; see also Petitioners’ Motion to Enforce Judgment,
7 Exh. 3 [Order].)

8 Despite these concessions, Respondents claim they are no longer obligated to follow the
9 Order because in their view it “was simply one way to ensure compliance with the 1998 Amended
10 Judgment of Declaratory Relief [.]” and it “is not the only way compliance with the
11 *Assenza* Judgment can be achieved.” (Opp. at 2:28 - 3:1.) The problem with LAPD unilaterally
12 discarding Judge Buckner’s Order, as it appears they have, is that as a result, Respondents are
13 simply no longer in compliance with the *Assenza* Judgment.

14 Respondents admit as much: Even though Respondents claim they “take[] [their]
15 responsibilities under the Judgment seriously[,]” Respondents admit that “on occasion the policy
16 is not strictly followed.” (Opp. at 5:17-25.) If Respondents are admittedly not consistently
17 following their policy, then they are not abiding by the Judgment on those occasions when they
18 are not following their policy. Further, seven of the eight declarations submitted in support of the
19 Motion show that Respondents’ claim that they are “occasionally” not following their policy in
20 reality means that they are *consistently not following their policy*.

21 It’s 1998 all over again. Three years after Respondents negotiated a CCW policy and it
22 was implemented as a consent Judgment in 1995, Respondents were claiming compliance with
23 that policy, all the while being non-compliant. It took a contempt motion and Judge Buckner
24 ordering declarations attesting to compliance from 18 high-level LAPD regional commanders be
25 produced by Respondents before Respondents understood the gravity of non-compliance. Judge
26 Buckner then spared Respondents from a contempt finding by *ordering* a specific procedure for
27 how Respondents would comply with the *Assenza* Judgment from that point forward.

28 Now that Respondents have surreptitiously discarded Judge Buckner’s procedure, the

1 result is that they are once again not complying with the Judgment.

2 Respondents should begin paying sanctions to the Court until they have provided sufficient
3 proof to the Court such that the Court is reassured that every desk sergeant working at a Los
4 Angeles Police Department (“LAPD”) station house knows the procedure for responding members
5 of the public who request concealed carry weapon (“CCW”) applications, and that every member
6 of the public who enters an LAPD station house and requests to apply for a CCW license walks
7 out with an application and a copy of the application policy, as Judge Buckner ordered
8 Respondents to do 13 years ago.

9 When Petitioners filed their Motion, they were not aware of the extent to which
10 Respondents would obfuscate on their clear violations of the law, and that Respondents would
11 attack the credibility of eight separate citizens with no evidence to support those attacks. In light
12 of Respondents’ attempts to raise factual issues of the veracity of the declarants, Respondents are
13 concurrently-filing herewith a request for a full evidentiary hearing on this motion.

14 **II. ARGUMENT**

15 **A. Respondents Mischaracterize the Basis for the Motion and Arguments Within**
16 **the Motion**

17 With respect to Respondents’ compliance with their procedural obligations under the
18 *Assenza* Judgment – the issue for which Petitioners brought their Motion to Enforce Judgment and
19 for Monetary Sanctions – Petitioners have presented cumulative evidence that Respondents are
20 not following any consistent policy to ensure that members of the public seeking an application
21 for a permit receive *both* the CCW permit application form and the LAPD Concealed Weapon
22 Policy during that process. (See, e.g., Declarations of David R. Davis at ¶¶ 15, 24; Jacob Daniel
23 Hill at ¶13; Paul Cohen ¶¶ 4, 5, 17; Scott Austin ¶¶ 4, 5, 14; Jill Brown at ¶¶ 3, 4, 5, 6; Chris
24 Butler at ¶¶ 4, 6, 7; Lisa Siegel at ¶ 5 [seven of eight declarants identifying that they never
25 received a copy of LAPD’s CCW policy from Respondents during their application process for a
26 CCW license].).

27 Pursuant to Judge Buckner’s July 1998 order, Respondents were required to attest to the
28 “present *and future availability* to any applicant for a concealed firearms license of both a copy of

1 such statement of [a CCW] of policy and of Los Angeles Police Department Form ... application
2 for a concealed weapons license.” (Motion at Exh. 3, pg. 2:16-20 thereof [Order] [emphasis
3 added].) Judge Buckner’s Order ensured Respondents’ compliance with the portion of the
4 *Assenza* Judgment that states “[a]ll applicants *shall* receive a copy of these guidelines *along with*
5 the application form.” (Motion at Exh. 6, pg. 7:19-20 thereof [Judgment] [emphasis added].)

6 Rather than addressing Petitioners’ concerns with respect to the availability and
7 distribution of the CCW application form and LAPD CCW policy, Respondents in opposition
8 raise a completely irrelevant issue, the use of the mandated “DOJ Standard Application For
9 License to Carry a Concealed Weapon” in lieu of the LAPD’s form. (Opp. at pp. 2-4). Nothing in
10 the moving papers suggests that Petitioners object to Respondents substituting this new
11 standardized CCW application form for LAPD’s unique prior CCW application form. Rather,
12 Petitioners object to members of the public getting *no* forms at all when they walk into an LAPD
13 station house, or getting only a CCW application form, but no accompanying copy of the LAPD
14 CCW application court ordered policy, or getting told by officers to not even bother applying, or
15 getting the runaround from officers who don’t know where the forms are or what the procedure is
16 for applying.

17 Respondents’ attempted mischaracterizations of Petitioner’s serious concerns regarding
18 Respondents’ non-compliance with the Judgment and Order underscore how Respondents cannot
19 substantively defend their current non-compliance.

20 **1. Judge Buckner’s Order is Not Discretionary**

21 In an attempt to demean the significance of Judge Buckner’s Order, Respondents state that
22 “the procedure described by Judge Buckner’s order is not the only way compliance with the
23 *Assenza* Judgment can be achieved.” (Opp. at 3:3-4.) While Judge Buckner’s Order is not the
24 “only way” to comply with the *Assenza* judgment, it was the necessary way to ensure Respondents
25 would comply following their first documented bout of non-compliance, and Judge Buckner’s
26 Order nevertheless mandates Respondents’ continued compliance. (See Motion at Exh. 3, pg.
27 2:16-20 thereof [Order of future compliance].) While the former 18 regional LAPD commanding
28 officer declarations “are evidence that the LAPD *followed* Judge Buckner’s order[,]” at some

1 point *in the past* (Opp. at 3:1-3 [emphasis added]), they do not demonstrate any current evidence
2 that Respondents *continue* to abide by Judge Buckner’s Order. And the opposition does nothing
3 to rebut with credible evidence the eight declarations demonstrating ongoing non-compliance by
4 Respondents.

5 Court orders are not discretionary. Respondents are bound by the Court’s Declaratory
6 Judgment to comply with the law. Because Judge Buckner’s Order required, among other things,
7 a declaration from all 18 regional LAPD commanding officers, of the “present *and future*
8 availability” of a CCW application and the LAPD CCW policy to all applicants, Respondents
9 have an obligation to abide by the Order on an ongoing basis. They admit that they have failed to
10 do so.

11 **2. The Current DOJ CCW Form and LAPD CCW Policy Are Widely**
12 **Unavailable to the Public At LAPD’s Station Houses**

13 While Petitioners’ agree that the “LAPD’s amendment to its rules to require the use of a
14 DOJ mandated application for is specifically allowed under the *Assenza* Judgment” (Opp. at 4:2-
15 3) and is permissible to ensure compliance with state law (Opp. at 3:22-24), Petitioners’ Motion
16 relates to non-compliance with the court-mandated procedure by which the CCW application form
17 – whichever one is used – and the LAPD CCW court ordered policy are distributed to the public at
18 large. Petitioners are not concerned about which version of the application form is distributed.
19 Respondents fail to explain why, to comply with the *Assenza* judgment and state law, they are not
20 distributing the DOJ version of the CCW application form at all of their station houses and
21 precincts to comply with Judge Buckner’s Order.

22 Without directly saying it, Respondents impliedly admit in opposition that the CCW
23 application form and LAPD CCW policy are not currently made available at all of the 18 regional
24 LAPD station houses and precincts, hence the veiled attack on Judge Buckner’s Order as being
25 unnecessary. Respondents further straddle the fence when Respondents’ declarant, Richard
26 Tompkins, states that Respondents adopted a new policy that all CCW applicants at station houses
27 be referred to the Gun Unit, which then mails a packet with the required *Assenza* policy materials
28 to the applicant. (See Declaration of Richard Tompkins, ¶¶ 6, 8 [“if a citizen comes to the Area

1 station seeking a CCW application, it is best to refer the citizen to the Gun Unit officers so that the
2 prospective applicant can be guided through the process.”]; see also Opp. at 3:16-19 [arguing that
3 the LAPD CCW policy is provided in the information packet mailed to applicants].) In the next
4 breath, Tompkins then states that Respondents’ official policy is to nonetheless require individual
5 officers to still provide a CCW application form and copy of the CCW application policy at each
6 station house to citizens pursuant to LAPD’s Manual section 4/767.05. (Tompkins Decl., ¶ 8
7 [“Additionally LAPD Manual section 4/767.05 informs officers of their responsibility to provide a
8 copy of the DOJ Standard Application and a copy of the LAPD’s Concealed Weapon License
9 Policy to any person who requests to apply for a CCW permit.”].) Respondents never reconcile
10 these conflicting claims regarding their practices.

11 Other contradictory claims are made by Respondents about their current policy. The
12 declaration of Tompkins further states: “The custom and practice of the Gun Unit is to provide a
13 copy of the LAPD’s Concealed Weapon License Policy to each and every individual *who submits*
14 a CCW application to the Unit.” (Tompkins Decl., ¶ 9 [emphasis added].) This is inconsistent
15 with Tompkins’ immediately earlier claim about compliance with LAPD’s Manual section
16 4/767.5 requiring providing copies of the form and policy to citizens when requested at the station
17 houses.

18 Are Respondents now claiming that they provide applicants the materials at station houses
19 *plus* mail them a packet afterward? As the supporting declarations demonstrate, if this is
20 Respondents’ new policy, it is rarely followed.

21 Tompkins last inconsistent policy statement in his declaration – that the LAPD CCW
22 policy is mailed to applicants *after* the application is submitted to LAPD – also patently violates
23 both the *Assenza* Judgment and Judge Buckner’s Order. This isn’t mere *pro forma*, the LAPD
24 CCW policy sets forth the factors by which applicants are going to be judged, and was included as
25 part of the *Assenza* Judgment so that applicants understood what burdens of proof and factors they
26 must meet to qualify for issuance of a CCW permit *before they submitted their applications*. (See
27 Motion, at Exh. 6, p. 4:19 - 7-20 thereof [portion of Judgment setting forth the factors that LAPD
28 will consider in assessing an application, and concluding “All applicants shall receive a copy of

1 these guidelines *along with* the application form”].) Tompkins’ last statement is tantamount to an
2 admission that Respondents are making applicants guess at what the factors for receiving a CCW
3 permit at the time applicants complete and submit the application form.

4 The purpose of the *Assenza* Judgment was to provide transparency and consistency in the
5 CCW application process. (See Motion, at Exh. 6, p. 7-19 20 thereof [“All applicants shall
6 receive a copy of these guidelines *along with* the application form”].) Not letting applicants know
7 what the factors they will be judged on until after the CCW application is submitted is anathema
8 to such transparency.

9 Most importantly, Respondents have unilaterally altered the negotiated and agreed-to
10 policy and never brought these internal changes to the attention of the Court or Petitioners, despite
11 the three opportunities they had when the original *Assenza* Judgment was amended in 1998, 2002,
12 and 2010.

13 Rather than “fulfilling the original intent and spirit of the *Assenza* Judgment[,]” (Opp. at
14 4:6-7) as Respondents suggest, their new policy, whatever it may actually be, is wildly
15 inconsistent with the *Assenza* Judgment, patently violates Judge Buckner’s Order, and in one
16 purported form, hides from applicants the key piece of information they need to complete the
17 CCW application form.

18 **B. Petitioners Have Extensive Evidence Demonstrating Respondents’ Non-**
19 **Compliance with the *Assenza* Judgment**

20 Eight declarations have been provided showing a pattern of random and varying policies
21 being applied at many different LAPD station houses, none of which comply with Judge
22 Buckner’s Order and the *Assenza* Judgment, and only one of which mimics the alleged new policy
23 adopted by Respondents. In response to these credible stories of disparate treatment across Los
24 Angeles, Respondents attack the veracity of these declarants “on information and belief”. By
25 attacking the eight declarations provided by Petitioners, Respondents unsuccessfully attempt to
26 diminish the impact of those declarations and instead have the opposite effect

27 For example, Respondents attempt to rebut portions of declarations of David Davis, Jacob
28 Hill and Brian Goldstein, in which each declarant states he never received from Respondents a

1 copy of the LAPD’s CCW policy. Respondents attack these statements by claiming that these
2 applicants “must have” received a copy of the policy at some point from their attorney, i.e.,
3 “[h]owever, Msrs. Davis, Hill and Goldstein were assisted with their CCW application by
4 attorney Burton Jacobson.” (Opp. Memo. at 4:17-22). Thus, in attacking the veracity of these
5 declarants, Respondents take the absurd position that it is acceptable for Respondents to impose
6 such a burden on CCW applicants that applicants are required to hire an attorney in order to even
7 see a copy of the LAPD CCW policy. And in attacking the declarants in this manner,
8 Respondents highlight that they themselves did not at any point provide the written policy to the
9 declarants as they are required to under the Judgment, but a third-party may have provided it to
10 applicants.

11 Respondents also attack the declarations of Paul Cohen, David Davis, Jacob Hill, and Scott
12 Austin by stating that “[t]hese claims that they did not receive a copy of the LAPD ‘guidelines
13 along with the application form are two, three, and four years old and therefore are not evidence of
14 any *current* noncompliance with the *Assenza* judgment.” (Opp. at 4:27 - 5:2.) This argument
15 cynically ignores that the reason – also set forth in those declarations – as to why some of the
16 claims are two, three or four years old is because that is how long the application process has been
17 ongoing for these applicants – because of Respondents’ delays, non-responsiveness, etc. This
18 argument also fails to explain how an incidence of non-compliance two, three or four years ago is
19 not evidence of current non-compliance, e.g., Respondents offer no evidence that they might have
20 been in non-compliance two, three or four years ago but implemented specific steps within the
21 past two years to remedy that non-compliance, such that they currently comply with the Judgment
22 and Order.

23 Finally, Respondents’ argument (that evidence of non-compliance during an application
24 process started two, three or four years ago is irrelevant to the issue of Respondents’ compliance
25 with the Judgment) completely contradicts Respondents’ earlier claim that: “[t]here is no evidence
26 that the LAPD has lost its commitment to comply with the *Assenza* judgment over the more than
27 12 years since Judge Buckner’s order.” (Opp at 3:14-16.)

28 Also noticeably absent from Respondents’ opposition is any discussion of the consistent

1 failure of applicants to get an application when they first inquire at a station house. Petitioners'
2 concerns aren't just with applicants failing to get a copy of the LAPD CCW policy with the
3 application form, they are also concerned about the disparate treatment citizens receive at the
4 various station houses. As the declarations evidence, most station houses don't have the
5 application form, most officers in those stations don't know the *Assenza*-required procedure to
6 follow when a citizen requests an application, and some officers, rather than attempt to provide the
7 required information, actively discourage applicants from applying. Respondents completely
8 ignore this pattern of citizens having to go to two or three station houses without getting the
9 required information. This un rebutted evidence of repeated instances where applicants cannot
10 even get the application form at station houses is *prima facie* evidence of Respondents' violation
11 of both the *Assenza* Judgment and Judge Buckner's Order, and is a violation separate and
12 irrespective of the issue of Respondents improperly changing their policy for distributing a copy of
13 the LAPD CCW policy.

14 The *Assenza* Judgment has no expiration date. Judge Buckner's Order applied then, now,
15 and in the future, and the supporting declarations provide un rebutted evidence that Respondents
16 have continually and repeatedly violated the *Assenza* Judgment since Judge Buckner's Order.¹

17
18 **C. Respondents Offer Little Credible Evidence Demonstrating Respondents'
19 Continuing Compliance with the *Assenza* Judgment**

20 Respondents also offer little affirmative evidence of their compliance. Tompkins'
21 declaration offered in evidence is mostly on "information and belief" and he provided no indicia
22 therein of what steps he took to form this information and belief such that the Court could

23
24 ¹ Without Respondents having provided any evidence of specific instances
25 where Respondents' policy resulted in applicants actually receiving a copy of LAPD's
26 written CCW policy as required, Respondents make the unsupported characterization
27 that the events in the eight declarations are "isolated incidents." (Opp. at 6:19-20.) In
28 the event the Court requires more declarations from other applicants besides the eight
already provided evidencing Respondents' failure to abide by the *Assenza* Judgment,
Petitioners can supply them upon request. Petitioners' counsel have been contacted by
numerous other citizens who have experienced treatment similar to the declarants, but
have submitted only these eight simply for the sake of not burying the Court in
paperwork.

1 consider it reliable. Thus, other than digging up one attorney letter which suggests Goldstein
2 might have been provided a copy of the LAPD CCW policy by his own attorney, Tompkins
3 provided no other information as to how he confirmed that the other six declarants who state
4 under oath that they never got a copy of the LAPD CCW policy from Respondents must somehow
5 be lying. Tompkins provides no copies of cover letters or drafts of those letters to these applicants
6 that evidence receipt of by them of a CCW packet, and he did not attach any logs or checklists to
7 his declaration evidencing that these applicants received the mailed packet. Tompkins provided
8 no information based on personal knowledge that LAPD did as Tompkins claims they did, other
9 than stating that he trained some officers to follow the distribution policy. Yet, by Tompkins' own
10 contradictory declaration, if he is to be believed that he trained officers to assiduously follow the
11 distribution policy, it is unclear which policy they were trained to assiduously follow, the one
12 where they refer applicants to the Gun Unit and the Gun Unit mails applicants a CCW packet after
13 the fact, or the one where applicants receive the written materials at the station house when they
14 request it. (See Tompkins Decl., ¶¶ 6, 8 [stating two contradictory policies]; see also discussion,
15 *supra*, Part II.A.2 [same].)

16 Finally, as for the inability of declarants Jill Brown, Chris Butler, and Lisa Siegel to obtain
17 a CCW application and LAPD CCW policy, Respondents cannot offer the excuse of "they must
18 have gotten a copy from their lawyer," so Respondents instead blithely explain that "[a]t most,
19 Petitioners have shown that the LAPD has not followed the mandate of section (F) subsection (6)
20 perfectly during the last several years." (Opp. at 5:21-22.) Petitioners' eight declarations are more
21 than mere "isolated instances of noncompliance[.]" (Opp. at 6:19-20.) Rather, this sampling of
22 Respondents' practice is unrebutted evidence of the prolonged and repeated pattern of
23 Respondents' failure to respect and follow the Order and Judgment of the Court. Respondents'
24 cavalier attitude toward their admitted violation of a standing court order should not be
25 countenanced.

26
27 **D. Monetary Sanctions Are Appropriate Given Respondents' Intentional
Non-compliance**

28 Code of Civil Procedure section 128(a)(4) provides the Court with express authority to

1 “compel obedience to its judgments, orders, and process”. (See Code Civ. Proc., § 128, subd.
2 (a)(4).) Respondents’ non-compliance is not due to their failing to train a couple of officers, or
3 some other inadvertence, it is due to their willful discarding of an ordered policy. Respondents
4 have had almost 13 years and two trips to court since Judge Buckner’s Order to seek leave from
5 the Court to modify his Order, to contact Plaintiffs to discuss a modification to the Order, or to
6 otherwise transparently and lawfully seek some relief from the Order. They have instead
7 surreptitiously violated the Order, and only now offer unconvincing excuses after having been
8 caught.

9 Because Respondents are in direct defiance of *Assenza* Judgment and Judge Buckner’s
10 Order, monetary sanctions in the amount of \$2,500 payable to the Court are authorized to be
11 ordered now pursuant to Code of Civil Procedure sections 177.5 and 1097.

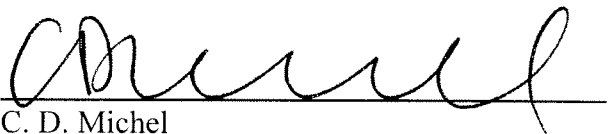
12 The Court should further set a hearing on an Order to Show Cause Re Contempt in light of
13 the willfulness of Respondents’ violation, in order to determine whether further monetary or other
14 sanctions are necessary to obtain Respondents’ compliance.

15 **III. CONCLUSION**

16 For the reasons set forth above, Petitioners request that this Court grant Plaintiffs’ Motion
17 to Enforce Judgment of the Third Amended Judgment of Declaratory Relief, as well as impose
18 monetary sanctions against Defendants jointly and severally in the amount of \$2,500.00, payable
19 to the Court.

20 Dated: June 2, 2011

MICHEL & ASSOCIATES, P.C.

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23 C. D. Michel
24 Joshua R. Dale
25 Attorneys for Plaintiffs

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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

On June 2, 2011, I served the foregoing document(s) described as

**PLAINTIFFS'/PETITIONERS' REPLY TO RESPONDENTS'
OPPOSITION TO MOTION TO ENFORCE JUDGMENT AND FOR
MONETARY SANCTIONS IN THE AMOUNT OF \$2,500.00**

on the interested parties in this action by placing
 the original
 a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

"SEE ATTACHED SERVICE LIST"

 (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on June 2, 2011, at Long Beach, California.

 (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on June 2, 2011, at Long Beach, California.

 X (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance.
Executed on June 2, 2011, at Long Beach, California.

 X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

 (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.

CLAUDIA AYALA

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“SERVICE LIST”

ANTHONY MARIO ASSENZA, et al. v. THE CITY OF LOS ANGELES, et al.

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