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March 13, 2017

Margaret Carter, Clerk of the Court
United States Court of Appeals for the First Circuit
John Joseph Moakley United States Courthouse
1 Courthouse Way
Boston, Massachusetts 02210

Re: 16-1756 -- Congregation Jeshuat Israel (CJI) v. Congregation Shearith Israel (CSI):
Appellee CJI's Rule 28(j) response

Dear Ms. Carter:

Applying neutral principles of Rhode Island trust law, the District Court found the evidence clear and convincing that Touro Synagogue is held in charitable trust. (AD46-65). CSI did not dispute this finding in its appellate briefs (CSI Br. 61), and there is no basis to disturb it given the overwhelming record evidence.

CSI never argued, nor is it plausible, that the Establishment Clause precludes finding Touro held in charitable trust. *Jones v. Wolf*, 443 U.S. 595, 603-06 (1979) (courts may resolve church property disputes by applying neutral principles of trust law) (cited by Becket). While CSI now claims it argued the “same thing” as did Becket, CSI never argued the court should not have found a trust purportedly because (i) neutral principles of trust law are applied differently when the parties are religious organizations (Becket Br. 21-22) — a position that does not comport with the First Amendment, or (ii) the court purportedly relied on the parties’ conduct more than written documents (Becket Br. 23) — even though the court paid careful attention to the relevant documents and did not interpret religious doctrine. (AD46-57).

CSI’s claims in its Rule 28(j) letter of “fidelity” to Touro and the Jews of Newport were rejected by the court as a factual matter. (AD98-103). CSI repudiated the trust and abandoned its responsibilities to Touro many decades ago — grounds for trustee-removal unrelated to the Rimonim issue. Despite the requirements of the 1945 Agreement (A2997, Art. I(a)), CSI testified it has no obligation to preserve or maintain Touro and rebuffed all requests for help. (A688; AD100, citing A271). CSI is not even a party to the 2001 agreement. (A2194-209). Ultimately, as the Attorney General noted, if CSI were deemed absolute owner, there would be nothing to prevent CSI in the future from closing and selling Touro to fund CSI in New York (AG Br. 1-2; A1089-90), just as CSI sought the “immediate return” of the Rimonim to CSI “in New York.” (A67¶4).

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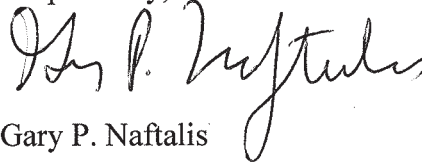
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We respectfully refer the Court to the complete colloquy leading to the District Court's refusal to admit Rabbi Soloveichik's testimony. (ECF107 at 117-43).

Respectfully,

A handwritten signature in black ink, appearing to read "Gary P. Naftalis", written in a cursive style.

Gary P. Naftalis

cc: Counsel (via ECF)