Supreme Court Case No.: S187243

2nd Civil No. B216515

LASC Case No. BS112956

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PACIFIC PALISADES BOWL MOBILE ESTATES, LLC
Plaintiff, Appellant, Petitioner

v.

CITY OF LOS ANGELES
Defendant, Appellant, Respondent

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE AN AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF RESPONDENT CITY OF LOS ANGELES

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APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

The League of California Cities hereby respectfully submits this application to file the attached amicus curiae brief in support of Respondent City of Los Angeles pursuant to Rule 8.520(f) of the California Rules of Court.

The League of California Cities (the "League") is an association of 476 California cities united in promoting the general welfare of cities and their residents. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys representing all 16 geographical divisions of the League from all parts of the State. The Committee monitors appellate litigation affecting municipalities and identifies those cases that are of statewide significance. The Committee has identified this case as being of such significance.

The League and its member cities have a substantial interest in the outcome of this case. It involves the interpretation of Government Code § 66427.5, which applies to certain subdivisions of mobilehome

parks to convert them to "resident ownership." There is considerable ongoing litigation throughout the State involving the interpretation of § 66427.5 that leaves Cities uncertain as to their obligations and discretion in reviewing applications submitted under § 66427.5. Many cities are now involved in the defense of costly litigation involving this Section.

Petitioner Pacific Palisades Bowl Mobile Estates ("Palisades") argues, as do other mobilehome park owners involved in such litigation, that § 66427.5 is the *only* law applicable to this type of subdivision and that it precludes the application of *all* the other state statutes applicable to subdivisions. In particular, Palisades claims that § 66427.5 precludes application of the Coastal Act, Public Resources Code § 30000, *et seq.* and the Mello Act, Government Code § 65590, to its proposed subdivision.

Allowing park owners like Palisades to avoid compliance with state laws designed to protect the public health and welfare, protect the environment and preserve affordable housing such as the Coastal Act and Mello Act is not required by anything in § 66427.5. That Section and the numerous other state laws concerning mobilehome parks, when read together, demonstrate legislative intent to protect the

owners of mobilehomes who rent spaces for their homes in mobilehome parks, who are referred to as "residents" in those laws. It also evidences legislative intent to assist residents to purchase the parks in which they reside or to subdivide the parks to convert them to "resident ownership." It does so by limiting the *local* regulations that can be placed on resident-initiated and resident-supported conversions to resident ownership.

Nothing in § 66427.5 or related statutes even suggests an intent to exempt park owners or residents from state laws designed to protect the public welfare, protect the environment, preserve coastal resources and preserve and promote affordable housing. When the Legislature intended to exempt resident-initiated and resident-supported conversions from such laws, it did so expressly. *See* e.g., Public Resources Code § 21080.8, which exempts resident-initiated conversions from the California Environmental Quality Act, Public Resources § 21000, *et seq.* ("CEQA"), and Government Code § 66428.1, which provides for the waiver of the requirement of a subdivision map when 2/3 of the residents initiate the subdivision and there are no health and safety problems in the park.

The mobilehome park owned by Palisades is located in the

coastal zone. Palisades nonetheless contends its proposed subdivision of the park does not require a coastal development permit because § 66427.5 is the *only* state law that can apply and because its proposed subdivision to convert it to resident ownership is not a development within the meaning of the Coastal Act. Palisades also contends it need not comply with the Mello Act despite the fact that the Mello Act applies by its express terms to subdivisions of mobilehome parks in the coastal zone.

Respondent City of Los Angeles contends that § 66427.5 does not preclude the application of all other state laws, particularly not ones that are of statewide importance, and that any application to subdivide property in the coastal zone must be accompanied by an application for a coastal development permit and the information necessary to determine what conditions, if any, are necessary to ensure compliance with the Mello Act. The League submits that the City of Los Angeles is correct.

Palisades' interpretation of § 66427.5 threatens the ability of Cities to comply with important state laws and their ability to adopt regulations to implement those laws. Palisades' interpretation also threatens the ability of Cities to protect the health and welfare of their

citizens. The League submits that when § 66427.5 is read properly, it does not preclude the application of the Coastal Act and Mello Act to subdivisions under § 66427.5.

The requirements of the Mello Act and Coastal Act apply to all subdivisions in the coastal zone in addition to the requirements of § 66427.5. Cities frequently have to consider applications for a single project that requires approvals under several statutes, such as the Subdivision Map Act, Government Code § 66410, *et seq.*, (the "Map Act") of which § 66427.5 is a part, CEQA and the Planning and Zoning Law, Government Code § 65000, *et seq.*, as well as the Coastal Act, the Mello Act and other state laws applicable to subdivisions. These laws can all be applied without conflict.

Even *if* there were a conflict between § 66427.5 and the Coastal and Mello Acts, as found by the court of appeal below, the expansive policies of those Acts, which are intended to protect coastal resources and access to persons of all economic status to the coastal zone for all the people of this State, would prevail over the limited focus of § 66427.5. That Section provides only a limited exception to the discretion vested in cities by the Map Act in a limited category of subdivisions of mobilehome parks.

The League believes that its perspective in this matter is worthy of the Court's consideration and that additional briefing will assist the Court in deciding this matter and hereby requests leave to file the amicus curiae brief attached hereto.

No party or counsel for a party in this appeal authored any part of the attached amicus curiae brief or made any monetary contribution to fund the preparation of the brief. No person or entity other than the League and its attorneys made any monetary contribution to fund the preparation of the brief.

Dated: June 30, 2011

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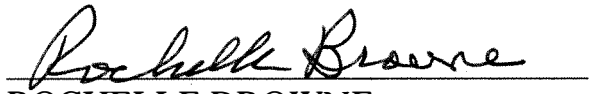
By: 

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I.

INTRODUCTION

Amicus Curiae League of California Cities (the "League" or "Cities") is an association of 476 California cities united in promoting the general welfare of cities and their residents. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys representing all 16 geographical divisions of the League from all parts of the State. The Committee monitors appellate litigation affecting municipalities and identifies those cases that are of statewide significance. The Committee has identified this case as being of such significance.

Cities have a substantial interest in the outcome of this case. It involves the interpretation of Government Code § 66427.5,[1] which applies to the subdivision of rental mobilehome parks to convert them to "resident ownership." There is considerable ongoing litigation throughout the State concerning the interpretation of § 66427.5, which leaves Cities uncertain as to their obligations and discretion in reviewing such applications and vulnerable to costly litigation. Many

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[1] All references herein are to the Government Code unless otherwise indicated.

Cities are now embroiled in litigation involving the interpretation of § 66427.5.

The interpretation advocated by Petitioner Palisades Bowl Mobile Estates ("Palisades") threatens the ability of Cities to comply with important state laws, such as, but not limited to, the Coastal Act, Public Resources Code § 30000, *et seq*., and the Mello Act, Government Code § 65590, and their ability to adopt regulations to implement those laws. Palisades' interpretation of § 66427.5 would also deprive Cities of the discretion vested in them by the Subdivision Map Act, Government Code § 66410, *et seq*. (the "Map Act").

Palisades claims that § 66427.5 is the *only* state law that can be applied to subdivision applications to convert mobilehome parks to "resident ownership" and that it creates a ministerial duty to approve subdivision applications under that Section so long as certain minimal procedural requirements are met. Palisades is mistaken. If accepted, Palisades' interpretation would deprive Cities of their ability to protect the health and welfare of their citizens. Cities urge that the Court not accept that interpretation of § 66427.5 in deciding the specific question presented by this case.

The specific question presented by this case is whether

§ 66427.5 precludes the application of the Coastal Act and the Mello Act to subdivision applications under § 66427.5. Cities submit that any subdivision in the coastal zone, whether under § 66427.5 or another section of the Map Act, is subject to the Coastal Act and Mello Act unless expressly and statutorily exempted. Nothing in § 66427.5 requires that it be read as superseding *all* other state laws applicable to subdivisions.

Section 66427.5 applies to subdivisions that convert rental mobilehome parks to "resident owned" parks, *i.e.*, condominium type parks. The owners of mobilehomes who rent spaces for the homes they own are referred to as "residents" in the various statutes that apply to such parks. Section 66427.5 limits the conditions that a *local* jurisdiction can impose to protect non-purchasing, low-income residents from economic displacement when a rental park is converted to "resident ownership," *i.e.,* when the subdivision application is for a *"bona fide resident conversion."*[2]

Palisades relies on two cases, *El Dorado Palm Springs v. City*

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[2] As discussed *infra*, only "bona fide resident conversions" are entitled to the benefits of the Section's limitations on the conditions that can be imposed by local jurisdictions. A park owner wishing to subdivide a park that does not quality as a bona fide resident conversion may do so under other Map Act sections.

of Palm Springs (2002) 96 Cal.App.4th 1153 ("*El Dorado*") and *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270 ("*Sequoia*") to support the claim that § 66427.5 is the *exclusive* state law applicable to subdivisions to convert a park to resident ownership. However, those cases address *only* whether § 66427.5 preempts *local* jurisdictions from imposing conditions on a conversion to resident ownership under § 66427.5. Therefore, they are not relevant to whether § 66427.5 precludes application of the Coastal Act and the Mello Act.

Those cases also hold that Cities have no discretion whatsoever to deny or condition applications made under § 66427.5 and no discretion to determine whether they are "bona fide resident conversions" entitled to the benefits of the Section's limitation on local regulations. Cities submit that those cases were wrongly decided and urge the Court not to accept the interpretation of § 66427.5 set forth in them or the interpretation of the Section advocated by Palisades. In order to properly interpret § 66427.5 and put it in its proper context, Cities briefly address the history of § 66427.5 and other relevant state statutes that bear on the interpretation of § 66427.5 in this brief.

The court of appeal below correctly found that § 66427.5 does not preclude application of the Coastal Act and Mello Act to subdivisions under that Section. However, Cities submit that this Court need not and should not find, as the court of appeal below did, that § 66427.5 conflicts with the mandates of the Coastal Act and the Mello Act. The Coastal Act, Mello Act and § 66427.5 can each be applied to a subdivision application brought under § 66427.5 without any conflict. Each serves a different purpose and the Coastal and Mello Acts provide that their requirements are *in addition* to the requirement of any permit required by any other state agency or by any regional or local agency. Properly read, § 66427.5 does nothing more than specify the conditions that can be placed on a bona fide resident conversion by local jurisdictions to protect non-purchasing, low-income residents.

Cities are frequently required to consider a single project that requires approvals under several state statutes. For example, a single project might require a zone change under the Planning and Zoning Law, Government Code § 65000, *et seq.*, a subdivision map under the Map Act and an environmental impact report ("EIR") and environmental findings under the California Environmental Quality

Act, Public Resources Code § 21000, *et seq.* ("CEQA"). In addition, if the project is located in the coastal zone, it will be subject to the Coastal Act and require a coastal development permit as well as a determination of what conditions, if any, are required to comply with the Mello Act. These state laws and § 66427.5 can each be applied to a subdivision application without conflict.

As an exception to the discretion vested in Cities by the Map Act and by the police power vested in Cities by the State Constitution, § 66427.5 should be narrowly construed. In contrast, the Coastal Act concerns the paramount statewide and national interest in protecting valuable coastal resources and ensuring access to the coastal zone, which includes promoting and preserving affordable housing in the coastal zone. Public Resources Code § 30001(a) & (b). Its provisions are to be liberally construed. Public Resources Code § 30009; *California Coastal Commission v. Quanta* (1980) 113 Cal.App.3d 579 ("*Quanta*").

The Mello Act implements the Coastal Act's objective of ensuring that all economic segments of the population can live in the coastal zone. *Coalition of Concerned Communities v. City of Los Angeles* (2004) 34 Cal.4th 733, concurring opinion at 741. Thus, even

if the Court were to find a conflict between those Acts and § 66427.5, the important policies for protecting coastal resources, preserving access to the coastal zone and preserving and ensuring affordable housing in the coastal zone for all the people of the State declared in the Coastal Act and Mello Act should prevail over the limitations on local regulation in a limited category of mobilehome park subdivisions set forth in § 66427.5.

II.

GOVERNMENT CODE SECTION 66427.5 LIMITS *ONLY* THE CONDITIONS THAT A *LOCAL* JURISDICTION CAN IMPOSE ON A CONVERSION TO "RESIDENT OWNERSHIP"

A. THE BACKGROUND AND CONTEXT IN WHICH SECTION 66427.5 SHOULD BE INTERPRETED

The mobilehome owners who rent spaces for the homes they own in mobilehome parks are uniquely vulnerable tenants due to the investment the residents make in purchasing and maintaining their homes and the fact that their homes are not really mobile. *Yee v. City of Escondido* (1992) 503 U.S. 519, 523. The Legislature has enacted numerous laws to regulate mobilehome parks and to protect the residents of those parks and preserve the affordable housing they

provide. The Mobilehome Residency Law, Civil Code § 798, *et seq.* (the "MRL"), refers to these homeowner/tenants as "residents." Civil Code § 798.11. The MRL gives residents the right to sell their homes in place in a park when they wish to move. Civil Code § 798.71-798.74. The MRL also gives them a variety of other rights not given to the tenants of apartment complexes. *See e.g.*, Civil Code § 798.31-798.35 (limitations on the fees that can be charged); § 798.56 (protections from eviction); § 798.34 (right to have additional persons reside in their homes).

The Mobilehome Parks Act, Health and Safety Code § 18000, *et seq.,* provides health and safety regulations governing parks and mobilehomes. It also provides for annual inspection of mobilehome parks to ensure compliance with health and safety regulations and for additional inspections in response to resident complaints of violations.

Because of the unique vulnerability of residents and the problematic nature of the situation in which both the park owners and the residents have property interests entitled to protection, the Legislature has also adopted laws to assist residents to purchase the parks in which they rent spaces for their homes. Government Code § 66428.1 provides for the waiver of a subdivision map when 2/3 of

the residents in a park sign a petition initiating subdivision and purchase of the park, provided there are no health and safety concerns that need to be addressed and information is provided showing the costs of acquisition and maintenance. If health and safety problems exist in the park, the local jurisdiction may then require a map and impose conditions on the subdivision to address those problems.

In recognition of the valuable affordable housing provided by mobilehome parks, Government Code §§ 50780-50782 provide a state fund to assist residents, local jurisdictions and non-profit organizations in purchasing a park or subdividing it to convert it to resident ownership in order to preserve that affordable housing. Government Code § 50781 defines "resident ownership" as:

> "depending on the context, either the ownership by a resident organization of an interest in a mobilehome park that entitles a resident organization to control operations of the mobilehome park for a term of no less than 15 years or the ownership of individual interests in a mobilehome park."

When a park is converted by existing residents, a non-profit or a local jurisdiction to "resident ownership," it will operate on a non-profit basis and continue to provide affordable housing. If a park is subdivided by a park owner over the objection of the majority of the

residents, the park will remain a rental park until the existing residents leave and a majority of the spaces are sold.

Government Code § 66427.4 applies to subdivisions of mobilehome parks to convert them to uses other than "resident ownership" and provides that Cities may condition such conversions on measures to mitigate the impact on displaced residents in addition to the discretion vested in local jurisdictions by the Map Act. Subsection (e) of § 66427.4 provides that it does not apply to conversions to "resident-initiated" subdivisions by a petition of 2/3 of the residents under § 66428.1. Nor would it apply to subdivisions that are "bona fide resident conversions" under § 66427.5 because § 66427.4(e) provides that the Section does not apply to "resident conversions." However, a park owner initiated subdivision that is opposed by a majority of the residents would not be a bona fide conversion to "resident ownership" and so would be governed by § 66427.4.

Business and Professions Code §§ 11010 and 11010.9 exempt *resident-initiated* conversions under § 66428.1 from some of the steps generally required before spaces and interests in a park can be sold. Public Resources Code § 21080.8 exempts *resident-initiated*

subdivisions to convert a park to resident ownership from compliance with CEQA.

Government Code § 66427.5 must be read against this backdrop and the demonstrated legislative intent to protect residents and to assist residents, non-profits and local jurisdictions in subdividing or purchasing a park. Section 66427.5 assists such conversions and preserves affordable housing by precluding local jurisdictions from imposing conditions beyond those specified in § 66427.5 to protect against the economic displacement of non purchasing, low income residents in "bona fide resident conversions." However, nothing in § 66427.5 or the above statutory schemes evidences any legislative intent to exempt conversions to resident ownership from compliance with other state laws that govern subdivisions and are designed to protect the public health and welfare, protect the environment and preserve affordable housing, such as the Coastal Act and Mello Act.

Section § 66427.5 is entitled "Avoiding Economic Displacement Of Non Purchasing Residents." As Palisades' opening brief acknowledges, the Section originally applied only to subdivisions of mobilehome parks to convert them to resident

ownership that received financing under Government Code § 50782 referenced above. It then clearly applied only to conversions initiated by residents, local jurisdictions and non-profit organizations eligible for such financial assistance. The Section was amended in 1995 to broaden its scope to apply to conversions to "resident ownership" not receiving state funding. (Palisades Opn.Brf. at 16-17) Most cities thought at that time that the Section remained applicable only to resident-supported conversions or those initiated by non-profits and local jurisdictions.

However, in *El Dorado Palm Springs v. City of Palm Springs* (2002) 96 Cal.App.4th 1153 ("*El Dorado*"), the fourth district court of appeal held that § 66427.5 preempted all local regulation and that a park owner could subdivide a park under § 66427.5 over the objection of the majority of its residents. Rather than embracing *El Dorado,* as claimed by Palisades, the Legislature amended § 66427.5 to prevent that result and explained in an uncodified provision of the amendment that the amendment was intended to ensure that only "bona fide resident conversions" could proceed under § 66427.5. (*See* AB 930, 2002 statutes, Ch. 1143, which is cited in Palisades' Open. Brief at 24.)

The change the Legislature made to § 66427.5 to achieve that objective was the addition of a required survey of resident support to be conducted jointly by the park owner and the president of the resident homeowners' organization and presented to the local jurisdiction to consider at the hearing required by § 66427.5(e) to determine whether the subdivider has complied with the requirements of § 66427.5. (*See* subsection (d)) Cities thought that this amendment, together with the Legislature's statement that the amendment was intended to ensure that only bona fide resident conversions could proceed under § 66427.5, meant that only *resident-supported* conversions could go forward under § 66427.5 and obtain the benefit of the limitations on local regulation that it provides.

But, the second district court of appeal opinion in *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270 (*"Sequoia")* held that the results of the survey were irrelevant and that a subdivision could go forward under § 66427.5 over the objections of the majority of the residents so long as the survey was, in fact, conducted according to the procedures required by § 66427.5.[3] Thus,

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[3] Palisades and other park owners claim based on *Sequoia* that the contents and adequacy of the tenant impact report required by

(Continued...)

Sequoia interpreted § 66427.5 by treating the amendment requiring a survey of resident support of § 66427.5 as meaningless.[4]

The subsequent second district court of appeal opinion in *Colony Cove Properties v. City of Carson* (2010) 187 Cal.App.4th 187 ("*Colony Cove*") concurred with much of the *Sequoia* opinion and invalidated the ordinance that the City of Carson had adopted to implement § 66427.5 because the ordinance contained standards for determining what constitutes a bona fide resident conversion not stated in § 66427.5. *Id.*, 187 Cal.App.4th at 1492. However, *Colony Cove* disagreed with *Sequoia* concerning the role of the survey of resident support required by the amendment of § 66427.5 and held that the survey can be considered in determining whether an

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(...Continued)

subsections (b) and (c) of § 66427.5 is also irrelevant so long as a report is provided. Cities submit that the requirement that a tenant impact report be provided to the residents and the City would be meaningless if Cities could not consider the adequacy and content of that report in making their decisions.

[4] The *Sequoia* opinion invited the Legislature to respond if it found the interpretation of § 66427.4 therein to be incorrect. Both houses of the Legislature twice passed bills doing so: AB 1542 in 2007 and AB 566 in 2009, which would have prevented park owners from using § 66427.5 to subdivide a park under § 66427.5 over the objection of the majority of the residents. Both bills were vetoed by the Governor on the ground that residents should not be able to prevent a park owner from subdividing a park. But, § 66427.5 is not the only Map Act provision under which a park can be subdivided. As discussed *supra,* a conversion that is not a bona resident conversion would be governed by § 66427.4.

application represents a "bona fide resident conversion." It declined, however, to decide how much weight could be given to the survey since § 66427.5 provides no guidance on that issue and invited the Legislature to clarify this issue. *Id.*, 187 Cal.App.4th at 1505-1506.

El Dorado and *Sequoia* are cited by Palisades, and by park owners in other litigation involving § 66427.5 pending throughout the State, to support their claim that § 66427.5 is the *exclusive* state statute applicable to conversions of mobilehome parks to resident ownership and that it precludes the application of *all* other state laws otherwise applicable to subdivisions. They are wrong. Neither *El Dorado* nor *Sequoia* address the applicability of state laws to subdivisions under § 66427.4 and, as discussed *infra,* nothing in the language or history of § 66427.5 precludes the application of other relevant state laws.

Although the legislative intent to exempt residents, non-profits and local jurisdictions subdividing and purchasing a park from additional *local* regulations to protect non purchasing, low-income residents from economic displacement is clear, no such intent can be found to exempt such conversions from other state laws applicable to subdivisions. Nor can any legislative intent be found to allow park

owners to avoid state laws like the Coastal Act and Mello Act when subdividing their parks over the objections of residents in order to make a profit by selling the spaces without compliance with local subdivision regulations or to escape rent controls.[5] Nor can any intent be found to allow park owners to pass on to the unsuspecting residents or future buyers the costs of remediating health and safety problems. The Map Act expressly allows local jurisdictions to impose conditions to address such problems before any property can be subdivided, even when the subdivision of mobilehome parks is initiated by 2/3 of the residents under § 66428.1.

B. THE TERMS OF SECTION 66427.5 AND ITS INTEPRETATION IN LIGHT OF ITS HISTORY AND OTHER RELEVANT STATUTES

Government Code § 66427.5 is entitled "Avoiding Economic Displacement of Non-Purchasing Residents" and requires that a subdivider applying to convert a park to "resident ownership" avoid such displacement by:

- offering each tenant the option of purchasing the space

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[5] Once a single space is sold, any otherwise applicable rent control ordinance will cease to apply. *El Dorado* 96 Cal.App.4th at 1166.

that the resident now rents or continuing to rent the space. (subsection a)

- filing a report with the local jurisdiction on the impact of the conversion on the tenants and providing a copy of the report to the residents before the hearing required by subsection (e). (subsections b & c)
- filing a survey of resident support conducted jointly by a resident representative and the park owner using a written ballot and submitting that survey to the local jurisdiction to be considered at the hearing required by subsection (e). (subsection d)
- limiting annual rent increases to non-purchasing, low-income residents to not more than 100% of the increase in the CPI and requiring that rent increases to market be phased in over four years for the other non-purchasing residents. (subdivision f)

Subsection (e) of § 66427.5, which requires a hearing to determine whether there has been compliance with the Section, is what Palisades relies on to claim that § 66427.5 is the *exclusive* state statute governing conversions when a subdivision is for the purpose of

converting a rental park to a "resident owned" park:[6] It provides as follows:

> The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by law or local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.

Palisades relies on the last sentence, which limits the scope of the hearing required by § 66427.5 to determining compliance with that Section to argue that the Section is the *only* state law applicable to subdivisions under § 66427.5 .

When read in light of the other Map Act sections expressly applicable to mobilehome park conversions to Government Code (§ 66427.4 and Government Code § 66428.1) and the other statutes applicable to mobilehome parks, mobilehome residency and resident

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[6] Although Palisades claims that it is converting the park to "resident ownership," there is no assurance that its park will become resident owned as that term is defined in Government Code § 50781 or any definition of the term that would include resident control and operation of the park. *El Dorado* held that as soon as one space is sold, the park will be deemed subdivided and resident control can occur only when sufficient spaces are sold to allow the homeowners association that will run the park to be comprised of residents rather than the park owner. Thus, as *El Dorado* explained, the result can be a sham conversion, *i.e.,* one in which the subdivider retains control of a park rather than a conversion to resident ownership." *Id.,* 96 Cal.App.4th at 1166.

acquisitions of a park, the most reasonable reading of § 66427.5 is that the hearing required by subsection (e) is in addition to the hearing ordinarily required to determine compliance with other applicable Map Act provisions and other applicable state laws, such as the Coastal Act, the Mello Act and CEQA. The fact that the hearing required by subsection (e) is limited to the items specified in subsections (a) through (d) does not mean that there cannot be any other hearing or a joint hearing that considers all applicable state laws.

A single proposed project often requires approvals under or compliance with several state laws. For example, a single project might require a zone change or a conditional use permit governed by the Planning and Zoning Law, a tentative map governed by the Map Act, an environmental impact report and environmental findings required by CEQA and a coastal development permit and compliance with the Mello Act.

Section 66427.5 cannot reasonably be read to mean that no other matters of state-wide concern, such as those addressed by the Coastal Act and Mello Act, can be considered or that health and safety concerns must be ignored. It would be unreasonable to assume that although the Legislature allows local jurisdictions to impose health

and safety conditions when a conversion is initiated by 2/3 of the residents under § 66428.1, it intended that local jurisdictions not be allowed to do so when a park owner seeks to subdivide a park without resident support or with the support of less than the 2/3 of residents as required by § 66428.1. It would be equally unreasonable to interpret § 66427.5 as exempting park owners from all other state laws applicable to all other property owners who seek to subdivide property.

Section 66427.5 applies to a specific and limited category of subdivisions of mobilehome parks (bona fide resident conversions) and limits the conditions that may be imposed on such conversions by local agencies to avoid the economic displacement of low-income, non-purchasing residents. It does nothing more. Nothing in its language or history requires the conclusion that such subdivisions need not comply with other state laws applicable to subdivisions, such as the Coastal Act and the Mello Act.

III.

THE COASTAL ACT APPLIES TO ALL SUBDIVISIONS IN THE COASTAL ZONE, INCLUDING SUBDIVISIONS UNDER SECTION 66427.5

The Coastal Act begins with the Legislative declaration that "the coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists in a delicately balanced ecosystem." Public Resources Code § 30001(a). The Act expressly provides that it is to be liberally construed to accomplish its purposes. (Public Resources Code § 30009).

Public Resources Code § 30600(a) provides that, with the exception of certain specified exemptions not applicable here, anyone wishing to undertake any development in the coastal zone shall obtain a coastal development permit "*in addition to obtaining any other permit required by law from any local government or from any state, regional or local agency*."

Palisades' mobilehome park is located in the coastal zone and it is undisputed that a coastal development permit is required for any development in the coastal zone. However, in addition to contending that § 66427.5 is the only state law that can be applied to a conversion

under that Section, Palisades contends that the Coastal Act does not apply to a subdivision under § 66427.5 because such subdivisions are not "developments" within the meaning of the Coastal Act. Palisades is mistaken.

The Coastal Act defines "development" to include:

> "changes in the density or intensity of uses of land, *including subdivisions pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code) and any other division of land, including lot splits.*" Public Resources Code § 30106.

The Coastal Act thus defines a subdivision under the Map Act as a development that changes the density or intensity of land use and requires a coastal development permit. A subdivision under § 66427.5 is a subdivision under the Map Act. Therefore, under the express terms of the Coastal Act, a subdivision under § 66427.5 in the coastal zone requires a coastal development permit.

The Map Act applies not just to new development; it expressly includes divisions of already improved land and land on which no use is proposed because of the possible future impact of such divisions. It defines "subdivision" as:

> "The division of any unit or units of improved or unimproved land for the purpose of sale, leasing or financing the units whether immediately or in the future."

Government Code § 66424.

A subdivision under § 66427.5 fits squarely within this definition because it is intended to allow the sale of mobilehome spaces created by the subdivision of a park.

Palisades argues that Public Resources Code § 30106 does not mean what it says and should not be read to include subdivisions under § 66427.5 because such subdivisions are mere changes of ownership and, therefore, do not change the density or intensity of land. That claim ignores the fact that the Coastal Act defines "changes in density of or intensity of use" to include subdivisions under the Map Act. Palisades' claim would, therefore, require reading exemptions into the Map Act and Coastal Act despite the fact that when the Legislature intended exemptions from those Acts, it expressly provided for them. (*See, e.g.,* Government Code §§ 66412, 66412.1, 66412.2, 66412.6; and Public Resources § 30600(e).) Neither Act provides an exemption for subdivisions under § 66427.5.

Further, a change in land use from rental property to homeowner owned property is a significant change in the use (intensity) of land that falls squarely under the Coastal Act's definition of development. A conversion under § 66427.5 would

change the composition of those living in a park from renters to land owners and from low- and moderate-income persons to more affluent persons who can afford to purchase not just a mobilehome but also the land on which it is located and an interest in a park's common areas. Although existing residents can continue to rent, once they move for health or job related reasons or because of rising rents[7], the affordable housing the park once provided will be lost.

Once a park is converted from a rental park to one in which spaces are to be purchased, the owner of a home and space might buy an adjacent space to have more space for a larger home, a patio or a garden, thereby changing the density of the park; might remove an existing home from the space and replace it with a larger home that occupies more of a space, thereby decreasing the area between homes; or might replace an existing home with one of the new two-story mobilehomes now available, thereby changing the composition of the housing in the park. Such changes could increase the impact on park

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[7] Protection from large increases is only provided by § 66427.5(f) for low-income residents who do not purchase their spaces. Those who do not qualify as low-income but cannot afford to purchase their space will have their rent increased to market (whatever the park owner says that is) in phases over four years. After that, there is no limitation on how much rents can be raised.

infrastructure such as sewers and roads and could impact water quality, water consumption, energy consumption, etc.

The reported cases that have considered the question of what constitutes a "development" in the coastal zone further demonstrate that any subdivision, including one under § 66427.5, is a development that requires a coastal development permit. *Quanta, supra,* 113 Cal.App.3d at 609, held that conversion of existing apartments to a stock cooperative is a development within the meaning of the Coastal Act and, therefore, requires a coastal development permit. *Quanta* explained that subdivisions to convert existing rental housing to condominiums or similar type ownership in the coastal zone require coastal development permits without regard to whether there is any new development or just a change of ownership because the definition of "development" in the Coastal Act expressly includes condominiums and community apartments because they are subdivisions. It then concluded that conversions to stock cooperatives require a coastal development permit because they are similar to condominiums and community apartments. *Id.* at 607-609.

Quanta further explains that the Coastal Act seeks to preserve and encourage the provision of housing opportunities for low and

moderate income persons within the coastal zone and that conversions to condominiums, community apartments and stock cooperatives might adversely affect that objective. *Id.* at 609. The same is true in this case.

In *La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231, the plaintiffs sought to adjust the lot lines between the 16 previously established parcels on their land and claimed that this did not require a coastal development permit because they were not increasing the number of parcels and the lot line adjustments were, therefore, not a "development" subject to the Coastal Act. *La Fe* rejected this claim, explaining that the Coastal Act recognizes that:

> "a subdivision of land or a lot line adjustment can result in changes in the density or intensity of use of property. A lot line adjustment can, as here have the same effect. More to the point though, *section 30106 explicitly applies to a 'subdivision' and any other division of land.* *Id.* 73 Cal.App.4th at 240, emphasis added.

A conversion under § 66427 is indisputably a subdivision and, therefore, a development under Coastal Act § 30106.

IV.

THE MELLO ACT APPLIES BY ITS EXPRESS TERMS TO SUBDIVISIONS OF EXISTING MOBILEHOME PARKS IN THE COASTAL ZONE

The State has declared the importance of preserving and providing affordable housing in the Housing Element Law, Government Code, Article 10.6, Government Code § 65580, *et seq.* The Housing Element Law begins with the declaration that the "availability of housing is of vital state-wide importance" and that "decent housing and a suitable environment for every Californian, including farmworkers, is a priority of the highest order." Government Code § 65580(a). Subsection (c) of § 65580 states that provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government. Subsection (d) provides that state and local governments have the responsibility to use the powers vested in them to "make adequate provisions for the housing needs of all economic segments of the community."

The Mello Act (§ 65590(a)) states that:

> "*In addition to the requirements of Article 10.6* (commencing with Section 65580), the provisions and *requirements of this Section shall apply within the*

> *coastal zone . . ..* Each respective *local government shall comply with the requirements of this section in that portion of its jurisdiction that is within the coastal zone.*" Government Code § 65590(a), emphasis added.

Subsection 65590(b) provides, *inter alia*, that the "conversion" of residential dwelling units occupied by low-income persons "*shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income.*" Subsection (g)(1) defines conversion as:

> "a change of residential dwelling, *including a mobilehome . . . or a mobilehome lot . . . to a condominium, stock cooperative or similar form of ownership. . .*"

Thus, by its express terms, the Mello Act applies to the conversion to resident ownership of a mobilehome park located in the coastal zone to a condominium or similar form of ownership. That is exactly the type of conversion addressed by § 66427.5 and exactly the type of conversion proposed by Palisades. Many such conversions involve primarily a change of ownership like that which occurs in a subdivision under § 66427.5 and do not involve new development. Palisades' claim that the Mello Act should not apply because it is only

a change of ownership is, therefore, contrary to the express language of the Act.[8]

Palisades' opening brief expressly acknowledges that mobilehome parks provide a valuable source of affordable housing. (*See e.g.,* Opn. Brf. at 2, 19) Palisades is nonetheless seeking an interpretation of Government Code § 66427.5 that would necessarily result in the loss of that affordable housing in the coastal zone. Palisades' claim that § 66427.5 serves the same purpose as the Mello Act and, therefore, that there is no need to apply the Mello Act to the conversion of mobilehome parks ignores both the meaning of "resident owned" and the purpose of the Mello Act, which is much broader than the narrow scope of § 66427.5.

The Mello Act protects the availability of affordable housing (both low- and moderate-income housing) in the coastal zone and requires the replacement of such housing when it is lost by a conversion to condominium type ownership. In contrast, § 66427.5 requires only the protection of existing non-purchasing, low-income

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[8] Palisades' claim the Mello Act does not contemplate the type of conversion that occurs under § 66427.5 would require reading an exception into the Mello Act that is contrary to its language and intent. When the Legislature intended exceptions to the Act, it expressly provided for them. *See* § 65590(h).

residents by limiting the annual rent increases for those residents to 100% of the increase in the Consumer Price Index. When existing low-income residents need to move, they will have to sell their homes to someone who can afford to purchase both the space and an interest in the common areas as well as the mobilehome. Thus, what was once low-income housing will become higher priced housing.

Further, § 66427.5 does little to protect those residents who do not meet the statutory definition of low income persons but cannot afford to purchase their spaces. While they can remain as renters, their rent can be increased to market (in the high priced coastal zone market) in phases over four years. (§ 66427.5(f)) After four years there is no limit on rent increases. And when those renters leave, only those who can afford to purchase a space, an interest in the common area and the mobilehome will be able to live in the park. Thus, if Palisades' argument that § 66427.5 precludes the application of all other state laws or Palisades' argument that § 66427.5 is equivalent to the Mello Act were accepted, the affordable housing provided by mobilehome parks in the coastal zone will be lost.

V.

THE COASTAL ACT, THE MELLO ACT AND SECTION 66427.5 EACH SERVE A DIFFERENT PURPOSE AND ALL CAN BE HARMONIOUSLY APPLIED TO A CONVERSION UNDER SECTION 66427.5

When § 66427.5 is read, as Cities submit it should be, as just a limitation on the conditions that can be imposed by a local jurisdiction to avoid the economic displacement of non-purchasing, low-income residents, there is no reason to conclude that it conflicts with the Coastal Act, the Mello Act or any other state law generally applicable to subdivisions. The Mello Act, the Coastal Act and § 66427.5 each serve a different purpose: the Mello Act to preserve and provide affordable housing in the coastal zone; the Coastal Act to protect valuable coastal resources; and § 66427.5 to protect the *existing* low-income residents of a park being converted to resident ownership from economic displacement. There is no reason these three state laws cannot exist harmoniously.

It would be unreasonable to treat a single section of the Map Act-- § 66427.5-- as repealing or superseding the state-wide policies embodied in the Mello Act and the Coastal Act simply because

§ 66427.5 was amended after the adoption of those Acts.[9] As this Court explained in *Penziner v. West American Finance Co.* (1937) 10 Cal.3d 160, 176, there is a presumption against repeal that can only be overcome by statutes that "are irreconcilable, clearly repugnant and so inconsistent that the two cannot have concurrent operation." Further, courts are bound, if possible, to harmonize the statutes applicable to a matter. *Id.*

There is nothing in the language of § 66427.5 that is irreconcilable with the Coastal and Mello Acts or precludes it from co-existing harmoniously with those Acts. Section 66427.5 does not use phrases like "notwithstanding any other law," which the Legislature uses when it wishes to make a statute control over all other provisions that might be applicable to a matter. *See e.g.,* Revenue and Taxation Code § 99(b).

As set forth above, § 66427.5 simply provides a limited exception to the discretion and authority vested in local jurisdictions by the Map Act for a specific and limited category of subdivisions. As an exception, it should be narrowly construed. In contrast, the

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[9] Respondent City of Los Angeles points out in its answering brief that there was an amendment to the Coastal Act concerning affordable housing after the last amendment of § 66427.5.

Coastal Act is to be liberally construed (§ 30300(a)), applies to all subdivisions in the coastal zone and provides that, except for those matters expressly exempted in the Act, a coastal development permit is required:

> "*in addition to obtaining any other permit required by law from any local government or from any state, regional or local agency.* Any person, as defined in Section 21106, wishing to perform or undertake any development in the coastal zone other than a facility subject to Section 25500, *shall obtain a coastal development permit.*" § 30600(a); emphasis added.

Thus, the Coastal Act expressly contemplates application to projects that require other permits, such as subdivisions that require tentative maps under the Map Act, which includes tentative maps under § 66427.5.

The Mello Act (§ 65590(a)) provides that *in addition* to the other requirements in the Planning and Zoning Law, Government Code § 65000, *et seq.*, concerning affordable housing (§§ 65580-65589), the provisions of the Mello Act shall apply in the coastal zone and that "*each local government shall comply with the provisions of this Section in that portion of its jurisdiction which is located within the coastal zone*." Further, as set forth *supra,* the

Mello Act expressly states that it applies to the conversion of mobilehome parks in the coastal zone to condominium or similar forms of housing.

Cities are frequently faced with a single proposed project application that requires compliance not only with the Coastal Act and the Mello Act but also with the Map Act, the Planning and Zoning Law, CEQA, the regulations of regional air quality management districts and the State Air Resources Board and the regulations of regional and state water quality boards, etc. No reasonable claim could be made that § 66427.5 supersedes and precludes application of all these state and regional regulations to subdivisions under § 66427.5.

These state and regional regulations, like the Mello and Coastal Acts, apply *in addition* to the requirements of the Map Act and the Planning and Zoning Law. These state and regional laws can be and are regularly applied harmoniously to subdivision applications. Cities faced with applications subject to several laws typically consider all of the requirements applicable to a project together at the same hearing. However, they can also hold a separate, earlier hearing to determine the § 66427.5 issues.

Palisades does not, and could not, reasonably claim that the Map Act conflicts with or precludes the application of these state and regional regulations. How then can there be a credible claim that a single section of the Map Act, like § 66427.5, precludes the application of all other relevant state and regional regulations applicable to subdivisions?

As set forth above, when properly read, § 66427.5 simply precludes local jurisdictions from imposing conditions to avoid the economic displacement of non-purchasing residents other than those specified in the Section when a mobilehome park is subdivided to convert it to resident ownership. The sentence of subsection (e) that states there is to be a hearing that considers only compliance with § 66427.5 does not mean that there cannot be another hearing after it has been determined whether a proposed subdivision is entitled to the benefits of § 66427.5 or a joint hearing that considers that issue and the other applicable laws, such as the Coastal and Mello Acts. Nothing in § 66427.5 requires the conclusion that the Section precludes the application of other applicable state and regional laws applicable to subdivisions.

VI.

IF THERE WERE A CONFLICT BETWEEN SECTION 66427.5 AND THE MANDATES OF THE COASTAL AND MELLO ACTS, THOSE ACTS WOULD PREVAIL OVER SECTION 66427.5

If, as the court of appeal below found, § 66427.5 conflicts with the state mandates in the Coastal and Mello Acts and *if*, as that court found, neither the language of the Acts and § 66427.5 nor their legislative history provides any guide as to which mandate should prevail, the Court should "turn to an analysis of the relevant policy considerations as they bear on the question of legislative intent." *Mejia v. Reed* (2003) 31 Cal.4th 657, 668. In this case, such an analysis compels the conclusion that the broader concerns of the Coastal Act and Mello Act must prevail.

The Coastal Act contains a declaration of its importance to all the people of this nation, not just those in California. Public Resources Code § 30001(b) declares that the:

> "permanent protection of the state's natural and scenic resources is a *paramount concern to present and future residents of the state and the nation.*" (Emphasis added)

Public Resources § 30001(a) declares that the coastal zone is:

> "a distinct and valuable natural resource *of vital and enduring interest to all the people* and exists as a delicately balanced ecosystem." (Emphasis added)

It is clear from these policies that the Coastal Act is intended to benefit *all* the people of the State and the nation. These policies concern a much larger population than the policy set forth in § 66427.5 of protecting the existing low-income, non-purchasing residents of a park converted to resident ownership from economic displacement. Section 66427.5 is intended to make it easier for residents to acquire the parks in which they reside by limiting the *local* regulations that can be imposed on a conversion to "resident ownership," *i.e.,* one that is resident-supported or resident-initiated. A comparison of the importance to all people in the State and nation of preserving coastal resources to the far more limited goals of § 66427.5, dictates that the Coastal Act prevail over § 66427.5.

The Mello Act derives from the Coastal Act. Former Public Resources Code § 30213 mandated that the Coastal Commission protect and provide for "housing opportunities for persons of low and moderate income." (1976 Statutes, Ch. 1330 §1, p. 5958) The Interpretive Guidelines for that Section indicated that § 30213 reflected the fact that one of the goals of the Coastal Act was to ensure

meaningful access to the coast and that meaningful access requires housing opportunities as well as other forms of coastal access. (Cal.Coastal Com., Interpretive Guidelines (1981) §II.A., p. 13) Those Guidelines further provided that the coastal zone should not be the domain of a single class of citizens and should instead remain available to the entire public and that the "provision of affordable housing benefits not only those who live in it but all members of society." (§ II.B, p. 14); s*ee Coalition of Concerned Communities v. City of Los Angeles* (2004) 34 Cal.4th 733, concurring opinion at 741.

In 1982, the responsibility for ensuring the provision of affordable housing in the coastal zone was transferred from the Coastal Commission to local jurisdictions by the deletion of Public Resources Code § 30213 and the enactment of the Mello Act, Government Code § 65590. (1981 Statutes, Ch. 1007) Thus, the Mello Act derives from the Coastal Act and promotes the Coastal Act's goal of ensuring access to coastal resources for all economic segments of the population.

The Mello Act provides that *each local government shall comply with its requirements for that part of its jurisdiction in the coastal zone* and that:

> " the *conversion* or demolition of existing residential dwelling units occupied by persons and families of low or moderate income. . . *shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons of low or moderate income*." Section 65590(b), emphasis added.

The policies and goals of the Mello Act, like those of the Coastal Act from which it was derived, concern a much larger population and are far broader than the policies and goals of § 66427.5. The Mello Act protects the existence and continued *future* availability of affordable housing and furthers the objectives of the Coastal Act. In contrast, § 66427.5 protects only the existing low-income residents of mobilehome parks so long as they remain in a park. It does nothing to protect the future availability of low- and moderate-income housing in the coastal zone when these residents move out of the park.

The broader goals and policies of the Coastal Act and Mello Act should prevail over the limited goals and policies of § 66427.5.

VII.

CONCLUSION

This Court should reject the contention that § 66427.5 precludes the application of the Coastal Act and the Mello Act to the

subdivision of mobilehome parks in the coastal zone to convert them to resident ownership. Conversions under § 66427.5 are subdivisions under the Map Act and the Coastal Act requires coastal development permits for all subdivisions in the coastal zone under the Map Act *in addition to any other permit required from a state, regional or local agency.* The Mello Act provides that *no conversion of a mobilehome park in the coastal zone shall be authorized unless provisions are made to replace units occupied by low- and moderate-income persons.*

Nothing in the language or history of § 66427.5 or related statutes supports the claim that the Section precludes the application of the Coastal Act, the Mello Act, or other state laws applicable to subdivisions under § 66427.5. Section 66427.5 does nothing more than limit the conditions that can be imposed by *local* jurisdictions on a "resident conversion" to avoid economic displacement of non-purchasing, low-income residents.

Even *if* § 66427.5 conflicted with the Mello Act and the Coastal Act, those Acts would prevail because their broader policies

concern all the people of this State. In contrast, § 66427.5 provides a narrow limitation on the discretion vested in local jurisdictions by the Map Act in a limited category of subdivisions.

Dated: June 30, 2011

RICHARDS, WATSON & GERSHON
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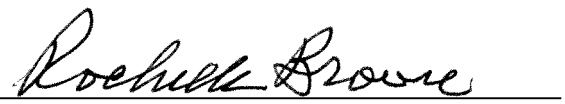
By: 

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CERTIFICATE OF COMPLIANCE

I certify that:

This brief complies with the type-volume limitation of California Rules of Court, Rule 8.520(c) because this brief contains 9,178 words, excluding the parts of the brief exempted by California Rules of Court, Rule 8.520(c)(1).

This brief complies with the typeface requirements of California Rules of Court, Rule 8.204 (b) and the type style requirements of California Rules of Court, Rule 8.204 (b)(2)(3)(4) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word, Times Roman, 14 font size.

Dated: June 30, 2011

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STATEMENT OF RELATED CASES

Real Party in Interest League of California Cities knows of no related case pending in this Court.

Dated: June 30, 2011

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PROOF OF SERVICE

I, Karen Forrand, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 355 South Grand Avenue, 40th Floor, Los Angeles, CA 90071-3101.

On June 30, 2011, I served the within document:

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE AN AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF RESPONDENT CITY OF LOS ANGELES

■ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid 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 contained in this affidavit.

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

Executed on June 30, 2011 at Los Angeles, California.

Karen Forrand