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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

14 MICHIKO SHIOTA GINGERY, an
individual; KOICHI MERA, an individual;
15 GAHT-US CORPORATION, a California
Non-Profit Corporation; and MASATOSHI
16 NAOKI, an individual,

17 Plaintiffs,

18 vs.

19 CITY OF GLENDALE, a Municipal
Corporation; and DOES 1 through 20,
20 inclusive,

21 Defendants.

Case No. BC556600

**PLAINTIFFS' OPPOSITION AND
OBJECTIONS TO DEFENDANT'S
EVIDENCE SUBMITTED WITH
DEFENDANT'S SPECIAL MOTION TO
STRIKE PURSUANT TO CALIFORNIA
CODE OF CIVIL PROCEDURE 425.16**

[Filed concurrently with [Proposed] Order;
Plaintiffs' Opposition to Defendant's Special
Motion to Strike Pursuant to California Code
of Civil Procedure 425.16; the Declarations of
Maxwell M. Blecher, Koichi Mera, Masatoshi
"Andy" Naoki, and Michiko Shiota Gingery;
Request for Judicial Notice; Notice of
Lodging]

Date: February 23, 2015
Time: 8:30 a.m.
Place: Department 34

Assigned for All Purposes to:
Hon. Michael P. Linfield

Complaint Filed: September 3, 2014

Trial Date: None set

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 28 2015

Sherril R. Carter, Executive Officer/Clerk
By Myrna Beltran, Deputy



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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

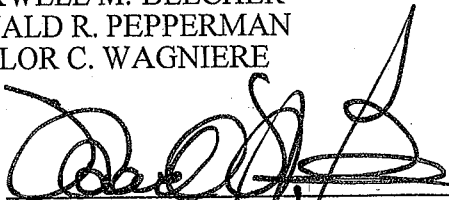
Plaintiffs Michiko Shiota Gingery, Koichi Mera, Masatoshi "Andy" Naoki, and GAHT-US Corporation ("Plaintiffs") hereby object to Defendant's Request for Judicial Notice, the Declaration of Christopher S. Munsey, Esq. ("Munsey") and the exhibits attached thereto filed in support of Defendant's Special Motion to Strike Pursuant to California Code of Procedure §425.16.

Plaintiffs object on the grounds that: (1) the items Defendant seeks judicial notice of are prejudicial, hearsay, subject to dispute, and irrelevant to the issues before the Court on Defendant's Special Motion to Strike; (2) the federal court records from Central District Case No. 14-1291 are irrelevant and devoid of precedential value; and (3) the content of these items do not come within the scope of Evidence Code section 452(h) to prove the "truth" of their contents.

Dated: January 28, 2015

LAW OFFICES OF RONALD S. BARAK
RONALD S. BARAK

BLECHER COLLINS PEPPERMAN & JOYE, P.C.
MAXWELL M. BLECHER
DONALD R. PEPPERMAN
TAYLOR C. WAGNIERE

By: 
Maxwell M. Blecher
Attorneys for Plaintiffs

1 **I. INTRODUCTION**

2 Defendant seeks to convert this action into one about who did what to whom during World
3 War II, but that is not the subject of this action. Instead, this suit instead concerns Defendant's
4 unconstitutional activities 70 years after World War II—intruding upon the federal government's
5 exclusive province over foreign affairs and the right to speak with "one voice" regarding an
6 important international partner. See *Crosby v. National Foreign Trade Council* (2000) 530 U.S.
7 363, 381. The exhibits attached to the Munsey Declaration and included Defendant's Request for
8 Judicial Notice are not relevant to Plaintiffs' claims in this action nor are they probative to the
9 issues and subject matter of Defendant's pending Special Motion to Strike before this Court. As a
10 result, Defendant's Request for Judicial Notice should be denied, and the Court should disregard
11 exhibits 1-16, 18-20, and 22-23 attached to the Munsey Declaration.

12 **II. THE COURT MAY TAKE JUDICIAL NOTICE OF ONLY CERTAIN TYPES OF
13 EVIDENCE OR FACTS**

14 "It is well recognized that the purpose of judicial notice is to expedite the production and
15 introduction of otherwise admissible evidence." *Mozzetti v. City of Brisbane* (1977) 67
16 Cal.App.3d 565. Judicial notice cannot, however, be "taken of any matter unless authorized or
17 required by law." Evid. Code § 450. Matters to be judicially noticed are addressed in Evidence
18 Code sections 451 and 452. Section 451 provides that judicial notice shall be taken of:

19 (a) The decisional, constitutional, and public statutory law of this state and
20 of the United States and the provisions of any charter described in Section 3, 4,
21 or 5 of Article XI of the California Constitution.

22 (b) Any matter made a subject of judicial notice by Section
23 11343.6, 11344.6, or 18576 of the Government Code or by Section 1507 of Title
24 44 of the United States Code.

25 (c) Rules of professional conduct for members of the bar adopted pursuant
26 to Section 6076 of the Business and Professions Code and rules of practice and
27 procedure for the courts of this state adopted by the Judicial Council.

28 (d) Rules of pleading, practice, and procedure prescribed by the United
States Supreme Court, such as the Rules of the United States Supreme Court, the
Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the
Admiralty Rules, the Rules of the Court of Claims, the Rules of the Customs
Court, and the General Orders and Forms in Bankruptcy.

(e) The true signification of all English words and phrases and of all legal
expressions.

(f) Facts and propositions of generalized knowledge that are so universally
known that they cannot reasonably be the subject of dispute.

1 Evidence Code section 452, on the other hand, relates to permissive judicial notice and
2 states that judicial notice may be taken of:

3 (a) The decisional, constitutional, and statutory law of any state of the
4 United States and the resolutions and private acts of the Congress of the United
5 States and of the Legislature of this state.

6 (b) Regulations and legislative enactments issued by or under the authority
7 of the United States or any public entity in the United States.

8 (c) Official acts of the legislative, executive, and judicial departments of
9 the United States and of any state of the United States.

10 (d) Records of (1) any court of this state or (2) any court of record of the
11 United States or of any state of the United States.

12 (e) Rules of court of (1) any court of this state or (2) any court of record of
13 the United States or of any state of the United States.

14 (f) The law of an organization of nations and of foreign nations and public
15 entities in foreign nations.

16 (g) Facts and propositions that are of such common knowledge within the
17 territorial jurisdiction of the court that they cannot reasonably be the subject of
18 dispute.

19 (h) Facts and propositions that are not reasonably subject to dispute and are
20 capable of immediate and accurate determination by resort to sources of
21 reasonably indisputable accuracy.

22 The burden is on the party requesting that the court take judicial notice of a matter to prove
23 that the item qualifies for judicial notice, is not reasonably subject to dispute, and is from a reliable
24 and trustworthy source. *People v. Maxwell* (1978) 78 Cal. App. 3d 124, 131. Here, Defendant has
25 not met this burden and Plaintiffs object to Defendant's Request for Judicial Notice on the grounds
26 that: (1) the items Defendant seeks judicial notice of are prejudicial, hearsay, subject to dispute,
27 and irrelevant to the issues before the Court on Defendant's Special Motion to Strike; (2) the
28 federal court records from Central District Case No. 14-1291 are irrelevant and devoid of
precedential value; and (3) the content of these items do not come within the scope of Evidence
Code section 452(h) to prove the "truth" of their contents. Accordingly, Defendant's request
for judicial notice should be denied and the Court should not consider Defendant's exhibits 1-16,
18-20, and 22-23.

**III. THE COURT SHOULD DENY DEFENDANT'S REQUEST FOR JUDICIAL
NOTICE OF EXHIBITS 1-16 AND 24 BECAUSE THEY ARE IRRELEVANT AND
HIGHLY PREJUDICIAL**

Defendant seeks judicial notice of 17 exhibits attached to the Munsey Declaration relating
to the history of Comfort Women and World War II, as well as commentary made by U.S. and
Japanese officials on the issue of Comfort Women, and the California public school curriculum for



1 social sciences. These items are irrelevant to Plaintiffs' claims and the Motion to Strike before
2 this Court, are subject to dispute, and highly prejudicial.

3 Although the Court may take judicial notice of a variety of matters pursuant to Evidence
4 Code section 450, only **relevant** material may be noticed. *See Gbur v. Cohen* (1979) 93
5 Cal.App.3d 296, 301 (Judicial notice "is always confined to those matters which are relevant to
6 the issue at hand."); *People v. Stoll* (1989) 49 Cal.3d 1136, 1144 fn. 5 (denying judicial notice
7 because the "material has no bearing on the limited legal question at hand."); *ITT Telecom*
8 *Products Corp. v. Dooley* (1989) 214 Cal.App.3d 307, 313 fn. 4 ("We decline to notice irrelevant
9 matter."). Irrelevant material lacks "any tendency in reason to prove or disprove any disputed fact
10 that is of consequence to the determination of the action" (Evid. Code § 210), and is not
11 admissible. Evid. Code, §350. Here, Plaintiffs challenge Defendant's actions as discriminatory
12 and violative of the federal government's exclusive control over foreign affairs. This is **not** an
13 action to determine the precise historical occurrences of World War II. As a result, historical
14 materials relating to the events that transpired during World War II and the political commentary
15 on these events, which Defendant seeks to introduce, in no way relate to whether Defendant's
16 actions – 70 years **after** World War II – were constitutional under the Supremacy Clause. The
17 merits (or lack thereof) of Defendant's Special Motion to Strike and Plaintiffs' case can be
18 determined without reference or regard to any historical account of World War II. Because of this,
19 these exhibits are irrelevant and inadmissible.

20 Moreover, for a matter to be subject to judicial notice, the matter must be of common and
21 general knowledge and not subject to dispute. Evid. Code §§ 452(g), 452(h); Evid. Code § 451(f);
22 *Fremont Indem. Co. v. Fremont General Corp.* (2007) 148 Cal. App. 4th 97, 113 ("A matter
23 ordinarily is subject to judicial notice only if the matter is reasonably beyond dispute.");
24 *Weitzenkorn v. Lesser* (1953) 40 Cal. 2d 778, 787 ("Before a court will take judicial notice of any
25 fact, however, that fact must be a matter of common and general knowledge, well established and
26 authoritatively settled, and not doubtful or uncertain."). The content of the items that Defendant
27 seeks to introduce through judicial notice are subject to dispute given that the historical
28 occurrences of World War II and Comfort Women are a contentious point of history between the



1 nations of Japan and South Korea, which still debate how history unfolded over 70 years later. As
2 a result, these exhibits are argumentative, speculative, and contain impermissible hearsay and
3 opinions that are improper for judicial notice. *See* Evidence Code §§ 352, 1200.

4 In addition, matters to be judicially noticed are also subject to Evidence Code § 352, which
5 provides that evidence may be excluded if its probative value is substantially outweighed by the
6 probability that its admission will necessitate an undue consumption of time or create a substantial
7 danger of unfair prejudice or confusion of the issues. *See Mitroff v. United Services Auto. Ass'n*
8 (1999) 72 Cal. App. 4th 1230 (court refused to take judicial notice of matter that was irrelevant
9 and that would result in undue consumption of time); Evid. Code § 454(a)(2). Defendant's request
10 for judicial notice of these records is an impermissible attempt to introduce prejudicial evidence
11 and otherwise stigmatize Plaintiffs, and any probative value of such evidence is outweighed by the
12 likelihood that it will create undue prejudice.

13 As such, Defendant's request for judicial notice of exhibits 1-16 and 24 should be denied.

14 **IV. THE COURT SHOULD DENY DEFENDANT'S REQUEST FOR JUDICIAL**
15 **NOTICE OF EXHIBITS 19-20 AND 22 BECAUSE THEY ARE**
16 **IRRELEVANT AND DEVOID OF PRECEDENTIAL VALUE**

17 Although a court may take judicial notice of the existence of each document in a court file,
18 it cannot take judicial notice of the truth of facts asserted in findings of fact, including court orders
19 and minute orders. *O'Neill v. Novartis Consumer Health, Inc.* (2007) 147 Cal.App.4th 1388, 1405
20 ("A court may take judicial notice of a court's action, but may not use it to prove the truth of the
21 facts found and recited."); *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, *modified (June 15,*
22 *1992)*; *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1749-1750; *Kilroy v. State of Calif.* (2004)
23 119 Cal.App.4th 140, 147-148. For the reasons discussed in Plaintiffs' Opposition to Defendant's
24 Motion to Strike, filed concurrently herein, the documents from Case No. 14-1291 are not relevant
25 to this proceeding and not binding on any of this Court's findings. As such, Defendant's request
26 for judicial notice of exhibits 19-20 and 22 should be denied.

	Material Objected To	Grounds for Objection
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2	1. Page 2, paragraph 2; Exhibit 1:	Irrelevant (Evid. Code §§ 210, 350)
3	“Attached hereto as Exhibit 1 is a true	Hearsay (Evid. Code § 1200)
4	and correct copy of a document prepared	Lack of foundation, unauthenticated document
5	at my direction reflecting examples of	(Evid. Code §§ 403, 702, 1271(c), 1401)
6	state and local government	Unfairly prejudicial and speculative (Evid.
7	proclamations, resolutions, statues,	Code § 352)
8	monuments, and memorials regarding	Not proper for judicial notice (Evid. Code §§
9	historical events implicating foreign	452(g), 452(h), 451(f))
10	affairs.”	
11	2. Page 2, paragraph 3; Exhibit 2: “Attached	Irrelevant (Evid. Code §§ 210, 350)
12	hereto as Exhibit 2 is a true and correct	Hearsay (Evid. Code § 1200)
13	copy of excerpts of the United States	Lack of foundation, unauthenticated document
14	Department of State's 2003 Japan	(Evid. Code §§ 403, 702, 1271(c), 1401)
15	Report, Country Reports on Human	Unfairly prejudicial and speculative (Evid.
16	Rights Practices, which I obtained from	Code § 352)
17	the Department of State website, run by	Not proper for judicial notice (Evid. Code §§
18	the United States government, available	452(g), 452(h), 451(f))
19	at	
20	http://www.state.gov/j/drl/rls/hrrpt/2003/27772.htm .”	
21	3. Page 2, paragraph 4; Exhibit 3: “Attached	Irrelevant (Evid. Code §§ 210, 350)
22	hereto as Exhibit 3 is a true and correct	Hearsay (Evid. Code § 1200)
23	copy of House Resolution 121, which I	Lack of foundation, unauthenticated document
24	obtained from the U.S. Government	(Evid. Code §§ 403, 702, 1271(c), 1401)
25	Printing Office website run by the	Unfairly prejudicial and speculative (Evid.
26	United States government, available at	Code § 352)
27	http://www.gpo.gov/fdsys/pkg/BILLS-110hres121ih/pdf/BILLS-110hres121ih.pdf .”	Not proper for judicial notice (Evid. Code §§
28		452(g), 452(h), 451(f))
	4. Page 2, paragraph 5; Exhibit 4: “Attached	Irrelevant (Evid. Code §§ 210, 350)
	here to as Exhibit 4 is a true and correct	Hearsay (Evid. Code § 1200)
	copy of a document entitled "On the	Lack of foundation, unauthenticated document
	Issue of 'Comfort Women,'" which I	(Evid. Code §§ 403, 702, 1271(c), 1401)
	obtained from the Ministry of Foreign	Unfairly prejudicial and speculative (Evid.
	Affairs of Japan website, run by the	Code § 352)
	Japanese government, available at	Not proper for judicial notice (Evid. Code §§
	http://www.mofa.go.jp/policy/postwar/issue9308.html .”	452(g), 452(h), 451(f))

	Material Objected To	Grounds for Objection
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	Material Objected To	Grounds for Objection
1 2 3 4 5 6 7	9. Page 3, paragraph 10; Exhibit 9: "Attached hereto as Exhibit 9 is a true and correct copy of a document prepared at my direction reflecting examples of articles regarding the Comfort Women."	Irrelevant (Evid. Code §§ 210, 350) Hearsay (Evid. Code § 1200) Lack of foundation, unauthenticated document (Evid. Code §§ 403, 702, 1271(c), 1401) Unfairly prejudicial and speculative (Evid. Code § 352) Not proper for judicial notice (Evid. Code §§ 452(g), 452(h), 451(f))
8 9 10 11 12 13	10. Page 3, paragraph 11; Exhibit 10: "Attached hereto as Exhibit 10 is a true and correct copy of excerpts of the transcript of State Department Spokesperson Jen Psaki's May 16, 2013 press briefing, which I obtained from the U.S. Department of State website, run by the United States government, available at http://www.state.gov/r/pa/prs/dpb/2013/05/209511.htm ."	Irrelevant (Evid. Code §§ 210, 350) Hearsay (Evid. Code § 1200) Lack of foundation, unauthenticated document (Evid. Code §§ 403, 702, 1271(c), 1401) Unfairly prejudicial and speculative (Evid. Code § 352) Not proper for judicial notice (Evid. Code §§ 452(g), 452(h), 451(f))
14 15 16 17 18 19	11. Page 3, paragraph 10; Exhibit 11: "Attached hereto as Exhibit 11 is a true and correct copy of excerpts of the transcript of State Department Spokesperson Jen Psaki's March 10, 2014 Press Briefing, which I obtained from the U.S. Department of State website, run by the United States government, available at http://translations.state.gov/st/english/texttrans/2014/03/20140310295719.html#axzz2wuISdul ."	Irrelevant (Evid. Code §§ 210, 350) Hearsay (Evid. Code § 1200) Lack of foundation, unauthenticated document (Evid. Code §§ 403, 702, 1271(c), 1401) Unfairly prejudicial and speculative (Evid. Code § 352) Not proper for judicial notice (Evid. Code §§ 452(g), 452(h), 451(f))
20 21 22 23 24 25	12. Page 3, paragraph 13; Exhibit 12: "Attached hereto as Exhibit 12 is a true and correct copy of the transcript of the March 25, 2014 remarks by President Obama, President Park of the Republic of Korea, and Prime Minister Abe of Japan, which I obtained from the White House website, run by the United States government, available at http://www.whitehouse.gov/the-press-office/2014/03/25/remarks-president-obama-president-park-republic-south-korea-and-prime-mi ."	Irrelevant (Evid. Code §§ 210, 350) Hearsay (Evid. Code § 1200) Lack of foundation, unauthenticated document (Evid. Code §§ 403, 702, 1271(c), 1401) Unfairly prejudicial and speculative (Evid. Code § 352) Not proper for judicial notice (Evid. Code §§ 452(g), 452(h), 451(f))

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	Material Objected To	Grounds for Objection
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	Material Objected To	Grounds for Objection
17.	Page 4, paragraph 19; Exhibit 18: "Attached hereto as Exhibit 18 is a true and correct certified copy of the Complaint filed in <i>Gingery v. City of Glendale</i> , Case No. 14-1291 (C.D. Cal.)."	Irrelevant (Evid. Code §§ 210, 350) Unfairly prejudicial and speculative (Evid. Code § 352) Not proper for judicial notice (Evid. Code §§ 452(g), 452(h), 451(f))
18.	Page 4, paragraph 20; Exhibit 19: "Attached hereto as Exhibit 19 is a true and correct certified copy of the Opposition to the Motion to Dismiss filed in <i>Gingery v. City of Glendale</i> , Case No. 14-1291 (C.D. Cal.)."	Irrelevant (Evid. Code §§ 210, 350) Unfairly prejudicial and speculative (Evid. Code § 352) Not proper for judicial notice (Evid. Code §§ 452(g), 452(h), 451(f))
19.	Page 4, paragraph 21; Exhibit 20: "Attached hereto as Exhibit 20 is a true and correct certified copy of the Minutes filed in <i>Gingery v. City of Glendale</i> , Case No. 14-1291 (C.D. Cal.)."	Irrelevant (Evid. Code §§ 210, 350) Unfairly prejudicial and speculative (Evid. Code § 352) Not proper for judicial notice (Evid. Code §§ 452(g), 452(h), 451(f))
20.	Page 4, paragraph 23; Exhibit 22: "Attached hereto as Exhibit 22 is a true and correct certified copy of the Judgment entered in <i>Gingery v. City of Glendale</i> , Case No. 14-1291 (C.D. Cal.)."	Irrelevant (Evid. Code §§ 210, 350) Unfairly prejudicial and speculative (Evid. Code § 352) Not proper for judicial notice (Evid. Code §§ 452(g), 452(h), 451(f))
21.	Page 4, paragraph 24; Exhibit 23: "Attached hereto as Exhibit 23 is a true and correct copy of the official White House response to "We the People Petition" on Glendale, California, which I obtained from the White House website, run by the United States government, available at https://petitions.whitehouse.gov/response/response-we-people-petition-glendale-ca ."	Irrelevant (Evid. Code §§ 210, 350) Hearsay (Evid. Code § 1200) Lack of foundation, unauthenticated document (Evid. Code §§ 403, 702, 1271(c), 1401) Unfairly prejudicial and speculative (Evid. Code § 352) Not proper for judicial notice (Evid. Code §§ 452(g), 452(h), 451(f))

V. CONCLUSION

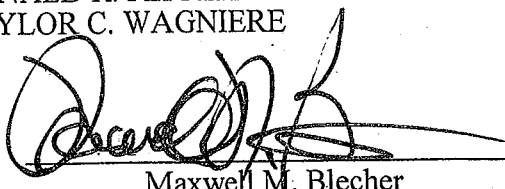
For all of the reasons set forth herein and in Plaintiffs' Opposition to Defendant's Special Motion to Strike, Defendant's Request for Judicial Notice should be denied.

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Dated: January 28, 2015

LAW OFFICES OF RONALD S. BARAK
RONALD S. BARAK

BLECHER COLLINS PEPPERMAN & JOYE, P.C.
MAXWELL M. BLECHER
DONALD R. PEPPERMAN
TAYLOR C. WAGNIERE

By: 
Maxwell M. Blecher
Attorneys for Plaintiffs



1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 At the time of service, I was over 18 years of age and not a party to this action. I am
4 employed in the County of Los Angeles, State of California. My business address is 515 South
Figueroa Street, Suite 1750, Los Angeles, CA 90071-3334.

5 On January 28, 2015, I served true copies of the following document(s) described as
6 **PLAINTIFFS' OPPOSITION AND OBJECTIONS TO DEFENDANT'S EVIDENCE**
7 **SUBMITTED WITH DEFENDANT'S SPECIAL MOTION TO STRIKE PURSUANT TO**
8 **CALIFORNIA CODE OF CIVIL PROCEDURE 425.16** on the interested parties in this action
as follows:

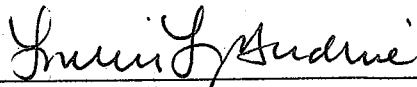
8 Michael J. Garcia, City Attorney
9 Ann M. Maurer, Chief Assistant City Attorney
10 Andrew Rawcliffe, Deputy City Attorney
613 E. Broadway, Suite 220
11 Glendale, CA 91206

Bradley H. Ellis
Frank J. Broccolo
Christopher S. Munsey
Laura L. Richardson
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013

12 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
13 persons at the addresses listed above and placed the envelope for collection and mailing, following
our ordinary business practices. I am readily familiar with Blecher Collins Pepperman &
14 Joye, P.C.'s practice for collecting and processing correspondence for mailing. On the same day
that correspondence is placed for collection and mailing, it is deposited in the ordinary course of
15 business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I
am a resident or employed in the county where the mailing occurred. The envelope was placed in
16 the mail at Los Angeles, California.

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

18 Executed on January 28, 2015, at Los Angeles, California.

19
20 
21 _____
Lorelei L. Gerdine

22 70536.2

Blecher Collins
Pepperman & Joye

