BEFORE THE
CALIFORNIA STATE ATHLETIC COMMISSION
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Arbitration of Contract Dispute Between: **ANDRE WARD,** **Boxer,** **and** **GOOSSEN TUTOR PROMOTIONS, LLC, INC.,** **Promoter.**	**ORDER OF THE ARBITRATOR**

DECISION

This matter came on regularly for hearing before the Executive Officer of the California State Athletic Commission, Andrew Foster, at 1:00 p.m. on April 9, 2014, pursuant to a Request for Arbitration filed by promoter, Goossen Tutor Promotions, (GTP). This matter was duly noticed and served pursuant to written notification to all parties i.e., First Amended Notice of Arbitration. (See Exh. 1, First Amended Notice of Arbitration.)

PARTIES

Promoter, GTP was represented by attorneys Bert Fields and James Molen. Also present from GTP were Dan Goossen and Benjamin Reder. The boxer, Andre Ward (Ward) did not personally attend the arbitration, however, Ward was represented by his counsel, Alan Rader. The Arbitrator was Andrew Foster, the Executive Officer of the Commission. Also present was James M. Ledakis, Supervising Deputy Attorney General, acting as legal counsel for the arbitrator.

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At the conclusion of the hearing, the matter was submitted. The arbitrator now makes the following findings:

LICENSE HISTORY OF BOXER AND PROMOTER

1. Ward is a professional boxer who was and is duly licensed by the California State Athletic Commission. Ward's promoter, GTP, was and is duly licensed by the California State Athletic Commission. Accordingly, both parties fall within the jurisdiction of the Commission. (See Exhs. 2 and 3, license certifications for Ward and GTP.)

JURISDICTION OF THE COMMISSION

2. Business and Professions Code section 18640, states:

> The commission has the sole direction, management, control of, and jurisdiction over all professional and amateur boxing, professional and amateur kickboxing, all forms and combinations of forms of full contact martial arts contests, including mixed martial arts, and matches or exhibitions conducted, held, or given within this state. No event shall take place without the prior approval of the commission. No person shall engage in the promotion of, or participate in, a boxing or martial arts contest, match, or exhibition without a license, and except in accordance with this chapter and the rules adopted hereunder.

3. Paragraph 17 of the Ward/GTP promotional agreement, entitled, "Forum Selection", states as follows:

> Any controversies and/or disputes concerning and/or arising under this Agreement and/or arising under the addendum shall be conducted in accordance with the California State Athletic Commission: Addendum to Promotional Contract, Sections C(1) and C(2), which is incorporated herein.[1]

4. "Addendum to Promotional Contract", Section C(1) and C(2), state in pertinent part:

> 1. That all contests or exhibitions of boxing which are conducted during the term of the promotional contract in the State of California shall in all respects be held in conformity with the laws of the State of California and the rules and regulations now or hereafter adopted, amended, or repealed by the commission. Said laws and rules are incorporated herein and made a part hereof by reference.

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[1] See Exhibit 11, Promotional Agreement between Ward and GTP dated April 6, 2011.

2. All controversies concerning the validity and/or enforceability of the promotional contract and this addendum shall be submitted for arbitration in the following manner:

> Within two (2) weeks after the origin of such dispute or controversy, either or both parties hereto may notify the commission of the existence of such dispute and of a desire and willingness to refer such dispute to arbitration, whereupon the commission shall by itself, or through another duly appointed by it, conduct a hearing at a time and place reasonably convenient to all interested parties and witnesses; notification of the time and place of such be given to all interested persons at their last known place of address. The parties hereto agree in the event of submission of any such controversy to arbitration that the decision of such arbitrator shall be final and binding upon the parties hereto and each of them agree to be bound thereby.

5. Paragraph 5 of the agreement, entitled, "Disability or Postponement", states as follows:

> (i) In the event that fighter shall become partially disabled and/or injured during the Term, and/or any extension thereof; or (ii) should Fighter become unable and/or unwilling for any reason whatsoever to participate in or train for any Bout offered to Fighter by Promoter; or (iii) should Fighter be prevented from participating in any Bout due to any athletic commission or boxing commission order affecting Fighter; or (iv) should the telecast of any Bout in which Fighter is participating in the main event be postponed or cancelled for any reason whatsoever; so (v) if Fighter desires to take an extended time off from his professional boxing career; or (vi) if Fighter shall fail for any reason whatsoever to participate in any Bouts offered to Fighter by Promoter; or (vii) if Fighter is in material breach or default hereunder; then in addition to any other rights and remedies Promoter may have, in the event of any of the preceding as set forth above in this section 5, the term of this agreement and addendum shall be extended by an additional subsequent addendum executed by the parties and approved by the Commission.[2]

PROCEDURAL HISTORY

6. On April 6, 2011, Ward entered into the subject three year Exclusive Promotional Rights Agreement (Promotional Agreement) with GTP commencing on Ward's first bout after the Super Six Tournament, which was September 8, 2012, where Ward TKO'd Chad Dawson for his 26th victory and retention of his middleweight title. All parties agreed on the record during the arbitration that September 8, 2012 was the official start date of the three year Promotional Agreement. Hence, with a start of September 8, 2012, the current expiration of the agreement is

[2] See Exhibit 11, Promotional Agreement between Ward and GTP dated April 6, 2011.

September 8, 2015. (See Exh. 11, Promotional Agreement between Ward and GTP dated April 6, 2011.)

7. On June 15, 2013, Ward requested arbitration pursuant to the April 6, 2011 promotional agreement before the Commission to have the agreement declared invalid and unenforceable. Ward's request for arbitration went forward as scheduled on June 25, 2013, resulting in a final decision dated June 28, 2013, wherein the Commission upheld the Promotional Agreement as valid and enforceable as to all parties. (See Exh 12-Arbitration Decision dated June 28, 2013)

8. On December 19, 2013, GTP requested that the State Athletic Commission arbitrate a second dispute arising out of the same promotional agreement dated April 6, 2011, between Ward and GTP. (See Exh. 1, First Amended Notice of Arbitration.) GTP alleges that Ward breached the promotional agreement by his disability and/or unwillingness to fight. As a result of Ward's legitimate disability and failure to cooperate in accepting fights, GTP requests that the promotional agreement be extended 16 months.

FINDINGS OF FACT

9. Andre Ward is 31 years old, 6'1", 168 pounds, and has a professional record of 27-0, with 14 knock outs. In 2011, he was named Sports Illustrated, Ring Magazine, and Boxing Writers Association fighter of the year. He is the consensus number 2 pound for pound fighter in the world; Ring Magazine Middleweight World Champion; WBA Super Middleweight World Champion; 2004 Olympic Gold Medalist and boxing commentator. (See Exh. 4, Andre Ward's Official Website.)

10. GTP was founded in 2002 by Dan Goossen, and is committed to the professional sport of boxing by promoting boxing events and utilizing long established and respected associations with television broadcast networks. (See Exh. 5, GTP Website.)

11. In June of 2013, Ward filed a request for arbitration with the Commission which was heard and decided. Afterwards, in December of 2013, GTP filed –the currently pending request for arbitration with the Commission. Thus, both Ward and GTP have invoked their rights under

the promotional agreement to have their disputes resolved by the Commission via binding arbitration.

12. Ward requests that the Commission stay this arbitration until the Los Angeles Superior Court rules on the parties pending cross-motions for determination of the validity of the Ward/GTP promotional agreement and the validity of the arbitration clause. Ward argues that the Arbitrator should defer rendering a decision as to the validity of the promotional agreement until after Ward's declaratory relief action can be concluded in Superior Court.

13. At the beginning of the arbitration hearing, Ward's counsel objected to the arbitration and declared that Ward would not participate in the proceedings. Accordingly, Ward did not personally attend the arbitration, nor did Ward offer any declarations in support of his counsel's arguments posited at the arbitration. However, Mr. Rader, counsel for Ward, did attend and introduced Exhibit 13, 10 pages of e-mail exchanges between Ward's manager, James Prince, and promoter Dan Goossen; Exhibit 14, a medical release signed by Dr. Michael Dillingham, which cleared Ward to fight on July 3, 2013; and lastly, Exhibit 15, a letter affirming that Ward was willing to fight.

14. In response, GTP offered the declaration of Dan Goossen along with several attached exhibits supporting its position. In addition, after having been duly sworn to testify, Mr. Goossen testified at length at the arbitration. Ward's counsel was given the opportunity to cross examine Mr. Goossen but he declined.

15. Ward's counsel argued as to the invalidity of the promotional agreement, the lack of the Arbitrator's jurisdiction to hear the first arbitration (filed by Ward in June of 2013), and the lack of the Arbitrator's jurisdiction to decide the current arbitration (filed by GTP in December of 2013.) Ward's counsel, present at all times during the arbitration, did a professional and persuasive job of advocating for Ward and against every position asserted by GTP at the arbitration.

WARD'S POSITION: THE PROMOTIONAL AGREEMENT IS VOID; THE FIRST ARBITRATION DECISION IS INVALID; AND THE ARBITRATOR LACKS JURISDICTION TO DECIDE THIS DISPUTE

16. Ward argues that the original promotional agreement is void because it allegedly violates Labor Code section 2855, which limits personal service contracts to seven years. Ward alleges that the promotional agreement exceeds seven years, and therefore it is void and any arbitration arising out of the agreement is likewise void and unenforceable. (See Exh. 7, Ward's Opening Arbitration Brief.)

17. Ward argues that this Commission can not legally rule on Ward's claim under Labor Code section 2855, as this issue is reserved for the Superior Court to decide and not for the Commission to decide.

18. In the alternative, Ward requests that if the Commission decides it has jurisdiction to decide the validity of the promotional agreement, then the Arbitrator should delay publication of its decision until after the Superior Court rules on the validity of the agreement in late August 2014.

19. Lastly, Ward argues that if the Arbitrator finds the agreement valid and enforceable, then the period of incapacity due to Ward's shoulder injury should not be more than six months. (See Exh. 7, Ward's Brief, page 10, lines 8-12.)

GTP'S POSITION: PROMOTIONAL AGREEMENT IS VALID, THE FIRST ARBITRATION DECISION IS VALID; AND THE ARBITRATOR HAS JURISDICTION TO DECIDE THIS DISPUTE

20. In response to Ward's argument that the promotional agreement is illegal and unenforceable, GTP asserts several arguments. First, on June 15, 2013, Ward exercised his right to arbitrate this very same promotional agreement before the very same Arbitrator. After a duly noticed arbitration, on June 28, 2013, the Commission held the agreement valid and enforceable. (See Exh. 12, Arbitrator's Decision dated June 28, 2013.)

21. Ward's prior June 28, 2013, arbitration brief was received into evidence without objection. The Arbitrator notes that conspicuously missing from Ward's Brief in that prior arbitration arising from the same contractual agreement is any argument that the promotional

agreement violated Labor Code section 2855. (See Exh. 16, Ward Arbitration Brief dated June 29, 2013.)

22. In 2011, Ward and Goossen entered into a three year Promotional Rights Agreement and Addendum, which was received into evidence Exhibit 11. Ward's manager, James Prince, was also a party to the agreement. Neither Square Ring, Inc. nor Showtime was a party to the Promotional Agreement.[3] A true and correct copy of the Promotional Agreement was attached to Dan Goossen's declaration. This agreement was also duly approved in writing by the Commission.[4] (See Exh. 11, Promotional Agreement between Ward and GTP, dated April 6, 2011, and Exh. 20, Goossen Declaration, par. 4.)

23. The promotional agreement between Goossen and Ward was negotiated by and through their respective counsel, and the agreement went through several drafts before being signed by the parties. In the negotiations, Ward stressed his increased value in the marketplace and used that asserted market value to force a substantial increase in his fees and to obtain a signing bonus. Ward demanded and received a $550,000 signing bonus plus a dramatic improvement in his fees per bout, with a minimum of $1,750,000 plus pay-per-view percentages. In his first bout under the subject new agreement, Ward received and retained $1.750 million dollars and in his second bout under the new agreement Ward received and retained $1.9 million,[5] for a total of $3.65 million. (See Exh. 20, Goossen Declaration, par. 5.)

24. Pursuant to section 2(a) of the Promotional Agreement, the agreement became effective upon Ward's "first bout immediately after [Ward's] participation in the

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[3] Ward asserts that a prior fight agreement, which involved Square Ring, Inc., Showtime and GTP, and the current agreement which only involves GTP constitutes a series of contracts that were reached while a prior agreement was in effect and that the combined term of both contracts exceeded seven years and the agreement violates Labor Code section 2855. The parties and circumstances surrounding the contracts were different, but Ward failed to prove his claim of combining the contracts because he offered no evidence to support his position at the arbitration. Further, Ward asserted this issue was reserved solely for the Superior Court.

[4] The declaration of Dan Goossen was received into evidence along with attachments as Exhibit 20, without objection; Goossen was present and available for cross examination by Ward's counsel, who declined to cross examine him, accordingly, Goossen's declaration is uncontroverted.

[5] The Commission notes that Ward received an additional $100,000 as an overweight penalty from Rodriguez.

Showtime Super Six Tournament" (Promotional Agreement par. 2(a)). That "first bout" occurred September 8, 2012. Accordingly, the 2011 Promotional Agreement took effect September 8, 2012, nine months after the 2009 multi-bout contract ended; and the contract year ran from September 8 of each year to September 8 of the next year. (See Exh. 20, Goossen Declaration, par. 6.)

25. In November 2012, Ward suffered a shoulder injury, for which he had surgery. This resulted in cancellation of a fight with Kelly Pavlik and resulted in Ward's inability to fight for a period of several months. (See Exh. 20, Goossen Declaration, par. 7.)

26. In June of 2013, while still recovering from shoulder surgery. Ward invoked the arbitration clause of the Promotional Agreement to commence an arbitration before the Commission, seeking to invalidate the agreement. As the 2013 arbitration brought to light, Ward's action to exclude Goossen from talking to HBO[6] had caused HBO to delay arranging for any Ward bout until his legal situation was cleared up. On June 28, 2013, after an evidentiary hearing, the arbitrator held that the Promotional Agreement was "valid." The arbitrator also found that Goossen can "still adequately represent Mr. Ward's interest and obtain bouts that would advance Mr. Ward's career and serve Mr. Ward's interest." (See Exh. 12, Arbitrator's Decision dated 6-28, 2013, and Exh. 20, Goossen Declaration, par. 8.)

27. After recovering from his injury and inactive as a boxer, Ward insisted on a "tune up" fight with a lesser opponent, but HBO would not pay him the amount he demanded for such a fight. Finally, that issue was resolved by Ward's agreement to fight Edwin Rodriguez. However, Rodriguez was not available until November 16, 2013. Thus, Ward's injury and surgery, plus his insistence on a "tune up" fight for money HBO wouldn't pay prevented his getting into the ring from November 2012 until November 2013, a total of 12 months. (See Exh. 20, Goossen Declaration, par. 9.)

[6] HBO is a rival premium network to Showtime, both TV networks derive substantial revenues from subscription television throughout the world. HBO negotiates with a fighter's promoter to determine a licensing fee payment to be paid to the promoter. Ward excluded GTP from HBO negotiations and this resulted in a delay in GTP acquiring future fights for Ward.

28. On December 9, 2013, Ward filed a lawsuit against GTP in Los Angeles Superior Court asking the Court to declare that the Promotional Agreement was invalid. Since filing that lawsuit, Ward and his manager, James Prince, have been relatively uncooperative in assisting Goossen in his efforts to procure Ward a fight. For example, in February 2014, having been advised that Ward was willing to fight Mikkel Kessler, Goossen obtained an offer for a Ward-Kessler fight. The offer was not accepted, but the evidence adduced at the arbitration hearing demonstrated that it was a good faith offer. (See Exh. 20, Goossen Declaration, par. 10.)

PURPOSE OF CALIFORNIA STATE ATHLETIC COMMISSION

29. The California State Athletic Commission's Mission Statement is to protect the public. Indeed, California Business and Professions Code section 18602, states:

> Protection of the public shall be the highest priority for the State Athletic Commission in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

STANDARD OF PROOF

30. The requisite standard of proof for arbitration is set forth in CCR 227(f), which provides, in pertinent part, that the party requesting arbitration has the burden of proof as follows:

> (a) A person who seeks arbitration of a contract dispute pursuant to Rule 221 shall send a written request for arbitration to the commission's headquarters and to the Office of the Attorney General at the address designated on the form. The request shall be on a form prescribed by the commission and shall contain all of the following information:
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> . . .
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> (f) The party requesting arbitration bears the burden of proving his or her case by a preponderance of the evidence. . .

REMEDIES/EVALUATION/CONCLUSION

1. Exclusive authority of the California State Athletic Commission to arbitrate promotional contracts exists by reason of the express language of the contract set forth in paragraph 17, of the April 6, 2011, "Promotional Agreement." (See Exhibit 11, Promotional Agreement between Ward and GTP dated April 6, 2011.)

2. Exclusive jurisdiction of the California State Athletic Commission to arbitrate this dispute is statutorily mandated under Business & Professions Code section 18640, and under California Code of Regulations, Title 4, Rule 220-Form of Contract, Rule 221, Provisions of Contract, and Rule 227, Arbitration Procedures, which governs arbitration of contract disputes between licensees. (See Exhibits 2 and 3, license certificates for Ward and GTP.)

3. Based on the above, the Arbitrator finds that the Commission has jurisdiction over it's licensees, that is Ward-a licensed boxer, and GTP-a licensed promoter, to hear and to resolve contract disputes between them.

4. The arbitrator finds that the promotional agreement dated April 6, 2011, was duly negotiated by the parties and their attorneys and that both Ward and GTP were intimately involved in the details. Both Ward and GTP appeared before the Commission with the promotional agreement, which was signed by the parties and approved in writing by the Commission. The agreement was again affirmed by Ward when he negotiated and accepted a $550,000 signing bonus from GTP, and thereafter collected 3.65 million dollars in purses for his next two bouts. After accepting the benefits of the promotional agreement, Ward sought to invalidate the agreement in his June 2013 arbitration request to the Commission. However, after Ward presented evidence and fully participated in the June 2013 arbitration, the Commission affirmed the validity of the agreement.

5. California law requires that "if a party believes the entire contractual agreement or a provision for arbitration is illegal, it must oppose the arbitration on this basis before participating in the process or forfeit the claim." *Cummings v. Future Nissan* (2005) 128 Cal.App. 4th 321, 328. (See Exh. 7, Ward's Brief, page 2, lines 4-15.)

6. The Commission finds that at Ward's June 2013 arbitration request, Ward failed to raise the issue that the promotional agreement was illegal, or that it allegedly violated Labor Code section 2855. Ward invoked the arbitration clause and fully participated in the June 2013 arbitration. For this reason, the Commission finds that like in *Cummings v. Future Nissan, supra*, 128 Cal.App. 4th 321, 328, Ward has forfeited the claim that the June 2013 arbitration and decision was illegal. Therefore, the June 2013 prior arbitration decision was and is valid, and this

present arbitration is likewise authorized, both via statutory authority as well as the provisions of the agreement itself.

7. The Commission re-affirms the validity of the agreement and now considers GTP's arbitration request to determine the appropriate amount of time to be added back onto the agreement to make up for the time of Ward's disability, or inability to fight.

8. Ward concedes that if the promotional agreement was valid, which the Commission hereby concludes, then the "issue of whether the agreement should be extended for any period due to incapacitating injury would properly be a subject for arbitration before the Commission." (See Exh. 7, Ward's Brief, page 10, lines 1-12.)

9. Whenever possible, and in the best interests of boxing, the Commission will carry out the expectations of the parties to a valid promotional agreement. In this instance, Ward expected to and did receive several million dollars for fighting. GTP expected to and did receive a percentage of fight revenues in exchange for arranging and promoting Ward's fights for three years. The Commission underscores the importance of honoring GTP's and Ward's expectations, and does so by affirming the terms and conditions of the promotional agreement upon which both parties have detrimentally relied.

10. Ward asserts that due to his shoulder injury, he was incapacitated for six months, and this the promotional agreement should only be extended six months. (See Exhibit 7, Ward's Brief, page 10, lines 1-12.) Ward was medically cleared on July 3, 2013. (See Ward's Exhibit 14, Medical Clearance.) Accordingly, Ward asserts the promotional agreement should end on March 8, 2016, which is six months added to the current expiration of September 8, 2015.

11. The Commission holds that GTP has met its burden of proof to establish by a preponderance of the evidence that the contract is valid, and that time should be added to the expiration of the promotional agreement. According to GTP, after Ward's November 2012 shoulder injury, and after receiving his medical clearance in July 2013, Ward demanded a "tune up fight" with a lessor opponent. This resulted in a significant delay because HBO would not pay Ward the high dollar purse for a lesser opponent. After exercising due diligence to find Ward a "tune up fight", GTP arranged for Ward to fight Edwin Rodriguez on November 16, 2013. GTP

asserts that Ward's high dollar demand for a "tune up fight", resulted in a one year delay from November 2012 (shoulder injury) to November 2013, when Ward fought Rodriguez. Further, GTP asserts that since Ward filed his lawsuit in Los Angeles Superior Court in December 2013, Ward has been uncooperative in working with GTP to arrange fights. Accordingly, GTP requests an additional four months from December 2013 to April 2014, for a total of 16 months. (See Exh. 20, Goossen Declaration, paragraphs 4-7.)

12. The Commission finds that Ward suffered a shoulder injury in November 2012, and that he was unable and/or unwilling to fight again until November 16, 2013, when he accepted the Rodriguez fight. Therefore, (12) twelve months shall be added to the agreement. In addition, based upon the e-mail communications between Ward's manager and Dan Goossen, and the direct and uncontroverted testimony of Dan Goossen, the Commission finds that Ward was uncooperative with GTP. According to Dan Goossen's testimony, from late December 2013, after Ward filed his civil lawsuit against GTP, Ward refused to cooperate with GTP's promotional efforts to contract a future fight. Based thereon, the Commission finds that from December 2013 through April 9, 2014, the date of Goossen's testimony and the date of this arbitration, Ward was uncooperative with GTP. Therefore the Commission adds an additional four months to the promotional agreement, for a total of 16 months.

13. Lastly, the Commission finds that Ward's recovery from shoulder surgery would require a reasonable amount of time for Ward to get back into fighting shape after his medical clearance. The Arbitrator recognizes that it takes many weeks to properly train for a championship fight and concludes that training for a fight counts as time spent on a fighter's agreement. Therefore, the Arbitrator grants Ward credit for two months of training towards his fight with Rodriguez, thereby deducting 2 months from the 16 month extension, resulting in a 1 month extension to the promotional agreement. The Commission finds that the promotional agreement, which started on September 8, 2012 and would otherwise have expired on September 8, 2015, is extended, and shall now expire on November 8, 2016.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is made:

The arbitration is resolved in favor of validating the promotional agreement dated April 6, 2011 between Goossen Tutor Promotions and Andre Ward;

Based upon the incapacity and/or uncooperativeness of Andre Ward to fight, (14) fourteen months shall be added to the promotional agreement's original expiration date of September 8, 2015, thereby extending the promotional agreement's expiration to November 8, 2016.

This decision shall become effective on April 25, 2014.

DATE: April 25 2014

Andrew Foster, Executive Officer
California State Athletic Commission

SD2014706539

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Goosen Tutor Promotions, LLC vs. Andre Ward**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 30, 2014, I served the attached **ORDER OF THE ARBITRATOR** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Bertram Fields, Esq.
Greenberg Glusker Fields Claman & Machtinger LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, CA 90067-4590

Alan Rader, Esq.
Law Offices of Alan Rader
1999 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067-6035

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 30, 2014, at San Diego, California.

N. Amansec	
Declarant	Signature

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