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ATTORNEYS FOR INTERVENER

PACIFIC POLK PROPERTIES, LLC

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA-NEVADA ANNUAL
CONFERENCE OF THE UNITED
METHODIST CHURCH, a California religious
corporation,

Plaintiff,

PACIFIC POLK PROPERTIES, LLC, a
Delaware limited liability corporation,

Intervener,

v.

CITY AND COUNTY OF SAN FRANCISCO,
a chartered California city and county; and
DOES 1-100, inclusive,

Defendants.

Case No. CV 11-02338 YGR (LB)

**JOINT STATUS CONFERENCE
STATEMENT AND [PROPOSED]
SCHEDULING ORDER**

Hearing Date: January 13, 2014

Time: 2:00 p.m.

Place: Oakland Courthouse
Courtroom 5, 2nd Floor

Trial Date: TBD

1 Plaintiff California-Nevada Annual Conference of the United Methodist Church
2 (“Conference”), Plaintiff-in-Intervention, Pacific Polk Properties, LLC (“Pacific Polk”), and the City
3 and County of San Francisco (the “City”) referred herein collectively as the “Parties” respectfully
4 submit this Joint Status Conference Statement and Proposed Scheduling Order pursuant to the Joint
5 Stipulation And Order dated December 12, 2013, ECF No. 129, in advance of the case management
6 conference set for January 13, 2014 at 2:00 p.m.

7 **I. BRIEF PROCEDURAL HISTORY**

8 The City brought a Rule 12(c) Motion for Judgment on the Pleadings, heard by the Court on
9 February 12, 2013. After the Motion was heard, Plaintiffs voluntarily dismissed certain claims with
10 prejudice. Pacific Polk dismissed the following claims: (1) First Cause of Action for Violation of
11 RLUIPA; (2) the Second Cause of Action for Violation of RLUIPA; (3) the Third Cause of Action for
12 Violation of First Amendment to U.S. Constitution; (4) the Fifth Cause of Action for Procedural Due
13 Process; and (5) the Sixth Cause of Action for Substantive Due Process. The Conference dismissed the
14 following claim: the Second Cause of Action for Violation of RFRA.

15 On September 30, 2013, the Court terminated the City’s Rule 12(c) Motion without prejudice.
16 A few days later, on October 3, 2013, the San Francisco’s Planning Commission approved the
17 Conditional Use authorization for the project that Pacific Polk proposed for 1601 Larkin Street in San
18 Francisco. On November 4, 2013, Judy Berkowitz, Hiroshi Fukuda, and Linda Chapman appealed the
19 CUP to the San Francisco Board of Supervisors. The appeal was rejected by the Clerk of the Board, on
20 November 13, 2013, for failure to meet the statutory requirements. The Zoning Administrator issued a
21 written Variance for the project on November 15, 2013. On November 25, 2013, that variance was
22 appealed by members of a group calling themselves the Nob Hill Neighbors. The Board of Appeals
23 hearing on the variance appeal is set for January 29, 2014, at 5:00 p.m. The City has suspended
24 issuance of the variance pending the Board of Appeals’ determination of the variance appeal by the
25 Nob Hill Neighbors. Likewise, the City has not issued a site permit for the project or a demolition
26 permit, while the variance appeal remains pending.

27 Discovery here has been stayed during the entire pendency of the action. Discovery is currently
28

1 still stayed.

2 **II. SETTLEMENT**

3 With the aid of Magistrate Judge Laurel Beeler, the Parties have been actively involved in the
4 settlement process. The Parties continue to be interested in pursuing settlement options in order to
5 avoid further litigation. From Plaintiffs' perspective no resolution is possible unless and until a
6 demolition permit issues and the Church Structure has been leveled. From the City's perspective, the
7 City's issuance of the Conditional Use authorization moots all injunctive aspects of this action. If
8 plaintiffs intend to pursue claims for attorneys fees and damages, then the City believes it will be
9 necessary for the Court to restore the City's 12(c) motion to the calendar. In the interim the Parties
10 intend to continue working with Judge Beeler to resolve all remaining aspects of this action.

11 **III. PRETRIAL SCHEDULE**

12 In view of the scheduled January 29, 2014 hearing on the Nob Hill Neighbors' variance appeal,
13 the parties jointly request that the Court reset the case management conference in this case to February
14 24, 2014, or the next date thereafter convenient to the Court. Such a continuance will give the parties
15 an opportunity to consult after the Board of Appeal decides the pending variance appeal and to report
16 the settlement status.

17 **SIGNATURE ATTESTATION**

18 (N.D. Cal. General Order 45, Section X.B.)

19 Concurrence in the filing of this document has been obtained from each other signatory, or
20 from the single signatory, in compliance with General Order 45, Section X.B.

21 Dated: January 7, 2014

22 DENNIS J. HERRERA, City Attorney
23 KRISTEN A. JENSEN
24 THOMAS S. LAKRITZ
25 JAMES M. EMERY
26 Deputy City Attorneys

27 By: _____ /s/
28 James M. Emery
Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

1 Dated: January 7, 2014

SIGNATURE LAW GROUP

2 By: _____/s/

Gordon Egan

3 **Attorneys for Plaintiff**

CALIFORNIA NEVADA ANNUAL CONFERENCE

OF THE UNITED METHODIST CHURCH

4 Dated: January 7, 2014

WOOD ROBBINS LLP

5 By: _____/s/

6 B. Douglas Robbins

7 **Attorneys for Plaintiff-in-Intervention**

PACIFIC POLK PROPERTIES LLC

8 **ORDER**

9
10 After considering the stipulation of the parties, and good cause appearing, **IT IS HEREBY**
11 **ORDERED AS FOLLOWS:** The Status Conference Hearing set for January 13, 2014 at 2:00 p.m. is
12 continued to March 3, 2014 at 2:00 p.m., in Courtroom Five of the Oakland Federal Building. The
13 parties shall submit a Joint Status Conference Statement and Proposed Scheduling Order by February
14 24, 2014. This Order terminates Docket No. 130.

15 **IT IS SO ORDERED.**

16 Dated: January 8, 2014

17 

18 YVONNE GONZALEZ ROGERS

19 UNITED STATES DISTRICT COURT JUDGE