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FILED
 Superior Court of California
 County of Los Angeles

MAR 27 2014
 Sherri R. Carter, Executive Officer/Clerk
 By Henry N. DiGiambattista Deputy
 N. DiGiambattista

6 Attorneys for Plaintiff Association for Los Angeles Deputy Sheriffs

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 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 ASSOCIATION FOR LOS ANGELES
 DEPUTY SHERIFFS, a California
 12 Corporation,
 13 Plaintiff,
 14 v.
 15 ARMANDO MACIAS, an individual, BRUCE
 NANCE, an individual, and DOES 1-100,
 16 Defendants.

CASE NO. **BC 540789**
**ASSOCIATION FOR LOS ANGELES
 DEPUTY SHERIFFS' EX PARTE
 APPLICATION FOR A TEMPORARY
 RESTRAINING ORDER ANDS ORDER
 TO SHOW CAUSE RE: PRELIMINARY
 INJUNCTION; [PROPOSED] ORDER RE
 TEMPORARY RESTRAINING ORDER
 AND PRELIMINARY INJUNCTION**

Timely Notice Given: Declaration of Jeremy Gray ¶¶12-13, Exhibit 11; Declaration of Don Jeffery Steck ¶ 23, Exh. 5.

DATE: March 27, 2014
 TIME: 8:30 A.M.
 PLACE: TBD

Trial Date: None Set

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RECEIPT #: CCH520872004
 DATE PAID: 03/27/14 08:06 AM
 PAYMENT: \$60.00
 RECEIVED: 310
 CHECK: \$60.00
 CASH: \$0.00
 CHANGE: \$0.00
 CARD: \$0.00

CITICASE: F0540789
 LEA/DEF#:

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on Thursday, March 27, 2014, at 8:30 a.m., or as soon
3 thereafter as the matter may be heard in appropriate Writs and Receivers Department of the above-
4 titled court (Department 82, 85, or 86, as determined by the Court at the time of the filing of this
5 action), located at 111 North Hill Street, Los Angeles, California 90012, Plaintiff Association for
6 Los Angeles Deputy Sheriffs (“ALADS”), will and hereby does move *ex parte*, pursuant to
7 California Code of Civil Procedure § 527, for a Temporary Restraining Order and/or an Order to
8 Show Cause re: Preliminary Injunction against Defendants Armando Macias (“Macias”) and
9 Bruce Nance (“Nance” and collectively with Macias, “Defendants”) ordering the following:

- 10 (1) Armando Macias and Bruce Nance, and each of them, are hereby enjoined and
11 barred from engaging in any actions for the purpose of accessing, or attempting to
12 access any funds belonging to ALADS, including without limitation, any and all
13 funds located in any bank accounts owned by ALADS, the Association for Los
14 Angeles Deputy Sheriffs State PAC, ALADS C.A.R.E.S. Foundation, ALADS
15 Insurance Trust, Peace Officers Relief Fund Trust, and/or any other ALADS
16 affiliated entities.
- 17 (2) Armando Macias and Bruce Nance, and each of them, are hereby enjoined and
18 barred from taking any action whatsoever, with respect to any and all affairs or
19 business of ALADS, unless and until one or both of them is provided specific
20 direction, in writing, by the Board of Directors of ALADS, comprised of: Don
21 Jeffery Steck; Floyd Hayhurst; Bruce Nance; Joseph McCleary; George Hofstetter;
22 Mark Divis; and Travis Kelly.
- 23 (3) Armando Macias and Bruce Nance, and each of them, are hereby enjoined and
24 barred from entering ALADS’s headquarters, located at 2 Cupania Circle,
25 Monterey Park, California 91755, and shall immediately turn over to ALADS’s
26 President, Jeffrey Steck, any and all keys, pass cards, key fobs, or similar access
27 devices to said property.
- 28

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- 1 (4) Armando Macias is hereby barred and enjoined from taking any action whatsoever,
2 or engaging in any communications whatsoever, under the color of authority that he
3 is a Director of ALADS, and Armando Macias is specifically enjoined and barred
4 from holding himself out to the public as a Director of ALADS.
- 5 (5) Steven J. Ipsen is enjoined from entering ALADS's headquarters, located at 2
6 Cupania Circle, Monterey Park, California 91755, and Mr. Ipsen shall immediately
7 turn over to ALADS's President, Jeffrey Steck, any and all keys, pass cards, key
8 fobs, or similar access devices to said property.
- 9 (6) The Baute Crochetiére & Gilford LLP law firm is ordered to immediately return to
10 ALADS the one hundred thousand dollars (\$100,000) in ALADS funds that it
11 possesses in its trust account.

12 ALADS will and hereby does also move this Court *ex parte* for the issuance of an Order to
13 Show Cause Re: Preliminary Injunction as to why they and all persons acting in concert with them
14 or on their behalf should not be enjoined from the following:

- 15 Engaging in any actions or communications for the purpose of accessing, or attempting to
16 access any funds belonging to ALADS, including without limitation, any and all
17 funds located in any bank accounts owned by ALADS, the Association for Los
18 Angeles Deputy Sheriffs State PAC, ALADS C.A.R.E.S. Foundation, ALADS
19 Insurance Trust, Peace Officers Relief Fund Trust, and/or any other ALADS
20 affiliated entities.
- 21 (2) Taking any action with respect to ALADS affairs without approval from the
22 majority of the Board of Directors of ALADS, comprised of the following
23 individuals: Don Jeffery Steck; Floyd Hayhurst; Bruce Nance; Joseph McCleary;
24 George Hofstetter; Mark Divis; and Travis Kelly.
- 25 (3) Entering ALADS's headquarters located at 2 Cupania Circle, Monterey Park,
26 California 91755.
- 27 (4) With respect to Armando Macias, claiming to be a director of ALADS or otherwise
28 holding himself out to the public as a director of ALADS.

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1 (5) With respect to Steven J. Ipsen, that he should be enjoined from entering ALADS's
2 headquarters located at 2 Cupania Circle, Monterey Park, California 91755.

3 Extreme circumstances exist for issuing of this Temporary Restraining Order without
4 notice, pursuant to California Code of Civil Procedure § 527(c) for the following reasons: (1)
5 Macias and Nance have made repeated and unlawful efforts to loot ALADS in an effort to fund
6 their attempts to usurp power from ALADS's Board of Directors. As a result of these efforts,
7 ALADS's account representatives at Wells Fargo Advisors have stated that if the current situation
8 persists -- where they are obtaining conflicting instructions from ALADS's duly elected Board of
9 Directors and Messrs. Macias and Nance -- that they will be forced to freeze all of ALADS's
10 accounts. Such a freezing of ALADS's accounts would be devastating not only to ALADS, but
11 also to its approximately 7,500 members who rely on the services that ALADS provides to them.
12 For instance, freezing ALADS's accounts with Wells Fargo would result in ALADS being unable,
13 to fund healthcare, the legal defense of its members, meet its payroll obligations, pay its vendors,
14 and fund retirement benefits for its staff. In short, ALADS would not be able to pay its basic
15 expenses and would essentially cease to function. As such, good cause exists to grant this *ex parte*
16 application; and (2) Macias and Nance's action in undermining ALADS's Board of Directors
17 results in inaction on the part of ALADS's staff as a result of the fear or threat of legal liability or
18 loss of their jobs, and prevents ALADS from fulfilling its obligations and responsibilities to its
19 members. As such, this constitutes good cause grant this *ex parte* application

20 This Application is based on the attached Memorandum of Points and Authorities, the
21 Declarations of Jeremy Gray, Don Jeffery Steck, Cindy Flores, Maria Cecile Silvestre, David
22 Gould, and John Rees filed herewith, the Proposed Order filed concurrently herewith, the
23 Complaint and Summons on file in this case, and on all pleadings, papers, evidence, and argument
24 as will be considered by the Court at the hearing on this Application, and such other information
25 that may come to this Court's attention.

26 This application is based on the *ex parte* notice given to defendants on March 26, 2014
27 prior to 10:00 a.m. Declaration of Jeremy Gray ¶¶12-13, Exhibit 11; Declaration of Don Jeffery
28 Steck ¶ 23, Exh. 5.

1 Dated: March 27, 2014

Respectfully submitted:

ZUBER LAWLER & DEL DUCA LLP

JEREMY J. GRAY

TRISTAN F. MACKPRANG

By: 

Attorneys for Plaintiff Association for Los Angeles Deputy Sheriffs

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. PRELIMINARY STATEMENT

3 The Association for Los Angeles Deputy Sheriffs ("ALADS" or the "Union") seeks
4 emergency Orders halting the conduct of two dissident Directors, Armando Macias and Bruce
5 Nance. Most importantly, ALADS asks that this Court to enjoin Messers. Macias and Nance's
6 unrelenting, and unlawful efforts to gain access to at least \$100,000.00 of ALADS's money.

7 On March 7, 2014, ALADS's Board of Directors ("Board") voted to dismiss Macias from
8 the Board. Macias' dismissal was required after several of ALADS's union representatives
9 discovered that, at the time of Macias' election to the Board, he failed to meet the qualifications to
10 be a Director. Specifically, the ALADS's Bylaws require that a Director must have attended 75%
11 of the "unit representative meeting" in the preceding two years. Shortly before Macias' dismissal
12 from the Board, it was discovered that he had attended merely 42% of the unit representative
13 meetings, a fact which Macias has never disputed.

14 In an effort to somehow overturn Macias' dismissal from the Board, Macias has recruited
15 the aid of Nance (Nance is a Board member and Vice President of ALADS) and the two have
16 commenced a campaign to unlawfully acquire access to ALADS's funds (for the apparent purpose
17 of funding their dissident activities) and otherwise disrupting ALADS's operations.

18 ALADS's asks that this Court put an immediate stop to their unlawful and improper
19 activities.

20 A. Defendants Misappropriation of \$100,000.00.

21 Defendants engaged in the following misappropriation of funds:

- 22 • On March 17, 2014, Messers. Macias and Nance improperly and unlawfully
- 23 attempted to intimidate ALADS's accountant, Cecile Silvestre, into providing them
- 24 a check, drawn on an ALADS's account, in the amount of \$100,000.00
- 25 (Declaration of Cecile Silvestre ("Silvestre Decl.") ¶¶ 16-27;
- 26 • When Ms. Silvestre refused, Messers. Nance and Macias improperly and
- 27 unlawfully acquired possession of an ALADS's "blank check" with the fraudulent,
- 28 intent of dispersing \$100,000.00 of ALADS's money to a law firm -- presumably to

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fund their dissident activities. (ALADS luckily learned of this plan and stopped payment on the check) (Silvestre Decl. ¶¶16-27; Declaration of John Rees (“Rees Decl.”) ¶ 10-17);

- On March 18, 2014, Macias and his lawyer, Steven Ipsen, attempted to force ALADS’s accountant to give them ALADS’s “signature cards” for its bank accounts and also ALADS’s checkbooks. Both requests were denied (Silvestre Decl. ¶¶ 28-33);
- On March 18, 2014, Mr. Nance, acting in collusion with Mr. Macias, withdrew \$100,000.00 from a bank account holding funds belonging to ALADS’s Political Action Committee; (Declaration of David Gould (“Gould Decl.”) ¶¶ 1-9.) It is impermissible to use the PAC funds for purposes unrelated to electoral politics in the context of local, State and Federal elections of public officials. (*Id.* ¶¶ 8-9.) In violation of his fiduciary duties to ALADS’s, Mr. Nance then obtained, and delivered, a “Cashier’s check” to the law firm of Baute Crochetiere & Gilford LLP (“Baute Law Firm”). Copies of withdrawal slips with only Nance’s authorization are attached to the Declaration of Don Jeffery Steck (“Steck Decl.”), ¶ 16, Exh. 4; Silvestre Decl., ¶ 39, Exh. 3. The Baute Law Firm deposited the funds in its trust account. (Declaration of Jeremy J. Gray (“Gray Decl.”), ¶ 4, Exh. 2). All of this violated ALADS’s Bylaws which require, in Section 11.02, that any check, or other order for the payment of ALADS’s funds, be signed by the Treasurer as well as one of the President or Vice President. None of the withdrawals or disbursements of the \$100,000.00 was authorized by the Board, or include the signature of the treasurer. Steck Decl., ¶¶ 15-18. Moreover, the disbursement of the PAC funds to a law firm, for non-political purposes, generates a real risk that ALADS will incur a tax penalty of \$40,000.00. Gould Decl.”) ¶¶ 8-9

In the days following Defendants misappropriation of the \$100,000.00, ALADS’s lawyers contacted the Baute Law Firm which, on Friday, March 21, 2014, relented, and agreed to hold the \$100,000.00 in its trust account pending a stipulation or court order. Gray Decl., ¶ 8, Exh. 6.

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1 Undaunted, Messers. Nance and Macias have, over the past four days, engaged in a variety
2 of other conduct by which they have sought to gain access to ALADS's funds including, without
3 limitation, visiting bank branch office(s) where ALADS's accounts reside and endeavoring to
4 withdraw funds Gray Decl., ¶¶ 10-11, Exhs. 8-10.

5 Defendants' conduct has prompted Wells Fargo to threaten to freeze all of ALADS funds,
6 which action would render ALADS incapable of paying its bills causing it irreparable harm. Steck
7 Decl., ¶¶ 19-21; Silvestre Decl., ¶¶ 40-42; Declaration of Cindy Flores ("Flores Decl."), ¶¶ 16-18;
8 Rees Decl., ¶¶ 18-19.

9 **B. Defendants' Additional Disruption Of ALADS.**

10 In addition to their efforts to unlawfully acquire access to ALADS's funds, Messers.
11 Macias and Nance have otherwise disrupted the operations of ALADS and rendered the day-to-
12 day business of ALADS intolerable for much of the staff. Silvestre Decl., ¶¶ 7-15; Declaration of
13 Cindy Flores ("Flores Decl."), ¶¶ 10-15; Rees Decl., ¶¶ 6-9.

14 **C. Requested Relief.**

15 In order that ALADS's funds be secured, and the Association be permitted to conduct its
16 business, ALADS requests the relief described in this Application, and accompanying proposed
17 order.

18 **II. STATEMENT OF FACTS**

19 **A. Background.**

20 ALADS is governed by certain bylaws entitled "The Bylaws of the Los Angeles Deputy
21 Sheriffs, Inc., a California Non-Profit Mutual Benefit Corporation" ("ALADS's Bylaws"). Steck
22 Decl., ¶ 9, Exh. 2. Section 6.01 of ALADS's Bylaws require, among other things, that ALADS
23 annually elect members of the ALADS board of directors. *Id.*

24 Section 6.05 of ALADS's Bylaws sets forth the mandatory qualifications of a director. *Id.*
25 Among other things, Section 6.05 requires that a director must be a voting member of ALADS
26 who is a unit representative in good standing and has attended at least 75% of the unit
27 representative meetings for the two years immediately preceding the election of directors. *Id.*
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1 Section 6.12.2 of ALADS's Bylaws permits a majority of the ALADS Board of Directors'
2 to remove any director "if he/she fails or ceases to meet the qualifications of a Director set forth in
3 Section 6.05 in effect at the beginning of that Director's current term of office . . ." *Id.*

4 The Bylaws also require that, in Section 11.02, that in the absence of Board approval, two
5 signatures are required for any disbursement of ALADS's funds. The Bylaws expressly require
6 that any disbursement of ALADS's funds include the signature of the Treasurer, and also the
7 signature of either ALADS's President, or Vice-President. The Treasurer's signature is
8 mandatory. *Id.*

9 **B. The Most Recent Election of ALADS's Seven Directors and Officers.**

10 In approximately July 2013 and ALADS held elections for the members of its Board of
11 Directors. The following seven individuals were elected as directors: (1) Macias; (2) Nance; (3)
12 Don Jeffery Steck (hereinafter "Steck"); (4) Floyd Hayhurst (hereinafter "Hayhurst"); (5) Joseph
13 McCleary (hereinafter "McCleary"); (6) George Hofstetter (hereinafter "Hofstetter"); and (7)
14 Mark Divis (hereinafter "Divis"). Steck Decl., ¶ 7.

15 At an Executive Session of the Regular Meeting of the Board of Directors on or about
16 November 14, 2013, the directors elected Macias to serve as ALADS's President, Nance to serve
17 as ALADS's Vice-President, Hayhurst to serve as ALADS's Secretary, and Steck to serve as
18 ALADS's Treasurer. Steck Decl., ¶ 8.

19 **C. The Board Later Learned That Macias Was Unqualified.**

20 Unbeknownst to ALADS's directors, Macias was not qualified to be a director under
21 Section 6.05 of ALADS's Bylaws. Macias had only attended approximately 42% of the unit
22 representative meetings during two-year period preceding his election – far less than the Bylaw's
23 minimum attendance requirement. Steck Decl., ¶ 9.

24 By running for election, Macias deceived ALADS's voting members by falsely
25 representing that he was qualified to serve and by concealing his woefully inadequate attendance
26 record. Thereafter, Macias's failure to own up to his lack of qualification breached his fiduciary
27 duty of candor and loyalty to ALADS.
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1 Indeed, it required investigative work by a group of unit representatives to discover that
2 Macias lacked the qualifications to serve as a director or officer of ALADS. Steck Decl., ¶¶ 9-11.
3 In or around February 2014, a group of unit representatives asked to inspect the attendance records
4 for ALADS's unit representative meetings for the two-year period preceding the July 2013
5 election. Steck Decl., ¶¶ 9-11; Flores Decl., ¶¶ 5-9. Upon inspecting the attendance records, they
6 discovered that Macias had attended only approximately 42% of the unit representative meetings
7 during that period. Steck Decl., ¶¶ 9-11.

8 The evidence of Macias' non-attendance was supplied to ALADS's Board. Steck Decl., ¶¶
9 9-11; Flores Decl., ¶¶ 5-9. On March 7, 2014, in "executive session" the Board considered the
10 topic of Macias' attendance issue. Steck Decl., ¶¶ 9-11. After considering that Macias attended
11 approximately 42% of the meeting in the two years prior to his election, a majority of the Board
12 voted to dismiss Macias as a Director. Specifically, four members of the ALADS Board of
13 Directors – Hayhurst, Steck, Divis, and Hofstetter (collectively, the "Majority of the ALADS
14 Board") – voted to remove Macias. Nance and McCleary opposed the motion to remove Macias,
15 while Macias abstained. Steck Decl., ¶¶ 9-11.

16 **D. Nance and Macias' Endeavor To Return Macias To The Board.**

17 Rather than accepting the vote of the Majority of the ALADS Board, and in direct breach
18 of their fiduciary duties to ALADS, Nance and Macias devised and pursued a course of action
19 designed to misappropriate ALADS's funds and usurp the authority of ALADS Board.

20 1. **Macias and Nance Misappropriated ALADS's Funds**

21 (a) **Macias and Nance Fraudulently Obtained a Blank Check**

22 On March 17, 2014, Macias and Nance entered the office at ALADS's accountant, Celine
23 Silvestre, and closed the door. Once the door was closed, Macias demanded that Silvestre provide
24 him with a \$100,000.00 check from ALADS's bank account made payable to the order of the law
25 firm of Baute, Crochetiere & Gilford LLP (the "Baute Law Firm"). (See, generally, Silvestre
26 Decl.)
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1 Macias told Silvestre that the retention of the Baute Law Firm was for “the protection of
2 ALADS.” Silvestre Decl. ¶ 18. When Macias made these statements, he was standing next to
3 Nance, who agreed with Macias’s statements. Silvestre Decl. ¶ 18. Macias and Nance knew that
4 this representation was false, because, in fact, the funds that they were seeking to pay to the Baute
5 Law Firm were to be used to further Macias’s and Nance’s own interests. Rees Decl., ¶17, Exh. 1.

6 Because of the large amount of money involved, and the requirement that such
7 expenditures be approved by ALADS’s Board of Directors, Silvestre asked Macias to show her
8 the resolution or board-approved contract showing that this expenditure was approved by
9 ALADS’s Board. Silvestre Decl., ¶ 19. Macias stated to Silvestre that he would provide her with
10 such a contract once he was able to give the check to the Baute Law Firm. Silvestre Decl. ¶ 19.

11 Macias and Nance both knew that their request to Silvestre was manifestly unlawful
12 because any expenditure of this magnitude -- \$100,000.00 – required Board approval, and also
13 required the signature of the Treasure. Silvestre Decl., ¶ 20. Nonetheless, Macias and Nance
14 persisted in demanding that Silvestre provide them with a check to pay the Baute Law Firm.
15 Silvestre refused. *Id.*

16 Undaunted, Macias and Nance eventually procured a **blank check** from Silvestre based on
17 their false representation that they would not use the check unless and until they obtained Board
18 Approval and whatever other authorization may be required. *Id.* at 24. Silvestre, who had no
19 reason at that time to know or believe that Macias and Nance would falsely represent the facts to
20 her, reasonably relied upon their false promise by presenting them with a blank check from
21 ALADS’s operating account. *Id.* at 25.

22 Sometime soon after Macias and Nance left her office, Silvestre spoke with Mr. John Rees,
23 a consultant to the ALADS Board of Directors, and told him that she had given Macias and Nance
24 the blank check. . *Id.* at 26; Rees Decl., 16-17. Mr. Rees then informed her that the ALADS’s
25 Board had not approved any such expenditure or any contract with the Baute Law Firm. Rees
26 Decl., 16-17. Thereafter, ALADS stopped payment on the blank check. Silvestre Decl., ¶ 27.

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1 (b) Macias and Ipsen's Demand for the Signature Cards for
2 ALADS's Bank Accounts

3 On March 18, 2014, the day after Macias and Nance had attempted to acquire a check for
4 \$100,000.00, Macias sought another route to ALADS's money: "signature cards" for ALADS's
5 bank accounts, and the checkbooks themselves. Silvestre Decl., ¶¶ 28-33. On March 18, 2014,
6 Macias and his attorney, Steve Ipsen, entered Silvestre's office and demanded that she give them
7 the signature cards for ALADS's bank accounts at Wells Fargo Advisors. Silvestre refused. *Id.*
8 Macias then demanded the checkbooks themselves, which, fortunately were safely locked away
9 with Steck. *Id.*

10 (c) Nance and Macias Finally Succeed In Their Efforts to
11 Misappropriate \$100,000

12 On March 18, 2014, Mr. Nance, acting in collusion with Mr. Macias, withdrew
13 \$100,000.00 from a bank account holding funds belonging to ALADS's Political Action
14 Committee. Gould Decl. ¶¶ 1-9; Silvestre Decl., ¶¶ 36-39; Steck Decl., ¶¶ 12-18. These PAC
15 funds must only be used for purposes related to electoral politics in the context of local, State and
16 Federal elections of public officials. Gould Decl. ¶ 8-9. In violation of his fiduciary duties to
17 ALADS's, Mr. Nance then obtained, and delivered, a "Cashier's check" to the Baute Law Firm.
18 Rees Decl., ¶¶ 10-17; Steck Decl., ¶¶ 16-17; Silvestre Decl., ¶¶ 36-39. The Baute Law Firm
19 deposited the funds into its trust account. Gray Decl., ¶ 4, Exh. 2. All of this violated ALADS's
20 Bylaws which require, in Section 11.02, that any check, or other order for the payment of
21 ALADS's funds, be signed by the Treasurer as well as one of the President or Vice President.
22 Steck Decl., ¶ 9, Exh. 2. None of the withdrawals or disbursements of the \$100,000.00 was
23 authorized by the Board, or include the signature of the treasurer. Steck Decl., 12-14, 15-18.
24 Moreover, the disbursement of the PAC funds to a law firm, for non-political purposes, generates
25 a real risk that ALADS will incur a tax penalty of \$40,000.00. Gould Decl., ¶ 8-9.

26 Upon learning that the Baute Law Firm had deposited \$100,000.00 of ALADS's PAC
27 money in its account, ALADS instructed its lawyer to take steps to recover the money. Gray
28 Decl., ¶¶ 1-8, Exhs. 1-6. Ultimately, on March 21, 2014, the Baute Law Firm announced that it

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1 would retain the money in its accounts, and only release the funds upon a Court order, or
2 stipulation of the parties. *Id.* at 9, Exh. 7.

3 The misappropriation of \$100,000.00 from ALADS's PAC funds was so significant that
4 the Intern Los Angeles County Sheriff's Department Internal *Criminal* Investigations Bureau
5 ("ICIB") is currently investigating the matter. Indeed, ALADS's president, Mr. Don Jeffery
6 Steck, met with ICIB investigators on both March 25, 2014 *and* March 26, 2014 to discuss this
7 matter and the possible adverse action against Nance and Macias. Steck Decl., ¶ 22.

8 **(d) Nance and Macias Continue To Seek Access To ALADS's**
9 **Money**

10 This past week, Nance and Macias' have redoubled their efforts to somehow gain access to
11 ALADS's money. Gray Decl., ¶¶ 10-11, Exhs. 8-10. They have even apparently visited various
12 bank branches in an effort to obtain ALADS money Gray Decl., ¶ 11, Exh. 10. Their actions are
13 causing, and threatening to cause irreparable harm to ALADS because ALADS's banks are not so
14 concerned about the conflict over ALADS's accounts that ALADS's banks are threatening to
15 freeze all of its money, which would render ALADS incapable of operating. Steck Decl., ¶¶ 19-
16 21; Silvestre Decl., ¶¶ 40-42; Flores Decl., ¶¶ 16-18; Rees Decl., ¶¶ 18-19.

17 2. **Nance and Macias Disrupt The Staff**

18 Shortly after both the March 7, 2014 and March 12, 2014 board meeting, all-staff meetings
19 were held. Flores Decl., ¶¶ 10-14; Silvestre Decl., ¶¶ 10-12; Rees Decl., ¶¶ 8-9. On March 12,
20 2014 ALADS's office manager, Cindy Flores, convene a meeting of all ALADS staff at ALADS's
21 office at Macias's instructions. Flores Decl., ¶¶ 10-14; Silvestre Decl., ¶¶ 10-12. Approximately,
22 thirteen members of ALADS's staff were present for this meeting. *Id.* When the meeting
23 commenced, Macias positioned himself at the head of the conference table with Nance. *Id.*
24 Macias then repeatedly told the staff that, notwithstanding what they had been told following the
25 March 7, 2014 board meeting regarding Macias's removal as ALADS's director, he was still "in
26 charge". *Id.*

27 Mr. Hayhurst, who was at the meeting, attempted to apologize to the staff for their being
28 placed in the middle of a Board dispute, but he was shouted down by Macias and Nance. *Id.*

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1 3. **Nance and Macias Disrupt ALADS's Membership**

2 On March 14, 2014, Nance and Macias distributed a letter to ALADS's membership from
3 Nance and Macias' attorney, Mr. Mark Baute. Mr. Baute's letter threatened litigation, stating that
4 "[a]ny Board member or officer who attempts to implement any sort of contrived decision
5 undertaken by Floyd Hayhurst ... will be held fully accountable for any and all misconduct, to the
6 fullest extent of the law." Silvestre Decl., ¶ 13, Exh. 2.

7 Mr. Baute's March 14, 2014 letter coupled with Nance's and Macias's statements about
8 their role at ALADS caused ALADS's staff to question who was in control of ALADS and to
9 whom they were supposed to report to when handling their day-to-day activities at ALADS. *Id.*
10 Nance and Macias's efforts to usurp control of ALADS also resulted in several instances in which
11 ALADS staff members have been and are uncertain about how to perform many of their day-to-
12 day duties and to be concerned about their job security if they decline to follow instructions from
13 either Nance or Macias that conflict with instructions from ALADS's other directors and officers.
14 *Id.*

15 **III. DEFENDANTS' UNJUSTIFIED ACTIONS REQUIRE ISSUANCE OF A**
16 **TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION TO**
17 **PREVENT NANCE AND MACIAS FROM CAUSING FURTHER IRREPARABLE**
18 **INJURY TO ALADS.**

19 ALADS's application for injunctive relief meets each of the traditional equitable criteria
20 for granting a temporary injunction: (1) a strong likelihood of success on the merits; (2) the
21 possibility of irreparable injury to the plaintiff if injunctive relief is not granted; and (3) balance of
22 the hardships favoring the plaintiffs. *Cohen v. Bd. of Supervisors* (1985) 40 Cal.3d 277, 286.
23 These factors are evaluated on a sliding scale – the greater the showing on likelihood of success,
24 the less needs to be shown that the balance of harm tilts to the claimant. *Butt v. State of California*
25 (1992) 4 Cal.4th 677-678; *Pleasant Hill Bayshore Disposal, Inc. v. Chip-It Recycling, Inc.* (2001)
26 91 Cal.App.4th 678, 696 (where plaintiff demonstrated a high likelihood of success on the merits,
27 the court had discretion to issue an injunction even if the balance of harm did not necessarily tip in
28 its favor); *It Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70; *Whyte v. Schlage Lock Co.*

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1 (2002) 101 Cal.App.4th 1443, 1449.

2 Here, by the relief requested, ALADS asks that the Court permit ALADS to conduct its
3 normal business. If the Court does not act to restrain Defendants from their wrongful and illegal
4 conduct, ALADS will be damaged beyond repair.

5 A. **THERE IS A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS.**

6 California Code of Civil Procedure §526(a)(1) states that an injunction may be granted
7 “when it appears by the complaint that the plaintiff is entitled to the relief demanded....”

8 Accordingly, this court is empowered to issue an injunction where it is “reasonable probable that
9 the moving party will prevail on the merits” *San Francisco Newspaper Printing Co., Inc. v.*
10 *Superior Ct.* (1985) 170 Cal.App 3d 438, 442.

11 The following is a brief review of certain causes of action alleged against Defendants.
12 ALADS need only to show a likelihood of success on the merits of any one cause of action
13 sufficient to justify the issuance of the restraining order and injunction. *Butt v. State of California*
14 (1992) 4 Cal.4th 668, 678. The fact that certain causes of action are not included is not meant to
15 reflect any assessment that ALADS would not prevail on such causes of action.

16 1. ***Plaintiff Will Prevail on Its Breach of Fiduciary Duty Claim.***

17 Not only do the facts submitted in support of this motion show that ALADS is likely to
18 prevail on its cause of action for breach of fiduciary duty, but that ALADS is virtually certain to
19 prevail on that cause of action. The elements of a cause of action for breach of fiduciary duty are:
20 (1) the existence of a fiduciary duty; (2) breach of the duty; and (3) damages resulting therefrom.

21 *Stanley v. Richmond*, 35 Cal. App. 4th 1070, 1086, 41 Cal. Rptr. 2d 768 (Cal. Ct. App. 1995).

22 Those acting as directors of a corporation are subject to a fiduciary duty to the corporation.

23 *Bainbridge v. Stoner* (1940) 16 Cal. 2d 423, 428. In addition, an officer who participates in the
24 management of a corporation, exercising some discretionary authority, is a fiduciary of the
25 corporation as a matter of law. *GAB Bus. Servs., Inc. v. Lindsey & Newsom Claim Servs., Inc.*

26 (2000) 83 Cal. App. 4th 409, 420-21, *disapproved of on different grounds by Reeves v. Hanlon*

27 (2004) 33 Cal. 4th 1140. “Even when an officer loses power or authority, that officer still owes a
28 fiduciary duty to the corporation.” *Id.* at 421. “To divest himself or herself of the duty, the officer

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1 must resign the office.” *Id.* In this case, Nance was both a director and an officer of ALADS with
2 discretionary authority. Steck Decl., ¶¶ 7-8. Macias, although a majority of the ALADS’s Board
3 of Directors had voted to remove him as director and officer under the Bylaws, nonetheless
4 continued assert both his authority as a director and officer of ALADS, and refused to resign his
5 office. Steck Decl., ¶¶ 7-11; Silvestre Decl., ¶¶ 9-13; Flores Decl., ¶¶ 10-12. Under California
6 law, both Nance and Macias owed a fiduciary duty to ALADS. *GAB Bus. Servs., Inc. v. Lindsey*
7 *& Newsom Claim Servs., Inc., supra*, 83 Cal. App. 4th at 421.

8 There is also little question that both Macias and Nance have breached their fiduciary
9 obligations to ALADS in myriad ways. Those duties include: a duty of loyalty, care, and candor
10 (*see* Restatement (Third) Of Agency §§ 8.08-8.11 and comments thereto); a duty of diligence (*id.*);
11 a duty of good conduct and not to conduct themselves in a manner that would likely damage
12 ALADS in its business (*id.* § 8.10 and comments thereto); and a duty to provide ALADS with all
13 facts material to their agency (*id.* § 8.11 and comments thereto). The evidence shows that both
14 Macias and Nance breached every one of these duties.

- 15 • They breached their duty of loyalty and good conduct when they violated Sections
16 11.01 and 11.02 of ALADS’s Bylaws by withdrawing \$100,000 from ALADS’s
17 State PAC without obtaining the signature of ALADS’s Treasurer. Bylaws §§
18 11.01 and 11.02; Steck Decl., ¶¶ 12-18; Silvestre Decl., ¶¶ 36-39.
- 19 • They breached their fiduciary duty of loyalty by seeking to withdraw the \$100,000
20 to pay for attorneys’ fees for the purpose of promoting their own interests. Steck
21 Decl., ¶¶ 12-18; Silvestre Decl., ¶¶ 16-39; Rees Decl., ¶¶ 10-17.
- 22 • They breached their fiduciary duty of loyalty and good conduct by entering into a
23 contract for legal services with the Baute Law Firm without authorization of a
24 majority of ALADS’s directors. Steck Decl., ¶¶ 15-17; Rees Decl., ¶¶ 10-17.
- 25 • They breached their fiduciary duty by seeking to control ALADS to the exclusion
26 of a majority of the ALADS Board of Directors. Silvestre Decl., ¶¶ 10-15; Rees
27 Decl., ¶¶ 8-9; Flores Decl., ¶¶ 10-18.

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- They breached their duty of candor by concealing the withdrawal of \$100,000 from ALADS's State PAC fund. Steck Decl., ¶¶ 15-22; Silvestre Decl., ¶¶ 36-39.
- They breached their fiduciary duty by failing to return the \$100,000 to ALADS's State PAC fund. Steck Decl., ¶¶ 15-22; Silvestre Decl., ¶¶ 36-39.
- They breached their fiduciary duty to refrain from acting in such a manner as to injure ALADS in its relationships with other persons by acting in such a manner as to cause confusion and uncertainty among ALADS's staff members and to disrupt ALADS's relationships with ALAD's staff members. Silvestre Decl., ¶¶ 10-15, 34-35; Flores Decl., ¶¶ 15-18; Rees Decl., ¶¶ 18-19.
- They breached their fiduciary duty to refrain from acting in such a manner as to injure ALADS in its relationships with other persons by acting in such a manner as to disrupt ALADS's relationships with ALADS's financial institutions. Steck Decl., ¶¶ 19-22; Silvestre Decl., ¶ 42; Rees Decl., ¶ 19.
- They breached their duty of loyalty by knowingly exceeding their authority and acting without authorization of a majority of ALADS's directors. Steck Decl., ¶¶ 12-18; Silvestre Decl., ¶¶ 14-38; Rees Decl., ¶¶ 10-17.
- And they breached their duty of candor by knowing making false representations to ALADS's staff members in order to obtain unauthorized funds from ALADS. Silvestre Decl., ¶¶ 14-38.

Finally, there is little doubt that Macias's and Nances's breaches of their fiduciary duties have damaged ALADS. Steck Decl., ¶¶ 12-22; Silvestre Decl., ¶¶ 14-42; Rees Decl., ¶¶ 10-19; Flores Decl., ¶¶ 12-18. If nothing else, they have taken \$100,000 from ALAD's State PAC fund, which they have refused to return. Steck Decl., ¶¶ 15-18; Silvestre Decl., ¶¶ 36-40. But the damages do not stop there, many of the damages caused by Macias's and Nance's conduct are difficult to measure in monetary terms, but nonetheless certainly exist. ALADS's staff are worried that they lose their jobs if they refuse to comply with orders from Macias and Nance that conflict with directives from the majority of ALADS's Board of Directors. Silvestre Decl., ¶¶ 14-15, 23, 34, 42; Flores Decl., ¶¶ 15-18; Rees Decl., ¶¶ 18-19. ALADS has even lost productivity as a

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1 result of staff taking sick leave simply to avoid dealing with Macias and Nance. Silvestre Decl., ¶
2 42. Macias and Nance's financial misconduct has damaged ALADS's relationships with its
3 financial institutions, even causing those institutions to threaten ALADS with financial disaster by
4 freezing ALADS's accounts. Steck Decl., ¶¶ 20-21; Silvestre Decl., ¶¶ 40-42; Rees Decl., ¶¶ 18-
5 19.

6 In short, the evidence presented in this motion overwhelmingly establishes that Macias and
7 Nance are liable to ALADS for breach of fiduciary duty.

8 **2. Plaintiff Will Prevail on Its Conversion Claim.**

9 Conversion is the wrongful exercise of dominion over property of another. *Steele v.*
10 *Marsicano* (1894) 102 Cal. 666, 669; *Poggi v. Scott* (1914) 167 C. 372, 375; *Moore v. Regents of*
11 *Univ. of Calif.* (1990) 51 Cal.3d 120, 137, *Kee v. Becker* (1942) 54 Cal.App.2d 466, 470, *Farmers*
12 *Insurance Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 451. "In a conversion action the
13 plaintiff need show only that he was entitled to possession at the time of conversion." *Enterprise*
14 *Leasing Corporation v. Shugart Corporation* (1991) 321 Cal.App.3d 737, 748.

15 Here, the evidence supporting Nance and Macias's conversion of \$100,000.00 of
16 ALADS's funds is overwhelming. On the afternoon of March 18, 2014, Nance and Macias
17 withdrew \$100,000.00 from the Association for Los Angeles Deputy Sheriffs State Political
18 Action Committee ("ALADS's State PAC"). Steck Decl., ¶ 15; Gould Decl., ¶¶ 4 and 5. Macias
19 and Nance then used those funds to procure a cashier's check for \$100,000.00 payable to the law
20 firm of Baute, Crochetiere & Gilford LLP, in order to procure and pay for legal services that were
21 not approved by ALADS's board. Steck Decl., ¶16, Exh. 4; Silvestre Decl., ¶¶ 36-39.

22 This withdrawal was done *without* authorization of ALADS's Board of Directors. Steck
23 Decl., ¶ 17. Furthermore, Macias and Nance lacked the authority to withdraw these funds under
24 ALADS's Bylaws¹ as such a transaction required the approval of *both* ALADS's Treasurer *and*
25

26 ¹ Section 11.02 of ALADS's Bylaws requires that, absent board approval, all "checks, drafts,
27 promissory notes, orders for the payment of money, and other evidences of indebtedness of the
28 Corporation *shall be signed by the Treasurer or the Assistant Treasurer and countersigned by*
(footnote continued)

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1 President or Vice-President. Steck Decl., ¶ 16; Silvestre Decl., ¶¶ 36-39.

2 The \$100,000.00 Nance and Macias misappropriated from ALADS's State PAC is not in
3 ALADS's possession. Gould Decl., ¶¶ 4-7. Rather, Macias and Nance's attorneys are in
4 possession of these funds. Indeed, they have admitted that these funds currently reside in their
5 trust account. "[The Baute] firm has received and deposited a cashier's check for \$100,000 from
6 ALADS." Gray Decl., ¶ 4, Exh. 2. Despite repeated demands for its return, the Baute firm has
7 refused to return these funds to ALADS. Gould Decl., ¶¶ 6-7. As a result of this, ALADS faces
8 significant tax liability. Gould Decl., ¶¶ 8-9.

9 Based on the foregoing, ALADS's had established that it will prevail on its Fourth
10 Cause of Action for Conversion against Macias and Nance.

11 **B. ALADS WILL SUSTAIN IRREPARABLE HARM IF THE**
12 **TRO/INJUNCTION IS DENIED.**

13 California Code of Code of Civil Procedure §536(a)(2) states that an injunction may be
14 granted "when it appears by the complaint or affidavits that the commission...of some act during
15 the litigation would produce irreparable injury, to a party to the action."

16 Here, ALADS's irreparable harm is clear. If Defendants are not enjoined from continuing
17 their ways, they will continue to interfere with ALADS's business until it can no longer operate.
18 In the absence of a judicial order clarifying the authority of Mr. Macias and Mr. Nance, there
19 exists a significant likelihood of further unauthorized financial transactions that will damage
20 ALADS's ability to function and provide services to its members. Steck Decl., ¶¶ 19-21; Silvestre
21 Decl., ¶¶ 40-42; Flores Decl., ¶¶ 16-18; Rees Decl., ¶¶ 18-19. Indeed, *ALADS's account*
22 *representatives at Wells Fargo Advisors have stated that if the current situation persists -- where*
23 *they are obtaining conflicting instructions from ALADS's duly elected Board of Directors and*
24 *Messrs. Macias and Nance -- that they will be forced to freeze all of ALADS's accounts. Id.*
25 Such a freezing of ALADS's accounts would be devastating not only to ALADS, but also to its

26 _____
27 *the President or the Vice President of the Corporation.*" Steck Decl., ¶9, Exh. 2 (emphasis
28 added).

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1 approximately 7,500 members who rely on the services that ALADS provides to them. For
2 instance, freezing ALADS's accounts with Wells Fargo would result in ALADS being unable to
3 fund healthcare, the legal defense of its members, meet its payroll obligations, pay its vendors, and
4 fund retirement benefits for its staff. In short, ALADS would not be able to pay its basic expenses
5 and would essentially cease to function. In this event, it would be extremely difficult to measure
6 or ascertain the proper pecuniary compensation that would be necessary to compensate for the
7 damages caused by such conduct. Steck Decl., ¶¶ 19-21; Silvestre Decl., ¶¶ 40-42; Flores Decl.,
8 ¶¶ 16-18; Rees Decl., ¶¶ 18-19.

9 Furthermore, even if the banks do not freeze ALADS's accounts, Mr. Macias's and Mr.
10 Nance's unauthorized use of ALADS's funds would cause waste, or great or irreparable injury, to
11 ALADS, because the continuing efforts of Mr. Macias and Mr. Nance to obtain unauthorized
12 access to funds will expose ALADS to risk of loss, will continue to confuse ALADS's staff, will
13 result in inaction on the part of ALADS's staff as a result of the fear or threat of legal liability or
14 loss of their jobs, and will generally prevent ALADS from fulfilling its obligations and
15 responsibilities to its members. Steck Decl., ¶¶ 19-21; Silvestre Decl., ¶¶ 40-42; Flores Decl., ¶¶
16 16-18; Rees Decl., ¶¶ 18-19.

17 **C. THE BALANCE OF HARM FAVORS ALADS.**

18 While California Code of Civil Procedure §526 makes no reference to the traditional
19 equitable concern of balancing equities, it is a crucial factor in determining whether to grant or
20 deny an injunction. If the denial of an injunction would result in great harm to the plaintiff, and
21 the defendant would suffer little harm if granted, then it is an abuse of discretion to fail to grant a
22 preliminary injunction. *Robbins v. Superior Court* (1985) 38 C3d 199, 205.

23 Here, clearly denying the injunction requested will result in devastating harm to ALADS.
24 If Macias and Nance are allowed to continue in their ways, they will continue to interfere with
25 ALADS's business until it can no longer operate. In the absence of a judicial order clarifying the
26 authority of Mr. Macias and Mr. Nance, there exists a significant likelihood of further
27 unauthorized financial transactions that will damage ALADS's ability to function and provide
28 services to its members. This will result in the freezing of ALADS's accounts and ALADS's

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17; Declaration of Cindy Flores (“Flores Decl.”) ¶¶ 12-15.) As a result of these efforts, ALADS’s account representatives at Wells Fargo Advisors have stated that if the current situation persists -- where they are obtaining conflicting instructions from ALADS’s duly elected Board of Directors and Messrs. Macias and Nance -- that they will be forced to freeze all of ALADS’s accounts. (Steck Decl. ¶ 21; Silvestre Decl. ¶ 42; Rees Decl. ¶ 19.) Such a freezing of ALADS’s accounts would be devastating not only to ALADS, but also to its approximately 7,500 members who rely on the services that ALADS provides to them. (Steck Decl. ¶ 21; Silvestre Decl. ¶ 42; Rees Decl. ¶ 19.) For instance, freezing ALADS’s accounts with Wells Fargo would result in ALADS being unable to fund healthcare, the legal defense of its members, meet its payroll obligations, pay its vendors, and fund retirement benefits for its staff. (Steck Decl. ¶ 21; Silvestre Decl. ¶ 42; Rees Decl. ¶ 19.) In short, ALADS would not be able to pay its basic expenses and would essentially cease to function. (Steck Decl. ¶ 21; Silvestre Decl. ¶ 42; Rees Decl. ¶ 19.) As such, good cause exists to grant this ex parte application; and

(2) Macias and Nance’s action in undermining ALADS’s Board of Directors results in inaction on the part of ALADS’s staff as a result of the fear or threat of legal liability or loss of their jobs, and prevents ALADS from fulfilling its obligations and responsibilities to its members. (Steck Decl. ¶ 21; Silvestre Decl. ¶¶ 14-15, 42; Rees Decl. ¶ 19; Flores Decl. ¶¶ 17-18.) As such, this constitutes good cause grant this ex parte application.

V. **CONCLUSION.**

ALADS respectfully requests that the Court grant the above-referenced injunctive relief.

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1 Dated: March 27, 2014

Respectfully submitted:

2 **ZUBER LAWLER & DEL DUCA LLP**

3 JEREMY J. GRAY

4 TRISTAN F. MACKPRANG

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6 By: _____

7 Attorneys for Plaintiff Association for Los
8 Angeles Deputy Sheriffs

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 777 S. Figueroa Street, 37th Floor, Los Angeles, California 90017.

On March 27, 2014, I served true copies of the following document(s) described as **EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND IN THE ALTERNATIVE AND OSC RE PRELIMINARY INJUNCTION; DECLARATION OF CINDY FLORES; DECLARATION OF JOHN REES; DECLARATION OF MARIA CECILIA SILVESTRE; DECLARATION OF JEFF STECK; DECLARATION OF JEREMY J. GRAY; DECLARATION OF DAVID GOULD AND [PROPOSED] ORDER** on the interested parties in this action as follows:

Steven J. Ipsen, Esq.
Law Office of Stephen J. Ipsen
1100 S. Hope Street, Suite 103
Los Angeles, California 90015

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Zuber Lawler & Del Duca LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on March 27, 2014, at Los Angeles, California.

Tristan F. Mackprang

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