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7 UNITED STATES BANKRUPTCY COURT
8 DISTRICT OF OREGON

9 In re:

10 SOCIETY OF JESUS, OREGON
11 PROVINCE, an Oregon domestic nonprofit
religious corporation,
12 Debtor.
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14
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Case No. 09-30938-elp11
DECLARATION OF WILLIAM L.
LOCKYEAR IN SUPPORT OF
CONFIRMATION OF SECOND
MODIFIED JOINT PLAN OF
REORGANIZATION DATED JUNE 30,
2011

16 I, William L. Lockyear, declare as follows:

- 17 1. I am the Chief Financial Officer of Society of Jesus, Oregon Province (the
18 "Debtor").
- 19 2. I am submitting this declaration in support of the confirmation of the
20 Second Modified Joint Plan of Reorganization Dated May 30, 2011 [Docket No. 1244-1]
21 (the "Plan").¹
- 22 3. I am familiar with the Plan, the Disclosure Statement Regarding First
23 Modified Joint Plan of Reorganization Dated May 27, 2011 [Docket No. 1187-1] (the
24 "Disclosure Statement"), and all the documents related thereto, having actively
25 participated or advised in the preparation, negotiation, and development of many
26

¹ All capitalized terms used in this Declaration that are not specifically defined herein are defined in the Plan.

1 features thereof.

2 4. If I were called upon to testify, I would testify as to the facts set forth in
3 this Declaration.

4 **A. Joint Plan of Reorganization.**

5 5. The primary disputed issues in this Case have included: (1) establishing a
6 method for the resolution and payment of Current Known Abuse Claims against the
7 Debtor and Participating Parties; (2) treatment of Future Abuse Claims that may be
8 asserted against the Debtor and the Participating Parties; (3) determination of the
9 identity and value of property of the estate, including whether or not certain property the
10 Debtor asserts is held in trust is property of the estate under 11 USC §541; and (4)
11 resolution of disputes with Debtor's insurers regarding coverage for payment of Abuse
12 Claims. The Plan provides for the global resolution of these issues.

13 6. The Plan is the result of a collaborative effort between the Debtor, the
14 Official Committee of Unsecured Creditors (the "Committee"), the Future Claimants
15 Representative (the "FCR"), and the Debtor's insurers, Safeco, Travelers, and Western
16 World (collectively the "Settling Insurers"). The Debtor, the Committee, the FCR, and
17 the Settling Insurers were involved in numerous mediation sessions and settlement
18 discussions over a period of approximately 20 months under the supervision of the Hon.
19 Gregg D. Zive, United States Bankruptcy Judge for the District of Nevada. These
20 negotiations involved both in-person meetings and telephone conferences, with
21 approximately eight or more in-person sessions being conducted in Reno, Portland, Los
22 Angeles, and Chicago.

23 7. Settlement discussions concerned the strengths and weaknesses of the
24 various participants' positions including, without limitation, the following issues: (1) the
25 aggregate estimated value of the Current Sexual and Non-Sexual Abuse Claims; (2) the
26 estimated number and value of anticipated Future Abuse Claims; (3) establishment of

1 both a non-litigation and litigation claims review process that was determined to be fair
2 and equitable by counsel for and members of the Committee, counsel for the majority of
3 the Current Known Abuse Claimants, and the FCR; (4) insurance coverage issues; and
4 (5) property of the estate issues. The parties met in person on numerous occasions and
5 by telephone conference call on multiple occasions, and following lengthy negotiations
6 between the Debtor, the Committee, the FCR, and the Settling Insurers through their
7 respective counsel, agreed upon the terms of the Plan. Debtor's counsel drafted the
8 Plan, which was modified through further negotiations between the Debtor, the
9 Committee, the FCR, and the Settling Insurers, which ultimately resulted in the Plan
10 which is the subject of a confirmation hearing scheduled for July 7, 2011.

11 **C. The Plan Satisfies Section 1129 of the Bankruptcy Code.**

12 8. Except as otherwise indicated, all facts set forth in this Declaration are
13 based on my personal knowledge, my experience as a Certified Public Accountant and
14 as the Chief Financial Officer of the Debtor, my knowledge of the Debtor and its history,
15 my review of the Debtor's business records, my understanding of the requirements of
16 Chapter 11 of the Bankruptcy Code as they relate to confirmation of a plan of
17 reorganization, the events that occurred throughout the Debtor's Chapter 11 case, the
18 discussions I have had with various professionals during the case, and my participation
19 in this Chapter 11 case. Based thereon, I believe that the Plan complies with the
20 applicable provisions of Section 1129 of the Bankruptcy Code for confirmation of a Plan.

21 **D. Plan Compliance with the Bankruptcy Code (11 USC § 1129(a)(1)).**

22 9. I believe that the Plan complies with Section 1129(a)(1) of the Bankruptcy
23 Code as follows:

24 **a. Section 1122 of the Bankruptcy Code.**

25 Section 3 of the Plan sets forth the classification of Claims and
26 Interests. I have been advised that such classification complies with Section 1122(a) of

1 the Bankruptcy Code because each class contains only claims or interests that are
2 substantially similar to each other.

3 **b. Section 1123(a)(1) of the Bankruptcy Code.**

4 Section 3 of the Plan designates classes of claims, other than
5 claims of the type described in Sections 507(a)(2), 507(a)(3), and 507(a)(8) of the
6 Bankruptcy Code.

7 **c. Section 1123(a)(2) of the Bankruptcy Code.**

8 Section 4 of the Plan identifies each class of claims or interests that
9 is not impaired under the Plan.

10 **d. Section 1123(a)(3) of the Bankruptcy Code.**

11 Section 5 of the Plan sets forth the treatment of impaired claims
12 and interests.

13 **e. Section 1123(a)(4) of the Bankruptcy Code.**

14 Sections 4 and 5 of the Plan provide that the treatment of each
15 claim or interest in each particular class is the same as the treatment of each other
16 claim or interest in such class.

17 **f. Section 1123(a)(5) of the Bankruptcy Code.**

18 Section 9 of the Plan provides adequate means for the
19 implementation of the Plan. The Plan will be implemented by the execution and delivery
20 of various documents and agreements, including the establishment and funding the
21 Trust for resolution and payment of Abuse Claims; funding and payment of all other
22 Claims in accordance with the treatment of those Claims as provided under the Plan;
23 objections to Claims; pursuit of any available insurance coverage provided by Non-
24 Settling Insurers; and closing of the Case.

25 **g. Section 1123(a)(6) of the Bankruptcy Code.**

26 This section does not apply because no new stock is being issued

1 to creditors.

2 **h. Section 1123(a)(7) of the Bankruptcy Code.**

3 The Plan complies with this requirement because management is
4 not changing and the continuation of current management is integral to the continuing
5 operation and viability of the Reorganized Debtor.

6 **i. Section 1123(a)(8) of the Bankruptcy Code.**

7 This section does not apply because the Debtor is not an individual.

8 **j. Section 1125 of the Bankruptcy Code.**

9 I also believe the Proponents have included in the Disclosure Statement,
10 adequate information of a kind, and in sufficient detail, as far as is reasonably
11 practicable in light of the nature and history of the Debtor and the condition of the
12 Debtor's books and records to enable a hypothetical creditor typical of holders of claims
13 or interests of the relevant class to make an informed judgment about the Plan.

14 **E. Proponents' Compliance with the Bankruptcy Code (Section 1129(a)(2) of**
15 **the Bankruptcy Code).**

16 10. On the basis of my understanding of the Bankruptcy Code requirements, I
17 believe the Proponents have complied with the applicable provisions of the Bankruptcy
18 Code, including Sections 1125 and 1126 of the Bankruptcy Code regarding disclosure
19 and plan solicitation. The Debtor timely filed with the clerk of the Bankruptcy Court its
20 schedules of assets and liabilities, and made amendments as necessary. The Debtor
21 has timely filed all financial reports required by Rule 2015 and has complied with the
22 various operating orders entered by the Court during the Case. I believe that the
23 Debtor's balloting agent, Omni Management Group, has provided timely notice of the
24 disclosure statement, plan, and confirmation hearing to all known creditors and all other
25 parties in interest to whom notice was required to have been provided. The chairperson
26 of the Committee will be submitting his own declaration that the Committee has
performed all of its duties as required under the applicable provisions of the Bankruptcy

1 Code. I understand the FCR will be submitting a declaration that he has complied with
2 the provisions of the order appointing him as the legal representative for the Future
3 Claimants in the Case and he has complied with the applicable provisions of the
4 Bankruptcy Code.

5 **F. Plan Provided in Good Faith (Section 1129(a)(3)).**

6 11. The Plan is the result of extensive, arms-length negotiations between and
7 among the Debtor, the Committee, the FCR, and the Settling Insurers. The Plan and
8 Disclosure Statement represent a culmination of those negotiations and the substantial
9 input of each representative group. Additionally, the Plan has been jointly proposed by
10 the Debtor, the Committee, and the FCR, and received overwhelming acceptance by
11 creditors entitled to vote. Accordingly, the Plan achieves the goal of consensual
12 reorganization embodied in the Bankruptcy Code.

13 **G. Payment for Services for Costs and Expenses (Section 1129(a)(4)).**

14 12. All payments made or to be made by the Debtor, the Committee, and the
15 FCR to their retained advisors for services or for costs and expenses in or in connection
16 with this Chapter 11 case, in connection with the Plan, and incidental to this Chapter 11
17 case, have been approved by, or are subject to the approval by the Bankruptcy Court.

18 **H. Directors and Officers (Section 1129(a)(5)).**

19 13. Section V. of the Disclosure Statement discloses that Patrick J. Lee, S.J.,
20 will continue to be the President of the Reorganized Debtor, and pursuant to the
21 Society's vow of poverty, he will receive no monetary compensation for his services to
22 the Reorganized Debtor, however his needs and expenses will be taken care of by the
23 Jesuit Community of which he is a member. I believe Fr. Lee's continued services as
24 President are in the best interests of creditors.

25 **I. No Rate Changes (Section 1129(a)(6)).**

26 14 The Debtor is not subject to any rate regulation and is not changing any

1 rates that require approval by a governmental agency.

2 **J. Acceptance by Impaired Classes (Section 1129(a)(7)).**

3 15. In order to satisfy the so called “best interest” test under Section
4 1129(a)(7), each holder within an impaired class must either (a) vote to accept the Plan,
5 or (b) receive no less than such holder would have received in a Chapter 7 liquidation.
6 The Summary of Acceptances and Rejections (the “Vote Summary”) reflects the
7 calculation of the votes to accept or reject the Plan cast by each impaired class entitled
8 to vote. Based upon the Vote Summary, only one creditor holding an impaired Claim
9 who was entitled to vote, voted to reject the Plan.² All other creditors holding impaired
10 Claims that voted, voted in favor of the Plan.

11 16. The holders of Claim Nos. 9 and 191 in Class 3 (Current Sexual Abuse
12 Claims) and Claim No. 191 in Class 3A³ (Non-Sexual Abuse Claims) have not
13 liquidated their claims. The holders of Claim Nos. 9 and 191 did not elect to litigate their
14 Current Sexual Abuse Claims, but elected to have those Claims included in a creditor
15 pool with the Claims to be determined by the Abuse Claims Reviewer for the applicable
16 creditor pool. Each pool has been allocated a proportionate share of the funds available
17 from the settlement of the property of the estate litigation and insurance settlements.
18 Each pool provides for an average per claim distribution of approximately \$300,000, and
19 the holders of Claim Nos. 9 and 191 will be entitled to receive their allocable shares of
20 the creditor pools based on the evaluation of their Current Sexual Abuse Claims by the
21 applicable Abuse Claims Reviewer. As a result of those settlements (see paragraph 27

22 _____
23 ² The Plan provides that all Claims in Class 8 (Penalty Claims), Class 11 (Formation
24 Fund Claim), and Class 13 (Donor and Beneficiary Claims) will not receive any
25 distribution under the Plan. As a result, the holders of Claims in these Classes were not
26 entitled to vote. As set forth below, the Proponents do not believe the holders of such
Claims would receive any distribution if the Debtor’s assets were liquidated under
Chapter 7.

³ Claimant No. 191 voted his claim in both Classes 3 and 3A but it appears to be only a
Class 3 Current Sexual Abuse Claim.

1 below), and the Abuse Claims resolution and funding process under the Plan, the
2 holders of Claim Nos. 9 and 191 will receive as much or more under the Plan than they
3 would receive if the Debtor's assets were liquidated under Chapter 7.

4 17. The holders of Class 8 Claims (Penalty Claims) are not entitled to vote
5 and will not receive any distribution on account of their Class 8 Claims. However, all
6 holders of Class 8 Claims that filed proofs of claim asserting Penalty Claims have voted
7 to accept the Plan as members of Class 3.

8 18. I have also been advised by the Debtor's counsel that Class 8 Penalty
9 Claims should be subordinated to all other Claims. As a result, and based on the
10 settlements between the Debtor, the Committee, the FCR, and the Settling Insurers
11 concerning the assets in the estate that would be available to pay Claims, the liquidation
12 of those assets in Chapter 7 would provide no distribution to Class 8 Penalty Claims
13 because the assets resulting from the settlements would be insufficient to pay all other
14 non-Penalty Claims in full. Thus the Plan provides Class 8 Penalty Claims with as much
15 as they would receive if the Debtor's assets were liquidated under Chapter 7.

16 19. The Class 11 Claim of the Formation Fund Charitable Trust is not a Claim
17 against the Debtor, but is a Claim against the Apostolic Works Fund Charitable Trust
18 and will be Disallowed on that basis. The Debtor, as the trustee of the Formation Fund,
19 agrees with such treatment of the Formation Fund Claim. Therefore, Class 11 should be
20 deemed to have accepted the Plan.

21 20. The only proofs of claim filed on behalf of donors and beneficiaries were
22 filed by attorney Douglas J. Pahl on behalf of the Committee of Beneficiaries of the four
23 Arcas (i.e., the Formation Fund, the Aged & Infirm Fund, the Apostolic Works Fund, and
24 the Foundations Fund charitable trusts). Many of the beneficiaries of the Arcas are
25 members of the Jesuit Communities that are Participating Parties under the Plan. I
26 understand the Committee of Beneficiaries intends to file a declaration in support of the

1 Plan. Furthermore, I do not believe that any of the donors' or beneficiaries' rights are
2 being affected by the Plan. All donor designated funds are being preserved and are not
3 being used to pay Claims. Although the members of Class 13 will not receive any
4 distribution under the Plan and their Claims will be Disallowed, the donor designated
5 funds will remain intact. Finally, because the only Class 13 Claims that were filed were
6 those of Mr. Pahl's clients (beneficiaries of the Arcas), and because they are in full
7 support of the Plan, Class 13 should be deemed to have accepted the Plan.

8 21. In order to assure that Claimants will receive as much as they would
9 receive if the Debtor's assets were liquidated under Chapter 7, the Plan provides for
10 funding, based on settlements between the Debtor, the Committee, the Participating
11 Parties, and the Settling Insurers, which is believed to exceed that amount that could be
12 made available if the Debtor's and Participating Parties' assets were liquidated. Those
13 settlements have resulted in funds to pay Administrative and Priority Claims in full
14 (estimated to be approximately \$5,000,000), and to provide \$500,000 to pay non-priority
15 General Unsecured Claims, resulting in a dividend of approximately 50% to General
16 Unsecured Creditors. In addition, the Trust will receive approximately \$43.1 million from
17 the Debtor and Participating Parties, approximately \$119.7 million in Insurance
18 Recoveries from Safeco, Travelers, and Western World. In addition, the Trust will
19 receive the Avoidance Actions and Third Party Derivative Claims. This is substantially
20 more than the Debtor and Participating Parties believe they would be required to
21 provide to Creditors if their assets were liquidated. That is because the majority of the
22 funds being used to pay Claims are from settlement of the Debtor's Insurance Claims
23 against Safeco, Travelers, and Western World and from assets that are held in the
24 Formation Fund, Aged and Infirm Fund, and Apostolic Works Fund, which the Debtor
25 asserts are Charitable Trusts that the Debtor contends would not be available to pay
26 Claims. Absent the settlement, the Debtor and the Charitable Trusts would defend any

1 such claim and litigate their defenses. This issue has not been fully litigated but has
2 been settled by the Debtor and the Committee to provide funding for this Plan.
3 Furthermore, the \$119.7 million from Safeco, Travelers, and Western World would not
4 be available for distribution to all Abuse Claimants in Chapter 7, but would only be
5 available to each Claimant on a claim-by-claim basis, and would require the Claimant to
6 personally pursue whatever Insurance Coverage might be available for his or her Claim.
7 Litigation over the extent of the Debtor's assets that might be available to pay Claims
8 and the extent of Insurance Coverage, would be prolonged, subject to appeals, very
9 costly to the estate, and have an uncertain outcome. As a result, the Proponents believe
10 the Plan results in significantly more to Creditors than would be available if the Debtor's
11 and Participating Parties' assets were liquidated.

12 **K. Acceptance by Certain Classes (Section 1129(a)(8)).**

13 22. The Vote Summary reflects the compilation of the votes to accept or reject
14 the Plan cast by each of the impaired classes entitled to vote. All classes have
15 accepted the Plan, are unimpaired, or were not entitled to vote. For those impaired
16 classes that were not entitled to vote (Classes 8, 11, and 13), all Claimants having filed
17 Claims in those classes have not filed objections to confirmation of the Plan, and I
18 understand that either they, or their counsel, intend to file declarations in support of the
19 Plan.

20 **L. Treatment of Administrative Claims, Priority Tax Claims, and Other Priority**
21 **Claims (Section 1129(a)(9)).**

22 23. Based upon my understanding, I believe the Plan complies with
23 Section 1129(a)(9). There are no administrative expense claims, wage claims,
24 employee benefit claims, or claims of governmental units as described in
25 Section 507(a)(8), other than those that the Debtor has paid or will pay in the ordinary
26 course of business, and the Debtor has funds sufficient to pay any such remaining
claims when or before they come due.

1 24. Sections 2.1, 6.7(b), and 14.17 of the Plan set forth the procedure to pay
2 Administrative Claims. All requests for payment of Administrative Claims, other than
3 those that will be paid in the ordinary course of business, must be filed no later than 30
4 days after the effective date. Payments of professional fees will be subject to Court
5 approval as provided in Sections 6.7(b) and 14.17 of the Plan.

6 25. Under Section 1.2 of the Plan, Priority Claims will be paid in full on the
7 later of the Effective Date or the date under which any such Priority Claim becomes
8 Allowed.

9 **M. Acceptance by Impaired Classes of Claims (Section 1129(a)(10)).**

10 26. As set forth in the Vote Summary, all impaired classes of claims that were
11 entitled to vote have voted to accept the Plan by the requisite majorities in each such
12 class.

13 **N. Feasibility (Section 1129(a)(11)).**

14 27. I believe the Plan is feasible and not likely to be followed by liquidation or
15 the need for further reorganization. For purposes of determining whether the Plan
16 meets this requirement, the Debtor has analyzed its ability to meet obligations under the
17 Plan in conjunction with the funding requirements of the Plan and operational changes
18 the Debtor has made to accommodate such funding requirements and pay its ongoing
19 expenses.

20 28. Attached hereto as Exhibit "1" is a list showing the name and amount
21 being contributed by the Debtor and Reorganized Debtor, and each of the Participating
22 Parties, to provide the \$43.1 million in cash as required by those parties under the Plan.

23 29. A significant part of the Plan funding requirements will be provided by the
24 \$119.8 million to be paid by the Settling Insurers. The Debtor believes the Settling
25 Insurers will timely make the payments required pursuant to their settlement
26 agreements with the Debtor.

1 30. I am familiar with the development and refinement of the financial
2 projections provided in the Disclosure Statement and believe them to be reasonable
3 based on all of my familiarity with the Debtor's financial operations and accounts and
4 discussions with the Debtor's financial advisors. I believe that as of the Effective Date,
5 the Reorganized Debtor will be able to service its debt obligations and will not be left
6 with unreasonable low available capital to operate as a result of the Plan or any
7 transactions contemplated by the Plan.

8 **O. Payment of Fees (Section 1129(a)(12)).**

9 31. The Debtor has paid all Chapter 11 statutory and operating fees required
10 to be paid. Pursuant to Section 14.18 of the Plan, the Debtor will pay all fees required
11 under 11 USC § 1930(a) occurring after the Effective Date as and when they become
12 due.

13 **P. Continuation of Retiree Benefits (Section 1129(a)(13)).**

14 32. On or after the Effective Date, and Reorganized Debtor will continue to
15 pay retiree benefits on the same basis that it paid such benefits prior to and during its
16 Chapter 11 Case.

17 **Q. No Domestic Support or Related Obligations (Section 1129(a)(14)).**

18 33. This section does not apply to the Debtor.

19 **R. Individual Chapter 11 Case (Section 1129(a)(15)).**

20 34. This section does not apply to the Debtor.

21 **S. Applicable Non-bankruptcy Law To Be Followed Regarding Transfers**
22 **(Section 1129(a)(16)).**

23 35. To the extent of any transfers contemplated by the Plan, the Debtor
24 intends to comply with applicable non-bankruptcy law.

25 **T. Fair and Equitable; No Unfair Discrimination (11 USC § 1129(b)).**

26 36. The Plan does not unfairly discriminate between any creditors.

1 Furthermore, the Plan has been unanimously accepted by all classes of impaired
2 Claims that were entitled to vote. As for any classes that were not entitled to vote and
3 will receive no distribution (Classes 8, 11, and 13), the holders of Allowed Claims in
4 those classes have either filed a declaration in support of the Plan, or have voted as
5 members of Class 3, 3A, or 4 to accept the Plan.

6 I declare under penalty of perjury under the laws of the United States of America
7 and the state of Oregon that the foregoing is true and correct.

8 Dated this 6th day of July, 2011 at Portland, Oregon.

9 */s/ William L. Lockyear*
10 _____
11 William L. Lockyear

12 F:\CLIENTS\19620\004\PLAN & DISCLOSURE STATEMENT\P-DECLARATION LOCKYEAR (PLAN CONFIRMATION).DOC

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Society of Jesus, Oregon Province
Contributions to Settlement

<u>Entity</u>	<u>Amount</u>
Society of Jesus, Oregon Province (Debtor)	8,265,000
Pioneer Educational Society	4,790,000
Montana Catholic Missions	300,000
Society of Jesus, Alaska	200,000
Jesuit Novitiate of Sheridan	980,000
Jesuit Novitiate of St Francis Xavier	10,000
Missoula Jesuit Community	26,000
Jesuit High Jesuit Community	84,000
Colombiere Jesuit Community	20,000
Arrupe Jesuit Community	326,000
Capitol Hill Jesuit Community	95,000
Gonzaga Jesuit Community	233,000
Manresa Jesuit Community	73,000
Regis Community	20,000
Br. Joe Prince Community	26,000
Bellarmino Jesuit Community	44,000
Cardoner Jesuit Community	10,000
Rocky Mountain Missions	25,000
Oregon Province Apostolic Works Fund Charitable Trust and its Trustees (Arca Operum Apostolicorum)	1,000,000
Oregon Province Formation Fund Charitable Trust and its Trustees (Arca Foundationum)	9,510,000
Oregon Province Aged & Infirm Fund Charitable Trust and its Trustees (Arca Praevisionis)	17,991,000
Oregon Province Foundations Fund Charitable Trust and its Trustees (Arca Foundationum)	10,000
Jesuit Community of Gonzaga Univeristy, Inc.	4,000,000
Loyola Retreat Associations, S.J., Inc. dba the Jesuit Spirituality Center	2,000
The Oregon Province of the Society of Jesus as dba of Society of Jesus, Oregon Province	50,000
Mount St. Michael's Seminary of Philosophy and Science	10,000
	<u>48,100,000</u>

1 CERTIFICATE OF SERVICE

2 I, Janine E. Hume declare as follows:

3 I am employed in the county of Multnomah, state of Oregon; I am over the age of
4 eighteen years and am not a party to this action; my business address is 1000 SW
5 Broadway, Suite 1400, Portland, Oregon 97205-3089, in said county and state.

6 I certify that on July 6, 2011, I served, by **first class mail**, a full and correct
7 copy of the foregoing **DECLARATION OF WILLIAM L. LOCKYEAR** on the parties of
8 record, addressed as follows:

9 **See attached service list.**

10 I also certify that on **July 6, 2011**, I served the above-referenced document(s) on
11 all ECF participants as indicated on the Court's Cm/ECF system.

12 I swear under penalty of perjury that the foregoing is true and correct to the best
13 of my knowledge, information, and belief.

14 Dated: July 6, 2011

15
16 */s/ Janine E. Hume*

17 _____
18 Janine E. Hume, Legal Assistant

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