SUPREME COURT COPY

No. _S180749

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BEACH CITIES COLLECTIVE,
a California non-profit corporation,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE

Respondent

CITY OF DANA POINT,

Real Party in Interest

BRIEF ON THE MERITS ON REVIEW

Re: Decision of the Court of Appeal, Fourth Appellate District, Division Four, filed February 19, 2010 (Court of Appeal No. G042880)
Orange County Case No. 30-2009-00298208

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BRIEF ON THE MERITS

i. INTRODUCTION

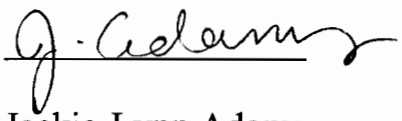
Petitioner Beach Cities Collective, Defendant and Appellant, successfully petitioned this Court to review the Order of the Court of Appeal, G042880, Fourth Appellate District, Division Three by William Rylaarsdam, Acting P. J. filed February 19, 2010. The Court granted review of the question whether an order enforcing a legislative subpoena is reviewable by appeal and granted Petitioner's request for a stay.

CERTIFICATE OF INTERESTED PARTIES

Other than the parties in the related cases, real party in interest, the appellate justices and the superior court judge, petitioner Beach Cities Collective and its patients, collective members, and directors, Petitioner knows of no person who has an interest that must be disclosed under this rule.

Dated: April 8, 2010

Signed under penalty of perjury under the laws of the State of California.



Jackie-Lynn Adams

I. ORDER GRANTING REVIEW

Petition for review was sought after the Court of Appeal deemed a notice of appeal to be a petition for extraordinary writ. The Court limited review in the Dana Point Safe Harbor Collective, The Point Alternative Care, Holistic Health, Beach Cities Collective, and Dana Point Beach Collective cases to the following issue: Is an order compelling compliance with a legislative subpoena issued under Government Code section 37104 appealable as a final judgment?

II. NATURE OF THE CASE

A. Introduction

The issue under review is an important unsettled issue whether an order compelling compliance with a legislative subpoena issued pursuant to California Government Code §37104 *et seq.* is appealable as a final judgment in a special proceeding or whether it may only be reviewed by a petition for extraordinary writ.

The Courts of Appeal and the Superior Courts in this state must choose among conflicting authority on the appealability of Superior Court orders enforcing administrative and analogous legislative subpoenas.

Some courts have held such orders are non-appealable and may only be reviewed by writ. (*See Bishop v. Merging Capital, Inc.*,

(1996). 49 Cal.App.4th 1803, 1806-09, 57 Cal.Rptr.2d 556.) Other courts, however, have found that the "better view" is that such orders are appealable as final judgments in special proceedings. (*Millan v. Restaurant Enterprises Group, Inc.*(4th Dist. 1993)14 Cal.App.4th 477, 484-85, 18 Cal.Rptr.2d 198.)

Therefore, the question of whether an order compelling compliance with a legislative subpoena issued pursuant to California Government Code §37104 *et seq.* is appealable as a final judgment in a special proceeding, will be a recurring one for California's courts.

B. Procedural History

The Petitioner, Beach Cities Collective (hereinafter "Beach Cities") is a California non-profit organization duly organized under the laws of the State of California. Holistic Health was created pursuant to the guidelines set forth by the California Attorney General as a collective for the cultivation and distribution of marijuana for medical purposes.

On or about June 27, 2009 the Real Party in Interest caused to be issued a subpoena for the production of Business Records pursuant to California Government Code § 37104. Said subpoena contained a total of 44 production requests. The aforementioned subpoena was

served upon the Petitioner on or about July 2, 2009 with a production date of August 13, 2009. On or about August 11, 2009, Petitioner informally responded to the subpoena indicating that it would not be complying on constitutional grounds.[1]

On or about August 27, 2009, the Real Party in Interest filed a Petition seeking an Order to Show Cause Re Contempt for Non-Compliance of a legislative subpoena pursuant to California Government Code § 37104 et seq. In support of the Order to Show Cause, the Real Party in Interest submitted the "Mayor's Report," which set forth the basis for the issuance of the Subpoena.

One of the demands in the subpoena, to which the Petitioner objected, and which was subject to extensive briefing at the trial court level, was the disclosure of private personal information of third parties and of the members of the collective. The Real Party in interest alleged that these records were sought to determine that the Petitioner was in compliance with the Attorney General Guidelines. The Petitioner argued that these were private and privileged records of third party individuals and of patients. Further, these private documents had no bearing on the issue at hand.

[1] The City and Superior Court have not differentiated in their response or enforcement of the subpoena among the other defendant/appellant/ petitioners.

Notwithstanding the Petitioner's arguments, on October 22, 2009, the Trial Court ordered that the Petitioner's custodian of records, David Lambert, produce all documents (including the names and physician information of patient members as well as private information of third parties) and records responsive to the City Subpoena to the City of Dana Point, no later than 5:00 p.m. on December 7, 2009. A copy of the order is attached to the Petition and incorporated herein by reference as Exhibit "A".

On November 10, 2009, the Petitioner timely filed its Notice of Appeal of the Superior Court's order. On November 17, 2009 the Court consolidated the Dana Point Enforcement cases for all purposes. On December 3, 2009, the Superior Court at the request of all Defendants including Petitioner, found the order to be appealable and stayed its enforcement pending the appeal.

On January 29, 2010, the Court of Appeal for the Fourth District on its own motion[2], found that the appeal in this case was not from an appealable order and deemed that the Notice of Appeal filed by the Petitioner on November 10, 2009, to be a petition for

[2] Court records indicate that Dana Point Beach Collective was invited to file a letter brief on the issue of appealability but did not do so. Holistic Health was never served with the City's letter brief on the issue, filed January 8, 2010.

extraordinary writ and further ordered that the Petitioner had fifteen days from the date of the order to file a petition for extraordinary writ. A copy of the January 29th order is attached to the Petition and incorporated herein by reference as Exhibit "B".

On February 10, 2010, the Petitioner filed its Motion to Reinstate Appeal, and to Reconsider the Order Denying Consolidation, in the Court of Appeal. On February 19, 2010, the Court of Appeal denied the Petitioner's motion, but allowed an extension up to and including March 12, 2010, for the Petitioner to file its extraordinary writ. A copy of the Court of Appeal order dated February 19, 2010 is attached to the petition and incorporated herein by reference as Exhibit "C".

The Court has now granted review of the Court of Appeal's ruling of February 19, 2010 as to the appealability of the Superior Court's Order and has granted a stay of the enforcement of the order.

III. APPEAL RATHER THAN WRIT IS THE PROPER AVENUE TO REVIEW AN ORDER ENFORCING A LEGISLATIVE SUBPOENA

This case presents an important question of law that will arise frequently in California's lower courts. The current decisions lack

uniformity. Despite the ruling in *Millan v. Restaurant Enterprises Group, Inc., supra,* which held that orders enforcing legislative subpoenas *are appealable* as final judgments in special proceedings, the Court of Appeal in *this* case has found that the appeal is *not* from an appealable order.

Petitioner and the other appellants have been denied their statutory right to appeal the Order of November 2, 2009. This right to appeal is critical, because of the potential disclosure of private information that could affect the way these third party individuals are treated.

IV. THE BETTER VIEW IS THAT AN ORDER IN A SPECIAL PROCEEDING THAT REQUIRES COMPLIANCE WITH A LEGISLATIVE SUBPOENA IS APPEALABLE

There is a split of authority on the appealability of Superior Court orders enforcing legislative subpoenas issued pursuant to *California Government Code* §37104 *et seq.* as well as of administrative subpoenas by government agencies. Some courts have held such orders are non-appealable and may only be reviewed by writ. (*See, Bishop v. Merging Capital, Inc.(supra),* 49 Cal.App.4th 1803, 1806-09, 57 Cal.Rptr.2d 556 .)

The Fourth District, where Petitioner's and the related cases are being heard, has, however, previously found that the "better view" is that such orders are appealable as final judgments in special proceedings. *Millan, supra* [internal citations omitted].

A. General Principles of Appealability vs. Writ

That there is a possibility of an appeal, that this court can decide that the order should be reviewed by appeal, almost decides the question. It has been long held that one of the major thresholds for writ relief is that the petitioner has no other speedy, appropriate or adequate remedy at law. The availability of appeal has been held to negate that threshold requirement: if an order can be appealed it should not generally be reviewed by writ absent other showing such as irreparable harm.

B. Applicable Principles of Law as to the Appealability of Legislative Subpoenas

The Sixth Appellate District has expressly found that an order to compel compliance with a legislative subpoena pursuant to Government Code § 37104 is appealable as a final judgment. (*City of Santa Cruz v. Patel,* (6th Dist. 2007)155 Cal.App.4th 234, 240-43, 65 Cal.Rptr.3d 824.) The Sixth District extensively cited *Millan* with approval extensively in *Patel* while also discussing and rejecting a

contrary line of cases from the Second District Court of Appeal in favor of this "better view".

Further, the more recent decision by the Third District in *State ex rel. Dept. of Pesticide Regulation v. Pet Food Express Ltd.* (2008) 165 Cal.App.4th 841 [81 Cal.Rptr.3d 486], although it concerns administrative subpoenas, offers strong support for the appealability of a legislative subpoena. The Court of Appeal noted that there was confusion regarding appealability of orders enforcing administrative subpoenas." (*Id.*, at p. 849; compare e.g., *Millan v. Rest. Enters. Group, Inc.* (1993) 14 Cal.App 4th 477, [18 Cal.Rptr.2d 198] (*Millan*) [holding that "the better view is that 'orders requiring compliance with the subpoenas are appealable as final judgments in special proceedings . . ..' "], with *Bishop v. Merging Capital, Inc.* (1996) 49 Cal.App.4th 1803, 1809 [57 Cal.Rptr.2d 556] (*Bishop*) [concluding that orders compelling compliance with administrative subpoenas are not appealable].) (*Id.*)

Following *Millan* and thus rejecting *Bishop*, the court in *State ex rel. Dept. of Pesticide Regulation* concluded that an order compelling compliance with an administrative subpoena is appealable as a final judgment:

"[A] judgment is the 'final determination of the rights of the parties in an action or proceeding.' The statutory scheme provides for an original proceeding in the superior court, which results in an order directing the respondent to comply with the administrative subpoena. The court order enforcing the administrative subpoena is tantamount to a superior court judgment in mandamus which, with limited exceptions, is appealable under Code of Civil Procedure § 904.1. Whether the matter is properly characterized as an 'action' or a 'special proceeding', it is a final determination of the parties' rights. It is final because it leaves nothing for further judicial determination between the parties except the fact of compliance or noncompliance with its terms.

The fact that an intransigent respondent may be subject to a contempt order does not mean the court order is not final, because the same possibility exists with injunctions and final judgments which form the basis for contempt citations. The purpose of any judicial order which commands or prohibits specific conduct is to make the sanction of contempt available for disobedience. This fact does not render such an order 'nonfinal.' Indeed, the contempt judgment is not appealable but must be reviewed, if at all, by writ, and therefore review of the underlying order can reliably be had only if that order is appealable. [Citation.]" (*State ex rel. Dept. of Pesticide Regulation, supra*, 165 Cal.App.4th at p. 851.).

Thus, *State ex rel. Dept. of Pesticide Regulation* rejected the argument that an order compelling compliance with an administrative subpoena is akin to a nonappealable discovery order:

"We . . . reject the Department's . . . argument that we should analogize to discovery orders in civil litigation, which are not considered final, appealable orders. Such

> discovery orders, however, are made in connection with pending lawsuits which have yet to be resolved. A discovery order does not determine all of the parties' rights and liabilities at issue in the litigation. The Department argues the same applies here, because even with the documents, the Department cannot impose administrative penalties unless an administrative hearing is held if such a hearing is requested. However, it is possible an administrative hearing may not be requested and, even if it is requested, it will not necessarily end up in court. [Fn. omitted.] In contrast to this case, pending civil litigation in which a discovery order occurs already involves the court and will continue to do so." (*State ex rel. Dept. of Pesticide Regulation, supra*, 165 Cal.App.4th at p. 852.).

State ex rel. Dept. of Pesticide Regulation, supra, was cited and followed in the more recent case of *The People ex rel. Preston DuFauchard v. U.S. Financial Management,* (2009) 169 Cal.App.4th 1502:

> We agree with the court's analysis in *State ex rel. Dept. of Pesticide Regulation.* In this case, the trial court's order compelling compliance with the Commissioner's administrative subpoena constituted a final determination of the parties' rights, notwithstanding the possibility that further proceedings might be required to gain U.S. Financial Management's compliance with that order. (See *State ex rel. Dept. of Pesticide Regulation, supra*, 165 Cal.App.4th at p. 852.) As such, the order constitutes an appealable final judgment pursuant to Code of Civil Procedure § 904.1, subdivision (a)(1). (See *State ex rel. Dept. of Pesticide Regulation, supra*, 165 Cal.App.4th at p. 849.)"

Accordingly, in following the historical rulings from *Bishop* through the present, there has been a clear shift in the treatment of legislative subpoenas. The recent decisions have clearly rejected *Bishop* and are more in line with *Millan*, in concluding that an order compelling compliance with an administrative subpoena is appealable as a final judgment.

V. THIS COURT'S DECISION IN *LEONE V. STATE MEDICAL BOARD* WHICH CONCERNED THE APPLICATION OF A SPECIFIC STATUTE PRESCRIBING WRIT REVIEW DOES NOT CONTROL THE INSTANT CASE

In 2000 this court confronted a statutory determination that an order on physician discipline must be reviewed by writ. However, *Leone v. State Medical Board* (2000) 22 Cal. 4th 660 , 94 Cal.Rptr.2d 61; 995 P.2d 191, for all its excellent discussion of the history of this state's legislation conferring appealability, is not dispositive because in *Leone* this court reviewed a specific statute *expressly prescribing writ*, rather than appellate review. (22 Cal. 4th at 644.) Here there is no express statute and thus the ordinary concerns that determine whether review should be by writ or appeal, and as petitioner contends, the

plain language of Code of Civil Procedure §§ 904.1 et. seq. compel the conclusion that the order is appealable.

VI. THE FOURTH DISTRICT'S RULING THAT THE ORDER ENFORCING THE LEGISLATIVE SUBPOENA IS NOT APPEALABLE SHOULD BE REVERSED

It is unclear why the court decided the order was not appealable. Although the order references *Olson v. Cory* (1983) 35 Cal. 3d 390, it appears to do so only in aid of its decision to treat the appeal as a petition for extraordinary writ. That is because in *Olson* the Supreme Court explained that the order in question was not appealable, inter alia, *because it was not a final order*. Here, however, the order was a final order on the only controversy presented to the Superior Court: did the City of Dana Point properly issue and serve a legislative subpoena on Respondents that the Superior Court properly enforced. No further proceedings on this issue could even occur until such time as the Appellate Court completed its review. In *H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal. App. 4th 1357 the Court similarly afforded the "relief" or grace it affords appellants here, that is treating the appeal from a non-appealable order as a petition for a writ. However, that case as well gives no rationale why this Court believes the order is not appealable.

VII. THIS COURT SHOULD ADOPT THE REASONING OF *PATEL V. CITY OF SANTA CRUZ* AND FIND THAT THE ENFORCEMENT ORDER IN THIS CASE IS APPEALABLE AS A FINAL ORDER

The question of the appealability of a Government Code § 37104 order was previously decided by the Court of Appeal in *City of Santa Cruz v. Patel* (2007) 155 Cal. App. 4th 134. The procedural posture of that case is nearly on all fours with this one. The City of Santa Cruz issued a legislative subpoena and when Patel failed to comply, the City instituted enforcement. Patel failed to comply with the subpoena. The Superior Court ordered Patel to comply and Patel appealed. Appellant could not provide a better analysis than that of the *Patel* court:

> Before proceeding to the substance of the dispute we must decide whether the superior court's orders are appealable. We conclude that they are. Government Code section 37104 authorizes the legislative body of a city to issue subpoenas "requiring attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding pending before it." In the event a witness refuses to comply with the subpoena, the mayor may report that fact to the judge of the superior court. (Gov. Code, § 37106.) "The judge shall issue an attachment directed to the sheriff of the county where the witness was required to appear, commanding him to attach the person, and forthwith bring him before the judge." (Id., §37107.) "On return of the attachment and production of the witness, the judge has jurisdiction." (Id., § 37108.) Refusal to

> comply with a subpoena could subject the witness to contempt proceedings. In that event, the witness has the same rights he or she would have in a civil trial "to purge himself [or herself] of the contempt." (Id., § 37109.) City issued the subpoenas and obtained enforcement orders according to the foregoing statutory scheme. Appellants claim that the compliance orders are appealable. City does not dispute that claim. There is no case directly holding that these compliance orders are appealable. Because there is a split of authority on the point as it relates to orders compelling compliance with administrative subpoenas (Gov. Code, § 11180 et seq.), we consider the issue in some detail. (Id.)

As the court acknowledged, there is no constitutional right to an appeal; the right to appeal is wholly statutory. (*Trede v. Superior Court* (1943) 21 Cal.2d 630, 634 [134 P.2d 745].) Code of Civil Procedure section 904.1 lists the types of rulings that are appealable in this state. A "judgment," other than an interlocutory judgment, is appealable. (Code Civ. Proc., § 904, subd. (a)(1).) Other specified orders are also appealable.

As Petitioner must agree, an order compelling compliance with subpoenas issued under Government Code section 37104 et seq. is not listed specifically as one of them. Indeed, until *Millan*, there was no case specifically considering the appealability of orders enforcing administrative subpoenas. *City of Vacaville v. Pitamber* (2004) 124

Cal.App.4th 739, 748 [21 Cal.Rptr.3d 396] (*Vacaville*) was an appeal from a legislative subpoena, but *Vacaville* did not consider appealability, apparently because the court of appeal assumed the order was appealable. The cases differ on the question of whether an analogous order compelling compliance with an administrative subpoena (Gov. Code, § 11180 et seq.) is appealable.

In *Millan v. Restaurant Enterprises Group, Inc.* (1993) 14 Cal.App.4th 477, 484-485 [18 Cal.Rptr.2d 198] (*Millan*), the Fourth District Court of Appeal held that an order compelling compliance with an administrative subpoena issued pursuant to Government Code section 11181 is appealable as a final judgment in a special proceeding.

In so holding, *Millan* primarily relied upon the fact that many cases, including cases from the Supreme Court, had considered appeals from such orders without addressing the appealability issue. (*Millan*, at pp. 484-485, citing *Younger v. Jensen* (1980) 26 Cal.3d 397 [161 Cal.Rptr. 905, 605 P.2d 813]; *Board of Medical Quality Assurance v. Gherardini* (1979) 93 Cal.App.3d 669 [156 Cal.Rptr. 55]; *Fielder v. Berkeley Properties Co.* (1972) 23 Cal.App.3d 30 [99 Cal.Rptr. 791]. See also *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 18

[56 Cal.Rptr.2d 706, 923 P.2d 1].) Of course, a case is not authority for an issue it has not considered. (*People v. Toro* (1989) 47 Cal.3d 966, 978, fn. 7 [254 Cal.Rptr. 811, 766 P.2d 577].) *Millan* also cited as a basis for its holding *Wood v. Superior Court* (1985) 166 Cal.App.3d 1138, 1140 [212 Cal.Rptr. 811]. (*Millan, supra*, 14 Cal.App.4th at p. 485.) However, *Wood* provides no independent analysis but simply relies upon the observation in *Franchise Tax Board v. Barnhart* (1980) 105 Cal.App.3d 274, 277 [164 Cal.Rptr. 331], that "[a]n order made under the authority of [Government Code] sections 11186-11188 . . . can be viewed as a final judgment in a special proceeding, appealable unless the statute creating the special proceeding prohibits such appeal."

Although the Second District Court of Appeal has held that compliance orders made under Government Code sections 11186 through 11188 are not appealable, that is because in those cas the compliance orders were not made in separate special proceedings. (*Barnes v. Molino* (1980) 103 Cal.App.3d 46, 51 [162 Cal.Rptr. 786] [order is not a final determination of parties' rights and does not fit description of appealable orders listed in Code Civ. Proc., § 904.1];

People ex rel. Franchise Tax Bd. v. Superior Court (1985) 164 Cal.App.3d 526, 535 [210 Cal.Rptr. 695] [following *Barnes*].

Because of its reliance on subsequent contempt proceedings to resolve the question of the validity of the subpoena, this Court should reject the Second District's view as stated in *Bishop v. Merging Capital, Inc.* (1996) 49 Cal.App.4th 1803, 1808-1809 [57 Cal.Rptr.2d 556] (Bishop).)

Bishop held that, when a witness is ordered to comply with an administrative subpoena issued under Government Code section 11180 et seq., the witness is not aggrieved until he or she has disobeyed the order and been found in contempt. Prior to that, any ruling the appellate court could make would be purely advisory. *The appellate court did not consider the order to be a judgment because, under its analysis, the order was not final.*

The orders before this Court in these five related cases compel compliance with legislative subpoenas issued pursuant to Government Code section 37104 et seq. As to these, Petitioner believes the better view is that the orders are appealable as final judgments. A judgment is the "final determination of the rights of the parties in an action or proceeding." (Code Civ. Proc., § 577.) The statutory scheme at hand

provides for an original proceeding in the superior court, initiated by the mayor's report to the judge, which results in an order directing the respondent to comply with a city's subpoena. Indeed, the compliance order is tantamount to a superior court judgment in mandamus, which, with limited statutory exceptions, is appealable. (Id., § 904.1, subd. (a); Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc. (1987) 43 Cal.3d 696, 702 [238 Cal.Rptr. 780, 739 P.2d 140].) Whether the matter is properly characterized as an "action" (Code Civ. Proc., § 22) or a "special proceeding" (id., § 23), it is a final determination of the rights of the parties. It is final because it leaves nothing for further determination between the parties except the fact of compliance or noncompliance with its terms. (*Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc., supra*, 43 Cal.3d at p. 703.) (Millan, supra at 484-85.)

Concerning the question of the finality of the order (see also *Collins v. Corie* (1936) 8 Cal. 2d 120), *Patel* concluded that the fact that an intransigent witness may be subject to a contempt order does not mean that the order compelling compliance is not final and that the normal rule is that "injunctions and final judgments which form

the basis for contempt sanctions are appealable. . and that if there is a contempt finding, *that* finding would not be appealable. (Id.)

> Therefore, review of the underlying order can reliably be had only if that order is appealable. The superior court's order determined all of the parties' rights and liabilities at issue in the proceedings; the only determination left was the question of future compliance, which is present in every judgment. (*Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1985) 192 Cal.App.3d 1530, 1537 [243 Cal.Rptr. 505].) We conclude that the orders herein must be deemed final judgments and are, therefore, appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(1). (*Patel, supra* at 240-244, emphasis added.)

As *Patel* recognizes, appeals are historically more likely to result in full opinions than writs, which are susceptible to postcard denial. Since this case presents issues of critical importance as cities attempt to deal with increasingly complex zoning and land use issues as well as the conflict between state and federal law on medical marijuana, the public interest as well as that of the litigants would be best served by the kind of full review and opinion provided by appeal. It should also be noted that the Superior Court had ruled in a contested hearing that the order was appealable and thereupon issued a stay.

VIII. CONCLUSION

For the reasons stated above, this Court should find that appeal, rather than writ, is the proper means to review an order compelling

compliance with a legislative subpoena issued pursuant to California Government Code §37104 *et seq*. and that such order is appealable as a final judgment in a special proceeding.

DATED: April 8, 2010

Respectfully submitted,

JACKIE-LYNN ADAMS,
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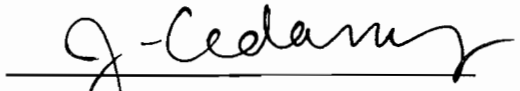
Attorneys for Beach Cities Collective

IX. CERTIFICATE OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204

The foregoing brief is proportionately spaced, using 14-point Time New Roman. The Word count of 4,186 is based on information provided by Microsoft Word processing program and therefore does not exceed the limits provided by Rule 8.204, California Rules of Court.

I certify that the foregoing is true and correct.

Executed this 8th day of April, 2010, at Los Angeles, California.



Jackie-Lynn Adams

State Bar No. 266807

PROOF OF SERVICE
(CCP §§ 1013(a) and 2015.5)

State of California,)
)ss.
County of Los Angeles.)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1055 Wilshire Boulevard, Suite 1996, **Los Angeles, California** 90017.

This brief has been submitted to this court and to the court of appeal by priority mail pursuant to rule of court rule 8.25(b)(3)(A).
On April 9, 2010, I served the foregoing BEACH CITIES' BRIEF ON THE MERITS by placing a true copy thereof enclosed in a sealed envelope, as follows:

Court of Appeal
601 W. Santa Ana Blvd.
Santa Ana, CA 92701

Clerk of the Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Rutan & Tucker
A. Patrick Munoz
Noam I. Duzman
Jennifer J. Farrell
611 Anton Blvd.,
14th Floor
Costa Mesa, CA 92626

☒ **(BY MAIL)** - I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail in Los Angeles, California.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **(STATE)** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **4.09.2010** at Los Angeles, California

J. Adams

Jackie Adams