

1 SNELL & WILMER L.L.P.  
2 Tiffany Brosnan, Bar No. 184810  
3 [tbrosnan@swlaw.com](mailto:tbrosnan@swlaw.com)  
4 Erin D. Leach, Bar No. 247785  
5 [eleach@swlaw.com](mailto:eleach@swlaw.com)  
6 Jordan M. Lee, Bar No. 295395  
7 [jmlee@swlaw.com](mailto:jmlee@swlaw.com)  
8 600 Anton Boulevard, Suite 1400  
9 Costa Mesa, California 92626-7689  
10 Telephone: 714-427-7000  
11 Facsimile: 714-427-7799

12 Attorneys for Defendants Regents Capital  
13 Corporation, Donald Hansen, Dennis Odiorne,  
14 Kirsten Merza, Chelsea Haines, Javier Enriquez,  
15 Kevin Kutter, and Travis Power

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

18 BALBOA CAPITAL CORPORATION

19 Plaintiff,

20 vs.

21 REGENTS CAPITAL  
22 CORPORATION; DONALD  
23 HANSEN; DENNIS ODIORNE;  
24 KIRSTEN MERZA; CHELSEA  
25 HAINES; JAVIER ENRIQUEZ;  
26 KEVIN KUTTER; TRAVIS POWER;  
27 and DOES 1 through 25, inclusive,  
28

Defendants.

CASE NO. 30-2014-00705733-CU-BT-  
CJC

Judge: Hon. Kirk Nakamura

**REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF DEFENDANTS'  
MOTION FOR ATTORNEYS' FEES**

DATE: August 14, 2014  
TIME: 2:00 P.M.  
PLACE: C-15

Date of Filing: February 19, 2014  
Trial Date: None set

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**05/22/2014** at 12:41:00 PM  
Clerk of the Superior Court  
By Emma Castle, Deputy Clerk


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

In accordance with California Evidence Code sections 452(d) and 453, and California Rule of Court 3.1306(c), defendants Regents Capital Corporation, Donald Hansen, Dennis Odiorne, Kirsten Merza, Chelsea Haines, Javier Enriquez, Kevin Kutter, and Travis Power respectfully request that this court take judicial notice of the following document filed in *Timepayment Corp. v. Lisa Gargiuloa and Balboa Capital corporation*, United States District Court for the District of Massachusetts, Case No. 1:12-cv-10463PBS:

1. Affidavit of Patrick Byrne filed on March 15, 2012. A true and correct copy of which is attached hereto at Tab "1."

Dated: May 22, 2014

SNELL & WILMER L.L.P.

By:   
\_\_\_\_\_  
Tiffany Brosnan  
Erin D. Leach  
Jordan M. Lee  
Attorneys for Defendants Regents Capital Corporation, Donald Hansen, Dennis Odiorne, Kirsten Merza, Chelsea Haines, Javier Enriquez, Kevin Kutter, and Travis Power



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
TIMEPAYMENT CORP.,	)	
Plaintiff	)	
	)	
v.	)	CIVIL ACTION NO. 1:12-cv-10463PBS
	)	
LISA GARGIULO and BALBOA CAPITAL	)	
CORPORATION,	)	
Defendants	)	
_____	)	

AFFIDAVIT OF PATRICK BYRNE

NOW COMES Patrick Byrne who deposes and says as follows:

1. My name is Patrick Byrne. At all times material hereto, I have been President, CEO and founder of Balboa Capital Corporation ("Balboa").
2. Like TimePayment Corp., Balboa is in the Microticket financing industry. Balboa establishes relationships with various dealers in different industries, including the water quality area. Once Balboa has established approved dealers, these dealers will refer their customers to Balboa to finance equipment purchased from the dealers.
3. Balboa has been in the micro ticket financing industry for many years. During that period of time, a substantial portion of Balboa's business has concentrated in the commercial water quality area. As a result, Balboa has established a working relationship with thousands of dealers in the commercial water quality industry.
4. Dealers in this industry do not generally work with just one (1) financing company. Typically, dealers may work with two (2) or more financing companies over

a period of time. Under the circumstances, Balboa will typically have the same contact information for dealers in the water quality area as a number of other finance companies. None of this contact information is secret or unavailable from public sources nor is it considered proprietary.

5. Dealers are typically located through public sources, including contacts with equipment manufacturers, Google searches, Water Quality Association membership lists, contacts made at trade shows, through professional publications or personal referrals. In my experience, most dealers will consistently work with a particular financing company because of the goodwill and personal relationship established between the dealer and the sales executive.

6. Typically, all financing companies in the water quality industry work in the same way, and the rates charged are virtually identical. It is the customer service, follow up and constant contact that results in a dealer continuing to use a particular company.

7. During 2011, Balboa began some limited contact with Lisa Gargiulo to inquire whether she was interested in coming to work for Balboa. The water quality industry is relatively small and, thus, we at Balboa were well aware of Lisa Gargiulo's success at TimePayment.

8. In October, 2011, Lisa came to visit Balboa in California, and on or about October 24, 2011, accepted an offer of employment with Balboa.

9. At no time prior to accepting employment did anyone at Balboa request from Lisa Gargiulo any proprietary or confidential information of TimePayment, nor did she volunteer any such information.

10. After accepting the position on or about November 1, 2011, after having been asked if she had a contact list, Lisa Gargiulo sent a contact list to Patrick Ontal at Balboa. A copy of that list is attached as Exhibit 5 to the Sinclair Affidavit.

11. That list was initially seen by Patrick Ontal and Robert Rasmussen.

12. Upon receipt of the list, a determination was made of which contacts on the list were commercial dealers who had worked with Lisa in the water quality area and were not already in our Sales Logic system. It was only those contacts that were inputted into the Balboa Sales Logic system. From that point forward, the only person on the sales force that had access to those contacts was Lisa Gargiulo. The list of accounts inputted into the Balboa Sales Logic system is attached to the Sinclair Affidavit as Exhibit 8.

13. During the review and consideration of the contact list provided by Lisa Gargiulo, we did not review in any detail or consider any funding information contained on the list, as we were simply interested in inputting Lisa Gargiulo's contact information for commercial water quality dealers with which Balboa did not previously have business experience.

14. Once the input process was completed, the remaining information that had been provided by Lisa Gargiulo was never used again.

15. It is my understanding that the only person who has ever used the inputted information at Balboa is Lisa Gargiulo.

16. I understand that on or about November 2, 2011, Lisa Gargiulo also may have sent a Three Month Funding Report to Patrick Ontal. I have never seen that Report and the information contained in that Report has never been used by Balboa.

17. In my experience, all of the contact information inputted into the sales logic system that came from TimePayment is freely available in public sources. Balboa was aware that Lisa Gargiulo did not have a Non-Compete Agreement with TimePayment and, therefore, understood that she was free to contact any of the dealers that she had previously worked with while at TimePayment.

18. Balboa, through Ms. Gargiulo, has solicited and obtained some limited business from dealers that previously had worked with Ms. Gargiulo at TimePayment and that are on the list of 1,000 contacts downloaded into the Sales Logic system. Any other dealers with whom Ms. Gargiulo may have secured business since November 1, 2011, that had previously done business with TimePayment and that are not on the list of contacts downloaded onto Sales Force, were dealers that Balboa had previously contacted and/or done business with.

19. It would be an unfair burden to prevent Balboa from doing business with every name on the original contact list provided by Lisa Gargiulo to Balboa of some 3,000 contacts. As previously stated, many of those contacts were dealers with which Balboa had a prior relationship before hiring Lisa Gargiulo and obtaining the information. For this reason, some 2,000 of the 3,000 contact names on that list were

never downloaded into the Balboa system and the information was never used. In addition, the names and contact information of all the dealers are easily available through public sources. As a result, any business obtained by Lisa Gargiulo or Balboa from dealers that had previously worked with Lisa at TimePayment would have come to Balboa whether the information was downloaded from TimePayment's list to Sales Logic, or not.

19. The above statements are made upon my personal knowledge, information or belief, and insofar as upon information and belief, I believe this information to be true.

Signed under the Penalties of Perjury this 15<sup>th</sup> day of March, 2012.

/s/ Patrick Byrne  
PATRICK BYRNE



CERTIFICATE OF SERVICE

I, David J. Gallagher, hereby certify that this document, filed through the ECF System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants, on this 15<sup>th</sup> day of March, 2012.

/s/ David J. Gallagher  
DAVID J. GALLAGHER - BBO NO. 183120  
REGNANTE, STERIO & OSBORNE LLP  
401 Edgewater Place, Suite 630  
Wakefield, MA 01880-6210  
(781) 246-2525  
dgallagher@regnante.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 May 22, 2014, I served, in the manner indicated below, the foregoing document described as **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' MOTION FOR ATTORNEYS' FEES** 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> <u><b>nhampton@hinescarder.com</b></u>
--	--

- 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 May 22, 2014, at Costa Mesa, California.

  
 Anh Dufour