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9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SANTA CRUZ

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 -vs-

14 BECKY ANN JOHNSON et al.,

15 Defendants.

Case # F22194

**PEOPLE'S PRELIMINARY  
HEARING POINTS AND  
AUTHORITIES**

Date: 3/13/12  
Time: 9:00 a.m.  
Dept: 7  
Event: PRELIM HEARING

16 From November 28, 2011, to December 4, 2011, a self-declared  
17 "anonymous, autonomous group acting in solidarity with Occupy Santa  
18 Cruz," unlawfully entered and remained within a clearly closed and  
19 shuttered bank located at 75 River Street in Santa Cruz, California.  
20 See <http://www.santacruzsentinel.com/localnews>, last visited on  
21 February 22, 2012. Police officers attempted to disperse the group  
22 that day but were outnumbered. After nearly 72 hours and numerous  
23 negotiations with police, an estimated 20 or 30 individuals  
24 eventually left the building.<sup>1</sup> See *id.*

25 \_\_\_\_\_  
26 <sup>1</sup> Defendant Johnson has noted in her eponymous blog that  
27 "taking over a long-empty bank building" was "technically illegal  
28 (trespass on private property)" and "likely to end with criminal  
charges." See <http://beckyjohansononewomantalking.blogspot.com> (blog  
entry on February 19, 2012).

1           Currently, 11 defendants have been charged with several felony  
2 and misdemeanor offenses based on both the trespass onto private  
3 property and the approximately \$30,000 in property damage that  
4 occurred after entry into the bank. In order to assist the Court  
5 with the probable cause determination it must make at the  
6 defendants' upcoming preliminary hearing, the People respectfully  
7 submit the following points and authorities summarizing the charges  
8 and evidence against each defendant.

9           In Count 1, the defendants have been charged with conspiring  
10 to commit both trespass and vandalism. In Count 2, the defendants  
11 have been charged with felony vandalism. The theory of liability  
12 with respect to the vandalism charges in both Count 1 and Count 2  
13 is that the vandalism was a natural and probable consequence of the  
14 initial trespass and that, as a result, the defendants are liable  
15 for the damage incurred inside the bank. In Count 3 and 4, the  
16 defendants have been charged with two forms of criminal trespass.  
17 Each count is discussed in turn below.

18           **A.    COUNT 1 -- JURY INSTRUCTIONS AND CASE LAW**

19           Count 1 of the Complaint charges the defendants with Conspiracy  
20 to Commit a Crime, in violation of Penal Code § 182(a)(1), a felony.  
21 A conspiracy is an agreement entered into between two or more  
22 persons with the specific intent to agree to commit a crime, and  
23 with the further specific intent to commit that crime, followed by  
24 an overt act by one or more of the parties for the purpose of  
25 accomplishing the object of the agreement. See CALCRIM No. 415.

26           While an overt act is an element of the crime of conspiracy in  
27 the sense that the prosecution must prove it to a unanimous jury's  
28 satisfaction beyond a reasonable doubt, the overt act element

1 "consists of an overt act, not a *specific* overt act." People v. Russ  
2 (2001) 25 Cal.4th 1124, 1134(emphasis in original). Furthermore, the  
3 overt act need not itself be criminal. Id. at 1135. Thus, a jury  
4 need only agree that any one overt act was committed, even if they  
5 disagree as to which particular overt act was committed. Id.

6 Also, any one of the conspirators, not necessarily the charged  
7 defendant, may commit the overt act to consummate the conspiracy.  
8 Id. "Disagreement as to who the coconspirators were or who did an  
9 overt act, or exactly what that act was, does not invalidate a  
10 conspiracy conviction, as long as a unanimous jury is convinced  
11 beyond a reasonable doubt that a conspirator did commit some overt  
12 act in furtherance of the conspiracy. When two or more persons  
13 combine to commit a crime, the jury need not agree on exactly who  
14 did what as long as it is convinced a particular defendant committed  
15 the crime regardless of what that defendant's precise role may have  
16 been." Id. at 1135-1136.<sup>2</sup>

17 A member of a conspiracy is criminally responsible for the  
18 crimes that he or she conspires to commit, no matter which member  
19 of the conspiracy commits the crime. CALCRIM No. 417. "Recognizing  
20 that criminal agency poses a greater threat to society than that  
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22 <sup>2</sup> The defendants are charged with conspiring to commit one  
23 or more crimes -- trespass, in violation of Penal Code §§ 602(m)  
24 and (o), and/or vandalism, in violation of Penal Code §§ 594(b)(1)  
25 and (b)(2). Also alleged in the Complaint are 17 overt acts  
26 committed by the defendants and/or their uncharged co-conspirators  
27 in order to accomplish the object of the agreement. These acts  
28 include breaking into the lock box containing the keys to the  
building, entering the building, remaining inside the building  
after being given verbal and written warnings to leave, barricading  
the building's doors and windows, controlling access to the  
building, and painting slogans and writings within the building.

1 posed by an independent criminal actor, the law seeks to deter  
2 criminal combination by recognizing the act of one as the act of  
3 all." People v. Zielesch, (2009) 179 Cal.App.4th 731, 739 (citation  
4 and internal quotation marks omitted). To that end, a member of a  
5 conspiracy is also criminally responsible for any act of any member  
6 of the conspiracy if that act is done to further the conspiracy and  
7 that act is a natural and probable consequence of the common plan  
8 or design of the conspiracy. CALCRIM No. 417 (emphasis added)<sup>3</sup>.

9 This rule applies even if the act was not intended as part of  
10 the original plan. Id. Under this rule, a defendant who is a member  
11 of the conspiracy does not need to be present at the time of the  
12 act. Id. See also People v. Morante (1999) 20 Cal.4th 403, 416. In  
13 other words, "[i]n combining to plan a crime, each conspirator risks  
14 liability for conspiracy as well as the substantive offense; in  
15 'planning poorly,' each risks additional liability for the  
16 unanticipated, yet reasonably foreseeable consequences of the  
17 conspiratorial acts[.]" People v. Luparello (1986) 187 Cal.App.3rd  
18 410, 438 (emphasis added). See also People v. Zacarias (2007) 157  
19 Cal.App.4th 652, 658 (noting that "conspiracy to commit a target  
20 offense makes it more likely that additional crimes related to the  
21 target offense will be committed"). Thus, "coconspirators, bound in  
22 criminal combination, are mutually bound to a punishment dictated  
23 by their conspiratorial efforts." Luparello, 187 Cal.App.3d at 437.

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26 <sup>3</sup> A natural and probable consequence is one that a  
27 reasonable person would know is likely to happen if nothing unusual  
28 intervenes. Id.

1 Here, the defendants have not contended that the their trespass  
2 into the bank was anything other then a purposeful, planned act.  
3 Indeed, entering and occupying the bank was a clearly and publicly  
4 stated aim of the group.<sup>4</sup> Thus, the only issue is whether the  
5 vandalism which took place after they entered the property was a  
6 natural and probable consequence of that trespass. Even if the  
7 defendants argue that while the initial trespass was intentional,  
8 the resulting vandalism was unplanned, they can still be held liable  
9 for this crime. Indeed, "[t]he law has been settled for more than  
10 a century that each member of a conspiracy is criminally responsible  
11 for the acts of fellow conspirators committed in furtherance of, and  
12 which follow as a natural and probable consequence of, the  
13 conspiracy, *even though* such acts were not intended by the  
14 conspirators as a part of their common unlawful design." Zielesch,  
15 179 Cal.App.4th at 739 (emphasis added).<sup>5</sup>

16 When determining if an unplanned crime was a natural and  
17 probable consequence of a conspiracy to commit the intended crime,  
18 the issue is not whether the defendant "*actually* foresaw the  
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20 <sup>4</sup> While each defendant entered the property, evidence of  
21 their entry will vary. For example, with respect to defendant  
22 Bradley Allen, photographs taken by Allen himself (and subsequently  
23 posted on public websites) ably documented his entry into and  
24 occupancy of the building. With respect to defendant Alex Darocy,  
25 law enforcement personally observed Darocy entering the building.  
26 However, as discussed in Section C. below, the Court should  
27 consider the concerted action of the group in addition to the  
28 individual conduct of a particular defendant.

29 <sup>5</sup> Thus, there are three possible ways a defendant could be  
30 held liable for the vandalism: (1) they personally committed an act  
31 of vandalism; (2) they engaged in a conspiracy to commit vandalism;  
32 or (3) they engaged in a conspiracy to commit trespass, and  
33 vandalism was a natural and probable consequence of the trespass.

1 additional crime, but whether, judged objectively, the unplanned  
2 crime was *reasonably* foreseeable." Id.(internal citations and  
3 quotation marks omitted)(emphasis in original). "To be reasonably  
4 foreseeable the consequence need not have been a strong probability;  
5 a possible consequence which might reasonably have been contemplated  
6 is enough[.]" Id. (internal citations and quotation marks omitted).  
7 See, e.g., People v. Kaufman (1907) 152 Cal. 331 (defendant who  
8 conspired to commit burglary necessarily conspired to protect other  
9 members of group from arrest or detection while going to and  
10 returning from scene of proposed burglary, and that shooting death  
11 of officer who encountered the group after abandoned burglary plot  
12 was natural and probable consequence of this unlawful enterprise).

13 Here, the vandalism was reasonably foreseeable. The sheer  
14 number of group members who took over the property as well as the  
15 length of time those members remained within the building after the  
16 takeover made subsequent destruction of the property a reasonably  
17 possible, if not highly probable, consequence. Moreover, the  
18 destruction in this case served a distinct purpose -- much like a  
19 street gang's graffiti, the vandalism in this case marked the  
20 group's territory; it allowed the organization to claim the building  
21 as their own, which was the ultimate point of the occupation.<sup>6</sup>  
22 Furthermore, it is inconceivable that the group members personally  
23 responsible for the vandalism would have damaged the property unless  
24 they felt safe doing so; unless they felt that their fellow

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26 <sup>6</sup> According to defendant Becky Johnson, the goal of the  
27 occupation was to convert the building into a community center. See  
28 <http://beckyjohansononewomantalking.blogspot.com> (blog entry from  
February 19, 2012).

1 trespassers would support their conduct. Indeed, it is axiomatic  
2 that those who commit crimes do not bring along for the ride  
3 innocent, unknowing witnesses; they do not allow others to view  
4 their crimes (or their aftermath) unless they believe the others are  
5 comfortable with, and supportive of, the enterprise and will protect  
6 their identities and nature of the offense from the police.

7 Notably, a member of a conspiracy does not have to personally  
8 know the identity or roles of all the other members. See CALCRIM No.  
9 415. Furthermore, the People do not have to prove that any of the  
10 members of the alleged conspiracy actually met or came to a detailed  
11 or formal agreement to commit one or more of the offenses. Instead,  
12 an agreement may be inferred from conduct if the members of the  
13 alleged conspiracy acted with a common purpose to commit the crimes.  
14 Id. See also People v. Remiro (1979) 89 Cal.App.3d 809, 843  
15 (circumstances from which a conspiratorial agreement may be inferred  
16 include "the conduct of defendants in mutually carrying out a common  
17 illegal purpose, the nature of the act done, the relationship of the  
18 parties, [and] the interests of the alleged conspirators").

19 Thus, it need not be shown the parties met and actually agreed  
20 to jointly undertake criminal action. Nor is it necessary to prove  
21 that all of its participants actually knew or directly associated  
22 with each other. Common design is the essence of conspiracy and the  
23 crime can be committed whether the parties comprehend its entire  
24 scope, whether they act in separate groups or together, by the same  
25 or different means known or unknown to some of them, if their  
26 actions are consistently leading to the same unlawful result. People  
27 v. Brown (1968) 259 Cal.App.2d 663, 671-672.

1           Here, the common design was clearly, publicly and repeatedly  
2 stated -- to occupy a long-shuttered commercial building belonging  
3 to a private entity. The defendants all heeded the call and, in  
4 support of the message behind the occupation, knowingly trespassed  
5 into the building. It is immaterial whether they all knew one  
6 another -- they united for a common purpose. This is not in dispute.  
7 However, this joint undertaking is not without its consequences.  
8 In addition to being charged with trespass, they can, and have been  
9 charged with the damage caused by their illegal entry. The question  
10 is not whether the defendants actually foresaw the vandalism, but  
11 whether, judged objectively, the vandalism was reasonably  
12 foreseeable. As discussed above, it clearly was.

13           California courts have aptly noted why crimes committed through  
14 the concerted action of a group, as is the case here, are more  
15 serious than those committed by an individual. "[T]o unite, back of  
16 a criminal purpose, the strength, opportunities and resources of  
17 many is obviously more dangerous and more difficult to police than  
18 the efforts of a lone wrongdoer. Collaboration magnifies the risk  
19 to society both by increasing the likelihood that a given quantum  
20 of harm will be successfully produced and by increasing the amount  
21 of harm that can be inflicted. Concerted action both increases the  
22 likelihood that the criminal object will be successfully attained  
23 and decreases the probability that the individuals involved will  
24 depart from their path of criminality. Group association for  
25 criminal purposes often, if not normally, makes possible the  
26 attainment of ends more complex than those which one criminal could  
27 accomplish." People v. Williams (1980) 101 Cal.App.3d 711, 721  
28 (internal citations and quotation marks omitted).

1           It is for this very reason that co-conspirators are liable for  
2 the natural and probable consequences of their original goal. As  
3 Williams noted, the danger of a conspiratorial group is not limited  
4 to the particular end toward which it has embarked. "Combination in  
5 crime makes more likely the commission of crimes unrelated to the  
6 original purpose for which the group was formed. In sum, the danger  
7 which a conspiracy generates is not confined to the substantive  
8 offense which is the immediate aim of the enterprise. Thus, wrongful  
9 conduct by such combination should be criminally punished even when  
10 the same acts would be excused or receive a lesser punishment when  
11 performed by an individual; group criminal conduct calls for  
12 enhanced punishment, and society has a justifiable right and  
13 obligation to intervene at an earlier stage." Id. (internal  
14 citations and quotation marks omitted). Thus, the defendants here  
15 must be held accountable for the crimes that naturally, and  
16 predictably, resulted from the original object of the conspiracy.

17           **B.     COUNT 2 -- JURY INSTRUCTIONS AND CASE LAW**

18           Count 2 of the Complaint charges the defendants with Felony  
19 Vandalism, in violation of Penal Code § 594 (b) (1). Here, the People  
20 are proceeding under an aiding and abetting theory of liability.<sup>7</sup>  
21 Aider and abettor liability comes in two forms. First, an aider and  
22 abettor is liable for the perpetrator's target crime when he acts  
23 with knowledge of the criminal purpose of the perpetrator and with

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25           <sup>7</sup> To be a principal to a crime, the conspirator need only  
26 intend to agree or conspire and to commit the offense which is the  
27 object of the conspiracy, People v. Horn (1974)12 Cal.3d 290, 296;  
28 while the aider and abettor must intend to commit the offense or to  
encourage or facilitate its commission. People v. Beeman (1984) 35  
Cal.3d 547, 560.

1 the intent to have the target crime committed. People v. Prettyman  
2 (1996) 14 Cal.4th 248, 259. Second, an aider and abettor is liable  
3 for any *other* crimes committed by the perpetrator that were the  
4 natural and probable consequence of the target crime. Id. at 260  
5 (emphasis added). See People v. Durham (1969) 70 Cal.2d 171, 181  
6 (an aider and abettor "is not only guilty of the particular crime  
7 that to his knowledge his confederates are contemplating committing,  
8 but he is also liable for the natural and reasonable consequences  
9 of any act that he knowingly aided or encouraged").

10 A defendant's liability for any other crimes committed in  
11 addition to the target crime "is measured by whether a reasonable  
12 person in the defendant's position would have or should have known  
13 that the ... offense was a reasonably foreseeable consequence of the  
14 act aided and abetted." People v. Medina (2009) 46 Cal.4th 913, 920  
15 (citation and internal quotation marks omitted). See People v.  
16 Nguyen (1993) 21 Cal.App.4th 518, 531 ("The determination whether  
17 a particular criminal act was a natural and probable consequence of  
18 another criminal act aided and abetted by a defendant requires  
19 application of an objective rather than subjective test. This does  
20 not mean that the issue is to be considered in the abstract as a  
21 question of law. Rather, the issue is a factual question to be  
22 resolved by the jury in light of all of the circumstances  
23 surrounding the incident. Consequently, the issue ... depends upon  
24 whether, under all of the circumstances presented, a reasonable  
25 person in the defendant's position would have or should have known  
26 that the charged offense was a reasonably foreseeable consequence  
27 of the act aided and abetted by the defendant") (citations and  
28 internal quotation marks omitted).

1           The standard of foreseeability is necessarily a low one,  
2 consistent with the bright line test that "any person concerned in  
3 the commission of a crime, however slight that concern may be, is  
4 liable as a principal in the crime." Id. (holding that forced sexual  
5 penetration with a foreign object could be a foreseeable consequence  
6 of tanning salon robbery). Foreseeable consequences need not be  
7 immediate, see, e.g., People v. Bringham (1923) 192 Cal. 748  
8 (murder of police officer during traffic stop was natural and  
9 probable consequence of robbery committed three days earlier), or  
10 consented to. See, e.g., People v. Brigham (1989) 216 Cal.App.3d  
11 1039 (aiding and abetting liability found where one member of  
12 professional "hitman" duo unpredictably killed a bystander, despite  
13 being told by his partner that there was a police officer nearby and  
14 that the bystander was not their intended target).

15           In this case, the target crime was trespass. And the ensuing  
16 vandalism was a natural and probable consequence of the target  
17 crime. Thus, as with the conspiracy charge discussed above, there  
18 are three possible ways a defendant could be held liable for the  
19 vandalism: (1) they personally committed an act of vandalism; (2)  
20 they aided and abetted the vandalism; or (3) they aided and abetted  
21 the trespass, and vandalism was a natural and probable consequence  
22 of the trespass. See also CALCRIM 402.

23           Generally, "an aider and abettor will 'share' the perpetrator's  
24 specific intent when he or she knows the full extent of the  
25 perpetrator's criminal purpose and gives aid or encouragement with  
26 the intent or purpose of facilitating the perpetrator's commission  
27 of the crime." People v. Beeman (1984) 35 Cal.3d 547, 560 (citations  
28 omitted). However, under the natural and probable consequences

1 doctrine, an aider and abettor need only share an intent to  
2 facilitate the commission of the *target* crime. People v. Montes  
3 (1999) 74 Cal.App.4th 1050, 1056 (emphasis added). If that hurdle  
4 is met, the critical issue becomes whether there was "a close  
5 connection between the target crime aided and abetted and the  
6 offense actually committed." Prettyman, 14 Cal.4th at 269.

7 The natural and probable consequences doctrine is based on the  
8 recognition that those who aid and abet should be responsible for  
9 the harm they have naturally, probably, and foreseeably put in  
10 motion. Id. at 259. "It follows that a defendant whose liability  
11 is predicated on his status as an aider and abettor need not have  
12 intended to encourage or facilitate the particular offense  
13 ultimately committed by the perpetrator." People v. Croy (1985) 41  
14 Cal.3d 1, 12 fn.5. "His knowledge that an act which is criminal was  
15 intended, and his action taken with the intent that the act be  
16 encouraged or facilitated, are sufficient to impose liability on him  
17 for any reasonably foreseeable offense committed as a consequence  
18 by the perpetrator. It is the intent to encourage and bring about  
19 conduct that is criminal, not the specific intent of the target  
20 offense" which must be found by the jury. Id.

21 "Among the factors which may be considered in determining  
22 aiding and abetting are presence at the crime scene, companionship,  
23 and conduct before and after the offense." In re Juan G. (2003) 112  
24 Cal.App.4th 1, 5 (citation omitted). However, a person who aids and  
25 abets the commission or attempted commission of a crime need not be  
26 present at the scene of the crime at all. See CALCRIM No. 401  
27 ("Someone aids and abets a crime if he or she knows of the  
28 perpetrator's unlawful purpose and he or she specifically intends

1 to, and does in fact, aid, facilitate, promote, encourage, or  
2 instigate the perpetrator's commission of that crime. If all of  
3 these requirements are met, the defendant does not need to actually  
4 have been present when the crime was committed to be guilty as an  
5 aider and abettor."<sup>8</sup> See also CALCRIM No. 3400 (if defendant aided  
6 and abetted or conspired to commit charged offense, then defendant  
7 is guilty even if not present when crime was committed).

8 In this case, the defendants aided and abetted the target  
9 offense (trespass) but will likely contend that they were not  
10 present when the natural and probable consequence of that offense  
11 (the vandalism) took place. Even if true, their absence should not  
12 exempt them from liability for this resulting crime. The defendants'  
13 support (whether at the scene or off site) assisted the cause and  
14 encouraged fellow trespassers to stay the course. And, as noted  
15 above, those who aid and abet should be held responsible for the  
16 harm they naturally, probably, and foreseeably put in motion.  
17 Prettyman, 14 Cal.4th at 259. The trespass put the vandalism into  
18 motion. Indeed, it was part and parcel -- a natural extension --  
19 of the target offense. If the medium is the message, then both  
20 crimes served the movement's purpose.

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22 <sup>8</sup> Conversely, a defendant may be convicted under the  
23 natural and probable consequences doctrine even if the target crime  
24 is not committed at all. See People v. Ayala (2010) 181 Cal.App.4th  
25 1440, 1443. "An aider and abettor may be liable where he  
26 intentionally aids one criminal act but the perpetrator actually  
27 commits some other, more serious criminal act that is reasonably  
28 foreseeable." Id. (fatal shooting was a natural and probable  
consequence of a planned physical attack by multiple gang members  
upon perceived rival gang members even though the shooting occurred  
at the start of the confrontation and no assault with fists,  
baseball bats, knives, or other weapons preceded the shooting).

1           **C.     COUNTS 3 AND 4 -- JURY INSTRUCTIONS AND CASE LAW**

2           Count 3 of the Complaint charges the defendants with Trespass  
3 by Entering and Occupying, in violation Penal Code § 602(m), and  
4 Trespass and Refusing to Leave Private Property, in violation of  
5 Penal Code § 602(o). In order to violate § 602(m) in this case, a  
6 defendant must willfully enter and occupy land or a building  
7 belonging to someone else without the consent of the owner, and must  
8 occupy some part of the land or building continuously until removed.  
9 See CALCRIM No. 2931. In order to violate § 602(o) in this case, a  
10 defendant must refuse or fail to leave land, real property, or  
11 structures belonging to another and not open to the general public,  
12 upon being requested to leave by a peace officer at the request of  
13 the owner, and upon being informed by the officer that he or she is  
14 acting at the request of the owner. See Cal. Pen. Code § 602(o).

15           Here, the defendants entered the property at different times  
16 and remained for different durations. (For the purposes of this  
17 brief, only defendants Allen and Darocy will be discussed.) As noted  
18 above, photographs taken by Allen himself ably documented his  
19 occupancy of the building. With respect to defendant Alex Darocy,  
20 law enforcement personally observed Darocy entering the building.  
21 Furthermore, on the first day of the group's occupancy, officers on  
22 the scene audibly announced that those entering and remaining inside  
23 the building were, in fact, trespassing and called for their exit.  
24 Officers also posted multiple signs clearly informing the building's  
25 occupants, and any future entrants, that they were trespassing and  
26 that the property owners had authorized law enforcement to take  
27 enforcement action for this violation. See Attachment A and B.

1           The defendants may contend they personally made only a fleeting  
2 appearance at the location and thus cannot be held liable under  
3 602(m). See In re R.N. (Jan. 3, 2012) 2012 WL 8178 at \*3  
4 (unpublished) (transient use of property insufficient under 602(m)).  
5 However, as discussed above, the defendants conspired to commit the  
6 trespass. Thus, the Court should consider the concerted action of  
7 the group in addition to the individual conduct of a particular  
8 defendant.<sup>9</sup> A member of a conspiracy is criminally responsible for  
9 the crimes that he or she conspires to commit, no matter which  
10 member of the conspiracy commits the crime. CALCRIM No. 417. Given  
11 that one or more members of the organization occupied the building  
12 for three days straight, the occupation must be deemed continuous.  
13 Furthermore, one or more members of the organization failed to leave  
14 the building after being asked to do so by the owner (through the  
15 Santa Cruz Police Department). Thus, the elements of both § 602(m)  
16 and § 602(o) are met here. As the group's name clearly stated, the  
17 goal of the enterprise was to take over the building for their own  
18 ends. There was no expiration date on this goal. The organization's  
19 signs did not declare "Fleeting Appearance Santa Cruz" or "Transient  
20 Use Santa Cruz." Their stated purpose was to "Occupy Santa Cruz" --  
21 in the form of 75 River Street.

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26 <sup>9</sup> A defendant's individual conduct can be sufficient to  
27 infer an agreement between the conspirators as well as showing an  
28 overt act in furtherance of that agreement, even if that conduct  
does not precisely satisfy the elements of the charged offense. See  
People v. Powers-Monachello (2010) 189 Cal.App.4th 400, 415.

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**CONCLUSION**

The standard of proof at a preliminary hearing is not the substantial evidence required for conviction, but only such evidence required to establish a "rational ground for assuming the possibility that an offense has been committed and the accused is guilty of it." Taylor v. Superior Court (1970) 3 Cal.3d 578, 582, overruled on another ground in People v. Antick (1975) 15 Cal.3d 79, 92, fn. 12(citations and internal quotation marks omitted). The People respectfully submit that this burden has been met here.

Dated: March 5, 2012

Respectfully submitted,

BOB LEE  
DISTRICT ATTORNEY

\_\_\_\_\_  
REBEKAH W. YOUNG  
ASSISTANT DISTRICT ATTORNEY