

No. S180560

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

HOLISTIC HEALTH, INC., A California non-profit corporation,

Appellant and Petitioner,

vs.

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

Respondent

CITY OF DANA POINT,

Respondent and Real Party in Interest

SUPREME COURT  
FILED

MAR - 9 2010

Frederick K. Onirich, Clerk  
Deputy

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Re: Decision of the Court of Appeal, Fourth Appellate District,  
Division Four, filed February 11, 2010 (Court of Appeal No.  
G042883)

Orange County Case No. 30-2009-00298196

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**APPELLANT/PETITIONER'S REPLY TO REAL PARTY'S  
ANSWER TO THE PETITION FOR REVIEW**

Alison Minet Adams  
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*Attorney for Petitioner*

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

Appellant/Petitioner Holistic Health, Inc., responds to Real Party in Interest Dana  
Point's Answer as follows:

I. INTRODUCTION

Real Party in Interest has unsuccessfully attempted to show why this Court  
should not review the order of the court below. Rather, the Answer supplements  
Petitioner's showing that review is necessary because of the discrepancy in the  
appellate courts' treatment of orders on administrative and legislative subpoenas.  
Moreover, as discussed below, Real Party in Interest concedes, by failing to

address properly 1) the finality of the court's order on Appellant/Petitioner, thereby rendering it appealable, 2) the lack of uniformity among the lower courts concerning treatment of orders on legislative and administrative subpoenas, or 3) the Appellate Court's refusal to consolidate the cases, and 4) that the order was made in violation of petitioner's right to due process and an opportunity to be heard on the question of appealability.

**II. ARGUMENT: REVIEW IS PROPER BECAUSE A) THERE IS A CONFLICT AMONG CURRENT APPELLATE COURT DECISIONS AND B) THE SUPERIOR COURT'S ORDER WAS FINAL, WITH NO FURTHER DETERMINATIONS REMAINING TO BE MADE BY THE COURT**

**A. Review is Necessary Because There is a Present Split of Authority Concerning the Appealability of Superior Court Orders Enforcing Legislative and Administrative Subpoenas**

There is no question but that the courts are split in their treatment of Superior Court Orders enforcing legislative and administrative subpoenas. Some courts have held such orders are non-appealable and may only be reviewed by writ. *See, Bishop v. Merging Capital, Inc.*, (1996), 49 Cal.App.4th 1803, 1806-09, while others have held such orders are appealable final judgments. *See, Santa Cruz v. Patel*, (6<sup>th</sup> Dist. 2007) 155 Cal.App.4th 234, 240-436. Although the current trend is to treat these orders as appealable final judgments, the fact that this matter is before this Court demonstrates that this important question of appellate jurisdiction remains unsettled.

In spite of this discrepancy, Real Party in Interest erroneously argues that the

Order, being unpublished, has no impact on the development of the law. The Answer points to no case law, and none exists, requiring matters reviewed by this Court to have been published. Should the Court choose to remand the matter to the Court of Appeal, this Court's holding would provide precedent and guidance to all lower courts. Moreover, because this particular case relates to five separate but related actions, which the Appellate Court, unlike the Superior Court, declined to consolidate, a determination regarding this action will provide the clarity necessary to dispose of the related actions in a manner consistent with the Court's holding. Without the Court's determination, there is a substantial likelihood of varied results among these cases.

**B. Because the Primary Statutory Basis for an Appeal is the Finality of the Court's Order, and Nothing Remains for Either Party Besides Compliance with the Order, the Order is Appealable.**

In an attempt to show that the Order is not appealable, Real Party in Interest cites a plethora of cases indicating that the right to appeal is provided only by statute or by the Constitution. To this, Appellant/Petitioner takes no issue, because the right to appeal this matter *is provided for by statute*. As Real Party in Interest correctly points out, *Code of Civil Procedure* section 904.1 states that an appeal may be taken from a "judgment," which is defined in *Code of Civil Procedure* section 577 as "the final determination of rights of the parties in an action or proceeding."

This matter came before the Appellate Court following a special proceeding to determine to enforce a legislative subpoena pursuant to *Government Code* section 31704. The only issue before the lower court was the rights of each party in the proceeding – whether Real Party in Interest had a right to the documents sought and whether Appellant/Petitioner had a right to avoid the subpoena.

Real Party in Interest points to the Second District case of *Bishop v. Merging Capital* supra, to suggest that an order enforcing a subpoena pursuant to Government Code § 11180 is not final. Recent cases however have presented a better view.

In *Bishop*, the court concluded that the appropriate time to seek review was after an adverse determination in a contempt proceeding. However, that a court order may later cause a party to be subject to a contempt proceeding should be of no moment for the court's determination as to whether an order is final. For example, the Court hears matters on the granting or dissolving injunctions without requiring party to subject themselves to contempt proceedings, pursuant to *Code of Civil Procedure* section 904.1(a)(6)). *Bishop* fails to explain a reasonable distinction, and more recent decisions in multiple appellate courts have abandoned this view (*e.g. The People ex rel. Preston DuFauchard v. U.S. Financial Management*, (Fourth District 2009) 169 Cal.App.4th 1502[*order compelling compliance with administrative subpoena is appealable as a final judgment*], *State*

*ex rel. Dept. of Pesticide Regulation v. Pet Food Express Ltd.* (3<sup>rd</sup> Dist. 2008) 165 Cal.App.4th 841, [ *order compelling compliance with administrative subpoena is appealable as a final judgment*]; *City of Santa Cruz v. Patel*, (6<sup>th</sup> Dist. 2007) 155 Cal.App.4th 234, 240-43 [ *holding an order to comply with a legislative subpoena under the very section at issue here is appealable as a final judgment*]).

### III CONCLUSION

Appellant/Petitioner's Petition for Review should be granted in order to settle this important question of appellate jurisdiction, to maintain judicial efficiency and in to avoid inconsistent results. Moreover, this Court should find that the Superior Court's order is appealable and that the cases should be consolidated for all purposes..

Respectfully submitted

March 9, 2010

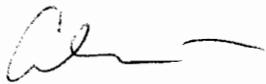


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Attorney for Petitioner and Appellant

CERTIFICATE OF WORD COUNT

I, appellant/petitioner's counsel of record declare under penalty of perjury that the within reply to answer to petition contains 1,264 word when calculated by Microsoft Word's automatic word count function, exclusive of this certificate, but including tables of contents and authorities.

Dated March 9, 2010



-----Alison Minet Adams  
State Bar No 107475

PROOF OF SERVICE

I, Boris M. Young, declare under penalty of perjury that pursuant to this Court's order, I faxed the within reply to Real Party's answer to the petition for review to real party at (714) 546-9035.

I mailed hard copies to:

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

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By placing them into the United States Mails at Studio City, California, in separate envelopes with postage affixed.

March 9, 2010

  
Boris M. Young

