

Stephanie N. Taub (SBN: 301324)
FIRST LIBERTY INSTITUTE
2001 West Plano Pkwy, Ste. 1600
Plano, TX 75075
Telephone: (972) 941-4444
Facsimi
Email: [REDACTED]
Attorney [REDACTED] enors

Aryeh Kaufman (SBN: 289745)
[REDACTED] UFMAN
[REDACTED]
[REDACTED]
[REDACTED] rvenors

G. Scott Sobel, Esq. (SBN: 124818)
[REDACTED]
[REDACTED]
Facsimi
Email: [REDACTED]
Attorney [REDACTED] r Hersel Cohen

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

ANIMAL PROTECTION AND RESCUE
LEAGUE, a California nonprofit
corporation; and CORY MAC
A'GHOBHAINN, an individual;

Plaintiffs,

vs.

CITY OF LOS ANGELES, LOS
ANGESES POLICE DEPARTMENT,
CITY OF IRVINE, IRVINE POLICE
DEPARTMENT, DOES 1 THROUGH 50,

Defendants.

Case No. 8:17-CV-01581-JLS-JDE

**PROPOSED INTERVENORS'
EMERGENCY *EX PARTE*
MOTION TO INTERVENE AND
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

HEARING REQUESTED
September 28, 2017 at 2:30 PM

**BEFORE THE HONORABLE
JOSEPHINE L. STATON**

1 TO THE HONORABLE JOSEPHINE L. STATON AND ALL PARTIES:

2 An emergency protective order is needed to protect Hersel Cohen (“Mr.
3 Cohen”) and Orthodox Jewish Congregations in Los Angeles and Irvine from
4 unlawful vigilante acts taking place this week against Jewish congregants.
5 Yesterday (September 27, 2017) afternoon, vigilantes broke into Mr. Cohen’s
6 backyard in an attempt to stop a lawful Jewish atonement ritual by trying to
7 effectuate a private person arrest under Penal Code 597(a). This took place after an
8 email yesterday morning by opposing counsel stating that “[m]embers of APRL
9 will continue to request private person arrests to enforce PC 597(a).” Because the
10 ritual is scheduled to continue until Yom Kippur begins on the evening of
11 September 29, 2017, an emergency protective order is necessary to protect the
12 safety and religious freedom of Orthodox Jewish congregants **today and**
13 **tomorrow – with the most urgent need tonight.**

14 Proposed Intervenor Mr. Cohen, Chabad of Irvine (a Jewish synagogue),
15 Congregation Ohel Moshe, Inc. (a Jewish synagogue), the Hebrew Discovery
16 Center (a Jewish youth organization), and Yeshiva Ohr Elchonon Chabad West
17 Coast Talmudical Seminary (a Yeshiva college) (collectively, the “Congregations”
18 or “Proposed Intervenor”) respectfully move to intervene ex parte for the purpose
19 of moving for an emergency Temporary Restraining Order to protect the Orthodox
20 Jewish Congregations from threats of harassment, physical assault, battery, and
21 false arrest **in the remaining two days leading up to Yom Kippur.**

22 In the Complaint, Plaintiffs threatened to commit acts of vigilante violence
23 against members of Orthodox Jewish congregations located in Irvine and Los
24 Angeles. *See* Compl. ¶¶ 6, 49, 68, Dkt. No. 1 (threatening to put religious
25 congregants under “private person arrest” using physical force and acknowledging
26 that they would be guilty of “battery” and “false arrest” if their legal theory is
27 incorrect). Plaintiffs targeted Jewish congregations that they believe engage in an
28

1 ancient and lawful religious atonement ritual called kaporos; the ritual takes place
 2 annually between Rosh Hashanah and Yom Kippur.¹ Plaintiffs named each of the
 3 Proposed Intervenor as targets in their Notice of Interested Persons.

4 Concerned about their safety in light of the Complaint's imminent threats,
 5 the Congregations contacted counsel for all parties on September 19, 2017,
 6 indicating their intention to file an ex parte motion for intervention and a TRO on
 7 September 20, 2017.² The Congregations intended to seek a TRO prohibiting
 8 Plaintiffs and associated persons from interfering with their atonement ritual.

9 On September 20, 2017, Plaintiffs' counsel represented that no one is
 10 "planning to interfere" with the kaporos ritual this year and that "[n]o one is going
 11 to physically attempt to place anyone under private persons arrest." *See* Decl.
 12 Stephanie N. Taub, Ex. D. In light of this express reassurance, the Congregations
 13 withheld filing their motion and instead notified the parties that they reserved the
 14 right to take action seeking appropriate relief with the Court, if circumstances
 15 changed and their members' safety or constitutional rights were in danger.

16 Despite Plaintiffs' express promise, today, vigilantes broke into Mr. Cohen's
 17 property, stole from him, and threatened to place him under private person arrest.
 18 These vigilantes actively interfered with the kaporos ritual in the way threatened in
 19 the Complaint, and they cited the precise penal code section relied upon in the
 20 Complaint. These vigilantes are either affiliated with APRL or colluding with
 21 APRL to violate Mr. Cohen's First Amendment right to freely exercise his
 22 religious beliefs.

23 Therefore, the Congregations now seek a protective order from the Court.
 24 We recognize that the Court generally resolves ex parte motions on the papers, but

25
 26 ¹ Plaintiffs are aware that courts have repeatedly rejected attacks on this ancient
 27 religious practice, and law enforcement officers have concluded that the atonement
 28 ritual is lawful.

² Counsel for Defendants have not yet appeared in this action.

1 if it would aid the Court in a timely resolution of this matter, the Congregations
2 will be available for a hearing on September 28, 2017 at 2:30 PM.

3 Plaintiffs' counsels' information is as follows:

4 Bryan W. Pease (SBN 239139)
5 Parisa Ijadi-Maghsoodi (SBN 273847)
6 LAW OFFICE OF BRYAN W. PEASE

7 [REDACTED]

8 Tel: [REDACTED]

9 Email: [REDACTED]

10 G. David Tenenbaum (SBN 150629)
11 LAW OFFICE OF G. DAVID TENENBAUM

12 [REDACTED]

13 Tel: [REDACTED]

14 Email: [REDACTED]

15 David R. Simon (SBN 145197)
16 SIMON LAW GROUP

17 [REDACTED]

18 Tel: [REDACTED]

19 Email: [REDACTED]

20 The contact information for Defendants' counsel is believed to be the
21 following:

22 Arlene Hoang
23 Deputy City Attorney for the City of Los Angeles
24 Office of the City Attorney
25 200 N Main St Fl 6
26 Los Angeles, CA 90012

27 T: [REDACTED]

28 F: [REDACTED]

1
2 Gabriel Dermer
3 Deputy City Attorney for the City of Los Angeles
4 Office of the City Attorney
5
6
7

8
9 T: ([REDACTED]
10 F: [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Jeffrey T. Melching
15 City Attorney for the City of Irvine
16 Rutan & Tucker, LLP
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

14 This motion is based upon the supporting memorandum of points and
15 authorities and attached declarations and exhibits.
16

17 Dated: September 28, 2017

18 Stephanie N. Taub
19 First Liberty Institute
20 Attorneys for Proposed Intervenors

21 By: /s/ Stephanie N. Taub
22 Stephanie N. Taub
23
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25
26
27
28

Stephanie N. Taub (SBN: 301324)
FIRST LIBERTY INSTITUTE
2001 West Plano Pkwy, Ste. 1600
Plano, TX 75075
Telephone: (972) 941-4444
Facsim: [REDACTED]
Email: [REDACTED]
Attorney [REDACTED] enors

Aryeh Kaufman (SBN: 289745)
[REDACTED] UFMAN
[REDACTED]
[REDACTED]
[REDACTED] rvenors

G. Scott Sobel, Esq. (SBN: 124818)
[REDACTED]
[REDACTED]
Facsim: [REDACTED]
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**MEMORANDUM OF POINTS AND
AUTHORITIES SUPPORTING
PROPOSED INTERVENORS'
EMERGENCY *EX PARTE*
MOTION TO INTERVENE AND
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

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SUMMARY OF ARGUMENT

An emergency protective order is necessary to protect Orthodox Jewish congregants from ongoing threats of vigilantism designed to chill the exercise of First Amendment rights. Yesterday (September 27, 2017), vigilantes broke into Mr. Cohen's backyard in an attempt to stop a lawful Jewish atonement ritual. Because the ritual is scheduled to continue until Yom Kippur begins on the evening of September 29, 2017, an emergency protective order is necessary to protect the safety and religious freedom of Orthodox Jewish congregants today and tomorrow.

Proposed Intervenor Hersel Cohen ("Mr. Cohen"), Chabad of Irvine (a Jewish synagogue), Congregation Ohel Moshe, Inc. (a Jewish synagogue), the Hebrew Discovery Center (a Jewish youth organization), and Yeshiva Ohr Elchonon Chabad West Coast Talmudical Seminary (a Yeshiva college) (collectively, the "Congregations" or "Proposed Intervenor") respectfully move to intervene in this action and move for a Temporary Restraining Order to protect the Congregations from Plaintiffs' threat of harassment, physical assault, and false arrest.

Four times in the past three years, opposing counsel has unsuccessfully attempted ask courts for a last-minute injunction against Orthodox Jewish rabbis, synagogues, or organizations.¹ Each time, opposing counsel files an injunction motion without warning just days or weeks before the synagogue's annual pre-

¹ Counsel Bryan Pease and David Simon represented the Animal Protection and Rescue League ("APRL") or United Poultry Concerns ("UPC") in three prior lawsuits against Orthodox Jewish organizations engaging in kaporos in Southern California. Each time, the courts held in favor of the Jewish organizations. Bryan Pease is also the CEO, CFO, and Secretary of Plaintiff APRL.

Yom Kippur ritual.² And each time, after reviewing the merits, courts ultimately reject the motion.³ Most recently, on September 14, 2017, the Court of Appeals for the Ninth Circuit rejected opposing counsel's motion for an injunction pending appeal against Chabad of Irvine's upcoming kaporos ritual.⁴ Plaintiffs' threat of physical force in the Complaint is therefore a threat to bypass the Ninth Circuit's recent ruling and impose its own version of vigilante justice. *See* Compl. ¶¶ 6, 49, 68, Dkt. No. 1 (threatening to put religious congregants under "private person arrest" using physical force).

As in every other kaporos case, opposing counsel delayed filing its lawsuit until shortly before Yom Kippur, creating an unnecessary emergency situation for the courts and religious practitioners.⁵ Because opposing counsel has been aware of the events giving rise to its Complaint for over three years, there is no reason to justify Plaintiffs' delay except to prejudice and harass Defendants and Proposed Intervenor in an attempt to chill religious free exercise rights.

² UPC's Motion for Injunction Pending Appeal, *United Poultry Concerns v. Chabad of Irvine*, No. 17-55696 (9th Cir. Aug. 18, 2017); UPC's Ex Parte TRO Application, *United Poultry Concerns v. Chabad of Irvine*, No. 8:16-cv-01810-AB-GJS (C.D. Cal. Sept. 29, 2016); APRL's Ex Parte TRO Application, *Animal Prot. & Rescue League, Inc. v. Chabad of Irvine*, No. 30-2015-00809469-CU-BT-CJC (Cal. Super. Ct. Sept. 16, 2015); UPC's Ex Parte TRO Application, *United Poultry Concerns, Inc. v. Bait Aaron, Inc.*, No. BC59712 (Cal. Super. Ct. Sept. 2, 2015).

³ Order Denying Motion for Injunctive Relief, *United Poultry Concerns v. Chabad of Irvine*, No. 17-55696 (9th Cir. Sept. 14, 2017); Minutes Telephonic Conference Dissolving TRO, *United Poultry Concerns v. Chabad of Irvine*, No. 8:16-cv-01810-AB-GJS (C.D. Cal. Oct. 11, 2016); Minute Order Denying Ex Parte TRO Application, *Animal Prot. & Rescue League, Inc. v. Chabad of Irvine*, No. 30-2015-00809469-CU-BT-CJC (Cal. Super. Ct. Sept. 18, 2015); Ex Parte Proceeding - Denied, *United Poultry Concerns, Inc. v. Bait Aaron, Inc.*, No. BC59712 (Cal. Super. Ct. Sept. 2, 2015).

⁴ Order Denying Motion for Injunctive Relief, *United Poultry Concerns v. Chabad of Irvine*, No. 17-55696 (9th Cir. Sept. 14, 2017).

⁵ *See supra*, note 2.

1 Because of the outcome of the previous cases, Plaintiffs are aware that the
 2 kaporos ritual is lawful and constitutionally protected. Plaintiffs are aware that the
 3 court in *United Poultry Concerns v. Bait Aaron*, No. BC592712 (Cal. Super. Ct.,
 4 July 6, 2016) at 21, Ex. A, held the Free Exercise Clause of the First Amendment
 5 protected kaporos practitioners from the lawsuit's illegitimate aim "to use the court
 6 to end a religious practice." *See* Compl. ¶ 45, Dkt. No. 1 (mischaracterizing the
 7 holding of *Bait Aaron*). Nevertheless, Plaintiffs' harassment of these rabbis,
 8 synagogues, and other religious organizations continues and has now escalated to
 9 trespass, theft, and threats of false arrest. *See* Compl. ¶¶ 6, 49, 68, Dkt. No. 1. The
 10 Congregations respectfully request that the Court permit intervention and protects
 11 them from the Complaint's specific threat of assault, battery, and false arrests of
 12 their members.

13 BACKGROUND

14 "Kapparot" or "Kaporos" is an Orthodox Jewish atonement ritual. The
 15 religious ritual dates back centuries and takes place in the days between the Jewish
 16 High Holidays of Rosh Hashanah and Yom Kippur. Decl. Hersel Cohen ¶ 4, Ex. B.
 17 The atonement ritual involves gently holding a live chicken over a congregant's
 18 head, reciting a prayer, and then ritually slaughtering the chicken in a Kosher and
 19 humane manner. *Id.* ¶¶ 4-5.

20 **Hersel Cohen** is an individual who engages in kaporos. Decl. Hersel Cohen
 21 ¶ 5, Ex. B. He is named in the Notice of Interested Persons. He was a party to the
 22 lawsuit *United Poultry Concerns v. Bait Aaron*, No. BC592712 (Cal. Super. Ct.,
 23 July 6, 2016), in which the court held in favor of kaporos practitioners.

24 In September 2016, in connection with kaporos, protestors came to his
 25 personal residence, blocked his driveway so that he could not leave, entered his
 26 home without permission, videotaped inside his home, walked into his minor
 27 children's bedrooms, yelled at his minor children, and physically fought with his
 28 son. *Id.* ¶ 7.

1 Yesterday, September 27, 2017, approximately 8 to 10 protestors trespassed
 2 onto Mr. Cohen's front yard. *Id.* ¶ 8. They threatened to arrest him pursuant to
 3 Penal Code § 597(a), if he did not give them chickens. *Id.* Mr. Cohen feared
 4 violence would break out. *Id.* Five protestors rushed past him and opened the gate.
 5 *Id.* ¶ 9. They went in very fast and started collecting the chickens and putting them
 6 in boxes. *Id.* Mr. Cohen went in to stop them, telling them, "bring them back, bring
 7 them back," but he could not stop them. *Id.* He tried to grab one box as one
 8 protestor was taking it, trying to stop them from stealing the chickens.⁶ *Id.* They
 9 took the boxes and ran out to their car, stealing between 20 and 30 chickens. *Id.* Mr.
 10 Cohen then called 911. *Id.* ¶ 11.

11 Police and animal control officers surveyed the yard and determined that
 12 everything was being done in accordance with the law. *Id.* ¶ 11. One officer stated
 13 that his office recognized the right of our community to carry out the kapparos
 14 ritual, as long as it was done in a humane manner as determined by animal control
 15 – which Mr. Cohen's was. *Id.* ¶¶ 11-12; *see also* Decl. G. Scott Sobel, Ex. E
 16 (attaching the police officers' cards with officer's note that there was "NO
 17 ILLEGAL ACTIVITY"). Some police officers stayed until all the protestors left.
 18 Decl. Hersel Cohen ¶ 13, Ex. B.

19 Additionally, yesterday, protestors also harassed each member of Mr.
 20 Cohen's Jewish community who came to his home to participate in the kaporos
 21 ritual, telling that they were "criminals" who would "be arrested for PC 597(a)."
 22 This threat deterred several members of the community from performing the ritual.
 23 *Id.* ¶ 10.

24 Mr. Cohen intends to continue facilitating kaporos rituals before Yom
 25 Kippur begins on Friday evening.

26
 27 ⁶ The protestor later told a police officer Mr. Cohen was pushing her and trying to
 28 hurt her, which is not true.

1 **Chabad of Irvine** is an Orthodox Jewish synagogue. It is named in the
 2 Notice of Interested Persons. In 2014, a local animal control expert from the Irvine
 3 Police Department and a special investigator from the California Department of
 4 Food and Agriculture watched Chabad of Irvine's ritual and affirmed that the ritual
 5 was done lawfully. Decl. Rabbi Tenenbaum ¶¶ 12-14, *Animal Protection and*
 6 *Rescue League v. Chabad of Irvine*, Ex. C. In 2014 and 2016, several activists
 7 showed up at the kaporos ceremony; they screamed at the little children, harassing
 8 them that their parents were partaking in kaporos, frightening them and causing
 9 them to cry. An anti-kaporos protest at Chabad of Irvine is scheduled for today,
 10 September 28, 2017.

11 **The Hebrew Discovery Center** is a Jewish youth organization. It is named
 12 in the Notice of Interested Persons. In accordance with their sincerely held
 13 religious beliefs, congregants or members of Hebrew Discovery Center have and
 14 will participate in a Kapparot ritual this year, in 2017. They intend to continue
 15 facilitating the ritual today, September 28, 2017, and a protest is planned today.

16 **Congregation Ohel Moshe** is a synagogue that caters to the spiritual needs
 17 and religious obligations of many orthodox Jews in the Greater Los Angeles area
 18 and offers various religious services to its congregants. It is named in the Notice of
 19 Interested Persons.

20 **Yeshiva Ohr Elchonon Chabad West Coast Talmudical Seminary**
 21 ("Yeshiva") is the largest yeshiva college on the West Coast of the United States
 22 and is affiliated with the Chabad movement. Yeshiva seeks to develop scholars
 23 thoroughly trained in all aspects of advanced Jewish scholarship; it prepares its
 24 students for positions as rabbis, teachers, and communal leaders, as well as for
 25 responsible, conscientious, and intelligent lay membership of the community.
 26 Yeshiva is named in the Notice of Interested Persons. In the past, protesters have
 27
 28

1 yelled at small children and accused them of murder, traumatizing many of these
2 children.

3 Opposing counsel repeatedly targets Orthodox Jewish organizations,
4 synagogues, and rabbis with unsuccessful litigation, attempting to block the
5 exercise of this minority religious practice.⁷ The Orthodox Jewish Congregations
6 seek to be able to participate in the Kapparot ritual without being harassed,
7 assaulted, or falsely arrested because of their religious exercise.

8 **ARGUMENT**

9 Because Plaintiffs seek to falsely arrest kaporos practitioners and stop their
10 ancient religious practice, the Orthodox Jewish Congregations meet the
11 requirements for intervention as of right. Fed. R. Civ. P. 24(a)(2). The
12 Congregations seek intervention in order to ask the Court to protect them from
13 Plaintiffs' threats of physical violence and harassment.⁸

14 **I. The Congregations Satisfy the Requirements for Intervention as** 15 **of Right.**

16 Pursuant to Federal Rule of Civil Procedure 24(a)(2), the Congregations are
17 entitled to intervene as of right. The rule states: "On a timely motion, the court
18 must permit anyone to intervene who: . . . claims an interest relating to the property
19 or transaction that is the subject of the action, and is so situated that disposing of
20 the action may as a practical matter impair or impede the movant's ability to
21 protect its interest, unless existing parties adequately represent that interest." Fed.
22 R. Civ. P. 24(a)(2). "[T]he requirements for intervention are broadly interpreted in
23 favor of intervention." *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006)
24 (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004)).

26 ⁷ See *supra*, notes 1-4.

27 ⁸ The Congregations seek intervention for the purpose of protecting their legal
28 interests and do not take on a full defense of the claims against the city Defendants.

**a. The Congregations Have a Significant Protectable Interest
Related to the Subject of the Action.**

Because the Complaint threatens the Congregations' members' right to be free from physical assault, battery, and false arrest as well as their constitutional right to freely exercise their religion, the Congregations' interests are directly related to the subject of this action.

"An applicant for intervention has a significantly protectable interest if the interest is protected by law and there is a relationship between the legally protected interest and the plaintiff's claims." *Alisal Water Corp.*, 370 F.3d at 919. The right to be free from assault, battery, and false arrest, and the constitutional right to free exercise are significantly protectable interests. *See P.B. v. Koch*, 96 F.3d 1298, 1304 (9th Cir. 1996) (identifying a right to "bodily integrity," a "right to be free from 'unjustified intrusions on personal security'", and a "right to be free from excessive force") (quoting *Ingraham v. Wright*, 430 U.S. 651, 673 (1977) *Hayden v. Reickerd*, 957 F.2d 1506, 1511 (9th Cir. 1991) (identifying a "state law right to be free from battery"); *Tekle v. United States*, 511 F.3d 839, 854 (9th Cir. 2007) ("Under California law, false arrest, or false imprisonment, is 'the unlawful violation of the personal liberty of another.'"); *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 924 (9th Cir. 2001) (holding that a false police report leading to an arrest could violate the arrestee's "Fourth Amendment right to be free from unreasonable seizure of her person."); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

Plaintiffs direct their threats of tortious action and constitutional infringement against several Orthodox Jewish organizations named in its Notice of Interested Parties. Each of the Proposed Intervenors is specifically named as an interested party. Plaintiffs' Notice of Interested Parties, September 12, 2017, Dkt.

No. 2. The lawsuit is directed at these Irvine or Los Angeles organizations. The Complaint specifically threatens that members of APRL “will continue to attempt to . . . effectuate a private persons arrest of individuals” they see participating in the kaporos ritual. Compl. ¶ 49, Dkt. No. 1.

Further, because the practice of kaporos is both lawful and constitutionally protected,⁹ Proposed Intervenor assert a claim against Plaintiffs for conspiracy to deprive persons of rights or privileges, under 42 U.S.C. § 1985(3).

Plaintiffs’ claims for injunctive and declaratory relief directly impact the Congregations’ legal rights and interests. Therefore, the Congregations satisfy the first element required for intervention as of right.

**b. Disposing of the Action May Impair or Impede the
Congregations’ Ability to Protect Their Interests**

The Complaint seeks to compel local police departments to take action against Orthodox Jewish organizations, including the Congregations, or to permit Plaintiffs to conduct “private person arrest[s]” of congregants. The outcome of this litigation will directly impact the Congregations’ rights and ability to protect their interests.

c. This Application is Timely

The Congregations bring this timely motion for intervention shortly after the Complaint was filed on September 12, 2017.

**d. The Existing Parties May Not Adequately Represent the
Congregations’ Interests**

As the city Defendants have not yet appeared, they are not able to adequately represent the Congregations’ interests. Further, the city Defendants may not be able to adequately represent the specific religious interests of the Congregations. Intervention is necessary to ensure that each Proposed Intervenor’s

⁹ See *infra* Part II.A.

Free Exercise rights are fully represented before the Court, at least for the purpose of the TRO motion. Therefore, the Congregations fulfill all the requirements for intervention as of right, and intervention must be granted.

e. In the Alternative, the Congregations Have Also Satisfied the Requirements for Permissive Intervention

In the alternative, the Court should grant permissive intervention because the Congregations have “a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). Many of Plaintiffs’ claims share common questions of law and fact with the Congregations’ claim that Plaintiffs conspired to deprive them of rights or privileges, under 42 U.S.C. § 1985(3).

II. The Congregations Are Entitled to a Temporary Restraining Order Against Plaintiffs

In light of Plaintiffs’ specific threat of physical violence against the Orthodox Jewish Congregations which are named as Interested Parties and the vigilante acts committed by activists who are either APRL members or conspirators,¹⁰ the Congregations request that the Court issue a Temporary Restraining Order prohibiting members of APRL and associated persons from interfering with the Congregations’ atonement ritual or coming within 100 feet of Mr. Cohen or the Congregations’ locations in the period between now and the beginning of Yom Kippur on September 29, 2017.

¹⁰ Because they used the precise tactic threatened in the Complaint (threatening private person arrest) based upon a violation of the same penal code section relied upon in the Complaint, these activists are either members of APRL or co-conspirators with APRL. Further, the actions against Mr. Cohen took place hours after an email yesterday morning by opposing counsel stating that “[m]embers of APRL will continue to request private person arrests to enforce PC 597(a).”

a. The Congregations Are Likely to Succeed on the Merits

Because The Kapparot Ritual is Lawful and Constitutional

The lawfulness of the practice of kaporos has been litigated multiple times, with courts holding each time in favor of the Orthodox Jewish organizations.

i. The Kapparot Ritual is Lawful

The kaporos ceremony is lawful. Yesterday, officers from the Los Angeles Police Department and animal control officers confirmed that the kaporos activities at Mr. Cohen's home were conducted lawfully. Similarly, in 2014, a local animal control expert from the Irvine Police Department and a special investigator from the California Department of Food and Agriculture watched Chabad of Irvine's ritual and affirmed that the ritual was done lawfully. Decl. Rabbi Tenenbaum ¶¶ 12-14. Multiple courts, after hearing the merits, held in favor of the kaporos rituals. Most recently, the Court of Appeals for the Ninth Circuit refused to issue injunction pending appeal against Chabad of Irvine's upcoming ritual.

The kaporos ritual violates none of Plaintiffs' laundry list of supposed violations. Plaintiffs rely most heavily on Penal Code § 597(a), which clearly does not apply in the context of religious rituals. Section 597(a) prohibits only the intentional and *malicious* killing of an animal. "Malicious" is a mens rea element necessary so that only those with the culpable intent to do a "wrongful" act can be punished under the criminal code. Cal. Penal Code § 7(4). Numerous state and federal laws regard Kosher killings as humane acts, rather than malicious or wrongful. *See, e.g.*, Cal. Code Regs. tit. 3, § 1246.15(a); Cal. Food & Agric. Code § 19501(b)(2); 7 U.S.C. § 1902(b); 7 U.S.C. § 1906. Therefore, simply stated, Penal Code § 597(a) does not prohibit humane and kosher killings of chickens during a religious atonement ceremony.

Plaintiffs mistakenly argue that it is per se "malicious" to kill an animal unless a person uses the animal for food or for another reason expressly listed in

California Penal Code § 599c. However, under this reasoning, it would also be “malicious” for a veterinarian to euthanize a suffering animal because this is not a reason listed in California Penal Code § 599c. The malicious mens rea requirement operates independently from the exceptions listed in California Penal Code § 599c. Neither a veterinarian nor a religious adherent act “maliciously,” and therefore neither violate the statute. In short, the Congregations’ rituals violate no laws.¹¹

**ii. The Congregations’ Ritual is Protected by the
Constitution, And the First Amendment Prohibits
Targeting a Religious Practice for Extinction**

As demonstrated by the multiple harassing lawsuits filed against Orthodox Jewish groups, Plaintiffs and their counsel are seeking to target a particular religious practice for extinction.¹² Plaintiffs’ true reason for this lawsuit is to improperly pressure the Congregations into stopping a lawful religious practice that is protected by the First Amendment simply because they do not like the practice.

Opposing counsel has a pattern of pursuing frivolous litigation in an attempt to chill the First Amendment rights of synagogues and other Orthodox Jewish organizations. For instance, in *United Poultry Concerns v. Bait Aaron*, No. BC592712 (Cal. Super. Ct. Aug. 26, 2015), counsel representing UPC sued seven Los Angeles Orthodox Jewish organizations and their rabbis because they performed Kapparot with chickens. The California court dismissed the lawsuit on multiple grounds, and expressly held that the plaintiff was “in fact, seeking recourse of the secular courts to end a religious practice on the grounds that

¹¹ The other alleged violations can be similarly disposed of as unfounded, or superseded by the Constitution. *See United Poultry Concerns v. Bait Aaron*, No. BC592712 (Cal. Super. Ct., July 6, 2016) (dismissing a lawsuit against Los Angeles Orthodox Jewish organizations premised on the same list of alleged code violations).

¹² *See supra*, notes 1-4.

1 Plaintiffs do not like it, and do not believe it is essential to use chickens for the
 2 religious ritual.” *Id.* at 19. As another example, counsel sent cease and desist letters
 3 designed to chill the lawful activity of Orthodox Jewish entities that conduct
 4 Kapparot with chickens. The Simon Law Group “threatened the Hebrew Academy
 5 [in Huntington Beach] with a legal action if it did not agree to sign a certification
 6 stating that it would never engage in the Jewish ceremony of Kaporos.” Decl.
 7 Ronan Cohen ¶ 3, Dkt. No. 90-8, *United Poultry Concerns v. Chabad of Irvine*, No.
 8 8:16-cv-01810-AB-GJS (C.D. Cal.). Given this history of targeting Orthodox
 9 Jewish organizations, APRL and its members will follow through on their threats.
 10 Absent a TRO, they will continue to attempt to place individuals associated with
 11 the Orthodox Jewish Congregations specifically targeted by Plaintiffs under
 12 “private persons arrest” for engaging in a lawful act protected by the First
 13 Amendment.

14 Permitting Plaintiffs to assume the role of government criminal prosecutor,
 15 and thereby allowing them to target synagogues and other Jewish organizations,
 16 would violate the First Amendment. *See Lukumi Babalu Aye v. City of Hialeah*, 508
 17 U.S. 520, 534 (1993) (holding official action that “targets religious conduct for
 18 distinctive treatment” unlikely to withstand strict scrutiny); *Fraternal Order of*
 19 *Police v. City of Newark*, 170 F.3d 359 (3d Cir. 1999) (holding strict scrutiny
 20 applies to applications of the law that target religious beliefs, and not merely to the
 21 lawmakers who first drafted the law); *Tenaflly Eruv Ass’n v. Borough of Tenaflly*,
 22 309 F.3d 144, 165-67 (3d Cir. 2002) (holding “selective application” of an
 23 otherwise neutral and generally applicable law triggers strict scrutiny). Selective
 24 application of a statute against the religious rite of synagogues triggers strict
 25 scrutiny and violates the Free Exercise clause. The Court should not allow
 26 Plaintiffs to abuse the judicial process to put improper pressure on the
 27 Congregations to change their religious practices.

1 **b. There is a Likelihood of Irreparable Injury Against the**
 2 **Congregations**

3 If the TRO is not granted, it is likely that Plaintiffs will cause irreparable
 4 injury to the Congregations. Plaintiffs' attempt to physically assault members of
 5 the Congregations when they are performing the kaporos ceremony would cause
 6 irreparable injury to these organizations and their members' First Amendment
 7 rights. "The loss of First Amendment freedoms, for even minimal periods of time,
 8 unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373
 9 (1976). "[T]he fact that a case raises serious First Amendment questions compels a
 10 finding that there exists the potential for irreparable injury, or that at the very least
 11 the balance of hardships tips sharply in [the religious adherent's] favor." *Sammartano v. First Judicial Dist. Ct.*, 303 F.3d 959, 973 (9th Cir. 2002) (internal
 12 quotation marks omitted). In the Ninth Circuit, merely "demonstrating the
 13 existence of a colorable First Amendment claim" is sufficient to establish
 14 irreparable injury. *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005).

15 Simply stated, physically assaulting and falsely imprisoning law-abiding
 16 citizens for attempting to exercise their fundamental rights as citizens is an injury
 17 beyond repair.

18 **c. The Balance Of Hardships Favors the Congregations**

19 Without a TRO, the physical safety of the Congregations' members is in
 20 danger, in addition to the threat to their ability to freely exercise their religious
 21 beliefs. These factors sharply tilt the balance of equities against APRL. By contrast,
 22 APRL will incur no injury from being prevented from falsely arresting members of
 23 the Congregations. The balance of hardships strongly weighs in favor of the
 24 Congregations.
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d. Public Interest Favors Protecting Constitutional Rights

“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013). “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Lukumi*, 508 U.S. at 531(internal citation omitted). At all times, the Congregations’ Kapparot practice treats chickens humanely and safely in compliance with all state and local laws. *See, e.g.*, Decl. Rabbi Tenenbaum ¶ 6. There is simply no legal violation here. The public interest sharply weighs in favor of protecting minority religious beliefs from being silenced by those determined to target their practices.

CONCLUSION

The Orthodox Jewish Congregations are entitled to intervene as of right, and a temporary restraining order should issue to protect the Congregations and their members.

Dated: September 28, 2017

Respectfully submitted,

Stephanie N. Taub
First Liberty Institute
Attorneys for Proposed Intervenors

By: /s/ Stephanie N. Taub
Stephanie N. Taub

1 **CERTIFICATE OF CONFERENCE**

2 This motion is made after giving notice to the parties' counsel, which took
3 place via email and phone on September 19, 2017. *See* Decl. Stephanie N. Taub,
4 Ex. D. Additional notice was given that the motion would be filed via email in the
5 morning of September 28, 2017.

6 Dated: September 28, 2017

7 Stephanie N. Taub
8 First Liberty Institute
9 Attorneys for Proposed Intervenors

10 By: /s/ Stephanie N. Taub
Stephanie N. Taub

11 **CERTIFICATE OF SERVICE**

12 Counsel for Plaintiffs were served electronically with Proposed Intervenor
13 Chabad of Irvine's Ex Parte Motion to Intervene and Motion for a Temporary
14 Restraining Order and all attachments via the Court's CM/ECF System on
15 September 28, 2017. Because Counsel for Defendants have not yet appeared,
16 Jeffrey T. Melching, City Attorney for the City of Irvine, and Arlene Hoang and
17 Gabriel Dermer, Deputy City Attorneys for the City of Los Angeles, will be served
18 with a file-stamped copy of this motion and all attachments via email on
19 September 28, 2017.

20 Dated: September 28, 2017

21 Stephanie N. Taub
22 First Liberty Institute
23 Attorneys for Proposed Intervenors

24 By: /s/ Stephanie N. Taub
25 Stephanie N. Taub
26
27
28

Stephanie N. Taub (SBN: 301324)
FIRST LIBERTY INSTITUTE
2001 West Plano Pkwy, Ste. 1600
Plano, TX 75075
Telephone: (972) 941-4444
Facsimi
Email: [REDACTED]
Attorney enors

Aryeh Kaufman (SBN: 289745)
[REDACTED] UFMAN
[REDACTED]
[REDACTED] rvenors

G. Scott Sobel, Esq. (SBN: 124818)
[REDACTED]
[REDACTED]
Facsimi
Email: [REDACTED]
Attorney r Hersel Cohen

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ANIMAL PROTECTION AND RESCUE
LEAGUE, a California nonprofit
corporation; and CORY MAC
A'GHOBHAINN, an individual;

Plaintiffs,

vs.

CITY OF LOS ANGELES, LOS
ANGESES POLICE DEPARTMENT,
CITY OF IRVINE, IRVINE POLICE
DEPARTMENT, DOES 1 THROUGH 50,

Defendants.

Case No. 8:17-CV-01581-JLS-JDE

**[PROPOSED] ORDER GRANTING
PROPOSED INTERVENOR'S EX
PARTE MOTION FOR
INTERVENTION AND
TEMPORARY RESTRAINING
ORDER**

1 Before the Court is Proposed Intervenor's Ex Parte Motion for Intervention
2 and Temporary Restraining Order. Having considered the motion, the Court
3 concludes that the motion should be and is hereby **GRANTED**.

4 Plaintiffs, members of the Animal Protection and Rescue League ("APRL"),
5 and persons associated with APRL are hereby **ENJOINED** from:

- 6 1. Interfering with the Congregations' kaporos rituals;
- 7 2. Trespassing on Congregants' property;
- 8 3. Harassing or assaulting the kaporos participants; and
- 9 4. Approaching within 100 feet of the Congregations' locations, including
10 Hersel Cohen's location, between September 28, 2017 and September 29,
11 2017.

12
13 **IT IS SO ORDERED.**

14
15 DATE: _____

16 U.S. DISTRICT JUDGE
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EXHIBIT A

G. SCOTT SOBEL, Esq., SBN 124818
LAW OFFICE OF G. SCOTT SOBEL

Telephone: [REDACTED]

Facsimile: [REDACTED]

Attorney for Hersel Cohen

FILED

Superior Court of California
County of Los Angeles

JUL 06 2016

RECEIVED
JUL 06 2016
FILING WINDOW

Sherril R. Carter, Executive Officer/Clerk
By Maricela Gonzalez, Deputy
Maricela Gonzalez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL

UNITED POULTRY CONCERNS, INC., et al.,

Plaintiffs,

vs.

BAIT AARON, INC., et al.,

Defendants.

Case No: BC592712

Assigned: Hon. Elizabeth Feffer, Dept. 39


Filed 8/26/15

NOTICE OF RULING (DISMISSAL)

PLEASE TAKE NOTICE that on June 20, 2016 Defendants second Demurrer came on regularly for hearing in Department 39, the Honorable Elizabeth Feffer, Judge presiding. Plaintiffs were represented by Bryan W. Pease and Ryan Gordon. Defendants were represented by Aryeh Kaufman and G. Scott Sobel.

The Court issued a tentative ruling. Argument was taken from counsel. The Court adopted it tentative. Defense counsel then moved orally for dismissal pursuant to Code of Civil Procedure Section 581(f)(1), which the court granted. The moving party was ordered to give notice. Attached hereto is a copy of the 6/20/2016 minute order, which contains the Ruling of the Court on the Demurrer and Dismissal.

DATED: June 29, 2016


G. Scott Sobel
Attorney for Defendant Hersel Cohen

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. My business address is [REDACTED]

On the date below, I served the document(s) described as:

NOTICE OF RULING

on the following interested parties in this action:

David R. Simon, Esq. SIMON LAW GROUP [REDACTED]	Attorneys for Plaintiffs
Bryan W. Pease, Esq. Law Offices of Bryan W. Pease [REDACTED]	Attorneys for Plaintiffs
David B. Casselman, Esq. CASSELMAN LAW GROUP [REDACTED]	Attorneys for Plaintiffs
Aryeh Kaufman, Esq. LAW OFFICE OF ARYEH KAUFMAN [REDACTED]	Attorneys for Defendants Bait Aaron, Inc., Rabbi Moshe Nourollah, Meir Nourollah

☒ by electronic mail pursuant to an agreement of all counsel to the above on the date below by placing a true and correct copy thereof, enclosed in a sealed envelope addressed as described above and depositing such envelope with the United States Postal Service in Los Angeles, California with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **June 29, 2016** at Los Angeles, California.


G. Scott Sobel

07/07/2016

EXHIBIT 1

Exhibit A - 003

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/20/16

DEPT. 39

HONORABLE ELIZABETH R. FEFFER

JUDGE

F. BECERRA

DEPUTY CLERK

HONORABLE
4

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

L. BITUIN, CA

Deputy Sheriff

SUZANE ONUKI, CSR#13734

Pro Tem Reporter

9:00 am BC592712

Plaintiff

Counsel

BRYAN W. PEASE(X)

RYAN GORDON(X)

UNITED POULTRY CONCERNS INC ET
VS

Defendant

BAIT AARON INC ET AL

Counsel

ARYEH KAUFMAN(X)

G. SCOTT SOBEL(X)

NATURE OF PROCEEDINGS:

DEMURRER OF DEFENDANTS GAIT AARON, INC., MOSHE NOUROLLAH, MEIR NOUROLLAH, YESHIVA OHR ELCHONON CHABAD WEST COAST TALMUDICAL SEMINARY, HEBREW DISCOVERY CENTER, NETANEL LOUIE, CONGREGATION OHEL MOSHE, INC., AND HERSEL COHEN

The Stipulation and Order to Use Certified Shorthand Reporter appointing official Court reporter pro tempore in the current proceedings is signed and filed this date.

The matter is called for hearing.

Counsel have seen and read the Court's written tentative ruling.

After argument, the Court adopts its tentative ruling as its final ruling as follows:

Demurrer by Defendants Bait Aaron, Inc., Rabbi Moshe Nourollah, Meir Nourollah, Yeshiva Ohr Elchonon Chabad West Coast Talmudical Seminary, Hebrew Discovery Center, Netanel Louie, and Hersel Cohen to Plaintiffs' Second Amended Complaint: SUSTAIN without leave to amend

On August 26, 2015, Plaintiffs United Poultry Concerns, Inc., a Virginia non-profit corporation; and Nazila Mahgerefteh, Kathy Schramm, Rachel Hoyt,

Page 1 of 21 DEPT. 39

MINUTES ENTERED 06/20/16 COUNTY CLERK

Exhibit A - 004

07/07/2016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/20/16

DEPT. 39

HONORABLE ELIZABETH R. FEFFER

JUDGE F. BECERRA

DEPUTY CLERK

HONORABLE
4

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

L. BITUIN, CA

Deputy Sheriff

SUZANE ONUKI, CSR#13734

Pro Tem Reporter

9:00 am BC592712

Plaintiff

Counsel

BRYAN W. PEASE(X)

RYAN GORDON(X)

UNITED POULTRY CONCERNS INC ET
VS

Defendant

BAIT AARON INC ET AL

Counsel

ARYEH KAUFMAN(X)

G. SCOTT SOBEL(X)

NATURE OF PROCEEDINGS:

Sara Jane Gage, Jennifer Mack, and Alice Chen Lewis filed the instant action for illegal business practices in violation of the Unfair Competition Law, pursuant to Business & Professions Code § 17200 et seq. Plaintiffs sought a temporary restraining order and preliminary injunction on September 2, 2015. The Honorable James C. Chalfant denied the request.

On October 16, 2015, Plaintiffs filed their First Amended Verified Complaint ("FAC"). The court sustained the Defendants' demurrers to the FAC with 20 days' leave to amend. Plaintiffs filed their Second Amended Complaint ("SAC") on March 22, 2016. Plaintiffs now assert seven causes of action, pursuant to Business & Professions Code § 17200 et seq.. The SAC continues to set forth numerous state statutes that are "predicate laws" applicable to Defendants' conduct, including Water Code § 13260; Food & Agricultural Code § 24741; Health & Safety Code § 41700(a); and Penal Code §§ 597(b), 597.1(a), 597.4, 597f, 597t, and 599. Plaintiffs also contend that the Defendants' conduct implicates Los Angeles Municipal Code sections 12.32, 13.02, 12.04.01, 53.62(a), 53.71, and 64.70.01(26)(3), and 64.70.02.

In support of their demurrer, defendants ask that the court take judicial notice of the First Amended Complaint, Defendants' demurrer thereto, Plaintiffs' Opposition, a stipulation between Plaintiffs and Defendant Young Israel of Beverly Hills, and a

Page 2 of 21 DEPT. 39

MINUTES ENTERED 06/20/16 COUNTY CLERK

07/07/2016

Exhibit A - 005

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/20/16

DEPT. 39

HONORABLE ELIZABETH R. FEFFER

JUDGE F. BECERRA

DEPUTY CLERK

HONORABLE
4

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

L. BITUIN, CA

Deputy Sheriff

SUZANE ONUKI, CSR#13734

Pro Tem Reporter

9:00 am

BC592712

Plaintiff

Counsel

BRYAN W. PEASE(X)

RYAN GORDON(X)

UNITED POULTRY CONCERNS INC ET

VS

Defendant

Counsel

ARYEH KAUFMAN(X)

G. SCOTT SOBEL(X)

BAIT AARON INC ET AL

NATURE OF PROCEEDINGS:

Summons and Complaint filed in a New York action. Plaintiffs' objections thereto are overruled, and these requests for judicial notice are GRANTED. (Evidence Code § 452(d).)

The defendants are either Orthodox Jewish religious institutions or Orthodox Jewish rabbis who perform the Jewish religious practice, of Kapparot. Defendants demurrer again, asserting Plaintiffs' SAC fails to state a cause of action for separate distinct reasons, including lack of standing.

A demurrer for sufficiency tests whether the complaint states a cause of action. (Hahn v. Mirda (2007) 147 Cal. App. 4th 740, 747.) When considering demurrers, courts read the allegations liberally and in context. (Taylor v. City of Los Angeles Dept. of Water and Power (2006) 144 Cal.App.4th 1216, 1228.) In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (Donabedian v. Mercury Ins. Co. (2004) 116 Cal.App.4th 968, 994.) "A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed. (Code of Civil Procedure §§ 430.30, 430.70). The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (Hahn, supra, 147 Cal.App.4th at 747.)

Page 3 of 21 DEPT. 39

MINUTES ENTERED 06/20/16 COUNTY CLERK

Exhibit A - 006

07/07/2016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/20/16

DEPT. 39

HONORABLE ELIZABETH R. FEFFER

JUDGE

F. BECERRA

DEPUTY CLERK

HONORABLE
4

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

L. BITUIN, CA

Deputy Sheriff

SUZANE ONUKI, CSR#13734

Pro Tem Reporter

9:00 am BC592712

Plaintiff

Counsel

BRYAN W. PEASE(X)

RYAN GORDON(X)

UNITED POULTRY CONCERNS INC ET
VS

Defendant

Counsel

ARYEH KAUFMAN(X)

G. SCOTT SOBEL(X)

BAIT AARON INC ET AL

NATURE OF PROCEEDINGS:

As noted above, the Second Amended Complaint alleges seven causes of action for illegal business practices, all based on alleged violations of Business & Professions Code § 17200. (SAC 1.)

1. Lack of Standing to Bring a Private Right of Action Based upon Failure to Comply with a Criminal Statute

This is not a case of first impression, of a civil action based upon alleged violations of animal cruelty laws. In 2008, the California Court of Appeal decided Animal Legal Defense Fund v. Mendes (2008) 160 Cal.App.4th 136 ("ALDF/Mendes"), a taxpayer action brought by a nonprofit corporation established to "protect the lives and interests of animals through the legal system." The case was brought against a business---not a nonprofit religious institution or a rabbi, as in this instance---but a business engaged in the business of raising calves, regarding the business' alleged practice of confining calves to isolation crates. The case was brought under Penal Code § 597t (a statute asserted herein by these Plaintiffs) and under Business & Professions Code § 17200. The trial court found that the complaint failed to state a cause of action, and sustained the defendants' demurrer without leave to amend.

In affirming the trial court, the court noted in

Page 4 of 21 DEPT. 39

MINUTES ENTERED 06/20/16 COUNTY CLERK

Exhibit A - 007

07/07/2016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/20/16

DEPT. 39

HONORABLE ELIZABETH R. FEFFER

JUDGE

F. BECERRA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

4

L. BITUIN, CA

Deputy Sheriff

SUZANE ONUKI, CSR#13734

Pro Tem Reporter

9:00 am BC592712

Plaintiff

Counsel

BRYAN W. PEASE(X)

RYAN GORDON(X)

UNITED POULTRY CONCERNS INC ET

VS

Defendant

Counsel

ARYEH KAUFMAN(X)

G. SCOTT SOBEL(X)

BAIT AARON INC ET AL

NATURE OF PROCEEDINGS:

ALDF/Mendes, supra:

"There are at least three different ways alleged violations of criminal law can result in civil actions. First, and perhaps most commonly, violation of a criminal statute can be used to establish a breach of the standard of care or other element of an ordinary tort cause of action. (See 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 11, p. 55.) Second, and pertinent to ALDF's argument on appeal, a criminal statute can expressly or impliedly give rise to a private right of action for its violation. (Ibid.) Third, under some circumstances, a governmental or quasi-governmental agency can sue to enjoin further breaches of the statute on a public nuisance or related theory. (See People ex rel. Gallo v. Acuna (1997) 14 Cal.4th 1090, 1107-1108, 60 Cal.Rptr.2d 277, 929 P.2d 596.)

"ALDF contends Penal Code section 597t impliedly establishes a private right of action in entities with a longstanding commitment to carrying out the laws protecting animals and a history of "direct work in the area of animal cruelty law enforcement and protection. Alongside prosecutors, groups like ALDF are the natural torchbearers for society and the animals in ensuring the protections under California's anti-cruelty laws, and ALDF and its members are significantly injured when those laws are violated." ALDF notes, as part of its discussion in support of this claim, that "more than thirty

Page 5 of 21 DEPT. 39

MINUTES ENTERED 06/20/16 COUNTY CLERK

Exhibit A - 008

07/07/2016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/20/16

DEPT. 39

HONORABLE ELIZABETH R. FEFFER

JUDGE

F. BECERRA

DEPUTY CLERK

HONORABLE
4

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

L. BITUIN, CA

Deputy Sheriff

SUZANE ONUKI, CSR#13734

Pro Tem Reporter

9:00 am BC592712

Plaintiff

Counsel

BRYAN W. PEASE(X)

RYAN GORDON(X)

UNITED POULTRY CONCERNS INC ET

VS

Defendant

Counsel

ARYEH KAUFMAN(X)

G. SCOTT SOBEL(X)

BAIT AARON INC ET AL

NATURE OF PROCEEDINGS:

statutes in the California Penal Code [are] designed to grant protections to animals in this state from abuses and maltreatment," all "designed with the intent to benefit both animals and groups like ALDF who take on the task of shielding them from harm."

"The issue in a case such as this is primarily one of legislative intent. If the Legislature intended a private right of action, that usually ends the inquiry. If the Legislature intended there be no private right of action, that usually ends the inquiry. If we determine the Legislature expressed no intent on the matter either way, directly or impliedly, there is no private right of action (Moradi-Shalal v. Fireman's Fund Ins. Companies (1988) 46 Cal.3d 287, 305, 250 Cal.Rptr. 116, 758 P.2d 58 (Moradi-Shalal)), with the possible exception that compelling reasons of public policy might require judicial recognition of such a right. (See id. at pp. 304-305, 250 Cal.Rptr. 116, 758 P.2d 58; see also Katzberg v. Regents of University of California (2002) 29 Cal.4th 300, 317, 127 Cal.Rptr.2d 482, 58 P.3d 339 [considerations for judicial recognition of private right of action for constitutional violations].) [footnote omitted]

"In the present case, we conclude the Legislature intended there not be a private right of action to enforce Penal Code section 597t; In light of the overall statutory scheme effectively "deputizing" humane societies to aid local authorities in the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/20/16

DEPT. 39

HONORABLE ELIZABETH R. FEFFER

JUDGE

F. BECERRA

DEPUTY CLERK

HONORABLE
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

L. BITUIN, CA

Deputy Sheriff

SUZANE ONUKI, CSR#13734

Pro Tem Reporter

9:00 am

BC592712

Plaintiff

Counsel

BRYAN W. PEASE(X)
RYAN GORDON(X)

UNITED POULTRY CONCERNS INC ET
VS
BAIT AARON INC ET AL

Defendant

Counsel

ARYEH KAUFMAN(X)
G. SCOTT SOBEL(X)

NATURE OF PROCEEDINGS:

enforcement of anticruelty laws, we think it clear that the Legislature did not intend to create a private right of action in other private entities, no matter how well-intentioned the goals of such entities. (See Arriaga v. Loma Linda University (1992) 10 Cal.App.4th 1556, 1563-1564, 13 Cal.Rptr.2d 619.)

"Since 1905, California has authorized the formation of corporations for the prevention of cruelty to animals. (See former Civ.Code, § 607, repealed by Stats.1947, ch. 1038, § 100001, p. 2439; see also Stats.1947, ch. 1038, § 10404, p. 2423, enacting Corp.Code, § 10400.) Such a corporation (hereafter § 10400 corporations) "may prefer a complaint against any person, before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting ... animals, and may aid in the prosecution of any such offender before such court or magistrate." (Corp.Code, § 10404.)

"Presumably because the law confers quasi-governmental powers on these corporations, the "articles of incorporation of such corporations filed with the Secretary of State shall be endorsed by the Department of Justice or by a judge of the superior court of the county in which the principal office of the corporation is located, as evidence of necessity." (Corp.Code, § 10401.) If the Department of Justice fails to act on an application for endorsement within 90 days, or refuses such

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F. BECERRA

DEPUTY CLERK

HONORABLE
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JUDGE PRO TEM

SUZANE ONUKI, CSR#13734

ELECTRONIC RECORDING MONITOR

L. BITUIN, CA

Deputy Sheriff

Pro Tem Reporter

9:00 am BC592712

Plaintiff

Counsel

BRYAN W. PEASE(X)

RYAN GORDON(X)

UNITED POULTRY CONCERNS INC ET
VS

Defendant

Counsel

ARYEH KAUFMAN(X)

G. SCOTT SOBEL(X)

BAIT AARON INC ET AL

NATURE OF PROCEEDINGS:

endorsement, the organizers of the corporation may apply to a superior court judge, who shall act on the application "after giving due consideration to the necessity of such corporation and assuring himself that the incorporators are acting in good faith." (Corp.Code, § 10402.)

"Only § 10400 corporations may apply for appointment of humane officers, whose duty "shall be the enforcement of the laws for the prevention of cruelty to animals." (Corp.Code, § 14502, subd. (a)(1)(A)(i).) Humane officers are required to have initial qualifications and subsequent periodic training. (Id. at subd. (i).) Powers to enforce anticruelty laws are conferred on humane officers by statute. (See id. at subds. (i)(1)(A)-(C), (i)(2)(A)-(C); see also Pen.Code, §§ 597f, 599aa [seizure of certain animals by humane officers].)

"Not only do the Corporations Code and the Penal Code provide for extensive regulation and empowerment of § 10400 corporations and humane officers, the Penal Code expressly provides a remedy for those not so regulated when they believe, inter alia, animal cruelty "is being, or is about to be" committed in "any particular building or place." (Pen.Code, § 599a.) "When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes" animal cruelty is taking place or will take place at a specific site, "the magistrate must issue and

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deliver immediately a warrant directed to any sheriff, police or peace officer or officer of any [\$ 10400 corporation], authorizing him to enter and search that building or place, and to arrest any person there present violating, or attempting to violate" any anticruelty law. (Ibid.)

"Accordingly, we conclude there is in place an explicit and comprehensive legislative scheme for enforcement of anticruelty laws, including an explicit avenue for enforcement upon the complaint of any person. This broad and somewhat unusual scheme for enforcement in the criminal system of laws for the protection of animals, including direct participation of both concerned residents and registered humane officers, demonstrates a legislative intent that these laws not be enforceable through a private right of action in civil court. (See Crusader Ins. Co. v. Scottsdale Ins. Co. (1997) 54 Cal.App.4th 121, 136, 62 Cal.Rptr.2d 620 (Crusader Ins. Co.).)" (ALDF/Mendes, supra, at pp. 141-144.)

This argument, of lack of standing, was recently re-affirmed in Animal Legal Defense Fund v. California Exposition & State Fairs (2015) 239 Cal.App.4th 1286 ("ALDF/Cal Expo") a taxpayer claim also brought to vindicate criminal animal cruelty statutes, arising out of the livestock nursery exhibit at the California State Fair. The California Court of Appeal affirmed the trial court's

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NATURE OF PROCEEDINGS:

sustaining of the demurrer without leave to amend,
also based upon lack of standing.

While the instant case is brought solely through Business & Professions Code § 17200, by reference to the "predicate laws," which are penal in nature, i.e., Water Code § 13260; Food & Agricultural Code § 24741; Health & Safety Code § 41700(a); and Penal Code §§ 597(b), 597.1(a), 597.4, 597f, 597t, and 599; as well as Los Angeles Municipal Code sections 12.32, 13.02, 12.04.01, 53.62(a), 53.71, and 64.70.01(26)(3), and 64.70.02, it is clear that the SAC alleges that the Defendants violated these penal statutes, and that a civil cause of action arises therefrom. That is, styling the SAC solely on the § 17200 claims, and not a direct cause of action based upon the Penal Code itself, does not alter the analysis. Indeed, the ALDF/Mendes case was also brought under § 17200, and the court similarly found lack of standing. (160 Cal.App. 4th at pp. 145-147.) The California courts have already concluded that recognition of a private right of action based upon animal cruelty penal statutes would be inconsistent with the Legislature's entrustment of enforcement of anticruelty laws to local authorities and humane societies. The Legislature did not intend to establish an implied private right of action for such violations. As there is no private right of action to enforce the "predicate laws," which are penal statutes, Plaintiffs' complaint fails.

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NATURE OF PROCEEDINGS:

2. Plaintiffs' Consumers' Cause of Action Fails to
State a Cause of Action

Defendants again argue that Plaintiffs lack standing because they have not alleged that any injury they suffered was caused by the conduct Defendants have allegedly engaged in. Pursuant to Business & Professions Code § 17204 an individual or corporation must have "suffered injury in fact and has lost money or property as a result of the unfair competition" to have standing. Plaintiffs do not allege that they are observant Orthodox Jews (let alone members of the various defendant synagogues) who participate in the religious practice of Kapparot practice. The Plaintiffs also contend that some of the rabbis and synagogues charged a "donation" which, Plaintiffs contend, was not a really a donation because it was "mandatory." (SAC 74, regarding Defendant Hersel Cohen.) That is, charging a "mandatory" "donation" in order to participate in a religious practice transforms these religious nonprofit organizations or religious individuals into a "business." (SAC 74.) Plaintiffs also contend that their out-of-pocket costs incurred to videotape the religious practice, to purchase a costume they wore to protest the religious practice (i.e. a "chicken suit"), and for "lost wages" for choosing to skip work and instead protest the Defendant rabbis when the rabbis were performing the religious practice for their congregants, constitutes damages. (SAC 68, allegations by

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NATURE OF PROCEEDINGS:

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None of this is sufficient to state a cause of action. In Hall v. Time, Inc., (2008) 158 Cal.App.4th 847, the court noted that the Unfair Competition Law permits civil recovery for "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." (Bus. Prof. Code, § 17200; see also id., § 17203 [injunction and restitution remedies]; Kraus v. Trinity Management Services, Inc. (2000) 23 Cal.4th 116, 127.) The UCL's purpose is to protect both consumers and competitors from unlawful, unfair or fraudulent business practices "by promoting fair competition in commercial markets for goods and services." (Kasky v. Nike, Inc. (2002) 27 Cal.4th 939, 949.) It arises in the "business context." (See, e.g., Stop Youth Addition, Inc. v. Lucky Stores, Inc. (1998) 17 Cal.4th 553, 577, 579, referring to the "California business climate" in the context of a UCL action.)

Here, even assuming the allegations in the SAC are true, there is no allegation that Orthodox Jewish synagogues and rabbis are "businesses" that are subject to regulation by the California Business & Professions Code. Indeed, a review of the index of the entirety of the California Business & Professions Code yields no section subjecting rabbis (or other religious leaders such as priests, ministers, imams, monks, or the like) or synagogues

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(or churches, temples, or mosques) to its "unfair competition" laws vis a vis religious practices or rituals.

Business & Professions Code § 17200 by its definition applies to a "business act or practice." Not every act that a business engages in is "justiciable." For example, there is a well-recognized protection of the "business judgment rule," wherein "California courts have consistently refused to interfere with directors' exercise of business judgment in making decisions." (Lee v. Interinsurance Exchange (1996) 50 Cal.App.4th 694, 713, rejecting the plaintiffs' Bus. & Prof. Code § 17200 claim.)

Proposition 64, approved by the voters at the November 2, 2004, General Election, changed the standing requirements for a UCL (Business & Professions Code, § 17200 et seq.) claim to create a two-pronged test: A private person now has standing to assert a UCL claim only if he or she (1) "has suffered injury in fact," and (2) "has lost money or property as a result of the unfair competition." (Bus. & Prof. Code, § 17204; see Californians for Disability Rights v. Mervyn's, LLC (2006) 39 Cal.4th 223, 227.) Proposition 64 accomplished that change by amending Business and Professions Code section 17204, which prescribes who may sue to enforce the UCL, by deleting the language authorizing suits by any person acting on behalf of the general public

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and by replacing it with the phrase, "who has suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. Prof. Code, § 17204; Id. at p. 228.)

"In 2004, the electorate substantially revised the UCL's standing requirement; where once private suits could be brought by 'any person acting for the interests of itself, its members or the general public' (former § 17204, as amended by Stats.1993, ch. 926, § 2, p. 5198), now private standing is limited to any 'person who has suffered injury in fact and has lost money or property' as a result of unfair competition." (Kwikset Corp. v. Superior Court (2011) 51 Cal.4th 310, 320-21.)

"The intent of this change was to confine standing to those actually injured by a defendant's business practices and to curtail the prior practice of filing suits on behalf of clients who have not used the defendant's product or service, viewed the defendant's advertising, or had any other business dealing with the defendant." (Id. at 321.) Thus, in Kwikset, supra, the loss was purchasing a lock that was falsely alleged to have been "Made in U.S.A." To contrast, the demurrer was properly sustained in Hall v. Time Inc., supra, as there was no real "damage." Therein, the court, at pp. 854-855, catalogued some of the various forms of economic injury.

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In their opposition to the demurrer, Plaintiffs argue that the UCL is commonly applied to religious organizations. (Opp. at 6.) Plaintiffs cite Maktab Tarighe Oveyssi Shah Maghsoudi, Inc. v. Kianfar (9th Cir. 1999) 179 F.3d 1244, 1249. That federal District Court case, however, applied Section 17200 to allegations of trademark infringement, and not to religious practice and ritual (as in this matter). Plaintiffs also rely upon Pines v. Tomson (1984) 160 Cal.App.3d 370, 380. That case, however, is also readily distinguishable, because it involved the publication of the Christian Yellow Pages and allegations that plaintiffs were "subject to defendants' discriminatory pattern and practice and excluded from advertising in said periodicals."

Finally, Plaintiffs cites Executive Committee Representing Signing Petitioners of Archdiocese of Western U.S. v. Kaplan (C.D. Cal., Sept. 17, 2004, No. CV 03-8947 FMC MANX) 2004 WL 6084228 at *6-7, which involved allegations that the defendants violated RICO, committed unfair business practices by "using their positions of authority and influence within the church to solicit charitable donations for worthy charitable causes, and . . . then us[ing] the money for personal purposes," and committed fraudulent business practices by deceiving the public "as to the intention of Defendants and the use of their money." None of those facts are remotely close to what is alleged in this action.

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None of the purposes of the UCL, of protecting both consumers and competitors by promoting fair competition in commercial markets for goods and services, are advanced by Plaintiffs' causes of action. While Plaintiffs attempt to add allegations regarding the receipt of donations (by other people, not by Plaintiffs) to invoke the application of the UCL, the case authority indicates that religious organizations have been held liable under the UCL only for fraudulent, unlawful, or unfair business practices as it relates to their solicitation of funds: i.e. lying about the money's use. The alleged business act or practice here is the ritual use of chickens in a religious ceremony. There is no authority for the proposition that the UCL applies in this case. Defendants' use of chickens in Kapparot is not a business act or practice within the meaning of the UCL.

A review of the allegations of the SAC reveals that the plaintiffs suffered no actual economic damages. They paid no money to any of the rabbis or synagogues to participate in the Kapparot ritual. Rather, the plaintiffs' alleged damages essentially consist of time spent and money spent to watch the rabbis perform the ritual on behalf of observant Orthodox Jews. Economic injury cannot be inferred because one of the plaintiffs purchased a "chicken suit" and chose to skip her paying job in order to don the chicken suit and protest a rabbi performing a religious ritual for his worshippers.

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Further, as in ALDF/Mendes, where the defendants actually ran a business, Plaintiffs have not alleged, and cannot show that they can allege, economic injury necessary to give them standing to state a valid § 17200 claim. Plaintiffs have not alleged, and cannot show that they can allege, that the defendant synagogues and rabbis come within the purview of the California Business & Professions Code.

Moreover, the allegation, that the rabbis and synagogues collected a "donation" to be paid by those desiring to participate in a religious practice, does not transform a nonprofit religious institution into a "business." From the analysis in Kwikset and other post-Proposition 64 § 17200 cases, this is insufficient to state standing.

As the court found in ALDF/Mendes, there is no causal connection between the allegedly wrongful conduct and injury. Indeed, as the court noted in ALDF/Cal Expo, supra, 239 Cal.App.4th at p. 1297, the rationale of the ALDF/Mendes case applies equally to Plaintiffs' taxpayer action. That is, the California courts have already concluded that recognition of a private right of action based upon animal cruelty penal statutes would be inconsistent with the Legislature's entrustment of enforcement of anticruelty laws to local authorities and humane societies. The Legislature did not intend to

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establish an implied private right of action for such violations, cited by Plaintiffs in their SAC as "predicate laws." Styling this action as a UCL action, based upon the penal "predicate laws," is an attempt to circumvent the clear legislative intent, as enumerated in ALDF/Mendes and ALDF/Cal Expo. For that reason as well, Plaintiffs' complaint fails.

3. First Amendment Free Exercise Clause

Defendants again contend that the Second Amended Complaint is barred by the First Amendment's Free Exercise Clause because UPC's stated purpose is to "end the use of chickens in Kapparot," a Jewish ritual. Indeed, in Exhibit 5 to Defendants' Request for Judicial Notice, the Stipulation for Entry of Final Judgment and Permanent Injunction in this matter, as to Defendant Young Israel of Beverly Hills ("Young Israel,"), Young Israel submitted to a permanent injunction prohibiting it from "Engaging in Kapparot using chickens or other animals." (Exhibit 5, p. 3, 8(a); Demurrer p. 5.) "[T]he right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" (Smith v. Fair Employment & Housing Com. (1996) 12 Cal.4th 1143, 1161.)

While Plaintiffs contend that the laws invoked by

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the SAC are valid, neutral laws of general applicability, the stated purpose of this lawsuit, is, however, to have the secular Los Angeles Superior Court end a religious practice that Jews have practiced for 11 centuries in connection with their Rosh Hashana/Yom Kippur observance. As the stipulated permanent injunction against Young Israel in this case demonstrates, Plaintiffs are, in fact, seeking recourse of the secular courts to end a religious practice on the grounds that Plaintiffs do not like it, and do not believe it is essential to use chickens for the religious ritual.

In the case of Church of Lukumi Babalu Aye, Inc. v. City of Hialeah (1993) 508 U.S. 520, the United States Supreme Court heard the issue of a Florida city that had enacted what it contended was a content-neutral animal cruelty statute. Therein, Petitioner church and its congregants practiced the Santeria religion, a religion originating in the 19th century, which employs animal sacrifice as one of its principal forms of devotion. The animals are killed by cutting their carotid arteries, and are cooked and eaten following all Santeria rituals except healing and death rites. After the church leased land in respondent city and announced plans to establish a house of worship and other facilities there, the city council held an emergency public session and passed resolutions and ordinances to prohibit the unnecessary or cruel killing of an animal. The United States Supreme Court found that

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the enactments violated the First Amendment's Free Exercise clause.

In the opinion, the Supreme Court noted, "The Free Exercise Clause of the First Amendment, which has been applied to the States through the Fourteenth Amendment, see *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940), provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." U.S.Const., Amdt. 1 (emphasis added). The city does not argue that Santeria is not a "religion" within the meaning of the First Amendment. Nor could it. Although the practice of animal sacrifice may seem abhorrent to some, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 714 (1981). Given the historical association between animal sacrifice and religious worship, see *supra* at ___, petitioners' assertion that animal sacrifice is an integral part of their religion "cannot be deemed bizarre or incredible." *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 834, n. 2 (1989). Neither the city nor the courts below, moreover, have questioned the sincerity of petitioners' professed desire to conduct animal sacrifices for religious reasons. We must consider petitioners' First Amendment claim."

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At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons. (See, e.g., Braunfeld v. Brown, (1961) 366 U.S. 599, 607 (plurality opinion); Fowler v. Rhode Island (1953) 345 U.S. 67, 69-70 (1953).)

Here, Plaintiffs seek to apply a consumer protection statute to a religious practice. Excising the term "Kapparot" and the references to the Jewish holy texts of the Torah and Talmud that were contained in the FAC (10(d)) from the SAC does not render the causes of action any less defective, as the Plaintiffs' ultimate aim is to use the court to end a religious practice (Request for Judicial Notice Exhibit 5). Plaintiffs' SAC, based upon the UCL, does not state any valid cause of action.

For the foregoing reasons, each and every cause of action of the SAC fails to state a claim against the Defendants. The court SUSTAINS the demurrer to the entirety of the Second Amended Complaint, without leave to amend.

Defendants oral motion to dismiss the case is granted pursuant to Code of Civil Procedure Section 581(f)(1).

Moving party is to give notice.

EXHIBIT B

Stephanie N. Taub, CA Bar No. 301324
FIRST LIBERTY INSTITUTE
2001 West Plano Pkwy, Ste. 1600
Plano, TX 75075
Telephone: (972) 941-4444
Facsimi
Email: [REDACTED]
Attorney enors

G. Scott Sobel, Esq., CA Bar No. 124818
SOBEL

[REDACTED]
[REDACTED]
[REDACTED]
Facsimi
Email: [REDACTED]
Attorney r Proposed Inte r Hersel Cohen

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

ANIMAL PROTECTION AND RESCUE
LEAGUE, a California nonprofit
corporation; and CORY MAC
A'GHOBHAINN, an individual;

Plaintiffs,

vs.

CITY OF LOS ANGELES, LOS
ANGESES POLICE DEPARTMENT,
CITY OF IRVINE, IRVINE POLICE
DEPARTMENT, DOES 1 THROUGH 50,

Defendants.

Case No. 8:17-CV-01581-JLS-JDE

**DECLARATION OF HERSEL
COHEN SUPPORTING
PROPOSED INTERVENORS' *EX
PARTE* MOTION TO INTERVENE
AND MOTION FOR A
TEMPORARY RESTRAINING
ORDER**

HEARING REQUESTED
September 28, 2017 at 2:30 PM

**BEFORE THE HONORABLE
JOSEPHINE L. STATON**

1 I, Hersel Cohen, declare:

- 2 1. I am over the age of eighteen. If called as a witness, I would competently
3 testify to the following facts, all of which are within my own personal
4 knowledge. This declaration is made in support of Proposed Intervenor's
5 Ex Parte Motion to Intervene and Motion for a Temporary Restraining
6 Order.
- 7 2. I was a party to the lawsuit *United Poultry Concerns v. Bait Aaron*, No.
8 BC592712 (Cal. Super. Ct., July 6, 2016).
- 9 3. I have been named as an Interested Party in the above captioned case.
- 10 4. Kaporos is a religious atonement ritual in Judaism that takes place in the
11 days between Rosh Hashanah and Yom Kippur. In my Jewish
12 community I have provided ritual kapparos services to members of my
13 community for over 15 years: for 5 years in my native Iran, and for 10
14 years in Los Angeles since I have lived here in the United States.
- 15 5. The ritual includes gently holding a live chicken above the community
16 member's head, reciting a prayer, and the humane, ritual slaughter of the
17 chicken in accordance with Jewish law. The chickens are treated
18 humanely and in accordance with state and local law.
- 19 6. In accordance with my sincerely held religious beliefs and the tradition in
20 my community of this practice for many centuries, I intend to participate
21 in the kaporos ritual this year, in 2017, at my home, which is located at
22 [REDACTED], as well as in various other
23 locations. To prepare for the ritual, I acquired several chickens, which
24 have a wholesale value of \$10 each.
- 25 7. In September 2016, anti-kapparos protestors came to my personal
26 residence, blocked my driveway so that I could not leave, entered my
27 home without my permission, videotaped inside my home, walked into
28 my minor children's bedrooms, yelled at my minor children that their

1 father "is a criminal," and fought physically with my son. Police had to
2 be called. My son and one protestor were arrested.

- 3 8. Today, September 27, 2017 at approximately 3:15 p.m., approximately 8
4 to 10 protestors came again to my home. They came on my front yard,
5 trespassing. They showed me an official looking paper but did not allow
6 me to read it, and threatened to arrest me pursuant to California Penal
7 Code Section 597(a) if I did not immediately give them my chickens. I
8 was afraid violence would break out, just like last year, and that I would
9 go to jail. My chickens were located in my back yard and on the side of
10 my house, enclosed by a wood fence and gate to the side of my house.
- 11 9. Five protesters rushed past me and opened the gate. They went in very
12 fast and started collecting chickens and putting them in boxes. I went in
13 to stop them, telling them, "bring them back, bring them back," but I
14 could not stop them. I tried to grab one box as a woman was taking it.
15 She later told a police officer I was pushing her and trying to hurt her.
16 That is not true. They took the boxes and ran out to their car. I estimate
17 they took between 20 and 30 chickens.
- 18 10. The protestors harassed each member of my Jewish community who
19 came to participate in the kapparos atonement ritual today. The
20 protestors were yelling at them, calling them "murderers," telling them
21 that they were "criminals" who would "be arrested for PC 597(a)."
22 Several members of the community were scared and went away without
23 performing the atonement ritual that they came for.
- 24 11. After they stole my chickens, I called 911 and asked the police to come.
25 Two police officers and one Animal Control officer arrived. The Animal
26 Control officer, with the police officers observing, inspected the chickens
27 in my back and side yards, and took photographs. He told me and the
28 police officers that the chickens were fine as they were, wandering freely

1 or in a pen, with water available to them. He told me that he was
2 satisfied that there was no violation. He also stated that his office
3 recognized the right of our community to carry out the kapparos ritual.

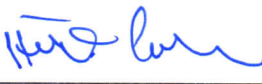
4 12. The police officers confirmed that the Los Angeles Police Department
5 considers the Jewish ritual of kapparos legal, and that they were present
6 to make sure that the live chickens were being treated in a humane
7 manner as determined by the Animal Control officer, and to ensure that
8 the protestors behaved lawfully.

9 13. After the inspection, the officers spoke with the protestors and took their
10 complaints. The protestors asked, and later insisted, that the officers
11 place me under "citizen's arrest for violation of P.C. 597(a)" and for
12 "pushing" one protestor. The officers refused to do so. The officers
13 stayed until about 10:00 p.m., when the protesters left.

14 14. I wish to be able to participate in kapporos without being harassed,
15 without my community members being harassed, without protestors
16 trespassing on my property, without fear of false arrest, and without theft
17 of my chickens, all because of my religious exercise.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Dated: September 27, 2017

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21 By: 

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Hersel Cohen

EXHIBIT C

1 Leslie Keith Kaufman (Bar # 109335)
 2 Law Offices of
 3 Kaufman & Kaufman
 4 [REDACTED]
 5 [REDACTED]

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 8 Attorneys for Defendants
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
 13

11	ANIMAL PROTECTION AND RESCUE	(CASE NO. 30-2015-00809469-CU-BT
12	LEAGUE, INC., a California)	
13	nonprofit corporation,	(DECLARATION OF
14)	RABBI ALTER TENENBAUM
15	Plaintiff,	(IN OPPOSITION TO
16)	PLAINTIFF'S EX PARTE
17	vs.	(APPLICATION FOR TEMPORARY
18)	RESTRAINING ORDER
19	CHABAD OF IRVINE, a	(
20	California corporation;)	
21	THE CHABAD HEBREW ACADEMY-	(
22	LUBAVITCH OF ORANGE COUNTY)	Hon. William D. Claster
23	a California corporation; and	(
24	DOES 1 through 50,)	DATE: September 18, 2015
25		(TIME: 1:30 P.M.
26	Defendant.)	DEPT: 18
27		(

28 I, RABBI ALTER TENENBAUM, hereby declare as follows:

1. I am the Rabbi of one of the Defendants in the above-captioned Orange County Superior Court Case No. 30-2015-00809469, entitled ANIMAL PROTECTION AND RESCUE LEAGUE, INC., v. CHABAD OF IRVINE, v. THE CHABAD HEBREW ACADEMY-LUBAVITCH OF ORANGE COUNTY.

2. I have personal knowledge of the following from my own knowledge, and if called upon to testify as to the matters set forth herein, I could and would competently do so.

3. This declaration is being submitted in opposition to

1 plaintiff's *ex parte* application for a temporary restraining order
2 against my synagogue.

3 4. The Kaparos (aka Kapporot) ritual placed at issue by the
4 Plaintiff organization, is a ritual practiced in Judaism for over
5 2000 years.

6 5. This religious ritual includes gently holding a live
7 chicken above one's head, and reciting a prayer, whereafter that
8 chicken is ritually slaughtered in accordance with Jewish Law.

9 6. At all times, all of the chickens are treated humanly and
10 in accordance with California law, California Regulations, and City
11 of Irvine ordinances.

12 7. The chickens are brought to the synagogue in crates
13 supplied by the farmer, that are in conformity with California law.

14 8. After the chickens are held, by the participating
15 individual above that individual's head, the chicken is ritually
16 slaughtered.

17 9. All of the chickens are slaughtered in accordance with the
18 religious requirements of the Torah.

19 10. The chickens are then placed into drums, sealed, and
20 picked-up for rendering, and all laws regarding the disposal of
21 dead animals are followed.

22 11. Defendant, CHABAD OF IRVINE, is not a business, and is
23 not conducting a business of selling or slaughtering chickens. The
24 Kaparos service is a private religious service that the synagogue
25 provides for people to fulfil the ritual. Participants may, or may
26 not make a donation, in accordance with their desire and ability.
27 There is no set fee for participation. We are not selling the
28 chicken, and the participants are not buying the chicken.

1 12. This is not the first time a protest group has attempted
2 to stop this religious ritual. Last September (2014) Mr. R. Dunn,
3 a special investigator for the California Dept of Food &
4 Agriculture was called to Chabad of Irvine regarding the kaparos
5 ceremony involving live chickens.

6 13. At the same time Ms. Kimberly Cherney, Animal Services
7 Supervisor from the Irvine Police Department, as well as uniformed
8 officers from the Irvine Police Department were also called.

9 14. Each of these state and city officials told us that
10 everything was all legal and done pursuant to the law, and they let
11 the ritual ceremony continue, which they watched, and then they
12 left.

13 15. We perform the ritual kaparos ceremony in accordance with
14 Food and Agricultural Code §19501(b)(2) which allows animals,
15 including chickens, "to be handled, prepared for slaughter, and
16 slaughtered in accordance with ritual requirements of the Jewish or
17 any other religious faith that prescribes a method of slaughter
18 whereby the animal suffers loss of consciousness by anemia of the
19 brain caused by the simultaneous and instantaneous severance of the
20 carotid arteries with a sharp instrument." This is exactly how the
21 Torah requires the chickens to be slaughtered.

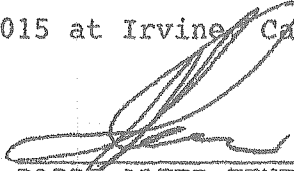
22 16. The method of slaughtering chickens used in the ritual
23 kaparos ceremony is also in accordance with California Code of
24 Regulations §1246.15(a), which deals directly with ritualistic
25 slaughter. This California Regulation specifically allows
26 Where a method of slaughter is prescribed by Kosher or other rules
27 of the Jewish faith, Islamic and other faiths and causes the
28 poultry to lose consciousness through anemia of the brain resulting

1 from the simultaneous severance of both carotid arteries with a
2 sharp instrument, it shall be considered a humane method of
3 slaughter.

4 17. Thus, under California law, as well as the Code of Jewish
5 Law, the ritual slaughter we perform is considered to be a humane
6 method of slaughter.

7 I declare under penalty of perjury under the laws of the State
8 of California that the foregoing is true and correct.

9 Executed this September 17, 2015 at Irvine, California.



RABBI ALTER TENENBAUM,
Declarant

Stephanie N. Taub, CA Bar No. 301324
FIRST LIBERTY INSTITUTE
2001 West Plano Pkwy, Ste. 1600
Plano, TX 75075
Telephone: (972) 941-4444
Facsimile: (972) 941-4457
Email: [REDACTED]

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

ANIMAL PROTECTION AND
RESCUE LEAGUE, a California
nonprofit corporation; and CORY MAC
A'GHOBHAINN, an individual;

Plaintiffs,

vs.

CITY OF LOS ANGELES, LOS
ANGESES POLICE DEPARTMENT,
CITY OF IRVINE, IRVINE POLICE
DEPARTMENT, DOES 1 THROUGH
50,

Defendants.

Case No. 8:17-CV-01581-JLS-JDE

**DECLARATION OF STEPHANIE
N. TAUB SUPPORTING
PROPOSED INTERVENORS' *EX*
PARTE MOTION TO INTERVENE
AND MOTION FOR A
TEMPORARY RESTRAINING
ORDER**

HEARING REQUESTED

September 22, 2017 at 2:30 PM

**BEFORE THE HONORABLE
JOSEPHINE L. STATON**

1 I, Stephanie N. Taub, do declare:

2 1. I am over the age of eighteen. If called as a witness, I would
3 competently testify to the following facts, all of which are within my own
4 personal knowledge. This declaration is made in support of Proposed Intervenor's
5 Ex Parte Motion to Intervene and Motion for a Temporary Restraining Order.

6 2. On September 19, 2017 at 1:10PM, I provided notice to counsel of
7 record for Plaintiffs via email that we would be filing an ex parte motion to
8 intervene and for a temporary restraining order in the above captioned case, in
9 order to protect the safety of religious congregants in Irvine and Los Angeles. The
10 email asked whether Plaintiffs were willing to stipulate that Plaintiffs, APRL
11 members, and associated persons will not attempt to place religious congregants
12 under private person arrest nor approach any of the religious institutions named in
13 the notice of interested parties between Rosh Hashanah and Yom Kippur 2017.

14 3. I also contacted Plaintiffs' counsel David Simon by phone on
15 September 19, 2017, at 3:28 PM, and left a voice message.

16 4. At 4:14 PM, Plaintiffs' Counsel Bryan Pease responded via email. He
17 stated that he did not think we adequately articulated the basis for our TRO
18 request and questioned whether we were seeking to enjoin peaceful protest
19 activities. He stated that his clients seek a judicial declaration, and they are not
20 seeking to engage in vigilante action. He further objected to the emergency TRO
21 procedure because he has multiple briefs due in another case on Thursday and he
22 did not believe that there was a threatened emergency. At 4:38 PM, I thanked Mr.
23 Pease for his response and stated that we would indicate that he was opposed to
24 the motion.

25 5. On September 19, 2017, at 5:07 PM, I emailed Mr. Pease asking if he
26 would stipulate that no one will interfere with the religious ceremony in question,
27 nor harass or assault the participants thereof, and agree that no one will endeavor
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1 to place anyone under “private persons arrest” for freely exercising a religious and
2 civil right.

3 6. Counsel for Defendants have not yet appeared in this action. I made
4 good faith efforts to reach counsel for Defendants.

5 7. I called Jeffrey T. Melching, the city attorney for the City of Irvine,
6 and notified him of the motion via phone on September 19, 2017, at 1:22PM. He
7 indicated that he would accept service on behalf of the Irvine Defendants for the
8 limited purposes of this motion. He did not indicate a position on the motion.

9 8. I called the Office of the Los Angeles City Attorney and was
10 forwarded to counsel Dov Lesel. I notified him of the motion via phone at
11 approximately 1:34PM and via email at 2:08PM. He indicated that he would
12 attempt to locate the proper counsel for the case. Mr. Lesel later directed me to
13 Arlene Hoang and Gabriel Dermer, the counsel for the City of Los Angeles who
14 would be handling the case. I spoke with Ms. Hoang on the phone about the
15 motion. She did not indicate a position on the motion at the time.

16 9. On Wednesday, September 20, 2017, at 7:41AM, Mr. Pease emailed
17 me, stating, “No one has interfered nor is planning to interfere this year,” and “No
18 one is going to physically attempt to place anyone under private persons arrest.”
19 He stated that the private person arrest concept is a legal formality that is said to a
20 police officer in order to attempt to obtain an arrest. He concluded, stating that we
21 did not have evidence that some harm was going to take place.

22 10. On September 20, 2017, at 2:21PM, I emailed all parties in this case. I
23 stated that, based upon Mr. Pease’s representations, we would not seek a TRO at
24 that time, but if circumstances change, we were prepared to seek appropriate relief
25 with the court.

26 11. One week later, on September 27, 2017, at 8:39AM, Mr. Pease
27 responded with an email stating that members of APRL will continue to request
28 ~~private person arrests, but will not attempt to physically do anything.~~

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Dated: September 28, 2017

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4 By: /s/ Stephanie N. Taub
5 Stephanie N. Taub
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EXHIBIT E

Stephanie N. Taub, CA Bar No. 301324
FIRST LIBERTY INSTITUTE
2001 West Plano Pkwy, Ste. 1600
Plano, TX 75075
Telephone: (972) 941-4444
Facsimi
Email: [REDACTED]
Attorney enors

G. Scott Sobel, Esq., CA Bar No. 124818
SOBEL

[REDACTED]
Facsimi
Email: [REDACTED]
Attorney r Hersel Cohen

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ANIMAL PROTECTION AND RESCUE
LEAGUE, a California nonprofit
corporation; and CORY MAC
A'GHOBHAINN, an individual;

Plaintiffs,

vs.

CITY OF LOS ANGELES, LOS
ANGESES POLICE DEPARTMENT,
CITY OF IRVINE, IRVINE POLICE
DEPARTMENT, DOES 1 THROUGH 50,

Defendants.

Case No. 8:17-CV-01581-JLS-JDE

**DECLARATION OF G. SCOTT
SOBEL SUPPORTING PROPOSED
INTERVENORS' *EX PARTE*
MOTION TO INTERVENE AND
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

HEARING REQUESTED
September 28, 2017 at 2:30 PM

**BEFORE THE HONORABLE
JOSEPHINE L. STATON**

1 I, G. Scott Sobel, declare:

- 2 1. I am over the age of eighteen. If called as a witness, I would competently
3 testify to the following facts, all of which are within my own personal
4 knowledge. This declaration is made in support of Proposed Intervenor's
5 Ex Parte Motion to Intervene and Motion for a Temporary Restraining
6 Order.
- 7 2. I am an attorney licensed to practice law in all courts in the State of
8 California, including this court. I am counsel for Hersel Cohen, a
9 proposed intervenor in this action, and co-counsel herein.
- 10 3. On September 27, 2017, at approximately 4:00 p.m. I went to my client's
11 home in response to his call about protesters. I stayed until approximately
12 7:00 p.m.
- 13 4. Two police officers and one Animal Control officer arrived. I
14 accompanied the Animal Control officer, with the police officers
15 observing, as they inspected the chickens in Mr. Cohen's back and side
16 yards. The Animal Control Officer told us that he was satisfied that there
17 was no violation. He wrote his name on a card, a true and correct copy of
18 which is attached hereto as Exhibit 1.
- 19 5. One of the police officers gave me a card, a true and correct copy of
20 which is attached hereto as Exhibit 1, with their names on the front, and
21 on the back the officer wrote: "PETA (sic) GROUP PROTESTING AT
22 LOCATION DUE TO RELIGIOUS RITUAL PRACTICING. MET
23 WITH ANIMAL CONTROL – NO ILLEGAL ACTIVITY." (Emphasis
24 added.)

25 I declare under penalty of perjury that the foregoing is true and correct.

26 Dated: September 27, 2017

27 By: 
28 G. Scott Sobel

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EXHIBIT 1

DATE: 9/27/17
Hc: PETA Group PROTESTING @ location
DUE TO RELIGIOUS RITUAL PRACTICES.
MET W/ ANIMAL CONTROL - NO ILLEGAL ACTIVITY.

If you wish to comment on the level of service you received, please
contact a Department supervisor or telephone (800) 339-6868, or
TTY for the hearing-impaired (213) 485-3604.



CITY OF LOS ANGELES
DEPARTMENT OF ANIMAL SERVICES

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(TTY HEARING IMPAIRED: 877-875-8205)

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LOS ANGELES, CA 90012

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3201 LACY STREET
LOS ANGELES, CA 90031

SOUTH LOS ANGELES CENTER
3612 ELEVENTH AVENUE
LOS ANGELES, CA 90018

SOUTH L.A. ANNEX CENTER
3320 WEST 36TH STREET
LOS ANGELES, CA 90018



HARBOR CENTER
957 N. GAFFEY ST.
SAN PEDRO, CA 90731

EAST VALLEY CENTER
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VAN NUYS, CA 91405

WEST VALLEY CENTER
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CHATSWORTH, CA 91311

NORTHEAST VALLEY CENTER
15321 BRAND BLVD.
MISSION HILLS, CA 91345



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FAX: (310) 444-0775
TTY: (310) 575-8719
www.lapdonline.org
www.joinlapd.com

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LOS ANGELES POLICE DEPARTMENT

WEST LOS ANGELES AREA
WEST LOS ANGELES PATROL DIVISION

WHEAT #4720

BY: FUTES #4710

1663 BUTLER AVENUE
LOS ANGELES, CA 90025

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D. Gonzalez #084
ANIMAL CONTROL OFFICER

ACTIVITY A17-023728

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