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Donald Hansen, and Dennis Odiorne
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE – CENTRAL JUSTICE CENTER
11

12 BALBOA CAPITAL CORPORATION,

13 Plaintiff,

14 v.

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

18 Defendants.
19
20
21

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

Assigned to Hon. Kirk Nakaruma

**DECLARATION OF DONALD
HANSEN 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

22
23
24 I, Donald Hansen, declare as follows:

25 1. I am the Chief Executive Officer of Regents Capital Corporation ("RCC"). Both I
26 and RCC are parties to this action. I make this declaration in support of Defendants' Opposition
27 to Plaintiff's *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause re
28

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 Preliminary Injunction. Except where noted to be otherwise, I state the following of my own
2 knowledge and, 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 1994 as an
6 Account Executive. In 1997 I took the position of Vice President of the Commercial Finance
7 Division. I 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 together left one equipment financing corporation to start their own competing company.
11 Balboa has grown to have over 150 employees.

12 4. As the Vice President of the Commercial Finance Division, I was responsible for
13 management and oversight of the Commercial Finance Division. At the time of my resignation in
14 December 2013, there were approximately 20 employees in the Commercial Finance Division
15 including Dennis Odiome, Kirsten Merza, Chelsea Haines, Javier Enriquez, Kevin Kutter and
16 Travis Power. I worked closely with each of these individuals. Our division focused on middle
17 market customers – namely, companies with annual revenues from \$10 million to \$250 million.
18 In my experience, personal relationships are very important in this industry. During the last few
19 years of my employment, the number of middle market transactions constituted approximately
20 20% of Balboa's deals while the remaining 80% were small ticket transactions (loans of \$150,000
21 or less).

22 5. There are hundreds of companies in this equipment financing business across the
23 United States. It is a highly competitive market. There are large national companies like GE
24 Capital competing with companies like Balboa and even smaller companies like RCC. Customers
25 consist of any business seeking to finance any piece of equipment used in their particular
26 operations – from a solo practitioner attorney who wants to finance a couple of computers, to an
27 aerospace company who wants to finance a 747 jumbo jet. Many customers will work with
28 multiple equipment financing corporations over time and/or at the same time for different

1 equipment and/or different loans. For example, when that solo practitioner attorney wants to
2 finance a refrigerator for his office break room, he may use a different finance company than he
3 used for the computers.

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

8 7. During my almost twenty years of employment with Balboa, I have reviewed
9 thousands of applications from thousands of different companies for thousands of different
10 equipment leasing loans and working capital loans. Some of these applications were converted to
11 transactions and many others were not. I would not be able to remember the name of every
12 company who submitted an application that I reviewed while working at Balboa.

13 8. At no time during my employment at Balboa did I have any formal written
14 customer list or excel spreadsheet with information regarding all of the customers I worked with.
15 There was a database on which information relating to leads/prospective customers and actual
16 customers was kept but I was unable to run a list from that database due to Balboa's security
17 measures.

18 9. During my time at Balboa, the company has publicly announced customer
19 information in places such as video testimonials that are posted on Balboa's website, YouTube,
20 Twitter, LinkedIn, and Facebook. These can be found at
21 <http://www.balboacapital.com/testimonials/>. The company "likes" its customers on Facebook,
22 therefore a list of all customers Balboa "likes" is shown to anyone who visits Balboa's Facebook
23 page. Similar to Balboa's "likes" on Facebook, it also frequently tweets on Twitter different
24 companies to connect with and to follow on follow Friday ("#FF"). Many of these companies
25 Balboa publicly asks people to follow on its Twitter page are customers of Balboa. Similarly, on
26 Balboa's LinkedIn page, it has 1,541 followers as of March 11, 2014, many of whom have been
27 Balboa customers. Balboa also has a Google+ page on which it is connected to 1,707
28 people/companies in its circle as of March 11, 2014, many of whom have been Balboa customers.

1 In addition, Balboa frequently releases press releases when it reaches financing deals with
2 customers. Through all of these means, Balboa publicly advertises the identities of many of its
3 customers.

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

9 11. During my employment and pursuant to my compensation agreement, if I brought
10 in new employees who brought with them their "books of business", also known as their
11 customer list from their prior employer, I would receive additional compensation in the form of
12 1% of gross margin generated by "Books of Business" salespeople for any such salespeople that I
13 brought in. Thus, Balboa incentivized employees to get individuals to join Balboa and take their
14 prior employer's customer list with them. This is one way the company has grown.

15 12. During my employment at Balboa I was not given access to any confidential or
16 proprietary marketing techniques or strategies. Rather, Balboa had a marketing department that
17 took care of marketing for the company and we were provided with leads from the marketing
18 department.

19
20 **Departure from Balboa and Formation of Regents Capital Corporation**

21 13. On December 10, 2013, I submitted my letter of resignation to Patrick Byrne, the
22 Chief Executive Officer of Balboa, and Rob Rasmussen, the Chief Operating Officer of Balboa.
23 A true and correct copy of my resignation letter is attached as Exhibit A. In this letter, I informed
24 Balboa that my goal was to provide a non-disruptive transition of my job duties. I also stated that
25 "[a]ll historical files, company data and documentation personally maintained during my tenure
26 remain intact in Balboa network directories [and that] I remain in full compliance with all of our
27 agreements." I asked that if there were any questions about Balboa materials or compliance with
28 our agreements (namely my employment agreement including the confidentiality provisions) that

1 we make sure to resolve those questions prior to my separation from Balboa. I also reiterated
2 verbally to Mr. Byrne and Mr. Rasmussen that I would not be taking any Balboa documents with
3 me.

4 14. After I gave him my resignation letter, Mr. Byrne asked that I stay through the end
5 of the week and I agreed to do so. He and Mr. Rasmussen requested that I continue processing
6 transactions for Balboa up until my last day, Friday, December 13, 2013, and I did so.

7 15. When I left Balboa, I did not take any customer lists, or customer files, or any
8 documents from customer files, or any supporting documentation concerning customer
9 transactions with me, including any customer tax returns.

10 16. On December 26, 2013, Mr. Odiorne and I filed the articles of incorporation for
11 RCC and registered the business with the Secretary of State.

12 17. On or about January 17, 2014, we issued a press release regarding the opening of
13 RCC. It was publicly disclosed on www.monitordaily.com and not targeted to any specific
14 companies.

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

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

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

25 **Injunction**

26 20. RCC is a start-up company. It is an independent commercial equipment finance
27 firm. At RCC, we focus on middle market clients nationwide. RCC currently has seven
28

1 employees. I am the company's Chief Executive Officer. My business partner, Dennis Odiorne,
2 is the company's President.

3 21. At RCC, one of our largest expenditures to date has been marketing. We have not
4 relied on any confidential Balboa information to market the company. Rather, we set up a
5 focused customer relations management system through salesforce.com. In addition, RCC
6 invested significant resources in purchasing "leads" or contact information of businesses through
7 data.com and we are using that information to solicit work and market ourselves. This is referred
8 to as "buying leads". RCC explained to data.com our desired criteria and purchased 47,000 leads
9 for potential companies, nationwide, who may need equipment financing. Balboa also purchased
10 leads throughout my employment. This is a method used by essentially all leasing companies.
11 RCC limited its leads to companies with annual revenue of \$10 million to \$250 million. This is
12 different than Balboa's focus. Balboa does "small ticket" business as well, working with
13 companies with less than \$1 million in annual revenue.

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

21 23. I have read and reviewed Balboa's [Proposed] Temporary Restraining Order
22 ("TRO"). In it, Balboa asks the court to order RCC to, among other things, refrain from
23 "[e]ngaging in any solicitation of companies who submitted an application to BALBOA that
24 Defendants reviewed while at BALBOA." Based on this description, I cannot tell which
25 supposed companies Balboa is referring to and cannot be expected to remember each and every
26 application that I reviewed in my almost 20 years of employment with Balboa in order to attempt
27 to comply with this. In addition, many companies submit applications to Balboa but never
28 actually engage in business with Balboa. Less than 50% of the applications that are submitted

1 convert into transactions. The proposed order is written so broadly that it can be read to include
2 almost any companies that ever engage in or seek to engage in equipment leasing.

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

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

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

20 27. If the TRO were granted, it would potentially preclude RCC from engaging in any
21 business as the description of what RCC is restricted from doing is so broad. I would predict that
22 RCC could lose up to \$100,000 a month if the TRO were granted.

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

25
26 Dated: 3/12/2014

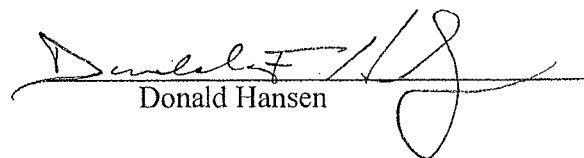

Donald Hansen

Exhibit A

December 10, 2013

Patrick Byrne
BALBOA CAPITAL CORPORATION
2010 Main Street
Suite 1100
Irvine, CA 92614

Patrick:

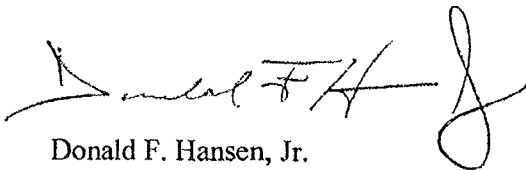
As of today, December 10, 2013, I am providing notice of resignation of my employment from Balboa Capital Corporation. My goal is to provide a non-disruptive transition of my duties. Based upon your direction, I will help ensure my responsibilities are properly transitioned as you best see fit for the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

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 19 years. I wish you and Balboa Capital continued success.

Sincerely,



Donald F. Hansen, Jr.

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 DONALD HANSEN 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	Attorneys for Plaintiff Tel: 714-513-1122 Fax: 714-513-1123 <u>mhines@hinescarder.com</u> <u>nhampton@hinescarder.com</u> <u>nmirzayan@hinescarder.com</u>
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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