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12 Attorneys for Defendants Regents Capital Corporation,  
13 Donald Hansen, and Dennis Odiorne

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**

BALBOA CAPITAL CORPORATION,

Plaintiff,

v.

REGENTS CAPITAL CORPORATION;  
DONALD HANSEN; DENNIS ODIORNE;  
KIRSTEN MERZA; CHELSEA HAINES;  
JAVIER ENRIQUEZ; KEVIN KUTTER;  
TRAVIS POWER; DOES 1 through 25,  
inclusive,

Defendants.

Case No. 30-2014-00705733-CU-BT-CJC

Assigned to Hon. Kirk Nakaruma

**DECLARATION OF DENNIS  
ODIORNE IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
BALBOA CAPITAL CORPORATION'S  
EX PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE RE  
PRELIMINARY INJUNCTION**

Date: March 12, 2014  
Time: 1:30 p.m.  
Dept.: C15

Date of Filing: February 19, 2014  
Trial Date: Not Set

I, Dennis Odiorne, declare as follows:

1. I am the President of Regents Capital Corporation ("RCC"). Both I and RCC are parties to this action. I make this declaration in support of Defendants' Opposition to Plaintiff's *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause re Preliminary

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**03/12/2014 at 01:34:00 PM**  
Clerk of the Superior Court  
By Giovanni Galon, Deputy Clerk

1 Injunction. Except where noted to be otherwise, I state the following of my own knowledge and,  
2 if called upon to do so, would and could testify competently to the following.

### 3 4 Employment at Balboa Capital

5 2. I began working at Balboa Capital Corporation (“Balboa”) in August 2005 as an  
6 account executive. In 2007 I became a Sales Manager in the Commercial Finance Division. I  
7 was in this position when I resigned.

8 3. Balboa is a lending company that specializes in equipment leasing, working capital  
9 loans and franchise financing. Balboa was created when Patrick Byrne and his co-worker Shawn  
10 Giffin left one equipment financing corporation to start their own competing company. Balboa  
11 has grown to have over 150 employees.

12 4. As a Sales Manager in the Commercial Finance Division, I was responsible for  
13 growing a customer base to achieve gross margin and other related sales quotas. The Commercial  
14 Finance Division focused on middle market customers – namely, companies with annual revenues  
15 from \$10 million to \$250 million. In my experience, development of personal relationships is  
16 very important in this industry and specifically to this range of the market and with these  
17 customers – a potential middle market customer’s decision as to which equipment financing  
18 company to go with is based in large part on the connection the company’s decision maker has  
19 with the sales representative at the financing company. The terms of the financing transaction  
20 and pricing typically do not differ much from one financing company to the next.

21 5. During my employment with Balboa, I managed 800 to 900 accounts. Many of  
22 the customers I worked with at Balboa I had worked with for many years, some even more than  
23 five years. Over time, I gained intricate knowledge and trust of these businesses. The customers  
24 frequently told me that they liked working with me because I was prompt, professional, they liked  
25 me and they could trust me. During my employment with Balboa, I gave many of the customers I  
26 worked with my personal cell phone number so that I could always be available to them.

27 6. There are hundreds of companies in this equipment financing business across the  
28 United States. There are large national companies like GE Capital competing with companies

1 like Balboa and even smaller companies like RCC. Customers consist of any business seeking to  
2 finance any piece of equipment used in their particular operations – from a solo practitioner  
3 attorney who wants to finance a couple of computers, to an aerospace company who wants to  
4 finance a 747 jumbo jet. Many customers will work with multiple equipment financing  
5 corporations over time and/or at the same time for different equipment and/or different loans. For  
6 example, when that solo practitioner attorney wants to finance a refrigerator for his office break  
7 room, he may use a different finance company than he used for the computers.

8       7. For many middle market transactions, a potential customer will request bids from  
9 multiple companies to determine which equipment financing company to use. During my  
10 employment at Balboa, I worked on multiple term sheets and proposals in response to requests for  
11 bids from potential customers for middle market transactions.

12       8. During my more than eight years of employment with Balboa, I have reviewed  
13 thousands of applications from thousands of different companies for thousands of different  
14 equipment leasing loans and working capital loans. Some of these applications were converted to  
15 transactions and many others were not. I would not be able to remember the name of every  
16 company who submitted an application that I reviewed while working at Balboa.

17       9. At no time during my employment at Balboa did I have any formal written  
18 customer list or excel spreadsheet with information regarding all of the customers I worked with.  
19 There was a database on which information relating to leads/prospective customers and actual  
20 customers was kept but I was unable to run a list from that database.

21       10. I am not aware of Balboa using any specialized marketing techniques or strategies  
22 to target potential customers that are markedly different from those techniques and strategies used  
23 by other companies in the industry. Balboa is a member of the same trade groups and receives  
24 industry magazines, like many other companies in the equipment financing business. Through  
25 these groups and publications, we share ideas.

26       11. During my employment at Balboa I was not given access to any confidential or  
27 proprietary marketing techniques or strategies. Rather, Balboa had a marketing department that  
28

1 took care of marketing for the company and we were provided with leads from the marketing  
2 department.

3  
4 **Departure from Balboa and Formation of Regents Capital Corporation**

5 12. On December 10, 2013, I submitted my letter of resignation to Patrick Byrne, the  
6 Chief Executive Officer of Balboa, and Rob Rasmussen, the Chief Operating Officer of Balboa.  
7 A true and correct copy of my resignation letter is attached as Exhibit A. In this letter, I informed  
8 Balboa that my goal was to provide a non-disruptive transition of my job duties. I also stated that  
9 “[a]ll historical files, company data and documentation personally maintained during my tenure  
10 remain intact in Balboa network directors [and that] I remain in full compliance with all of our  
11 agreements.” I asked that if there were any questions about Balboa materials or compliance with  
12 our agreements (namely my employment agreement including the confidentiality provisions) that  
13 we make sure to resolve those questions prior to my separation from Balboa. I also reiterated  
14 verbally to Mr. Byrne and Mr. Rasmussen that I would not be taking any Balboa documents with  
15 me.

16 13. Mr. Byrne and Mr. Rasmussen requested that I stay through the end of the week,  
17 December 13, 2013, to help with the transition and I agreed to do so. Mr. Byrne walked me from  
18 division to division to discuss with certain sales managers approximately 50 to 75 of the accounts  
19 that I had been working on and to provide these sales manager with the specifics of the accounts  
20 and the customers and how to approach the account. I did so.

21 14. When I left Balboa, I did not take any customer lists, or customer files, or any  
22 documents from customer files, or any supporting documentation concerning customer  
23 transactions with me, including any customer tax returns.

24 15. On December 26, 2013, Mr. Hansen and I filed the articles of incorporation for  
25 RCC and registered the business with the Secretary of State.

26 16. On or about January 17, 2014, we issued a press release regarding the opening of  
27 RCC. It was publicly disclosed on [www.monitordaily.com](http://www.monitordaily.com) and not targeted to any specific  
28 companies.

1           17.     Mr. Hansen and I hired five former Balboa employees to work at RCC. We told  
2 each of them when we hired them not to take anything from Balboa when they left, including any  
3 list of customers or files of customer documents they may have had at Balboa.

4           18.     After I left Balboa, I received calls from many customers I worked with at Balboa  
5 on my personal cell phone. They called to tell me that they had received a call from Balboa  
6 saying a variety of things – some were told that I was reassigned to a new position, others were  
7 told that I was doing something else in the company, and others were just told that this new sales  
8 representative that contacted them would be handling the relationship going forward. My  
9 understanding is that Balboa was not forthright or honest with these customers and did not tell  
10 them that I had left the company and was no longer working at Balboa. This is problematic to me  
11 because based on the representations of Balboa, or lack thereof, these customers may have  
12 believed that the sales representative that took over the relationship was acting on my behalf,  
13 which they were not. I received many of these calls before I even had a chance to call any of  
14 these customers to let them know that I was no longer working at Balboa. Many of these  
15 individuals were upset by the call from Balboa and told me that they wanted to do business with  
16 me, not Balboa. For those that told me they wanted to do business with me in the future, I asked  
17 that they give me their email address so that I could forward them my new contact information at  
18 RCC.

19           19.     Aside from those customers that contacted me, I also contacted some of the other  
20 customers that I had worked with at Balboa whose names I had remembered to inform them that I  
21 was no longer with Balboa and was now working for RCC. It was not until after my employment  
22 with Balboa ended that I made any such calls. I did not use any of Balboa's database systems to  
23 contact such individuals or to get their contact information. I was able to get contact information  
24 for all of these people doing simple Google searches.

RCC's Business and the Potential Detrimental Effect of Balboa's Proposed  
Injunction

20. RCC is a start-up company. It is an independent commercial equipment finance firm. At RCC, we focus on middle market clients nationwide. RCC currently has seven employees. I am the company's President. My business partner, Donald Hansen, is the company's Chief Executive Officer.

21. At RCC, one of our largest expenditures to date has been marketing. We have not relied on any confidential Balboa information to market the company. Rather, we set up a focused customer relations management system through salesforce.com. In addition, RCC purchased "leads" or emails of businesses through data.com and we are using that information to solicit work and market ourselves. Balboa also purchased leads throughout my employment. This is a method used by essentially all leasing companies. RCC limited its leads to companies with annual revenue of \$10 million to \$250 million. This is different than Balboa's focus. Balboa does "small ticket" business as well, working with companies with less than \$1 million in annual revenue.

22. Our sales team is expected to make approximately 100 calls a day to leads we purchased through data.com. In addition, I have attended trade shows where we contacted attendees in advance from the trade show website, I have handed out business cards, and met people in various industries, such as potential customers, vendors and other competitors. For example, I attended CONEXPO in Las Vegas during the week of March 3, 2014. This is a construction industry trade show. RCC has not in any way focused its marketing efforts specifically on companies that have worked with or are working with Balboa.

23. I have read and reviewed Balboa's [Proposed] Temporary Restraining Order ("TRO"). In it, Balboa asks the court to order RCC to, among other things, refrain from "[e]ngaging in any solicitation of companies who submitted an application to BALBOA that Defendants reviewed while at BALBOA." Based on this description, I cannot tell which supposed companies Balboa is referring to and cannot be expected to remember each and every company whose information that I reviewed in my more than eight years of employment with

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1 Balboa in order to attempt to comply with this. In addition, the term "application" is unclear as  
2 with middle market potential deals, an application is really just a formality. What we really  
3 review prior to a deal being converted are the company's financial statements. In addition, many  
4 companies inquire regarding potential financing deals with Balboa but never actually enter into  
5 such a deal with Balboa. The proposed order is written so broadly that it can be read to include  
6 almost any companies that ever engage in or seek to engage in equipment leasing.

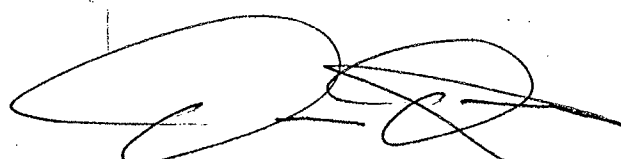
7 24. In addition, Balboa asks to court to order RCC to refrain from "[u]sing, copying,  
8 dealing with, disclosing, trading, and otherwise exploiting or misappropriating BALBOA's  
9 confidential information including its customer list and customer files." Again, this proposed  
10 order is written too broadly and it is unclear. What is Balboa referring to with respect to  
11 confidential information? It is undefined. Moreover, what is Balboa referring to with respect to  
12 "its customer list"? I am not aware of any explicit customer list at Balboa. Similarly, what  
13 specifically is Balboa referring to with respect to "customer files," and what all is included within  
14 the phrase?

15 25. The order, in other words, would essentially preclude RCC from doing business  
16 with any business from any company that may have submitted an application to Balboa at any  
17 time in the last 20 years for any services. RCC may not survive a nearly 12-month shut down of  
18 its business, especially given the fact that it opened its doors for business less than three months  
19 ago.

20 26. In addition, RCC will be the primary source of income for myself and, from what I  
21 understand, for RCC's employees. If RCC is effectively shut down for a year as a consequence  
22 of the court entering Balboa's proposed order, all of these individuals, including myself, may be  
23 out of work.

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

26  
27 Dated: 3/12/14

  
\_\_\_\_\_  
Dennis Odiorne

**Exhibit A**



Patrick Byrne

BALBOA CAPITAL CORPORATION

2010 Main Street

Suite 1100

Irvine, CA 92614

Patrick:

As of today, December 10, 2013, I am providing notice of resignation of my employment from Balboa Capital Corporation. My goal is to provide a non-disruptive transition of my duties. Based upon your direction, I will help ensure my responsibilities are properly transitioned as you best see fit for the company. I will be available from today until close of business on Friday, December 13, 2013.

I sincerely appreciate the opportunities I have been given at Balboa Capital Corporation. With that in mind, I would like to leave on the best terms possible. All historical files, company data and documentation personally maintained during my employment remain intact in Balboa network directories. Further, I remain in full compliance with all of our agreements. If there are any questions about Balboa Capital materials or compliance with our agreements please make sure we resolve those prior to my separation on December 13<sup>th</sup>.

For your convenience, I have attached a report detailing the outstanding salary and commissions owed to me based on our commission policy and my Sales Manager compensation plan for 2013. Included on the report is my current address for any future correspondence. If these figures do not reconcile to your calculations, we should resolve that prior to my departure as well.

I always be grateful for the opportunities provided to me during the last 8 years. I wish you and Balboa Capital continued success.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dennis Odiorne', with a large, stylized initial 'D'.

Dennis Odiorne

**PROOF OF SERVICE**

***Balboa Capital Corporation v. Regents Capital Corporation, et al.***  
**OCSC Case No. 30-2014-00705733**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, CA 92626-7689.

On March 12, 2014, I served, in the manner indicated below, the foregoing document described as **DECLARATION OF DENNIS ODIORNE IN SUPPORT OF DEFENDANTS' OPPOSITION TO BALBOA CAPITAL CORPORATION'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Marc S. Hines, Esq. Nicole M. Hampton, Esq. Natalie Mirzayan, Esq. Hines Carder, LLP 3090 Bristol Street, Ste. 300 Costa Mesa, CA 92626	<b>Attorneys for Plaintiff</b>  <b>Tel: 714-513-1122</b> <b>Fax: 714-513-1123</b> <b><u>mhines@hinescarder.com</u></b> <b><u>nhampton@hinescarder.com</u></b> <b><u>nmirzayan@hinescarder.com</u></b>
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- BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested (C.C.P. § 1013(a)). **Only as to those indicated below.**
- BY FACSIMILE: (C.C.P. § 1013(e)(f)).
- BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees **only as to those indicated below.** (C.C.P. § 1013(c)(d)).
- BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to the addressee(s). (C.C.P. § 1011(a)(b)).
- BY ELECTRONIC SERVICE: Only as to those indicated with email addresses on the service list (C.C.P. §1010.6 (a)(2)).

\*\*\*\*\*

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

Executed on March 12, 2014, at Costa Mesa, California.

  
\_\_\_\_\_  
Anh Dufour