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Attorneys for Objector/Respondents
Kinch Hoekstra and Edward Keonjian, Trustees of the
L.L. Nunn Trust and Directors of the Deep Springs
Corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF INYO

In re the Matter of the L.L. Nunn Trust for the benefit of Deep Springs College under the Deed of Trust dated November 5, 1923,	Case No. SI CV PM 1253232 **DECLARATION OF JOSEPH C. LIBURT IN OPPOSITION TO PETITION FOR MODIFICATION OF PRELIMINARY INJUNCTION** **DATE: April 26, 2013** **TIME: 9:00 AM** **DEPT: 4** **JUDGE: Hon. Dean T. Stout** ACTION FILED: February 6, 2012

I, Joseph C. Liburt , declare:

1. The facts set forth in this declaration I know to be true of my own personal knowledge, except where such facts are stated to be based on information and belief, and those facts I believe to be true. If called to testify in this matter, I could and would testify competently to the matters set forth in this declaration.

2. Attached hereto as Exhibit A is a true and correct copy of an email I sent to Petitioner's counsel Christopher Campbell on December 23, 2012, and his email response to me the same day.

3. Attached hereto as Exhibit B is a true and correct copy of an email sent by Petitioner's counsel Jon Michaelson on March 25, 2013 containing the Trustees' resolution delegating decision-making authority to the largely student-run Applications Committee.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of April, 2013 in Irvine, California.

Joseph C. Liburt

EXHIBIT A

From: Chris Campbell [mailto:CCampbell@bakermanock.com]
Sent: Sunday, December 23, 2012 9:36 AM
To: Liburt, Joseph C.
Cc: 'Heather M. Hoekstra'
Subject: RE: Notice of meetings

Thank you Joe,

I am not aware of any plan to have any board meetings prior to the regularly scheduled spring meeting. I will make sure that you and Kinch receive timely notice if and when any additional meeting is planned. Certainly if there is any proposal to take action to remove any board member I agree that it needs to be discussed at a properly noticed meeting of the entire board.

Chris

From: Liburt, Joseph C. [mailto:jliburt@orrick.com]
Sent: Sunday, December 23, 2012 1:33 AM
To: Chris Campbell
Cc: 'Heather M. Hoekstra'
Subject: Notice of meetings

Chris,
I understand that Dave Hitz contacted Kinch Hoekstra on Saturday and that they spoke on the phone. I further understand that Hitz told Kinch that if Kinch does not resign from the Board, Hitz will proceed with a vote to have him removed. Kinch told Hitz that he will not resign, and that he believes as a matter of fiduciary duty he cannot resign under the current circumstances.
I write to you in your role as the General Counsel of Deep Springs as well as Dave Hitz's legal counsel in the litigation. Please be advised that if Dave Hitz or any other member of the Board calls a meeting of the Board of Directors and/or the Trustees, Kinch must receive proper notice of such meeting. Since Kinch is currently in Illinois for the holiday, any notice to Kinch should be sent to him at both of his email addresses:
Kinch.hoekstra@gmail.com
Hoekstra@berkeley.edu

To make sure that Kinch receives notice of any meeting, I also request that you provide me with notice of any meeting so that I can make sure Kinch receives the notice.

To avoid any confusion about the purpose of this email, I am not suddenly asking for notice of any Litigation Committee meetings, which I assume have been occurring without notice to Kinch all along. Rather, I am insisting on proper notice for any meeting for which Kinch would normally receive notice, including but not limited to any meeting relating to his removal.

As with "Plan B", so with this action to remove Kinch: it will be without legal basis, will be entirely in bad faith, and will be done only to avoid the legal obligations of the Board or simply to harass Kinch. We will seek all appropriate remedies for legally frivolous actions.

Joe

ORRICK

JOE LIBURT
Partner

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EXHIBIT B

K&L GATES

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March 25, 2013

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Via Email (jliburt@orrick.com)

Joseph C. Liburt
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Re: In re the Matter of the L.L. Nunn Trust for the benefit of Deep Springs College – Transgender Applicant

Dear Joe:

Further on the subject of the transgender applicant, over this past weekend the Trustees of Deep Springs College Corporation as well as members of the Application Committee were advised along the lines set forth in my letter to you dated March 15, 2013. Yesterday, the Trustees adopted the following resolution:

> WHEREAS, the Board of Directors of Deep Springs Corporation considered the current law and advice of counsel concerning issues to be addressed in the review of applications by transgender applicants;
>
> THEREFORE, the Board of Directors hereby resolves as follows:
>
> An applicant who self-identifies as male and whose identification has been stable and consistent over time shall be considered eligible for admission under the single sex admissions policy. The Board delegates to the Application Committee the task of determining whether an applicant's identification as male meets the standards set forth.

You and your clients may also be interested to know that the Trustees also formally commended the Application Committee for its outstanding performance this year.

The work of the Application Committee is, of course, not yet concluded and final admission decisions by the College not yet made. Invitations to attend Deep Springs will be extended on April 1st. The deadline for acceptance is May 1st. As a result of these fast

approaching dates, we – but more importantly the College – would appreciate hearing from you immediately in the event you have questions or anything further of substance to say about the possible admission of the transgender applicant.

Sincerely,

Jon Michaelson

JM/dl

cc: Heather M. Hoekstra, Esq. (via Email)
Christopher L. Campbell, Esq. (via Email)