



City of Carson Report to Mayor and City Council

March 16, 2011
New Business Discussion

SUBJECT: CONSIDERATION OF ORDINANCE NO. 11-1468 REPEALING ORDINANCE NO. 08-1401 REGARDING THE RESIDENT SURVEY OF SUPPORT REQUIREMENTS OF THE CARSON MUNICIPAL CODE

Submitted by William W. Wynder
City Attorney

Approved by Clifford W. Graves
Interim City Manager

I. SUMMARY

The City Council is requested to introduce for first reading Ordinance No. 11-1468 (Exhibit 1) which will repeal Ordinance No. 08-1401, Section 2 (Exhibit 2), the so-called "Survey of Support" ordinance adopted by the City Council in 2008. This repealing ordinance is required by order of the Los Angeles County Superior Court (Exhibits 3 & 4) *and* because the "Survey of Support" ordinance is now moot in light of the favorable ruling of the Court of Appeals in *Colony Cove Properties, LLC v. City of Carson* (2010) 187 Cal. App. 4th 1487.

II. RECOMMENDATION

WAIVE further reading and INTRODUCE Ordinance No. 11-1468 "AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, REPEALING ORDINANCE NO. 08-1401, SECTION 2, CONCERNING MOBILEHOME PARK CONVERSIONS."

III. ALTERNATIVES

None. This action is required by order of the Los Angeles Superior Court.

IV. BACKGROUND

In 2008 and faced with multiple and newly filed applications for conversions of various mobilehome parks in the community, the Office of the City Attorney recommended, and the City Council adopted, Ordinance No. 08-1486 adding Municipal Code section 9209.3(B)(2).

As codified, the new ordinance added these provisions to the mobilehome conversion ordinance in Carson:

"2. Survey of Residential Support. A survey of residential support conducted in compliance with subdivision (d) of Government Code Section 66427.5. The subdivider shall demonstrate that the survey was conducted in accordance with an agreement between the subdivider

and an independent resident homeowners' association, if any, was obtained pursuant to a written ballot, and was conducted so that each occupied mobilehome space had one (1) vote. The completed survey of resident support ballots shall be submitted with the application. In the event that more than one (1) resident homeowners' association purports to represent residents in the park, the agreement shall be with the resident homeowners' association which represents the greatest number of resident homeowners in the park. For purposes of determining whether a proposed conversion is a bona fide resident conversion, the following criteria shall be used:

(a) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 shows that more than fifty (50) percent of resident households support the conversion to resident ownership, the conversion shall be presumed to be a bona fide resident conversion.

(b) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 shows that at least thirty-five (35) percent but not more than fifty (50) percent of residents support the conversion to resident ownership, the subdivider shall have the burden of demonstrating that the proposed conversion is a bona fide resident conversion. In such cases, the subdivider shall demonstrate, at a minimum, that a viable plan, with a reasonable likelihood of success as determined by the decision maker, is in place to convey the majority of the lots to current residents of the park within a reasonable period of time.

(c) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 shows that less than thirty-five (35) percent of residents support the conversion ownership, the conversion shall be presumed not to be a bona fide resident conversion.”

This provision of the municipal code was modeled after an essentially identical ordinance adopted by the County of Sonoma, which had been *challenged and upheld* by the County of Sonoma Superior Court at that time the City considered, fine-tuned, and then adopted its own iteration of the same. However, by the time the conversion application of the Colony Cove Mobile Estates came before the Carson City Council for hearing and possible action, the First Appellate District had *reversed* the County of Sonoma trial court's decision, and held the Sonoma County ordinance was preempted by state law.

In the face of that appellate ruling, the Carson City Council, based upon advice of the Office of the City attorney, elected *not* to apply the City's Survey

Ordinance to the conversion application Colony Cove Mobile Estates. Notwithstanding the same, as the City Council is well familiar, the owner of this mobilehome park sues the City over virtually any and every action taken in connection with mobilehome parks all in an attempt to recover “money damages” from the City.

Accordingly, this mobilehome park owner filed what is know as a “facial” challenge to the “Survey of Support” provisions of the municipal code. Eventually, the Court of Appeals in *Colony Cove Properties, LLC v. City of Carson* (2010) 187 Cal. App. 4th 1487 concluded that any local implementing ordinance regarding the resident survey of support provisions of state law was pre-empted by Government Code Section 66427.5. The City has, therefore, been ordered to repeal this provision of the municipal code.

In so ruling, however, the Court of Appeals interpreted the relevant provision of Section 66427.5 in the manner intended by the City of Carson in adopting its Survey of Support ordinance, thereby effectively rending the City’s local implementing ordinance moot in any event. In important language, the Court of Appeals ruled:

“When the Legislature amended section 66427.5 in 2002, [the new subdivision] requires applicants to obtain a survey of support of the residents of the mobilehome park, conducted in accordance with specific procedures, and to submit ‘[t]he results’ to the entity or agency ‘authorized by local ordinance to approve, conditionally approve, or disapprove the [subdivision] map.’ *This language alone suggests that the contents of the survey, as opposed to its mere existence, are relevant to the approval process.* By thereafter specifically stating that the results are ‘to be considered as part of the subdivision map hearing prescribed by subdivision (e),’ the Legislature made that intention explicit. *Construing the statute to eliminate the power of local entities and agencies to consider the results of the survey when processing a conversion application would consign the ‘to be considered’ language of subdivision (d)(5) to surplusage.*” (Emphasis added.)

The attached ordinance comports with the requirement of the decision of the Court of Appeals.

V. FISCAL IMPACT

None.

VI. EXHIBITS

1. Ordinance No. 11-1468 (pgs. 5-6)

- 2. Ordinance No. 08-1401 (pgs. 7-9)
- 3. Judgment of the Los Angeles Superior Court (pgs. 10-12)
- 4. Writ of Mandate of the Los Angeles Superior Court (pgs. 13-16)

Document1

Prepared by: William W. Wynder, City Attorney

TO:Rev010511

Reviewed by:

<u>City Clerk</u>	<u>City Treasurer</u>
<u>Administrative Services</u>	<u>Development Services</u>
<u>Economic Development Services</u>	<u>Public Services</u>

Action taken by City Council

Date _____ Action _____

ORDINANCE NO. 11-1468

AN ORDINANCE OF THE CITY OF CARSON,
CALIFORNIA, REPEALING ORDINANCE NO. 08-1401,
SECTION 2, CONCERNING MOBILEHOME PARK
CONVERSIONS

WHEREAS, the City Council of the City of Carson considered and adopted Ordinance No. 08-1401 adding certain sections to the Carson Municipal Code; and

WHEREAS, Section 2 of that ordinance added requirements to the Carson Municipal Code relating to the conduct of a survey of residential support; and

WHEREAS, in May, 2008, the owner of Colony Cove Properties, LLC filed a lawsuit challenging the survey of residential support provisions of the Carson Municipal Code; and

WHEREAS, on February 9, 2011, following protracted litigation in the Los Angeles County Superior Court and the California Court of Appeals, First Appellate District, a judgment was issued finding Ordinance No. 08-1401 invalid; and

WHEREAS, on February 28, 2011, the Los Angeles County Superior Court issued a writ of administrative mandate ordering the City of Carson, California, to “vacate Ordinance No. 08-1401.”

THE CITY COUNCIL of the CITY OF CARSON, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Pursuant to the order of the Los Angeles County Superior Court, Carson Municipal Code § 9209.3(B)(2), is hereby repealed, in its entirety, and declared to be vacated in the manner required by law. The language of this sub-section of the Municipal Code being repealed and vacated by this ordinance reads as follows:

“2. Survey of Residential Support. A survey of residential support conducted in compliance with subdivision (d) of Government Code § 66427.5. The subdivider shall demonstrate that the survey was conducted in accordance with an agreement between the subdivider and an independent resident homeowners association, if any, was obtained pursuant to a written ballot, and was conducted so that each occupied mobilehome space had one vote. The completed survey of resident support ballots shall be submitted with the application. In the event that more than one resident homeowners association purports to represent residents in the park, the agreement shall be with the resident homeowners association which represents the greatest number of resident homeowners in the park. For purposes of determining whether a proposed conversion is a *bona-fide* resident conversion, the following criteria shall be used:

(a) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 shows that more than 50% of resident households supports the conversion to resident ownership, the conversion shall be presumed to be a bona-fide resident conversion

(b) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 shows that at least 35% but not more than 50% of residents support the conversion to resident ownership, the subdivider shall have the

burden of demonstrating that the proposed conversion is a bona-fide resident conversion. In such cases, the subdivider shall demonstrate, at a minimum, that a viable plan, with a reasonable likelihood of success as determined by the decision-maker, is in place to convey the majority of the lots to current residents of the park within a reasonable period of time.

(c) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 shows that less than 35% of residents support the conversion ownership, the conversion shall be presumed not to be a bona-fide resident conversion.”

SECTION 2. Carson Municipal Code § 9209.3, is hereby amended, to re-number existing sub-sections 3, 4, and 5, following repeal of sub-section 2, and to be re-numbers as sub-sections 2, 3, and 4, respectively.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

PASSED. APPROVED, and ADOPTED this _____ day of March, 2011.

Mayor Jim Dear

ATTEST:

City Clerk Helen S. Kawagoe

APPROVED AS TO FORM:

City Attorney



ORDINANCE NO. 08-1401

AN ORDINANCE OF THE CITY OF CARSON,
CALIFORNIA, CONCERNING MOBILEHOME PARK
RESIDENTIAL CONVERSIONS

THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DOES ORDAIN AS
FOLLOWS:

SECTION 1. Carson Municipal Code § 9209.1, is hereby amended, in its entirety, to read as follows (new text highlighted in red or underlined):

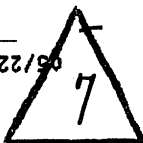
"Section 9209.1 Purpose: The purpose of these provisions is to promote greater individual choice in type, quality, price and location of housing; to provide for housing needs of all segments of the population; to provide increased home ownership opportunities for all segments of the population; to mitigate the hardship caused by displacement of tenants, particularly those in low to moderate cost housing and those who are elderly, families with minor dependent children, the handicapped and the disabled; to promote the safety of conversion projects and correction of Building Code violations in such projects; to provide adequate off-street parking; to encourage construction of new rental units to replace units lost due to conversions; to protect the existing rental housing stock by reducing conversions; to ensure that conversions of mobilehome parks to resident ownership are bona fide resident conversions in accordance with state law; and to generally regulate projects in accordance with applicable general and specific plans and with the public health, safety and welfare."

SECTION 2. Carson Municipal Code § 9209.3, is hereby amended, to add a new sub-section 2, entitled "Survey of Residential Support," and to re-number the subsections there after in seriatim order, and to read as follows (new text highlighted in red or underlined):

"2. Survey of Residential Support. A survey of residential support conducted in compliance with subdivision (d) of Government Code § 66427.5. The subdivision shall demonstrate that the survey was conducted in accordance with an agreement between the subdivider and an independent resident homeowners association, if any, was obtained pursuant to a written ballot, and was conducted so that each occupied mobilehome space had one vote. The completed survey of resident support ballots shall be submitted with the application. In the event that more than one resident homeowners association purports to represent residents in the park, the agreement shall be with the resident homeowners association which represents the greatest number of resident homeowners in the park. For purposes of determining whether a proposed conversion is a bona-fide resident conversion, the following criteria shall be used:

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(b) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 shows that at least 35% but not more than 50% of residents support the conversion to resident ownership, the subdivider shall have the burden of demonstrating that the proposed conversion is a bona-fide resident conversion.



In such cases, the subdivider shall demonstrate, at a minimum, that a viable plan, with a reasonable likelihood of success as determined by the decision-maker, is in place to convey the majority of the lots to current residents of the park within a reasonable period of time.

(c) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 shows that less than 35% of residents support the conversion ownership, the conversion shall be presumed not to be a bona-fide resident conversion."

SECTION 3. Carson Municipal Code § 9209.3, is hereby amended, to re-number existing sub-sections 2, 3, and 4 to follow sequentially after new sub-section 2, and to be re-numbers sub-sections 3, 4, and 5, respectively.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

PASSED, APPROVED, and ADOPTED this 19th day of February, 2008.

Jim Dear
Mayor Jim Dear

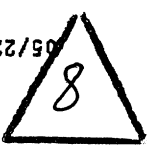
ATTEST:

Helen S. Kawagoc
City Clerk Helen S. Kawagoc

APPROVED AS TO FORM:

W. W. [Signature]
City Attorney

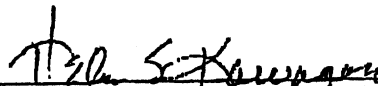
CC0002



STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF CARSON)

I, Helen S. Kawagoe, City Clerk of the City of Carson, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing ordinance, being Ordinance No. 07-1401 passed first reading on February 6, 2008 was duly and regularly adopted by the City Council of said City at a regular meeting of said Council, held on the 19th day of February, 2008, and that the same was passed and adopted by the following roll call vote:

AYES:	COUNCIL MEMBERS:	Mayor Dear, Santarina, Williams, Gipson and Davis-Holmes
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None



City Clerk, City of Carson, California

CC0003



ORIGINAL

FILED
Superior Court of California
County of Los Angeles

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FEB 09 2011

John A. Clarke, Executive Officer/Clerk
By ~~A. Fajardo~~, Deputy
ANNETTE FAJARDO

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 COLONY COVE PROPERTIES, LLC, a
11 Delaware limited liability company,

12 Petitioner,

13 vs.

14 CITY OF CARSON; CITY OF CARSON CITY
15 COUNCIL; DOES 1 through 10, inclusive,

16 Respondents.

CASE NO. BS114932

[Consolidated with Case No. BS115305]

Assigned to The Hon. James C. Chalfant
Dept. 85

~~PROPOSED~~ JUDGMENT FOLLOWING
REMAND

17 On May 19, 2008, Petitioner Colony Cove Properties, LLC ("Petitioner") filed a Verified
18 Petition for Peremptory Writ of Mandate seeking issuance of this Court's writ to vacate Ordinance
19 No. 08-1401, adopted by the City of Carson City Council on February 19, 2008 ("Conversion
20 Ordinance Action").

21 On June 13, 2008, Petitioner filed a Verified Petition for Peremptory Writ of Mandate
22 seeking issuance of this Court's writ to vacate Ordinance No. 08-1402U, adopted by the City of
23 Carson City Council on March 18, 2008, which extended a temporary moratorium on mobilehome
24 park conversions from rental-only facilities to resident ownership within the City of Carson for a
25 period of one (1) year ("Moratorium Ordinance Action").

26 On January 7, 2009, the Conversion Ordinance Action was related and consolidated with
27 the Moratorium Ordinance Action.
28

RECEIVED
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DEPT. 85



1 On March 21, 2009, the moratorium extension adopted by Ordinance No. 08-1402U
2 expired.

3 On June 19, 2009, the Conversion Ordinance Action and the Moratorium Ordinance
4 Action, as related and consolidated, came up for hearing in Department 85 of the Los Angeles
5 Superior Court, the Honorable James C. Chalfant presiding. This Court subsequently issued its
6 Amended Judgment on August 8, 2009.

7 Respondent appealed the Amended Judgment to the Court of Appeal, Second Appellate
8 District, Division Four, which issued its decision on August 31, 2010, affirming in part and
9 reversing in part the Amended Judgment (the "Court of Appeal's Decision") and remanding the
10 matter to this Court.

11 In light of the Court's of Appeal's Decision, and good cause appearing, this Court hereby
12 corrects its prior Amended Judgment and **HEREBY FINDS, ORDERS and ADJUDGES AS**
13 **FOLLOWS:**

- 14 1) Ordinance No. 08-1401 is invalid for the reasons set forth in the Court of Appeal
15 Decision.
- 16 2) A peremptory writ of mandate shall issue under the seal of this Court commanding
17 Respondent City of Carson, through its City Council, to vacate Ordinance No. 08-
18 1401.
- 19 3) The Moratorium Ordinance Action is dismissed as moot.
- 20 4) Petitioner shall recover its costs in this proceeding, including its costs on appeal, in the
21 amount of \$ _____.

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23 Dated: 2/9/11

J. Chalfant
Hon. James C. Chalfant
Judge of the Superior Court

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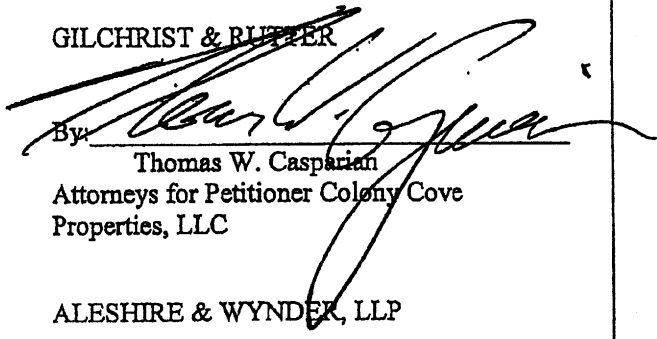


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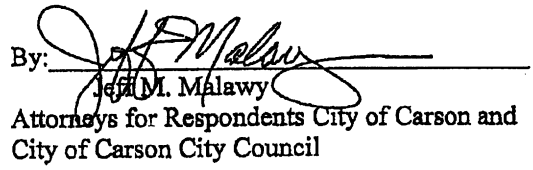
DATED: January 27, 2011

GILCHRIST & BLITZER

By: 
Thomas W. Casparian
Attorneys for Petitioner Colony Cove
Properties, LLC

DATED: January 27, 2011

ALESHIRE & WYNDER, LLP

By: 
Jeff M. Malawy
Attorneys for Respondents City of Carson and
City of Carson City Council

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

COLONY COVE PROPERTIES, LLC, a
Delaware limited liability company,

Petitioner,

vs.

CITY OF CARSON; CITY OF CARSON CITY
COUNCIL; DOES 1 through 10, inclusive,

Respondents.

CASE NO. BS114932

[Consolidated with Case No. BS115305]

Assigned to The Hon. James C. Chalfant
Dept. 85

~~[PROPOSED]~~ PEREMPTORY WRIT OF
MANDATE FOLLOWING REMAND

(Conversion Ordinance Action)

13

1 TO CITY OF CARSON AND CITY OF CARSON CITY COUNCIL:

2 Good cause appearing from the Verified Petition for Peremptory Writ of Mandate filed in
3 this Court on May 19, 2008 ("Petition"), supporting documents on file in this proceeding, the
4 hearing before this Court on June 19, 2009, and the decision of the California Court of Appeal
5 issued in this matter on August 31, 2010,

6 YOU ARE HEREBY COMMANDED, pursuant to the Judgment Following Remand
7 entered on FEB - 9 2011 to vacate Ordinance No. 08-1401.

8 YOU ARE FURTHER COMMANDED to make and file a return to this Writ within
9 sixty (60) days of issuance of this Writ, setting forth what you have done to comply.

10 The Court will retain jurisdiction over the Petition and enforcement of this Writ.

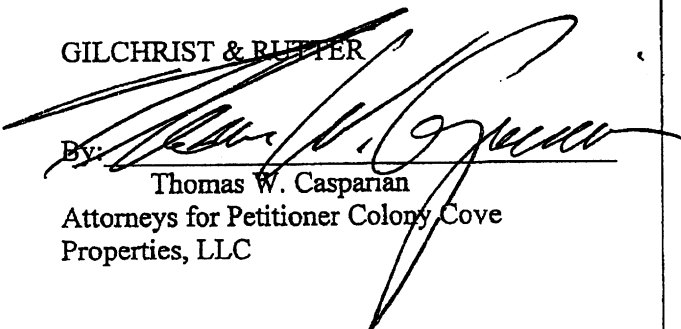
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12 FEB 28 2011 JOHN A. CLARKE, CLERK, Clerk

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14 By K.W. Kam, Deputy Clerk

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18 APPROVED AS TO FORM AND CONTENT

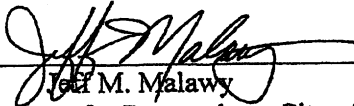
19 DATED: January 31, 2011

GILCHRIST & BLETTNER

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21 By: 
22 Thomas W. Casparian
23 Attorneys for Petitioner Colony Cove
Properties, LLC

24 DATED: January 31, 2011

ALESHIRE & WYNDER, LLP

25
26 By: 
27 Jeff M. Malaw
28 Attorneys for Respondents City of Carson and
City of Carson City Council

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 1299 Ocean Avenue, Suite 900, Santa Monica, California 90401-1000. On March 3, 2011, I served the foregoing documents:

PEREMPTORY WRIT OF MANDATE FOLLOWING REMAND

- by sending a true copy of the foregoing document(s) by e-mail to each interested party at the e-mail address(es) set forth below. No e-mail transmission error was reported.
- by transmitting the document(s) listed above via facsimile from sending facsimile machine number to the fax number(s) set forth below on this date before 5:00 p.m. and receiving confirmed transmission reports indicating that the document(s) were successfully transmitted.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Monica, California, addressed as set forth below.
- by causing overnight delivery by *FedEx* of the document(s) listed above to the person(s) at the address(es) set forth below.
- by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice for the collection and processing of 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 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 the date of deposit for mailing in affidavit.

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

Executed on March 3, 2011, at Santa Monica, California.



Jane Adam

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SERVICE LIST

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