

S.180468

SUPREME COURT
FILED

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MAR - 2 2010

Frederick K. Olinich Clerk

Deputy

THE POINT ALTERNATIVE CARE, INC.,
a California non-profit corporation,

Petitioner,

Supreme Court Copy

vs.

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

Respondent

CITY OF DANA POINT,

Real Party in Interest

PETITION FOR REVIEW

Re: Decision of the Court of Appeal, Fourth Appellate District, Division
Four, filed February 11, 2010 (Court of Appeal No. G042893)
Orange County Case No. 30-2009-00298187

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I. PETITION FOR REVIEW

To the Honorable Chief Justice of the California Supreme Court,
and the Associate Justices of the Supreme Court of California:

The Point Alternative Care, Inc., Defendant and Appellant,
respectfully petitions for review following the decision of the Court of
Appeal, G042893, Fourth Appellate District, Division Three per
William Rylaarsdam, Acting P. J. filed February 11, 2010.

II. ISSUE PRESENTED FOR REVIEW

Whether an order compelling compliance with a legislative subpoena
issued pursuant to California Government Code §37104 *et seq.* is appealable
as a final judgment in a special proceeding.¹

Review is requested to resolve inconsistent present opinions by the
First, Second, Third, Fourth and Sixth District Courts of Appeal regarding
appealability of the underlying Superior Court order compelling compliance
with a legislative subpoena.

¹ Government Code §37104 provides as follows:
The legislative body may issue subpoenas requiring attendance of witnesses or production of books
or other documents for evidence or testimony in any action or proceeding pending before it.

III. NATURE OF THE CASE

A. Introduction

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

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

Some courts have held such orders are non-appealable and may only be reviewed by writ. See, Bishop v. Merging Capital, Inc., 49 Cal.App.4th 1803, 1806-09, 57 Cal.Rptr.2d 556 (1996). Other courts, however, have found that the "better view" is that such orders are appealable as final judgments in special proceedings. Millan v. Restaurant Enterprises Group, Inc., 14 Cal.App.4th 477, 484-85, 18 Cal.Rptr.2d 198 (4th Dist. 1993).

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

This Court should grant review to give guidance to the lower courts in California on this important issue.

B. Procedural History

The Petitioner, THE POINT ALTERNATIVE, INC., A CALIFORNIA NON-PROFIT CORPORATION (hereinafter "The Point") is a California non-profit organization duly organized under the laws of the State of California. The Point was created pursuant to the guidelines set forth by the California Attorney General as a collective for the cultivation and distribution of marijuana for medical purposes.

On or about June 29, 2009 the Real Party in Interest, caused to be issued a subpoena for the production of Business Records pursuant to California Government Code § 37104. Said subpoena contained a total of 44 production requests. The aforementioned subpoena was served upon the Petitioner on or about July 2, 2009 with a production date of July 27, 2009. The Petitioner was granted an extension until August 10, 2009 to respond. On or about August 10, 2009, the Petitioner provided its responses to the requested documents. These responses included both the appropriate objections, as well as numerous documents which evidence the Petitioner's compliance with the California Attorney General Guidelines relating to the cultivation and distribution of marijuana for medical purposes.

On August 31, 2009, the Real Party in Interest filed a Petition seeking an Order to Show Cause Re Contempt for Non-Compliance of a legislative subpoena pursuant to California Government Code § 37104 et seq. In

support of the Order to Show Cause, the Real Party in Interest submitted the “Mayor’s Report,” which set forth the basis for the issuance of the Subpoena.

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

Notwithstanding the Petitioner’s arguments, on November 2, 2009, the trial Court ordered that the Petitioner’s custodian of records, produce all documents (including the private information of third parties) and records responsive to the City Subpoena to the City of Dana Point, no later than 5:00 p.m. on December 7, 2009. A copy of the order is attached hereto and incorporated herein by reference as Exhibit “A”.

On November 13, 2009, the Petitioner timely filed its Notice of Appeal to the Trial court’s order. Further, on December 3, 2009, the trial Court at the request of the Petitioner, stayed enforcement of its order during the pendency of the appeal.

On January 29, 2010, the Court of Appeal for the Fourth District on its own motion, found that the appeal in this case is not from an appealable order

and deemed that the Notice of Appeal filed by the Petitioner on November 13, 2009, to be a petition for extraordinary writ and further ordered that the Petitioner had fifteen days from the date of the order to file a petition for extraordinary writ. A copy of the January 29th order is attached hereto and incorporated herein by reference as Exhibit "B".

On February 10, 2010, the Petitioner filed its Motion to Vacate Order and Reinstate Appeal with the Court of Appeal. On February 11, 2010, the Court of Appeal denied the Petitioner's motion, but allowed an extension up to and including March 12, 2010, for the Petitioner to file its extraordinary writ. A copy of the Court of Appeal order dated February 11, 2010 is attached hereto and incorporated herein by reference as Exhibit "C".

The Petitioner now seeks review of the Court of Appeal's ruling on February 11, 2010.

IV. WHY REVIEW SHOULD BE GRANTED

The California Rules of Court provide for review in this Court “when necessary to secure uniformity of decision or to settle an important question of law.” (Cal. Rules of Court, Rule 8.500 (b)(1).) This case presents an important question of law that will arise frequently in California’s lower courts. Current decisions lack uniformity. Despite the ruling in *Millan v. Restaurant Enterprises Group, Inc.*, *supra*, which sets forth that orders relating to legislative subpoenas are appealable as final judgments in special proceedings, the Court of Appeal in this instant case has found that the appeal is not from an appealable order.

In the present matter, the Petitioner has been denied their right to appeal the Trial court’s order of November 2, 2009. This right to appeal is critical, because of the potential disclosure of private information that could affect the way these third party individuals are treated. The issue posed in this petition, raises a clear ambiguity in the law as it relates to the appealability of legislative subpoenas. This ambiguity will have a significant impact on a large number of cases.

In the absence of a definitive ruling from this Court, there will be no uniformity of decision as it relates to legislative subpoenas.

V. LEGAL DISCUSSION

A. Nature of Action

Since the question of appealability goes to the jurisdiction of this court, it is invested with the authority to consider its own jurisdiction and the issue of appealability. Olson v. Cory, 35 Cal.3d 390 (1983).

It appears there is a present split of authority on the appealability on Superior Court orders enforcing administrative and analogous legislative subpoenas issued pursuant to California Government Code §37104 et seq. Some courts have held such orders are non-appealable and may only be reviewed by writ. See, Bishop v. Merging Capital, Inc., 49 Cal.App.4th 1803, 1806-09, 57 Cal.Rptr.2d 556 (1996).

The Fourth District has, however, previously stated and found that the “better view” is that such orders are appealable as final judgments in special proceedings. Millan v. Restaurant Enterprises Group, Inc., 14 Cal.App.4th 477, 484-85, 18 Cal.Rptr.2d 198 (4th Dist. 1993).

Moreover, the better view is that “orders requiring compliance with the subpoenas are appealable as final judgments in special proceedings. . . . Numerous cases, including cases from our Supreme Court, have decided appeals taken from similar orders on the merits without discussion of the appealability issue. Inasmuch as the Supreme Court is among those courts which have assumed the appealability of such orders, we conclude such an order is appealable The issue on this appeal, whether the subpoena meets constitutional standards for enforcement, is a matter of law and is reviewed *de novo*. Millan, supra [internal citations omitted].

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

The Sixth District Court of Appeal has expressly found that an order to compel compliance with a legislative subpoena pursuant to Government Code §37104 is appealable as a final judgment. City of Santa Cruz v. Patel, 155 Cal.App.4th 234, 240-43, 65 Cal.Rptr.3d 824 (6th Dist. 2007). Millan is cited extensively in the Patel opinion in support for its ruling and a contrary line of cases from the Second District Court of Appeal was discussed and rejected in favor of the "better view" of the Fourth District Court of Appeal.

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

In following *Millan* and implicitly rejecting *Bishop*, the court in *State ex rel. Dept. of Pesticide Regulation* concluded that an order compelling compliance with an administrative subpoena is appealable as a final judgment: "[A] judgment is the 'final determination of the rights of the parties in an action or proceeding.' The statutory scheme provides for an original proceeding in the superior court, which results in an order directing the respondent to comply with the administrative subpoena.

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

The fact that an intransigent respondent may be subject to a contempt order does not mean the court order is not final, because the same possibility exists with injunctions and final judgments which form the basis for contempt citations. The purpose of any judicial order which commands or prohibits specific conduct is to make the sanction of contempt available for disobedience. This fact does not render such an order 'nonfinal.' Indeed, the

contempt judgment is not appealable but must be reviewed, if at all, by writ, and therefore review of the underlying order can reliably be had only if that order is appealable. [Citation.]" (*State ex rel. Dept. of Pesticide Regulation, supra*, 165 Cal.App.4th at p. 851.).

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

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

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

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

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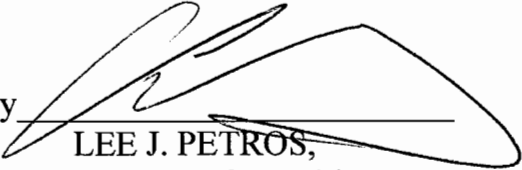
VI. CONCLUSION

For the reasons stated above, this Court should grant review to determine the whether an order compelling compliance with a legislative subpoena issued pursuant to California Government Code §37104 *et seq.* is appealable as a final judgment in a special proceeding.

DATED: February 17, 2010

Respectfully submitted,

By



LEE J. PETROS,
Attorneys for Petitioner

CERTIFICATE OF COMPLAINT

California Rules of Court, Rule 8.204

The foregoing brief is proportionately spaced, using 13-point Time New Roman Regular. The Word count of 2694 is based on information provided by Microsoft Word processing program and therefore does not exceed the limits provided by Rule 8.204, California Rules of Court.

I certify that the foregoing is true and correct.

Executed this 17th day of February, 2010, at Santa Ana, California.



LEE J. PETROS

PROOF OF SERVICE

I, RAJASHREE DAYANAND, am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 1851 East First Street, Ste. 857, Santa Ana, CA 92705.

On February 18, 2010, I served the foregoing PETITION FOR REVIEW by placing a true copy thereof enclosed in a sealed envelope, as follows:

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

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

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

I caused such envelopes to be deposited in the mail at Santa Ana, California or placed for collection and mailing on the date and at the place shown above following our ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States postal service on that same day 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 (1) day after date of deposit for mailing affidavit. The envelopes were mailed with postage thereon fully prepaid.

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

Executed this 18th day of February, 2010, at Santa Ana, California.



RAJASHREE DAYANAND

1 RUTAN & TUCKER, LLP
A. Patrick Muñoz (State Bar No. 143901)
2 City Attorney, City of Dana Point
Noam I. Duzman (State Bar No. 213689)
3 Deputy City Attorney
Jennifer J. Farrell (State Bar No. 251307)
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5 Costa Mesa, California 92626-1931
Telephone: 714-641-5100
6 Facsimile: 714-546-9035

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

NOV 02 2009

J. CARLSON, Clerk of the Court
J. Carlson

7 Attorneys for CITY OF DANA POINT

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
11

12 In Re:
13 ENFORCEMENT AGAINST THE POINT
ALTERNATIVE CARE OF CITY OF DANA
14 POINT CITY COUNCIL SUBPOENA

Case No. 30-2009-00298187

ORDER

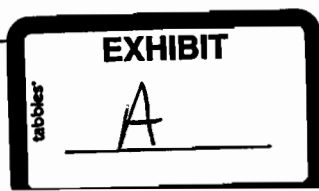
Date: October 22, 2009
Time: 10:00 a.m.
Dept.: C-17
Judge: Hon. Glenda Sanders

17
18 The hearing on the City of Dana Point's ("City") application for an order compelling
19 Respondent The Point Alternative ("Respondent") to respond to the City Subpoena came on
20 regularly for hearing on October 22, 2009, at 10:00 a.m. in Department C-17 of the above-entitled
21 Court, the Honorable Glenda Sanders, Judge Presiding.

22 Upon consideration of the pleadings and papers filed in support of and in opposition to the
23 City application, and after considering the arguments of counsel, and good cause appearing,

24 IT IS ORDERED, ADJUDGED AND DECREED THAT:

25 Respondent's custodian of records, Stephen Hase, shall produce all documents and records
26 responsive to the City Subpoena to the City of Dana Point at the office of Rutan & Tucker, 611
27 Anton Boulevard, Suite 1400, Attention: Patrick Muñoz, Costa Mesa, California 92626, no later
28 than 5:00 p.m. on December 7, 2009.



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IT IS SO ORDERED.

Dated: 11-2-09

GLEND A SANDERS
Honorable Glenda Sanders
Judge of the Superior Court

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

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CARLSON, Clerk of the Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

In re: Enforcement Against the
Point Alternative Care of City of
Dana Point City Council's
Subpoena.

30-2009-00298187

FINAL RULING
Dept. C17

**City of Dana Point v. Point Alternative Care;
Holistic Health; Safe Harbor Collective; Beach Collective and Beach Cities Collective.**

The Mayor of the City of Dana Point in her report to this Court pursuant to Government
Code 37106 notifies the Court that:

1. The City has learned that the Respondents are likely operating as marijuana dispensaries within the City's borders;
2. These Respondent Dispensaries have not obtained any authorization from the City to do so;
3. The City has received several complaints from residents and business owners concerning some of these dispensaries;
4. The Respondent Dispensaries are operating beyond the scope of their Occupancy Permits;

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5. The Dana Point Municipal Code states that any proposed land use not expressly allowed in a given district is prohibited;

6. Medical marijuana dispensaries are not listed as permitted uses in the City;

7. Based on this information, and against the background of State and Federal Law as well as the AG Guidelines, the City Council authorized her to issue subpoenas pursuant to GC 37104 "for the purpose of gathering information that could assist the City in its investigation as to whether medical marijuana dispensaries located in the City are operating in compliance with applicable law."

GC 37104 provides that a legislative body may issue subpoenas requiring the attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding pending before it. The issuance of the subpoena is valid if:

1. It is authorized by ordinance or similar enactment;
2. It serves a valid legislative purpose;
3. The witnesses or materials subpoenaed are pertinent to the subject matter of the investigation.

Re 1: Authorized by Ordinance or Similar Enactment

The first requirement is clearly met. Just as the City of Lodi's city council was specifically authorized to issue subpoenas pursuant to GC 37104 so too is the City of Dana Point. This is the "ordinance" or "other enactment" to which the Courts in *Connecticut Indemnity* at 813, and *Wilkerson v. United States* 365 U.S. 339, 408-409 are referring. The facts in *Wilkerson* were very different from the facts here. In *Wilkerson* the entity that issued the subpoena was the House Committee on Un-American Activities. The respondent challenged that committee's power to issue a legislative subpoena. The Supreme Court determined that the Committee derived its power to issue legislative subpoenas from 2 U.S.C Section 192 which empowered the House of Representatives and its Standing

1 Committees (including the subject committee) to issue them. Here we are dealing with an
2 entity which is specifically authorized to issue legislative subpoenas pursuant to GC
3 37104.

4 The Respondents also appear to suggest that the City of Dana Point cannot issue the
5 subpoenas absent an ordinance similar to the *Vacaville* city ordinance imposing a duty
6 on hotel owners to collect and remit an occupancy tax to the City of Vacaville. This is not
7 correct. There is no authority for the proposition that a legislative entity is only
8 empowered to issue a subpoena in connection with an *existing* ordinance as opposed to
9 an ordinance it might enact after conducting its legislative enquiry. (See *Connecticut*
10 *Indemnity* at 814 citing *Barenblatt v. U.S.* "The scope of the power of inquiry ...is as
11 penetrating and far reaching as the potential power to enact and appropriate...")

12
13 **Re 2: Serves a Valid Legislative Purpose**

14 A legislative body may conduct an investigation in order to assist its decision making
15 regarding legislative matters. *Connecticut Indemnity Company v. Lodi* 23 Cal. 4th 807.
16 The investigation cannot be an end in and of itself. *Watkins*, 354 US 178. The
17 investigation must be for a legislative purpose. Respondents argue that the City, in
18 declaring it was issuing the subpoenas "to investigate whether medical marijuana
19 dispensaries are operating in compliance with applicable law" essentially admits that the
20 subpoenas were issued, not for any legislative purpose, but rather for the improper
21 purpose of determining whether to prosecute them for non compliance with applicable
22 law.

23
24 The Court rejects this argument. It is clear from a reading of the Mayor's entire report that
25 the City authorized the issuance of the subpoenas to investigate whether the
26 dispensaries are complying with the law in order to determine how to respond to
27 residents' concerns about the manner in which the dispensaries are conducting
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1 business, whether under existing zoning laws they should be permitted to conduct such
2 businesses, whether the zoning laws need to be amended to accommodate the
3 dispensaries, and if so what amendments are necessary. Mayor's Report Para.s 1-2.
4 The Mayor and the other Council members were elected to legislate on precisely such
5 matters.

6
7 In *Vacaville* the court held that the subpoena was properly issued for the purpose of
8 enabling the city to investigate whether a business was violating a tax ordinance. The
9 court ruled that the City Council was considering the valid legislative concern of carrying
10 out the audit of an uncooperative taxpayer to determine compliance with the City's taxing
11 ordinance. The court held that matters relating to the investigation and enforcement of tax
12 measures are proper legislative concerns. The Vacaville City Council met to consider the
13 tax administrator's effort to obtain cooperation with the tax audit. The City Council
14 authorized the mayor to issue the subpoena and to apply to the superior court for
15 enforcement of the subpoena as authorized by GC section 37104. Thus the tax audit and
16 the reluctant taxpayer's refusal to comply with the subpoena were considered by the
17 court in *Vacaville* to be proper subjects of legislative enquiry by the City Council.

18
19 Likewise here the City's concern that the dispensaries may be operating beyond the
20 scope of their occupancy permits is a proper subject of legislative enquiry. The essential
21 facts in the case at bar are indistinguishable from the facts in *Vacaville* and those in
22 *Connecticut Indemnity*. The City, in furtherance of its legislative powers, is entitled to
23 investigate whether dispensaries are operating under the law to determine if they should
24 be allowed to continue operating as dispensaries in city limits, and if so under what
25 conditions.

26 Because the City's issuance of the subpoenas was, in itself, a proper exercise of
27 legislative power, the potential that the City might also use information gained by the
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1 subpoenas in future litigation against the dispensaries does not render them invalid.
2 *Connecticut Indemnity Company* at 816 ("When a city's issuance of a subpoena is, in
3 itself, a proper exercise of legislative power, the potential that the city also may use the
4 information gained by that subpoena in future litigation does not render the subpoena
5 invalid".) In *Connecticut Indemnity* the Supreme Court of California went on to state
6 "...it is well established that courts generally do not engage in such second-guessing of
7 legislative motive....". *Id. at 816.*

8
9 **Re 3: The witnesses or materials subpoenaed are pertinent to the subject matter of**
10 **the legislative investigation.**

11 Respondents claim that the demands are overly broad but they fail to indicate with
12 specificity which documents are not reasonably related to the legislative purpose
13 described above. A challenge to a subpoena for lack of specificity must fail unless the
14 challenging party can demonstrate that the demands in the subpoenas are not pertinent
15 to the subject matter of the investigation. *Connecticut Indemnity at 816-817.*

16 The City is entitled to information to determine if the entities are acting within current
17 state and local laws to determine whether it should allow the entities to continue to
18 operate and, if so, to decide what additional local regulation may be required. The City
19 has provided the uncontroverted expert opinion of Mr. Goodrich as to the relevance of
20 the documents sought to a proper forensic evaluation of the question whether the
21 respondent entities are maintaining financial and other records necessary for compliance
22 with the enabling legislation and the AG Guidelines. Even absent such an opinion the
23 Court considers that the subpoenas seek pertinent documents and records. The court
24 lists below the specific demands and primary relevance each demand has to the
25 purposes stated above:

1 **Demands 1-11, 34, 37, 40, 41, 42, 43, and 44** relate to the general business
2 operation of the entities, including compliance with the tax laws. The enabling legislation
3 prescribes the structure of entities entitled to provide medical marijuana.

4 **Demands 13-23, 36, 37, and 39** seek information regarding compliance with specific
5 aspects of H&S § 11362.7. The documents requested relate to each Respondent's
6 status as a primary caregiver, clinic, residential care facility, residential care facility for
7 elderly, hospice, home health agency, cooperative, or collective. The demands also
8 include demands for documents showing verification of member qualifications and
9 verification of caregiver status.

10 **Demands 12 and 24-33** seek information regarding the supply of marijuana to
11 Respondents. The documents sought relate to the source of the marijuana, its cost,
12 methods of exchange, amount cultivated, amount stored, transportation, distribution and
13 security measures.

14 **Demands 36, 38 and 39** seek information necessary to determine the qualifications
15 of persons to be members of the entities under both H&S 11362.7 and the Attorney
16 General guidelines. The documents sought include names of members, names of
17 persons designated as primary caregivers, and documents supporting the designation of
18 an entity or person as a primary caregiver.

19 The City has specifically not sought copies of marijuana recommendations, patient
20 medical files, and information related to the medical condition for which the
21 marijuana was recommended. See City's Reply to Safe Harbor's Opposition, Page 7,
22 lines 19-23 and footnote 3. (A similar statement is made by the City in its Reply to each
23 of the Respondents' Oppositions).

24
25 The 5th Amendment, Brown Act, Equal Protection, Separation of Powers, 4TH
26 Amendment and Privacy Objections:

27
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1 Having considered the arguments made by Petitioner and each Respondent concerning
2 these issues or objections, the Court is persuaded by the City's arguments and
3 accordingly concludes these objections have no merit. Each of these objections is
4 overruled.

5
6 The Court has, however, signed the Protective Order proposed by the City to ensure that
7 the names of members are treated as "Confidential Information" to be made available
8 only to those designated as "Qualified Persons" within the meaning of the Protective
9 Order. As such, the names of members will be made available only to that very limited
10 group of persons who have a justifiable need to know such information in order to assist
11 the City in the performance of its legislative purpose.

12
13 **The Court's Orders.**

14 The Court finds that the City's subpoenas were properly served in furtherance of a proper
15 legislative purpose. While at least one of the Respondents has produced some
16 documents responsive to the City's subpoena, none of the Respondents has produced all
17 the documents and records sought by the subpoena.

18 The Court has accordingly signed orders requiring the individual served with the
19 subpoena (on behalf of the Respondent for which he was authorized to accept service of
20 the subpoena at Court on October 2, 2009) to produce all documents and records
21 responsive to the subpoena on December 7, 2009 no later than 5PM at the offices of
22 Rutan & Tucker, 611 Anton Boulevard, Suite 1400, Costa Mesa, CA. Thus the Court has
23 signed orders requiring: (1) Stephen Hase, (2) Garrison Williams, (3) David Niedhardt, (4)
24 Kevin Sperry and (5) David Lambert for and on behalf of The Point Alternative Care,
25 Holistic Health, Safe Harbor Collective, Beach Collective and Beach Cities Collective
26 respectively, to produce all documents and records responsive to the City's Subpoena at
27 the time and place mentioned above.

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Any records containing "Confidential Information" as defined in the Protective Order signed by the Court shall be produced and handled in accordance with the provisions of that Protective Order.

The Court has signed the Protective Order to protect the confidentiality interests of Respondents' medical marijuana members. Any willful breaches of the Protective Order will result in the issuance of an Order to Show Cause why sanctions for contempt of Court should not be issued against the person breaching the Protective Order.

November 2, 2009



Glenda Sanders

Judge, Superior Court of California.

JAN 29 2010

Deputy Clerk _____

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE POINT ALTERNATIVE CARE,
INC.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

CITY OF DANA POINT,

Real Party in Interest.

G042893

(Super. Ct. No. 30-2009-00298187)

O R D E R

THE COURT:*

The court finds the appeal in this case is not from an appealable order and deems the notice of appeal filed on November 13, 2009, to be a petition for extraordinary writ. (*Olson v. Cory* (1983) 35 Cal.3d 390; *H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1366-1367.) Petitioner, The Point Alternative Care, Inc., has 15 days from the date of this order to file a petition for extraordinary writ. Any informal response shall be filed within 5 days thereafter. No extensions of time will be granted absent a showing of extraordinary good cause.

On the court's own motion and for good cause, the previous briefing schedule on appeal is hereby VACATED and any request for an extension of time to file a brief is MOOT.

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Petitioner's request to consolidate this case with G042878, G042880, G042883, and G042889 is DENIED.

RYLAARSDAM, J.

RYLAARSDAM, ACTING P. J.

* Before Rylaarsdam, Acting P. J., Moore, J., and Aronson, J.

G042893

The Point Alternative Care, Inc. v. The Superior Court of California, County of Orange

Superior Court of Orange County

Lee James Petrohilos
1851 E 1st St Ste 857
Santa Ana, CA 92705

The Superior Court of California, County of Orange
Hon. Glenda Sanders Dept C-17
700 Civic Center Drive West
Santa Ana, CA 92701

Patrick A. Munoz
Rutan & Tucker
611 Anton Blvd Ste 1400
Costa Mesa, CA 92628-1950

FEB 11 2010

Deputy Clerk _____

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
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THE POINT ALTERNATIVE CARE,
INC.,

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v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

CITY OF DANA POINT,

Real Party in Interest.

G042893

(Super. Ct. No. 30-2009-00298187)

ORDER

THE COURT:*

Petitioner's motion to vacate the order filed by this court on January 29, 2010, and to reinstate the appeal is DENIED.

Based on petitioner's representation that this case involves complex issues which require extensive briefing, the court finds good cause to GRANT petitioner's application for an extension of time to file a petition for extraordinary writ. Petitioner may file a

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G042893

The Point Alternative Care, Inc. v. The Superior Court of California, County of Orange

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Costa Mesa, CA 92628-1950

petition for extraordinary writ no later than March 12, 2010. No extensions of time beyond March 12, 2010, will be granted absent a showing of extraordinary good cause.

Any informal response shall be filed no later than March 22, 2010.

RYLAARSDAM, J.
RYLAARSDAM, ACTING P. J.

* Before Rylaarsdam, Acting P. J., Moore, J., and Aronson, J.