



CITY ATTORNEY

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DATE: March 16, 2010

TO: Jonathan Gettleman **FAX NUMBER:** 515-5228
Mark Briscoe 429-5664

FROM: John G. Barisone

RE: *People v. Richardson* (Consolidated Case No. CV162526)

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1 John G. Barisone, SBN 87831
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6 Attorneys for Plaintiff PEOPLE OF THE STATE OF CALIFORNIA ex rel. John G. Barisone, City
Attorney for the City of Santa Cruz

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CRUZ

11 PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. John G. Barisone, City Attorney for the
12 City of Santa Cruz,

13 Plaintiff,

14 vs.

15 ANNA GALEEN RICHARDSON, and
MIGUEL ANGEL DELEON.

16 Defendants.

Case No. CV162526
[consolidated with CV162525]

**REPLY MEMORANDUM IN SUPPORT OF
CONTEMPT CITATION APPLICATION**

Date: March 19, 2010
Time: 9:00 a.m.
Dept: 4

18 **A. INTRODUCTION**

19 As explained in the City's opening memorandum, the court's inquiry in determining whether to
20 issue a contempt citation is narrowly focused and specific. The court is authorized to exercise its
21 contempt power upon finding: 1) the person against whom the preliminary injunction was issued was on
22 notice or had knowledge of the preliminary injunction; 2) the person against whom the preliminary
23 injunction was issued had the ability to comply with the preliminary injunction; and 3) the person
24 against whom the preliminary injunction was issued willfully refused to comply with the preliminary
25 injunction. Here, there is no contention by Defendants that they were without knowledge or were not on
26 notice of the subject preliminary injunctions.¹ Accordingly, in this proceeding the court is only required

27 _____
28 ¹ To punish for constructive contempt, it must appear that the order on which the contempt proceeding is based was served on the accused, that the accused was present when the order was made, or that the accused had knowledge of the order. *In Re:*

1 to ascertain whether Defendants had the ability to comply with the preliminary injunctions but willfully
2 refused to do so. In opposing the City's contempt citation application, the Defendants posited a series of
3 procedural and substantive objections to that application which, upon consideration of the applicable
4 case law and statutes, can be readily overruled by the Court.

5 B. ARGUMENT

6 1. Defendants Objections To The Affidavits.

7 a. The City Attorney's Affidavit

8 At page 6 of their memorandum, Defendants argue that the City Attorney's "charging affidavit"
9 should be disregarded in that "it states no facts that establish the Defendants have the ability to comply
10 with Judge Burdick's order." However, in the same paragraph they acknowledge that the declaration
11 expressly references police reports upon which the facts recited in the affidavit were based. The City's
12 Ex Parte Application For Order To Show Cause For Contempt filed with this Court on February 23,
13 2010 states, at page 2, "This application is based upon the accompanying Memorandum of Points and
14 Authorities, the accompanying declarations of John G. Barisone, Santa Cruz Police Officers Alex
15 Martin, Daniel Forbus, William Winston, and Santa Cruz GIS Coordinator Richard Westfall, the
16 accompanying Declaration of Notice and all other court records and files in these consolidated actions."

17 Defendants, in referring to the City Attorney's affidavit, concoct the term "charging affidavit"
18 which is used nowhere in the civil contempt statutes or in the case law construing those statutes. Having
19 invented this term, they then argue that this affidavit must be disregarded by the Court because it does
20 not incorporate by reference (as distinguished from "referring to") the other affidavits submitted in
21 support of the contempt application. (Defendants' memorandum page 5, line 22 through page 6, line 2).
22 However, as explained on at least two occasions by the California Supreme Court, contempt proceedings
23 may be based upon multiple affidavits and are not required to be brought pursuant to a single "charging
24 affidavit." As long as the affidavits considered together set forth the requirements essential to the
25 commission of a contempt, the affidavits cumulatively considered state a valid complaint for contempt.
26 *Wutchumna Water Company v. Superior Court* (1932) 215 Cal. 734, 740; *Mitchell v. Superior Court*

27
28 *Felthoven* (1946) 75 Cal.App.2d 465,468-469. In this instance, the court minutes (attached as Exhibit 1) reflect that on May 29, 2009, Defendants were both present in court when Judge Burdick issued the subject preliminary injunctions.

1 (1912) 163 Cal. 423,424. Finally with regard to Defendants' novel "charging affidavit" contention, the
2 California Supreme Court has expressly held that the case against a person charged with contempt of
3 court is not required to be proved by the person who submits an affidavit charging contempt, but may be
4 proved by the testimony of other witnesses and by the use of documentary evidence. *Vernon v. Superior*
5 *Court* (1952) 38 Cal.2d 509, 516-517. To this end, testimonial affidavits, such as the police officer
6 affidavits submitted in this case, may be offered and received into evidence. *Collins v. Superior Court*
7 (1957) 150 Cal.App.2d 354,363-364.

8 **b. The Police Officer Affidavits**

9 Next, citing *Davis v. Washington* (2006) 126th S.Ct. 2266 without referencing the facts of that
10 case, Defendants assert "that statements contained in police reports that were created as part of a
11 criminal investigation are testimonial hearsay" and object to the three submitted police officer affidavits
12 on that basis. In *Davis*, the subject police report contained a statement taken from a domestic abuse
13 victim who was subsequently unavailable to appear at trial for cross-examination by defense counsel.
14 Over defense counsel's objection, the police report, including the victim's statement, was admitted into
15 evidence. The Supreme Court held that the trial court committed reversible error in admitting the
16 victim's statement into evidence given the Confrontation Clause set forth in the 6th Amendment to the
17 United States Constitution. *Id.* at 2271-2272, 2280.

18 In this case, a review of each officer's affidavit, and the reports prepared by those officers
19 incorporated by reference into their respective affidavits, immediately reveals that all facts stated therein
20 are based upon the officer's own personal observations, experience and knowledge. None of the
21 affidavits rely upon the statement of a third person as a basis for concluding that Defendants were in
22 violation of Judge Burdick's two preliminary injunction orders.

23 **2. Ability to Comply with the Preliminary Injunctions.**

24 Defendants correctly assert that the purpose of Richard Westfall's affidavit is to "document the
25 size of the 'forbidden zone' as determined by Judge Burdick on May 29, 2009" so as to allow this court
26 to infer "that plenty of City remains so the Defendants could have slept somewhere else." (Defendants
27 memorandum page 7, line 16-18). Then, without authority, Defendants argue that the court cannot make
28 an inference relative to the Defendants ability to comply with Judge Burdick's preliminary injunctions

1 by referring to Mr. Westfall's affidavit and that the City has failed to meet its burden of proof if this was
2 indeed the City's purpose in submitting the Westfall affidavit.

3 Defendants' argument misses the point. As noted by the court in *Rappaport v. Superior Court*
4 (1940) 39 Cal.App.2d 15, 22 "In order to sustain an order for contempt, two essential facts must appear,
5 namely: (1) there must be notice or actual knowledge of the order, for the disobedience of which citation
6 for contempt has issued; and (2) the act ordered to be done must be within the power of the contemnor to
7 perform." The court then emphasized that the burden of proving inability to comply with a court order
8 is upon the party claiming that inability. This point was reiterated by the court of appeal in *In Re*
9 *Sigesmund* (1961) 193 Cal.App.2d 219, 225 where the court likewise emphasized that it is the
10 defendant's burden to prove inability to comply as distinguished from the plaintiff's burden to prove
11 ability to comply:

12 The contention that there was no substantial evidence that petitioner had, at the
13 time he was adjudged in contempt for failing to make the deposit ordered by the
14 court, the ability to do so is without merit. As a general rule, the party seeking to
15 enforce an order such as the one as to which petitioner was held in contempt here,
16 is not required to prove the ability of the party charged with the contempt to
17 comply with the order *but that the contempt is established by proof of the order,*
the alleged contemnor's knowledge of the order and his failure to comply with it
and that the burden is upon the alleged contemnor to prove his inability to comply
with the order in order to purge himself of the contempt. (Citing the California
Supreme Court in *In Re McCarty* (1908) 154 Cal.354 at 573).² (italics added)

18 In summary, Defendants' unsupported assertion that "it is Plaintiff's burden to prove beyond a
19 reasonable doubt that Defendant's (sic) could legally comply with Judge Burdick's May 29, 2009
20 order..." (Defendants memorandum page 8, lines 5-6) is directly contradicted by the applicable case law
21 in California which addresses this point.

22 3. Willful Violation of the Preliminary Injunctions.

23 At page 8, line 6 of its memorandum Defendants assert that the affidavits submitted in support of
24 the City's contempt citation application are insufficient for their failure to demonstrate that Defendants'
25 respective preliminary injunction violations were willful and seem to suggest that the willfulness of the
26 violation must be proven in a manner akin to proving intent for a specific intent crime. Once again,

27 ² The *Sigesmund* court subsequently held that the general rule was not applicable under the particular facts of the case before
28 it inasmuch as three years had elapsed between the subject court order and the act giving rise to the contempt proceeding. *Id.*
at 224.

1 Defendants make a blanket assertion without citation to authority.

2 In the context of contempt proceedings “Willfulness is merely ‘a purpose or willingness to
3 commit the act, or make the omission’ in issue in the contempt hearing ... We would not construe
4 ‘willful’ as pertaining to contempt as meaning only a deliberate intention to disregard a court order, but
5 rather as encompassing an *indifferent disregard of the duty to obey it promptly.*” *In Re Karpf* (1970) 10
6 Cal.App.3d 355,372 citing the California Supreme Court in *Lyons v. Superior Court* (1955) 42 Cal.2d
7 755,759 (italics added). On this point it is also noted that “An unlawful intent is presumed from the
8 doing of an unlawful act.” Evidence Code Section 668. As it was unlawful for Defendants to disobey
9 Judge Burdick’s orders (Code of Civil Procedure Sections 177.5, 178, 1209.5; Penal Code Sections 166,
10 657), the court can make the presumption that Defendants unlawfully intended, and therefore willingly,
11 violated those orders.

12 4. Lawfulness Of Judge Burdick’s Order.

13 At page 10 of their memorandum Defendants contend “The Plaintiff must prove beyond a
14 reasonable doubt that the May 29, 2009 order was lawfully issued.” They assert that because they
15 challenged the constitutionality and legality of Judge Burdick’s May 29, 2009 preliminary injunction at
16 the time it was proposed by the City Attorney, they have the right to re-litigate this issue during the
17 current contempt citation proceedings and they also suggest that as long as they contest the validity of
18 Judge Burdick’s orders they have the right to violate them with impunity. Once again, the Defendants
19 make a legal assertion without citation to legal authority. Once again, case law directly contradicts their
20 unsupported assertion. As noted by the California Supreme Court, if a court, having jurisdiction, should
21 issue an order, it is obligatory, until reversed by an appellate court, and disobedience of the order
22 constitutes a contempt. *In Re Cohen and Jones* (1855) 5 Cal. 494, 495-496. On this point,

23 Jurisdiction has been defined as being the power to hear and determine the matter
24 in controversy, and if the power existed the question of whether the court erred or
25 the power was improperly exercised is not involved and errors of the court therein
26 constitute no defense whatever. An injunction may be disregarded only when the
27 same is void because of want of jurisdiction in the judge who issued it. *In Re*
28 *Wood* (1939) 34 Cal.App.2d 546, 551.

27 Defendants do not, and cannot, suggest that Judge Burdick lacked jurisdiction over this matter
28 when he issued his May 29, 2009 preliminary injunctions. Having been enjoined to refrain from

1 engaging in the conduct referenced in the preliminary injunction orders, Defendants, absent an appellate
2 court writ directing Judge Burdick to vacate those orders, are bound by both injunctions and are
3 obligated to obey them despite the fact they continue to protest that Judge Burdick improvidently and
4 unlawfully issued the preliminary injunctions.

5 **5. Punishment for Contempt.**

6 At pages 11-15 of their memorandum, Defendants argue that it would be unconstitutional for this
7 court to punish Defendants in the manner authorized by Code of Civil Procedure Section 1218.
8 Conspicuously absent from Defendants' five-page argument in support of this contention is any
9 reference to Code of Civil Procedure Section 1218 which expressly, unequivocally, and unambiguously
10 authorizes the court to punish Defendants as proposed by the City for violation of Judge Burdick's
11 preliminary injunctions. Equally conspicuous by its absence from Defendants' discussion is any
12 reference to the nature of the proceedings which prompted Judge Burdick to issue the two preliminary
13 injunctions. As explained by the City in its three memoranda of points and authorities submitted to the
14 court prior to Judge Burdick's issuance of the preliminary injunctions (see Exhibits 1-3 attached to the
15 City's February 23, 2010 memorandum of points and authorities), this is a nuisance abatement lawsuit
16 brought by the City pursuant to state law i.e., Civil Code Sections 3479 and 3480 authorizing the City
17 Attorney to abate public nuisances. It is not a criminal prosecution for violation of the City's Municipal
18 Code. Judge Burdick, in issuing the preliminary injunctions, determined that the conduct complained of
19 in the locations referenced in his preliminary injunction orders, in addition to constituting a violation of
20 the Santa Cruz Municipal Code, constituted a public nuisance as defined by California Civil Code
21 Section 3479 i.e., "anything which is injurious to health...or indecent or offensive to the senses, or an
22 obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or
23 property, or unlawfully obstruct the free passage or use, in the customary manner, of any...public park,
24 square, street, or highway..."

25 In addition, the injunction was issued pursuant to state law, specifically Code of Civil Procedure
26 Section 526, another state statute with which Defendants fail to reference in their discussion. That
27 statute authorizes the issuance of an injunction pursuant to specified criteria which it delineates. Finally,
28 Defendants' discussion fails to reference Code of Civil Procedure Section 731 which expressly

1 authorizes a city attorney to invoke state law and commence a civil action to abate a public nuisance in
2 the jurisdiction for which the city attorney is responsible.

3 Reduced to its essence, Defendants' argument seems to be that if a city council criminally
4 proscribes certain conduct within its jurisdiction by enacting an ordinance, the city attorney is thereafter
5 prohibited from exercising his or her statutorily conferred discretion to bring a nuisance abatement
6 proceeding for an ongoing and prolonged course of conduct in stark violation of that city ordinance.
7 Once again no authority is offered for this proposition and once again Defendants' unsupported
8 argument is flatly contradicted by state law, in this case Civil Code Section 3479 which expressly
9 authorizes a city attorney to abate any conduct which constitutes a public nuisance without reference to
10 whether or not that conduct happens to also constitute a municipal code violation, as well as Code of
11 Civil Procedure Section 526 which authorizes a party to apply to the court for an injunction where,
12 among other reasons, such an order "is necessary to prevent the multiplicity of judicial proceedings...".
13 Finally Defendants' argument on this point fails to account for Civil Code Section 3369 which expressly
14 authorizes the court to effectively enforce penal laws through nuisance abatement proceedings and to
15 afford equitable relief in connection with those proceedings.

16 On the issue of punishment Defendants continue to improperly conflate state law and the Santa
17 Cruz Municipal Code. At pages 11-12 of their memorandum they argue that the court must adhere to
18 Santa Cruz Municipal Code Sections 4.04.010 and 4.04.020 in assessing penalties in this proceeding.
19 Those two sections delineate penalties for violation of the City's Municipal Code. As explained above,
20 this is not a Municipal Code enforcement proceeding; this is a contempt of court proceeding brought
21 pursuant to state law. The City is seeking penalties not for a violation of the City's Municipal Code, but
22 rather for multiple violations of this court's two May 29, 2009 preliminary injunction orders issued
23 pursuant to state law. Defendants do not, and cannot, contend that the punishment requested by the City
24 is not entirely consistent with that called for by Code of Civil Procedure Section 1218.

25 **6. Intent to Remain Overnight.**

26 At pages 8-10 of their memorandum, Defendants argue that since "none of the officers' reports
27 indicated that Ms. Richardson appeared to have the intention to remain in that location overnight"
28 (Defendants' memorandum at page 9, lines 7-8), "...the facts contained in the police reports attached to

1 the officers' declarations regarding Ms. Richardson do not rise to the level of evidence beyond a
2 reasonable doubt of either a violation of Section 6.36.010 or the May 29, 2009 preliminary injunction
3 order." (Defendants' memorandum at page 9 line, 28 through page 10, line 2) Again without citation to
4 supporting authority, Defendants appear to argue that unless the police report recites in verbatim fashion
5 the elements of an offense, the report is defective and the violation referenced in the report may not be
6 prosecuted. Defendants' argument ignores a fact of life which California courts have for decades
7 acknowledged and accommodated through their construction and application of statutory evidentiary
8 rules. Intent is rarely susceptible to direct proof and must, therefore, ordinarily be inferred from the
9 circumstances surrounding the violation in question. As explained by the court in *People v. Franklin*
10 (1957) 153 Cal.App.2d 795, 797-798:

11 Such intent may be inferred from the facts and circumstances disclosed by the
12 evidence. Such intent is rarely susceptible of direct proof and must, therefore,
13 ordinarily be inferred from the circumstances. When the evidence is sufficient to
14 justify a reasonable inference that such intent existed, the verdict will not be
15 disturbed on appeal...It was, of course, for the trial court to pass upon the
16 credibility of witnesses and to determine the reasonable inferences to be drawn
17 from the evidence.

18 *See also People v. Kwok* (1998) 63 Cal.App.4th 1236, 1245; *People v. Pre* (2004) 117 Cal.App.4th 413,
19 420; and *People v. Walls* (1978) 85 Cal.App.3d 447-452; Penal Code Section 21(a) ("The intent or
20 intention is manifested by the circumstances connected with the offense.")

21 Considered against this evidentiary standard, the court, by reference to the three submitted police
22 officer affidavits documenting the four subject preliminary injunction violations, can readily conclude
23 that in each instance the campsites in question were established to accommodate overnight occupancy.
24 Officer Martin's affidavit with reference to the October 23, 2009 violation states that he was dispatched
25 to Defendants' encampment at 7:45 a.m., 45 minutes prior to the 8:30 a.m. "no sleeping" curfew and
26 that when he arrived 17 minutes following the curfew he observed Ms. Richardson and Mr. Deleon
27 sleeping on top of blankets and sleeping bags in a public parking lot campsite obviously established
28 much earlier. The photographs taken by Officer Martin and his attached police report with reference to
29 the January 20, 2010 violation establish that Deleon was observed sleeping at 7:55 a.m., during the "no
30 sleeping" curfew, at a campsite he had established in the Galleria business/office complex. Defendants

1 acknowledge this violation at page 10, lines 3-9 of their memorandum. With reference to the January
2 26, 2010 violation, Officer Forbus was reasonable in concluding that Ms. Richardson had established a
3 campsite in the Kinko's parking lot which she intended to maintain overnight when, at 5:32 p.m. he
4 observed her already covered with blankets and coats either sleeping or pretending to sleep. Similarly,
5 with reference to the February 12, 2010 violation, although Officer Winston observed the 703 Front
6 Street campsite established by Mr. Deleon and Ms. Richardson at 1:41 p.m., it was apparent to him that
7 they each intended to occupy their respective campsites indefinitely. Officer Winston's observations
8 and conclusions are supported by the photographs he took and attached to his report.

9 In summary, the four police reports incorporated by reference, and attached to, the submitted
10 police officer affidavits clearly document facts which this court, employing the principles of
11 circumstantial evidence referenced above, can rely upon in concluding that in each of the four cases
12 cited by the City, Defendant Richardson or Defendant Deleon, or both Defendants, were in clear
13 violation of Judge Burdick's preliminary injunctions at the time they were observed and contacted by
14 the police officers.

15 C. CONCLUSION

16 In light of the reasons posited in this memorandum, the City's February 23, 2010 memorandum
17 and the other pleadings submitted by the City in connection with this contempt citation application, as
18 well as the legitimate public nuisance concerns which prompted Judge Burdick to issue the two subject
19 preliminary injunctions on May 29, 2009, it is respectfully submitted that this court should find that both
20 Defendants, on three occasions apiece, violated Judge Burdick's preliminary injunction orders, hold
21 them in contempt, and punish them accordingly.

22
23 Dated: 3-16, 2010

ATCHISON, BARISONE, CONDOTTI & KOVACEVICH

24
25 By:

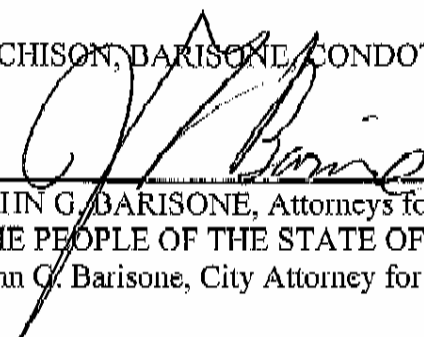

JOHN G. BARISONE, Attorneys for Plaintiff
THE PEOPLE OF THE STATE OF CALIFORNIA ex rel.
John G. Barisone, City Attorney for City of Santa Cruz

EXHIBIT 1

PLEASE FILE IN
Richardson / DeLeon
Docket

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ
Selected Action and Related Minutes

6/12/09

Page: 1

Case Number : CV162526
Case Name ..: PEOPLE OF THE ST OF CALIF ETC V ANNA G RICHARDSON
Case Type ..: CIVIL - SANTA CRUZ Case Status : M-Active
Category ...: (U) CIVIL COMPLAINT
Jurisdiction: SANTA CRUZ
=====

Complaint Type : COMPLAINT Filed : 1/15/09

PLAINTIFF(s):

PEOPLE OF THE STATE OF CALIFORNIA
EX REL JOHN G BARISONECITY
ATTORNEY FOR THE CITY OF SANTA CRUZ
ATTORNEY:
ATCHISON BARISONE ET AL
SUSAN BARISONE

DEFENDANT(s):

ANNA GALEEN RICHARDSON Served

Complaint Type : COMPLAINT Filed : 1/15/09

PLAINTIFF(s):

PEOPLE OF THE STATE OF CALIFORNIA
EX REL JOHN G BARISONECITY
ATTORNEY FOR THE CITY OF SANTA CRUZ
ATTORNEY:
ATCHISON BARISONE ET AL
SUSAN BARISONE

DEFENDANT(s):

MIGUEL ANGEL DELEON Served

Action Date Description Disposition

5/29/09 HEARING RE PRELIMINARY INJUNCTION (FROM CV162525) COMPLETE
Dept.: 4 Time : 10:00
HONORABLE Judge Paul P. Burdick, presiding
CLERK: David Criswell
REPORTER: Ellarae Markhart
-
-
APPEARANCES:
Susan Barisone, Esq., Counsel appearing for
PEOPLE OF THE STATE OF CALIFORNIA
Jonathan Gettleman, Esq. and Mark Briscoe, Esq.,
Co-Counsel appearing with ANNA GALEEN RICHARDSON,
MIGUEL ANGEL DELEON

6/12/09

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ
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Page: 2

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Category ...: (U) CIVIL COMPLAINT
Jurisdiction: SANTA CRUZ

=====

-
The case is regularly called for hearing.

-
The Court advises of its tentative ruling.

-
Counsel address(es) the issues now before the Court.

-
THE COURT MAKES THE FOLLOWING ORDER(S):
Plaintiff's request to present oral testimony is denied.

-
FINDINGS AND ORDERS:

Nuisance Per Se has been established. City Ordinances have been violated. Defendant's conduct, not status of homelessness is punishable. Therefore the Preliminary Injunction is granted as to camping and sleeping between 11:00PM and 8:30AM in those areas as specified and indicated for the record.

-
A map of the specified areas are provided to Defendants in the Courtroom. Mr. Gettleman is authorized to accept service of the order on behalf of Mr. De Leon and Ms. Richardson.

-
Ms. Barisone is to prepare the order and submit same for the Court's signature by close of business today.

-
=====MINUTE ORDER END/DC=====

**** END OF CASE PRINT ****

People v. Anna Galeen Richardson, et al.

Santa Cruz County Superior Court Case No. CV162526 (Consolidated with CV162525)

PROOF OF SERVICE

I am employed in the County of Santa Cruz, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 333 Church Street, Santa Cruz, California 95060.

On the date set forth below, I served the following document(s): **REPLY MEMORANDUM IN SUPPORT OF CONTEMPT CITATION APPLICATION**

on the interested party(ies) to said action by the following means:

[] **(BY MAIL)** By placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on that date following ordinary business practices, in the United States Mail at the offices of Atchison, Barisono, Condotti & Kovacevich, Santa Cruz, CA, addressed as shown below. I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the United States Postal Service, and in the ordinary course of business, correspondence would be deposited with the U.S. Postal Service the same day it was placed for collection and processing.

[] **(BY HAND-DELIVERY)** By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[*] **(BY FACSIMILE TRANSMISSION)** By transmitting a true copy thereof, from sending facsimile machine telephone number (831) 576-2269 to the following party(ies) at the receiving facsimile machine number(s) shown below. The transmission was completed, and the transmission report attached was properly issued by the transmitting facsimile machine.

[] **(BY OVERNIGHT DELIVERY)** By placing a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to Atchison, Barisono, Condotti & Kovacovich, to be delivered by Federal Express, to the address(es) shown below.

[] **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

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

Executed on March 16, 2010, at Santa Cruz, California.

ANGELA GOBLE

NAMES, ADDRESSES AND/OR FAX NUMBERS OF PARTIES SERVED:

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