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**REC'D**  
DEC 21 2012  
**FILING WINDOW**

11  
12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF LOS ANGELES

14 CENTRAL DISTRICT

15 ANTHONY MARIO ASSENZA, et al., )

CASE NO. BC115813

16 Plaintiffs and Petitioners, )

**[PROPOSED] ORDER ON PLAINTIFFS'  
MOTION FOR ATTORNEY'S FEES  
AFTER HEARING ON OSC RE  
CONTEMPT**

17 vs. )

18 THE CITY OF LOS ANGELES, et al., )

Date: January 16, 2013

19 Defendants and Respondents. )

Time: 8:45 a.m.

20 Dept. 14

21 Plaintiffs' Motion for Attorney's Fees after hearing on the court's Order to Show Cause re  
22 Contempt came for hearing on January 16, 2013 in Department 14 of this Court. Michel &  
23 Associates, P.C. appeared on behalf of Plaintiffs, and the Los Angeles City Attorney's Office  
24 appeared on behalf of Defendants.

25 Having read the motion, the memoranda, declarations, exhibits filed by the parties, and  
26 having heard argument of counsel, the court makes the following findings and Order:

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1           1.       Defendants were adjudged by this court in its November 21, 2012 Order to not be  
2 in compliance with the Court's prior enforcement orders and the Judgment in this matter, and as a  
3 result were ordered to adopt further compliance and enforcement measures to address such  
4 violations.

5           2.       In order to make a prima facie showing of indirect contempt, the following  
6 evidence must be shown through competent evidence: (i) there was an issuance of a valid court  
7 order, (ii) the contemnor's knowledge of the order, (iii) the contemnor's ability to obey it, and (iv)  
8 the contemnor's willful disobedience. *Koehler v. Superior Court (Papazian)* (2010) 181  
9 Cal.App.4th 1133, 1169. The order and judgment of contempt must state evidentiary facts  
10 supporting a finding of each of these elements, except that it need not state such facts in support of  
11 the finding of willfulness, which may be inferred from the circumstances. *Id.* No issue has been  
12 raised that Defendants were not apprised of and served with the OSC re Contempt or that they  
13 were not afforded an opportunity to address and rebut the allegations therein.

14           3.       In order to make a prima facie showing of direct contempt, it must be shown that  
15 the contemnor committed ones of the acts proscribed by Code of Civil Procedure section 1209. *In*  
16 *re Buckley* (1973) 10 Cal.3d 237, 248. Direct contempt can consist of filing affidavits containing  
17 statements known to be false, or with disregard as to their truth or falsity. *In re Ciraolo* (1969) 70  
18 Cal.2d 389, 394. The submission of false affidavits to a court violates Section 1209(a)(1) &  
19 (a)(9)'s prohibitions on wilful obstruction of the orderly processes of the court. *Vaughn v.*  
20 *Municipal Court of Los Angeles Judicial Dist.* (1967) 252 Cal.App.2d 348, 358.

21           4.       For the reasons set forth below, the court finds evidentiary facts sufficient to  
22 support a finding of indirect contempt – for violation of the Assenza judgment and this court's  
23 July 6, 2011 order between September 7, 2012 and October 24, 2012 – as well as a finding of  
24 direct contempt – for Defendants making material misrepresentations to and in the presence of this  
25 court on or about June 9, 2011, September 7, 2011, relating, in the first instance, to  
26 representations made to this court by counsel and Defendants' witness regarding knowledge of  
27 compliance, and in the second instance, by filing declarations with this court containing  
28 affirmative statements of compliance made with disregard to their truth or falsity.

1           5.       The affidavits in support of the Order to Show Cause re Contempt establish a  
2 prima facie showing of indirect contempt by evidencing Defendants' willful and conscious  
3 disregard of the court's orders and Judgment. As a result of Defendants' numerous  
4 representations to the court, including representations during the June 9, 2011 hearing, that the  
5 orders and Judgment were understood by Defendants, could be achieved by Defendants, and  
6 would be achieved in a manner previously negotiated by, specified by, and agreed to by  
7 Defendants, Defendants are judicially estopped from claiming that such orders and Judgment were  
8 not achievable or were too ambiguous to be understood or enforced. Even if Defendants' were not  
9 judicially estopped from asserting the defenses of (i) their purported inability to achieve the aims  
10 of the orders and judgment, and (ii) that such orders and judgment were too ambiguous to be  
11 followed, the court does not find sufficiently compelling Defendants' evidence submitted in  
12 support of these defenses such that the prima facie evidence submitted in support of the indirect  
13 contempt aspect of the Order to Show Cause re Contempt is sufficiently rebutted.

14           6.       This court finds that Defendants' evidence is not compelling enough to overcome  
15 the prima facie evidence of contempt for (i) violation of a court's orders and judgment; and (ii)  
16 material misrepresentations by a party to the court, for the following reasons:

17                   (a) Per *Lortz v. Connell* (1969) 273 Cal.App.2d 286 and *Share v. Casiano Bel-Air*  
18 *Homeowners Assn.* (1989) 215 Cal.App.3d 515, this court has the authority to issue contempt  
19 sanctions for violation of the Judgment. Regardless of such authority, both the dealings of the  
20 parties as well as the language of the judgment establish that the parties intended that violations of  
21 such judgment be enforced via contempt proceedings;

22                   (b) Irrespective of the violation of the judgment by Defendants, the court  
23 subsequently entered two enforcement orders, one in 1998 and another in 2011, the violation of  
24 either of which are punishable by the contempt sanction;

25                   (c) In entering the July 6, 2011 enforcement order, the court expressed to  
26 Defendants' counsel on the record at the June 9, 2011 hearing its desire that its order result in  
27 compliance with the judgment, and Defendants' counsel expressly and affirmatively represented  
28 on the record that such compliance could be achieved as a result of such order. Defendants then

1 reaffirmed that they were purportedly complying with the enforcement order when Defendants  
2 submitted 21 declarations of their station commanders claiming to have adequately trained their  
3 personnel to comply with the distribution requirements being enforced by the 2011 order;

4 (d) The evidence submitted in support of the court's Order to Show Cause re  
5 Contempt has met the prima facie burden on contempt of showing that the 21 station house  
6 declarations did not evidence compliance or substantial compliance by Defendants with either the  
7 Judgment or the court's July 6, 2011 order. Upon presentation of the prima facie evidence  
8 establishing the lack of reliability of Defendants' declarations, Defendants were given an  
9 opportunity to present evidence to rebut the evidence of unreliability. Instead, Defendants  
10 presented evidence that tended to further prove the lack of reliability of the declarations.  
11 Defendants' witnesses confirmed that at the time the declarations were submitted, Defendants had  
12 no reasonable or well-founded belief that the representations in those declarations actually  
13 evidenced the purported compliance with the judgment or the 2011 enforcement order.  
14 Defendants' witnesses further testified at the hearing on the OSC re Contempt that Defendants'  
15 belief was, or reasonably should have been, that the alleged compliance measures testified to in  
16 the declarations would be wholly ineffective in achieving the claimed compliance with the  
17 Judgment or July 6, 2011 order. Defendants' witnesses further testified that at least 40 percent of  
18 the stations were still in non-compliance nine months after entry of the July 6, 2011 order;

19 (e) The evidence submitted in support of the court's Order to Show Cause re  
20 Contempt further showed that at least one and perhaps more of Defendants' declarants' submitted  
21 testimony to the court was outright false or contained material misrepresentations of fact  
22 insomuch as Defendants later conceded that such testimony was not based upon any reasonable or  
23 good faith belief by the declarants that the measures they were testifying to would be effective in  
24 achieving compliance with the judgment. Defendants admitted this lack of good faith belief in the  
25 testimony of Deputy Chief Kirk Albanese and in the statements by Defendants' counsel affirming  
26 that at the time the declarations were submitted by Defendants, it was most reasonable for  
27 Defendants to believe and represent that instructions from Defendants' supervisory personnel to  
28 its desk personnel would be ineffective and difficult to obtain compliance with. Defendants

1 disregarded such knowledge and instead represented to the court through 21 declarations that such  
2 instructions from supervisors to subordinates would be effective and achieve compliance.

3 (f) The evidence submitted in support of the court's Order to Show Cause re  
4 Contempt sufficiently evidenced that one of the declarations – that of Captain William Murphy –  
5 was materially false. Defendants made no attempt to address this allegation or evidence and  
6 presented no counter-declarations or other evidence in rebuttal.

7 7. The Court further finds that the affidavits in support of the Order to Show Cause re  
8 Contempt, plus the evidence submitted in supplemental briefing by the parties, evidence that  
9 Defendants, and each of them, had no lawful excuse or substantial justification for the violation of  
10 the court's orders and the judgment, or the misrepresentations made to the Court.

11 THEREFORE, IT IS ORDERED THAT Defendants, and each of them, are in contempt of  
12 this court, and are subject to judgment for all lawful sanctions and punishment provided for under  
13 Code of Civil Procedure sections 1218 and 1219. The imposition of any such sanction or  
14 punishment is hereby stayed until January 2, 2013, subject to compliance by Defendants with the  
15 further enforcement measures ordered by this court on November 21, 2012. Should Defendants  
16 not comply with the November 21, 2012 order, this Court shall lift the stay and impose  
17 punishment or make such further orders as necessary to ensure compliance.

18 IT IS FURTHER ORDERED THAT Plaintiffs are entitled under Code of Civil Procedure  
19 section 1218(a) to their reasonable fees and costs in instituting and prevailing on the court's Order  
20 to Show Cause re Contempt. This Court deems such reasonable fees and costs to be \$53,123.36.  
21 Such fees and costs will be paid within 60 days of service on all parties of notice of the entry of  
22 this Order.

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IT IS FURTHER ORDERED THAT \_\_\_\_\_

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Terry Green  
JUDGE OF THE SUPERIOR COURT

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I, Christina Sanchez, am employed in the City of Long Beach, Los Angeles County,  
5 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.

6 On December 21, 2012, I served the foregoing document(s) described as

7 **[PROPOSED] ORDER ON PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AFTER**  
8 **HEARING ON OSC RE CONTEMPT**

9 on the interested parties in this action by placing

[ ] the original

[X] a true and correct copy

10 thereof enclosed in sealed envelope(s) addressed as follows:

11 **"SEE ATTACHED SERVICE LIST"**

12  
13 X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and  
14 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,  
15 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.

16 Executed on December 21, 2012, at Long Beach, California.

17        (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the  
addressee.

18 Executed on December 21, 2012, at Long Beach, California.

19        (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of  
20 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  
21 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.

22 Executed on December 21, 2012, at Long Beach, California.

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

25        (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.

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27 CHRISTINA SANCHEZ  
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“SERVICE LIST”

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

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