

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Animal Protection and Rescue League, Inc. vs. Chabad of Irvine

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

CASE NUMBER:
30-2015-00809469-CU-BT-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 06/23/17 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 6/23/17. Following standard court practice the mailing will occur at Sacramento, California on 6/26/17.

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Clerk of the Court, by:



, Deputy

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 06/23/2017

TIME: 04:38:00 PM

DEPT: C34

JUDICIAL OFFICER PRESIDING: Martha K. Gooding

CLERK: Javier Espino, Delia Sanchez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2015-00809469-CU-BT-CJC** CASE INIT.DATE: 09/11/2015

CASE TITLE: **Animal Protection and Rescue League, Inc. vs. Chabad of Irvine**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT ID/DOCUMENT ID: 72613513

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 6/20/2017 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules in accordance with the Statement of Ruling attached hereto and incorporated herein.

Court orders Clerk to give notice.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 23 2017

DAVID H. YAMASAKI, Clerk of the Court

BY: PK, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

ANIMAL PROTECTION AND
RESCUE LEAGUE, INC. ,

Plaintiff,

v.

CHABAD OF IRVINE AND THE
CHABAD HEBREW ACADEMY-
LUBAVITCH OF ORANGE
COUNTY ,

Defendant.

30-2015-00809469
STATEMENT OF RULING
Hon. Martha K. Gooding
Dept. C34

This action is brought by Plaintiff Animal Protection and Rescue League, Inc. ("APRL" or "Plaintiff") against Chabad of Irvine ("Chabad-Irvine") and The Chabad Hebrew Academy-Lubavitch of Orange County ("Lubavitch") under the California Unfair Competition Law ("UCL"). At the heart of the action is an annual Jewish religious ritual known as Kaporos (also called Kapporot), in which live chickens are used to perform an atonement ritual and, later, ritually slaughtered in accordance with Jewish law. APRL contends Defendants' participation in the Kaporos ritual constitutes an "unlawful business practice" within the meaning of Section 17200 of the Business and Professions Code,

1 because the manner in which the chickens are kept, slaughtered and disposed of is a violation of
2 various state statutes or local municipal codes.

3 APRL asserts a single cause of action under Section 17200 et seq. of the Business and
4 Professions Code, alleging “Defendants illegally harbored, slaughtered, and disposed of hundreds of
5 chickens” in connection with the Kaporos ritual. See 8/31/2016 First Amended Verified Complaint
6 (“FAC”) ¶¶ 30. Plaintiff seeks injunctive relief on that cause of action, specifically, preliminary and
7 permanent injunctions enjoining defendants “from killing any chicken or other animal for, or on behalf
8 of, another person, for compensation or a donation” and “from harboring, slaughtering, and/or
9 disposing of any chicken or other animal in violation of any of the” statutes alleged in the FAC. See
10 FAC, Prayer at ¶¶ 1, 2.¹

11 Defendant Chabad-Irvine filed an Answer to the FAC and asserted 25 affirmative defenses.
12 Defendant Lubavitch did not respond to the FAC, and its default was entered on June 8, 2017.

13 The case was scheduled for trial on June 19, 2017. Pursuant to Section 598 of the California
14 Code of Civil Procedure, the Court determined that justice – as well as the economy and efficiency
15 of handling the litigation – would be promoted by ordering trial to proceed first on the threshold issue
16 whether the challenged conduct constitutes a “business practice” under Section 17200.² The Court
17 therefore ordered that this issue to be tried first.

18 Before trial commenced, the Court also addressed another preliminary matter raised by the
19 parties: the status of defaulted Defendant Lubavitch. Plaintiff persuasively argued that the witnesses
20 who would testify in a default prove-up hearing with respect to Lubavitch would be essentially
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23 ¹ Plaintiff’s Prayer states that it seeks “declaratory relief” in the form of a declaration that Defendant’s conduct described in
24 the FAC is illegal. That does not allege a claim for declaratory relief. First, it is not asserted as a separate cause of action
25 and does not appear to come with the scope of Section 1060 of the Code of Civil Procedure. Second, it seeks a
26 declaration only for the redress of past wrongs, rather than operating prospectively. See *Babb v. Superior Court* (1971) 3
27 Cal.3d 841, 848; *Baldwin v. Marina City Properties, Inc.* (1978) 79 Cal.App.3d 393, 407. Third, in any event, such a
28 declaration is unnecessary. See Code. Civ. Proc. § 1061 (“The court may refuse to exercise the power granted by this
chapter in any case where its declaration or determination is not necessary or proper at the time under all the
circumstances.”) Whether Defendants’ conduct of the 2014 Kaporos ritual was unlawful is squarely put at issue by
Plaintiff’s single cause of action for unlawful business practices under the UCL. A declaratory relief action seeking the
same relief is therefore redundant and unnecessary.

² All statutory references are to the Business and Professions Code unless otherwise indicated.

1 identical to those needed for trial of the "business practice" issue with respect to Chabad-Irvine.
2 Accordingly, the Court combined, in a single evidentiary hearing, (1) the trial on the initial "business
3 practice" issue as to Chabad-Irvine; and (2) the "prove-up" hearing as to Lubavitch, in which Plaintiff
4 could produce evidence to prove its entitlement to the relief it seeks against Lubavitch.³

5 Pursuant to that order, trial commenced and was conducted on June 20, 2017 in well less
6 than a day. Plaintiff was represented by Bryan W. Pease and Alanna J. Pearl. Defendant Chabad-
7 Irvine was represented by Leslie Keith Kaufman and Stephanie N. Taub.

8 At the conclusion of all evidence and closing argument, the parties submitted the matter to the Court
9 for ruling. Neither party requested a Statement of Decision pursuant to Section 632 of the Code of
10 Civil Procedure, and the requirements of that statute therefore do not apply here. Nevertheless, the
11 Court issues this Statement of Ruling to briefly summarize its decision and the bases therefor. The
12 Court's findings and conclusions below are based on the Court's consideration of all the evidence
13 admitted at trial, including the parties' Joint List of Stipulated Facts ("Stip.Facts"), and reflect the
14 Court's evaluation of the credibility of each of the witnesses who testified.

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19 ³ Attorney Ronan Cohen ("Cohen"), counsel of record for Lubavitch, appeared at the outset of trial and stated the following:
20 First, Lubavitch no longer exists; it is currently defunct and has been for years. Indeed, it was suspended by the California
21 Secretary of State several years ago. Second, Cohen mistakenly filed an answer to Plaintiff's Complaint on behalf of the
22 defunct Lubavitch and thus appeared (and is listed) as its counsel of record in this action. Third, in connection with an anti-
23 SLAPP motion filed by Chabad-Irvine in this action, Cohen filed a declaration, dated November 12, 2015, stating that
24 Lubavitch is "a defunct entity that ha[s] not operated in many years and ha[s] been suspended by the California Secretary
25 of State several years ago." However, Cohen never withdrew as counsel of record for Lubavitch, sought to be relieved as
26 counsel of record, sought to correct the unauthorized filing of the Answer, or otherwise sought to correct, or be relieved of
27 the consequences of, his mistaken filing of the Answer. Cohen also never sought to set aside the default entered against
28 Lubavitch.

24 Of course, Cohen's representations to the Court are not evidence. Nor do they constitute a motion to set aside the
25 default entered against or to otherwise cure the consequences of Cohen's acknowledged errors. Thus, as of the trial date,
26 the record before the Court reflected that (a) Lubavitch was properly served (through its counsel of record) with the FAC;
27 (b) Lubavitch failed to respond to the FAC; and (c) default was entered against Lubavitch on June 8, 2017. As a result of
28 that default, all well-pleaded allegations against Lubavitch in the First Amended Complaint are deemed admitted – that is,
all "material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." *Kim v. Westmoore
Partners, Inc.* (2011) 201 Cal.App.4th 267, 281 (citations and quotations omitted). Thus, the Court proceeded to conduct a
prove-up proceeding to determine what, if any, remedy Plaintiff can prove it is entitled to obtain vis a vis Lubavitch. As set
forth below, the Court concludes Plaintiff has not proven it is entitled to any relief against Lubavitch.

1 THE FACTS⁴

2 **The Kaporos Ritual**

3 Kaporos is an ancient religious ritual practiced by those of the Orthodox Jewish religion. See
4 Stip.Facts ¶¶ 9, 10. Although the parties stipulated the Kaporos ritual has been practiced by
5 Orthodox Jewish congregations for “at least several hundred years” (*id.* ¶ 11), credible trial testimony
6 showed the ritual has been practiced since at least the 7th century. Kaporos is an atonement ritual
7 performed during the Jewish high holy days, between Rosh Hashanah and Yom Kippur. See *id.* ¶
8 7. It is an exercise of sincerely held religious beliefs (*id.* ¶ 6) that historically incorporates chickens
9 as a central part of the ritual. See *id.* ¶ 8.

10 Rabbi Alter Tenenbaum of Chabad-Irvine credibly testified about the nature and purpose of
11 Kaporos. To perform the Kaporos ritual, an individual gently holds a live chicken while atoning for
12 his or her sins, reciting Hebrew prayers and reflecting on human frailty, mortality, and the gift of life.⁵
13 The chicken is then slaughtered in a ritual manner by a schochet (a ritual slaughterer) and disposed
14 of in accordance with Jewish law. All this is done as a means of helping participants to appreciate
15 the transitory nature of human life, to atone for their sins, and to be inspired to cherish life,
16 appreciate the gift of life bestowed on them, and live every day in the best way they possibly can.

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19 **Chabad of Irvine**

20 Defendant Chabad-Irvine is a local, “full-service” Jewish synagogue. As such, it provides a
21 broad range of faith-based ministry to the Jewish community, including, by way of example, religious
22 services, rituals, ceremonies and observances (such as weddings, namings, bar mitzvahs, bat
23 mitzvahs, funerals), religious programs, religious education for children, teens and adults (including

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25 ⁴ To the extent facts are recited in the “Conclusions” section below that are not stated in this “Facts” section, they are also
26 part of the Court’s factual findings. Likewise, to the extent legal conclusions are included in this “Facts” section that are not
stated in the “Conclusions” section, they are part of the Court’s conclusions.

27 ⁵ Ideally, the gender of the chicken used during Kaporos matches the gender of the participant. It is possible for more than
28 one ritual participant to “share” a single chicken, and there are times a single participant may use more than one chicken.
For example, a pregnant woman who does not know the gender of her unborn baby would use three chickens: a female
chicken for herself, another female chicken in case her baby is a girl; and a male chicken in case her baby is a boy.

1 a Hebrew school), Jewish holiday observances, community outreach, hospital visitation, and
2 counseling. The U.S. Internal Revenue Service recognizes Chabad-Irvine as a non-profit
3 organization and has granted it 501(c)(3) tax exempt, non-profit status. Its non-profit status has
4 never been revoked.

5 Chabad-Irvine is led by Rabbi Alter Tenenbaum, who has been head rabbi since 1991.
6 Throughout Rabbi Tenenbaum's tenure at Chabad-Irvine, the synagogue has offered the Kaporos
7 ritual to its congregation (and to others who wish to participate) almost every year, including 2014,
8 2015 and 2016. Chabad-Irvine's conduct of and participation in the Kaporos ritual is consistent with,
9 and advances, the religious and spiritual goals and mission of the synagogue.

10 Chabad-Irvine conducted the 2014 Kaporos ritual in the synagogue's yard and parking lot; in
11 2015, it was conducted the ritual in the synagogue's yard. Individuals who wished to participate went
12 to the synagogue during a three-hour window on the day designated for the ritual, where Chabad-
13 Irvine provided them a live chicken to use in performing the ritual. Rabbis were present throughout
14 the three-hour time period to assist participants in saying the ritual prayers or reciting the prayers in
15 Hebrew, or otherwise to provide spiritual or religious guidance to participants. Some participants
16 chose to avail themselves of the rabbis' assistance; some did not. After the ritual concluded, the
17 chickens were slaughtered by a schochet, whose fee was paid by Chabad-Irvine. Because Jewish
18 law does not allow waste, the chickens' carcasses were then returned for rendering to the company
19 that provided them.

20 In 2014 and 2015 (as in prior years), Chabad-Irvine suggested that each participant in the
21 Kaporos ritual make an \$18 donation to the synagogue.⁶ The donation, however, was completely
22 optional. Some participants made larger donations, some smaller. Some made no donation.
23 Individuals who made no donation – e.g., because they were unable to do so, had insufficient funds
24 to make a donation on the day of the ritual, or simply chose not to donate – nevertheless could and
25 did participate in Kaporos. No one wishing to participate in the ritual would be excluded or turned
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27 ⁶ Rabbi Tenenbaum credibly testified that Chabad-Irvine did not refer to the \$18 donation as a purchase. It was a
28 suggested, but no means mandatory, donation, and it was referred to as such.

1 away for lack of a donation. Anyone who wished to bring their own chicken to use in performing the
2 ritual could certainly do so; however, in all the years he has been at Chabad-Irvine, Rabbi
3 Tenenbaum cannot recall any instance in which a ritual participant chose to do so.

4 The \$18 amount of the suggested donation has important spiritual symbolic significance in
5 the Jewish religion. When Hebrew letters are assigned a numerical value, the letters that spell the
6 Hebrew word "chai" (meaning "life") equal the number 18. For this reason, since at least 1991 when
7 Rabbi Tenenbaum joined Chabad-Irvine (and, indeed, in his experience, throughout his entire
8 childhood and adult life), the suggested donation for the Kaporos ritual has been \$18.⁷

9 To enable individuals to participate in the ritual in 2014 and 2015, Chabad-Irvine arranged
10 with a private company to supply the live chickens and then, after they had been slaughtered by the
11 schochet, to render the carcasses. Chabad-Irvine paid for the cost of the chickens (which included
12 the cost of disposing of them after being slaughtered), and also paid for the schochet's fee. Since at
13 least 1991, every year Chabad-Irvine has conducted the Kaporos ritual, the expenses it incurred in
14 connection with the ritual exceeded the amount of the donations it obtained from participants.
15 Performance of the Kaporos ritual was never intended to be – and it was not at any time – a fund-
16 raising or profit-generating activity for the synagogue. It was never intended to (and it never did)
17 generate positive cash flow for Chabad-Irvine. It was, as the parties' stipulated, an exercise of
18 sincerely-held religious beliefs with ancient origins.

19 In 2016, the Kaporos ritual was not conducted at the Chabad-Irvine synagogue, but rather at
20 Baladi Poultry, a commercial poultry company in Midway City. As always, Chabad-Irvine rabbis
21 were present during the three-hour period set aside for the ritual, to assist participants in performing
22 Kaporos or otherwise to provide spiritual guidance at the event. Instead of Chabad-Irvine
23 purchasing the chickens for participants as it had in prior years, however, participants purchased the
24 chickens directly from Baladi Poultry, which not only provided the chickens but also made
25 arrangements with the ritual slaughterer and provided disposal of the carcasses.

26 _____
27 ⁷ Witness Ronnie Steinau – who testified for Plaintiff at trial and also signed the verified FAC as "an agent of Plaintiff" (see
28 Verification to FAC) – testified she called Chabad-Irvine on the telephone and was told by a woman who answered that
she could participate in the Kaporos ritual at Chabad-Irvine only if she purchased a chicken for \$27. The Court finds this
testimony unreliable and not credible.

1 Chabad-Irvine intends to continue to participate in the annual performance of the ancient
2 Kaporos ritual in the future.

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4 **Chabad Hebrew Academy-Lubavitch of Orange County**

5 Plaintiff offered little evidence about Defendant Lubavitch. Witnesses Jill Mulato and Ronnie
6 Steinau each testified that, on the day of the Kaporos ritual in October 2014, after observing the
7 events at Chabad-Irvine, she went to the Hebrew Academy in Huntington Beach to observe its
8 Kaporos ritual, understanding and believing it to be the academy run by Defendant Lubavitch.⁸
9 There, both Mulato and Steinau saw live chickens in cages and saw chickens being handed to
10 individuals. Steinau spoke to a woman in the parking lot who expressed displeasure with the ritual
11 taking place at the Hebrew Academy.

12 The Court finds the evidence proved that a Kaporos ceremony was conducted in 2014 at
13 Defendant Lubavitch's Hebrew Academy in Huntington Beach and that it is the event conducted by
14 Lubavitch that is referred to in Plaintiff's FAC. However, Plaintiff presented no evidence that
15 Lubavitch performed – or had any involvement in the performance of – a Kaporos ritual in 2015 or
16 2016; that Lubavitch intends to perform the Kaporos ritual in the future; or, indeed, that Lubavitch
17 even still exists.⁹

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24 ⁸ Steinau previously had researched the names and locations of Chabad and Hebrew Academy organizations in Orange
County that perform the Kaporos ritual; Lubavitch is one of the entities whose name and address she identified.

25 ⁹ The allegation in the FAC that “[o]n information or belief, Defendants engage in these events annually every October”
26 (FAC ¶ 19) does not fill the evidentiary gap. By reason of Lubavitch's default, only the well-pled material factual allegations
of the FAC are deemed admitted; “contentions, deductions or conclusions or fact or law” are not. *Kim v. Westmoore*
27 *Partners, Inc.* (2011) 201 Cal.App.4th 267, 281 (citations and quotations omitted). An allegation made on “information or
belief,” particularly (as here) in a verified complaint, does not constitute a well-pled factual allegation; it is no more than a
28 contention, deduction or factual conclusion. See *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149,
1158 (for purposes of demurrer, a pleading made on information and belief is insufficient if it merely asserts the facts so
alleged without alleging the information that leads the plaintiff to believe the allegations are true).

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CONCLUSIONS

Chabad-Irvine

Pursuant to the Court's CCP Section 598 order, the only issue tried to the Court at this juncture as to Chabad-Irvine is whether the challenged conduct by Chabad-Irvine constitutes a "business practice" within the meaning of Section 17200. As explained below, the Court concludes it does not. The evidence shows the conduct of the Kaporos ritual is a religious practice – a religious ritual of atonement – not a "business practice" that comes within the ambit of Section 17200.¹⁰

The California Unfair Competition Law ("UCL") prohibits and provides civil remedies for unfair competition. *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320. "Unfair competition" is defined as "any unlawful, unfair or fraudulent business act or practice." Bus. & Prof. Code § 17200. The purpose of the UCL "is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services." *Kwikset*, 51 Cal.4th at 320 (citing and quoting *Kasky v Nike, Inc.* (2002) 27 Cal.4th 939, 949).

To be sure, the scope of the UCL is "broad" and its coverage is "sweeping." *Cel-Tech Comm'ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180. In enacting the UCL, the Legislature intended to include within its ambit "anything that can properly be called a business practice and that at the same time is forbidden by law." *Id.* (citation/quotation omitted). But the reach of the statute is not unlimited. *Id.* at 182. A party seeking to invoke the statute must prove that the challenged conduct is a business act or practice. If it is able to carry that burden of proof, the UCL provides for injunctive and restitutionary remedies. Bus. & Prof. Code § 17203.

The challenged conduct here by Chabad-Irvine is not a business act or business practice. Chabad-Irvine's purchase of chickens for participants to use in the 2014 and 2015 Kaporos ritual does not transform its conduct from that of a synagogue meeting, or assisting in meeting, the religious and spiritual needs of the community to that of a commercial enterprise. As noted, the purpose of the UCL is to "protect both consumers and competitors by promoting fair competition in

¹⁰ The Court notes that a Federal District Court, applying the California UCL, recently reached the same conclusion. See *United Poultry Concerns v. Chabad of Irvine*, No. 8:16-cv-01810-AB-GJS (C.D.Cal. May 12, 2017), Dkt. No. 11.

1 commercial markets for goods and services.” *Kwikset*, 51 Cal.4th at 320 (citing and quoting *Kasky v*
2 *Nike, Inc.* (2002) 27 Cal.4th 939, 949). It is not to regulate the conduct of religious organizations as
3 they provide for the religious and spiritual needs of the community by conducting – or by assisting in
4 the conduct of – religious rituals.

5 That the conduct of a religious ritual or observance entails the purchase of “goods” (here,
6 chickens) or “services” (here, of a ritual slaughterer) or that it results in donations being made to the
7 synagogue that conducts, oversees, or assists in the performance of the ritual does not lead to a
8 different conclusion. Undoubtedly, the performance of many religious ceremonies or rituals requires
9 the purchase of “goods” necessary to conduct them (e.g., communion wafers, wine, candles) or
10 payments for “services” (e.g., the services of a minister, rabbi, cantor, organist/musician, or choir
11 director). And plainly, many religious services or ceremonies result in donations being solicited and
12 made (e.g., when offering plates or baskets are passed among a congregation during a religious
13 service for the purpose of requesting and receiving donations). But that does not convert those
14 religious activities, rituals and observances into business practices. They remain *religious* activities,
15 rituals and observances. Nor does that convert the synagogue or church that engages in those
16 religious activities, rituals and observances into a business whose religious activity is subject to the
17 UCL.

18 19 **Hebrew Academy-Lubavitch Of Orange County**

20 The evidence before the Court showed that Defendant Lubavitch conducted a Kaporos ritual
21 at its Huntington Beach Hebrew Academy in October 2014. For the reasons set forth above,
22 however, Plaintiff did not prove a violation of Section 17200 by Lubavitch, as the ritual is (and was) a
23 religious ritual, not a business practice within the ambit of Section 17200.

24 Even if Plaintiff had proven a Section 17200 violation by Lubavitch, however, there is no
25 evidence Lubavitch continued to perform the challenged conduct in the years following 2014 or that
26 it intends to continue to perform the challenged conduct in the future. Thus, Plaintiff failed to prove
27 its right to the injunctive remedy it seeks against Lubavitch. It is true Section 17203 applies to past
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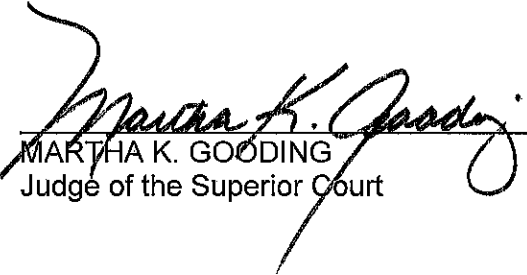
1 conduct. See Bus. & Prof. Code § 17203 (any person who “has engaged” in unfair competition may
2 be enjoined). The statute does not, however, dispense with the requirement that, to obtain an
3 injunction, a plaintiff must show there exists a threat that the allegedly wrongful act will continue.
4 “[I]njunctive relief will be denied if at the time of the order of judgment, there is no reasonable
5 probability that the past acts complained of will recur.” *California Service Stations & Auto. Repair*
6 *Ass’n v. Union Oil Co. of Calif.* (1991) 232 Cal.App.3d 44, 57. Plaintiffs have not proven there is a
7 reasonable probability Lubavitch will continue to engage in the challenged conduct in the future.

8 * * * * *

9 Chabad-Irvine shall, within ten (10) days of notice of this Statement of Ruling, efile a Proposed
10 Judgment with the Court that is consistent with this Statement of Ruling, including filing an editable
11 version of the Proposed Judgment. Chabad-Irvine shall also serve a copy of the Proposed
12 Judgment by fax, personal service or, if the parties have agreed to email service, by email. Plaintiff
13 shall have five court days to e-file and serve (in the same manner prescribed for the Proposed
14 Judgment) any objections to the Proposed Judgment.

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16 DATED: _____

6/23/2017

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MARTHA K. GOODING
Judge of the Superior Court