KAMALA D. HARRIS
Attorney General of California
TANIA M. IBANEZ
Senior Assistant Attorney General
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Attorneys for the Attorney General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF INYO

IN 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. SICVPB 12-53232 **OPPOSITION TO EX PARTE APPLICATION FOR LEAVE TO SERVE NOTICE TO APPEAR ON SHORTENED TIME; DECLARATION OF WENDI HORWITZ; AND DECLARATION OF SHARON OLIVER** Ex Parte Date: May 8, 2014 Time: 9:00 a.m. Dept: 4 Hon. Dean T. Stout

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The Attorney General hereby submits her opposition to the Ex Parte Application to shorten the time to serve a Notice to Appear at Trial pursuant to Code of Civil Procedure section 1987, subdivision (b). Counsel for Kinch Hoekstra and Edward Keonjian (Respondents) have failed to show good cause why the testimony of the Attorney General and/or that of Senior Assistant Tania M. Ibanez is necessary or meets the legal standards to seek the testimony of top

governmental officials.

In order to subpoena a top governmental official, Respondents have the burden of affirmatively demonstrating that "compelling reasons" exist to justify such action. Respondents must show (1) that the official has "direct personal factual information pertaining to material issues in an action," (2) that "the information to be gained from such testimony is not available through any other source," and (3) "such a proceeding is essential to prevent prejudice or injustice to the party who would require it." Respondents have not and can not meet their burden. Absent a clear showing, Attorney General Kamala D. Harris and Senior Assistant Attorney General Tania M. Ibanez should not be subject to testify.

In order to require testimony from opposing counsel, Respondents have the burden of affirmatively demonstrating that "extremely good cause" exists to justify such testimony. Respondents must show (1) that there are no "other practicable means to obtain the information" sought, and (2) such testimony is crucial to the case." Respondents have not and can not meet their burden. Absent a clear showing, Attorney General Kamala D. Harris and Senior Assistant Attorney General Tania M. Ibanez should not be subjected to testify.

Requiring such testimony will only serve to impede these officials in the conduct of their essential duties, contrary to the public interest. Such officials are protected from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.

FACTUAL BACKGROUND

On or about April 25, 2014, Respondent's counsel attempted to serve two documents entitled "Civil Subpoena For Appearance at Trial or Hearing" by email and by messenger. (Horwitz Decl. ¶ 2.) The civil subpoenas were addressed to the Attorney General Kamala Harris and Senior Assistant Attorney General Tania M. Ibanez (Ibanez). (Horwitz Decl. ¶ 3.) The two civil subpoenas were defective under Government Code section 68097.2, in that they failed to

provide for any witness fees. (Horwitz Decl. ¶ 3.) The defective subpoenas were served by email on the same day that the Attorney General consented to the Trust Modification. (Horwitz Decl. ¶ 2.)

On April 28, 2014, Deputy Attorney General Wendi Horwitz met and conferred with respondent's counsel Eric M. George. (Horwitz Decl. ¶ 4.) Ms. Horwitz explained to Mr. George that in order to serve the Attorney General or Ms. Ibanez, respondents would need to prove "compelling reasons" showing (1) that the official has "direct personal factual information pertaining to material issues in an action," (2) that the information to be gained is not available through any other source, and (3) that "such a proceeding is essential to prevent prejudice or injustice to the party who would require it." (Horwitz Decl. ¶ 4.) The letter attached to the subpoenas failed to address those requirements and did not meet the legal standards for requiring the testimony of top governmental officials or opposing counsel. Rather Mr. George's letter sought testimony from the "Attorney General's representatives as to the reasons, circumstances and due diligence underlying the Attorney General's eleventh-hour, purported consent." (Horwitz Decl. ¶4.) Ms. Horwitz explained to counsel that any such testimony would be privileged under the Attorney Client Privilege under Evidence Code, sections 950-955, the Work Product Privilege under Code of Civil Procedure, section 2018.030, and the Official Information Privilege under Evidence Code, section 1040. Such testimony was also privileged under the Deliberative Process Privilege. (Horwitz Decl. ¶ 4.) After the meet and confer, on April 29, 2014, Mr. George withdrew his subpoena without prejudice. (Horwitz Decl. ¶ 5; Exh. A.)

On or about April 29, 2014, Counsel for Petitioners, Christopher Campbell contacted the Attorney General's Office and advised that Mr. George was claiming that the Consent provided by the Attorney General on April 25, 2014, was defective because the Attorney General was not a party to the action and this was allegedly required pursuant to Government Code section 12591. (Horwitz Decl. ¶ 9) Later on the same day, Mr. Campbell advised that the Court on its own motion joined the Attorney General as an indispensable party. (Horwitz Decl. ¶ 9) On April 30, 2014, the Attorney General's Office was served with Notice of Entry of Order Joining the Attorney General as an Indispensable Party. (Horwitz Decl. ¶ 9)

The Attorney General's Office prepared an Answer and Consent May 1, 2014. The Answer and Consent were to be filed by overnight Federal Express on May 1, 2014, but Federal Express failed to pick up on May 1, 2014, because of a demonstration. (Oliver Decl.¶s. 2-4.)

Respondent's counsel now seeks to call the Attorney General and/or Senior Assistant Attorney General Ibanez for trial testimony. As set forth below, the Exparte Application fails to demonstrate compelling reasons to compel the testimony of either the Attorney General or Ms. Ibanez. Counsel is aware of what information the Attorney General's Office received in arriving at the decision to consent.

ARGUMENT

I.

RESPONDENT'S REQUEST TO SHORTEN NOTICE TO REQUIRE TESTIMONY IS UNREASONABLE

Counsel for Respondents made arguments before this Court that the Attorney General was an indispensable party, when the Court ordered that the Attorney General was an indispensable party, counsel for respondents attempted to have the Attorney General withdraw the Consent. Having not obtained a withdrawal of the Consent, counsel now seeks to call the Attorney General and Senior Assistant Attorney General Ibanez to Trial.

Respondents argue that they need to know what the Attorney General's Consent was based on. Counsel is well aware of what the records relied on by the Attorney General's staff. (Horwitz Decl. ¶ 6; Exhs B &C.) Counsel served Public Act Requests seeking this information on February 14, 2014 and again on April 16, 2014. (Horwitz Decl. ¶ 6; B & C.) The Attorney General's Office responded to the Public Act Requests on February 20, 2014 and on April 25, 2014, producing all of the records and communications received from Petitioners in their request for a consent. (Horwitz Decl. ¶ 6.) Respondent's counsel was also served with all of the submissions made by Petitioner's Counsel Mr. Campbell on March 3, 2014 in support of the request that the Attorney General consent. (Horwitz Decl. ¶ 6.) Respondents were given an equal opportunity to respond, and provide materials in support of their request that the Attorney General not consent. (Horwitz Decl. ¶ 6.) Respondents provided their arguments and materials

in support of their request on March 21, 2014. (Horwitz Decl. ¶ 7.) While Respondent's counsel claims that the Attorney General consented on the eleventh hour, no promises were ever made by the Attorney General's Office that a decision would be made in time for the trial date. In fact, Ms. Ibanez informed Mr. Bibbero that she could not guarantee that the Attorney General would make a decision by the time Mr. Campbell proposed. (Horwitz Decl. ¶ 7.)

It will be a hardship for Senior Assistant Attorney General Ibanez to appear at Court given her battle with breast cancer and ongoing chemotherapy treatment. (Horwitz Decl. ¶ 8.) Respondents on the other hand have access of all of the records relied on by the Attorney General's Office in making the decision to consent.

II.

RESPONDENTS HAVE NOT AND CAN NOT MET THEIR BURDEN OF SHOWING "COMPELLING CIRCUMSTANCES" THAT WOULD SUBJECT THE ATTORNEY GENERAL AND SENIOR ASSISTANT ATTORNEY GENERAL, TOP GOVERNMENTAL OFFICIALS, TO TESTIFY

Attorney General Kamala D. Harris is the chief law officer for the State of California (Cal. Const., art. V, §13) and the head of the California Department of Justice (Govt. Code, §§12510, and 15000.) The Attorney General is a top governmental official.[1] Senior Assistant Attorney General Tania M. Ibanez is the head of the Charitable Trusts Section in the California Department of Justice and also a top governmental official. California courts have established the relevant legal standard governing the deposing and testifying of top governmental officials and agency heads. The general rule is that the heads of agencies and other top governmental executives are normally not subject to depositions or having to testify. (*Nagle v. Superior Court* (1994) 28 Cal.App.4th 1465, 1467-1468 citing *Deukmejian v. Superior Court* (1983) 143 Cal.App.3d 632, 633; *State Board of Pharmacy v. Superior Court* (1978) 78 Cal.App.3d 641, 644-645; *Civiletti v.*

[1] Judicial notice shall be taken of the following: . . . (f) Facts and propositions of generalized knowledge that are so universally known that they cannot reasonable be the subject of dispute." (Evid. Code, § 451, subdiv. (f).)

Municipal Court (1981) 116 Cal.App.3d 105, 110.) "A highly placed public officer should not be required to give a deposition in his official capacity in the absence of '*compelling reasons.*'" (*California State Board of Pharmacy v. Superior Court, supra*, 78 Cal.App.3d, at p. 644-645 [internal citations omitted].) **The rule applies to officials summoned to testify as third parties as well as those who are named defendants. (*State Board of Pharmacy v. Superior Court, supra,* 78 Cal.App.3d at p. 643.)**[2]

The underlying rationale for this rule is that ". . . an official's time and the exigencies of his everyday business would be severely impeded if every plaintiff filing a complaint against an agency head, in his official capacity, were allowed to take his oral deposition. Such procedure would be contrary to the public interest, plus the fact that ordinarily the head of an agency has little or no knowledge of the facts of the case." (*Nagle v. Superior Court, supra* 28 Cal.App.4th at p. 1468 [internal citation omitted].) "If the head of a government agency were subject to having his deposition taken concerning any litigation affecting his agency . . . we would find that heads of government departments . . . would be spending their time giving depositions and would have no opportunity to perform their functions. [¶] . . . It would be oppressive and vexatious to require [the head of a government agency] to submit to interrogation that might last for several hours and that would, of course, disturb government business." (*State Board of Pharmacy v. Superior Court, supra*, 78 Cal. App.3d, at pp. 644-645, quoting *Capitol Vending Co. v. Baker* (D.D.C. 1964) 36 F.R.D. 45, 46.) "It is patently in the public interest that the Attorney General be not unnecessarily hampered or distracted in the important duties cast upon him by law." (*State Board of Pharmacy v. Superior Court, supra*, 78 Cal. App.3d, at p. 644.)

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[2] Similarly, "extremely good cause" must be shown by the party seeking testimony from opposing counsel. (*Carehouse Convalescent Hosp. v. Sup.Ct. (Sims)* (2006) 143 Cal.App. 4th 1558, 1562, (emphasis added) citing *Spectra-Physics, Inc. v. Sup.Ct.* (1988) 198 Cal.App.3d 1487, 1493 [internal citations omitted].)

When the right to depose or seek the testimony of a top governmental official or agency head is challenged, the party seeking testimony from the official bears the burden of demonstrating that "compelling circumstances" exist to justify seeking testimony from the official. (*Civiletti v. Municipal Ct.* (1981) 116 Cal.App.3d 105, 110; see also *State Bd. of Pharmacy, supra*, 78 Cal.App.3d, at p. 644-645.) The party seeking testimony from a top governmental official must show that the official has "direct personal factual information pertaining to material issues in an action," and that "the information to be gained from such a deposition is not available through any other source." (*Nagle, supra*, 28 Cal.App.4th, at p. 1468 [internal citations omitted].) The proponent must also make a "clear showing" that the official's testimony "is essential to prevent prejudice or injustice" to the party who would require it. (*Civiletti, supra*, 116 Cal.App.3d, at p. 110; *State Bd. of Pharmacy, supra*, 78 Cal.App.3d, at p. 645.)

As set forth in the Respondents ex parte application, Respondents are seeking testimony from the Attorney General or Senior Assistant Attorney General "how the interests of unnamed future beneficiaries will be impacted, and what the State is doing to protect their interests" and "to testify about the consent filed by the Attorney General to change the L.L. Nunn Trust."

First, Respondents have not and can not show that the Attorney General has direct personal factual information pertaining to the filing of the "Consent Of California Attorney General To Trust Modification Under Probate Code §15403" (Consent) or "how the interests of unnamed future beneficiaries will be impacted, and what the State is doing to protect their interests."

While Respondents seek to find out on how the interests of unnamed future beneficiaries will be impacted, and what the State is doing to protect their interests, any personal information concerning the filing of the Consent would be privileged under the Attorney Client Privilege

under Evidence Code, sections 950-955, the Work Product Privilege under Code of Civil Procedure, section 2018.030, and the Official Information Privilege under Evidence Code, section 1040. Such testimony is also privileged under the Deliberative Process Privilege. The deliberative process privilege exempts from disclosure materials that would expose an agency's decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions. Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is actually related to the process by which policies are formulated or, if it is inextricably intertwined with policymaking processes. (*Times Mirror Co.* v. *Sup. Court* (1991) 53 Cal.3d 1325.)

Second, Respondents have not and can not show that the information to be gained from the Attorney General's testimony is unavailable through any other source. Presumably, the parties are addressing how the interests of unnamed future beneficiaries will be impacted, and what the State is doing to protect their interests. The only action taken by the Attorney General's Office was the filing of the Consent.

Third, Respondents have not and can not show that the Attorney General's testimony is essential to prevent prejudice or injustice to them. There has been no prejudice or injustice to the Respondents. Again, any testimony regarding the filing of the Consent is privileged and "how the interests of unnamed future beneficiaries will be impacted, and what the State is doing to protect their interests" does not require testimony from the Attorney General's Office. This Court is applying the legal standards appropriate under the Probate Code and California law.

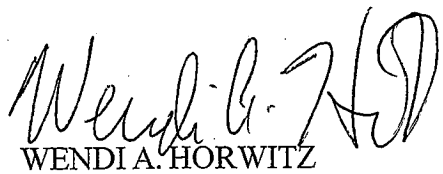
Respondents have not and can not clearly demonstrate "compelling circumstances" required in order to overcome the general rule that top governmental officials are not subject to testify. Absent such findings, it is an abuse of discretion to require such testimony. (*Civiletti v. Superior Court, supra*, 116 Cal.App.3d. at p. 110.) Compliance with their request would subject

the Attorney General and Senior Assistant Attorney General to unreasonable and oppressive demands to the detriment to the conduct of public business on behalf of the People of the State of California.

Dated: May 7, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
TANIA M. IBANEZ
Senior Assistant Attorney General
WENDI A. HORWITZ
Deputy Attorney General



WENDI A. HORWITZ
Deputy Attorney General
Attorneys for the Attorney General

DECLARATION OF WENDI A. HORWITZ

I, WENDI A. HORWITZ, declare as follows:

1. I am a Deputy Attorney General with the Los Angeles Office of the Attorney General. I have been a Deputy Attorney General for over twenty- five years. The matters stated in this declaration are stated on my own personal knowledge. If called as a witness, I could and would testify competently and consistently thereto.

2. On or about April 25, 2014, Respondent's counsel attempted to serve two documents entitled "Civil Subpoena For Appearance at Trial or Hearing" by email to Senior Assistant Attorney General Tania M. Ibanez and a cover letter. The two civil subpoenas were served by messenger on April 28, 2014.

3. One civil subpoena was addressed to the Attorney General Kamala Harris, and the other was addressed to Senior Assistant Attorney General Tania M. Ibanez. The two civil subpoenas were defective under Government Code section 68097.2, in that they failed to provide for any witness fees of $275 for a state employee.

4. On April 28, 2014, I contacted respondent's counsel Eric M. George and indicated that my office would be filing a Motion to Quash if the subpoenas were not withdrawn. I explained to Mr. George that in order to serve the Attorney General or Ms. Ibanez, respondents would need to prove "compelling reasons" showing (1) that the official has "direct personal factual information pertaining to material issues in an action," (2) that the information to be gained is not available through any other source, and (3) that "such a proceeding is essential to prevent prejudice or injustice to the party who would require it." In addition, I explained to Mr. George that any such testimony would be privileged under the Attorney Client Privilege under Evidence Code, sections 950-955, the Work Product Privilege under Code of Civil Procedure, section 2018.030, the Official Information Privilege under Evidence Code, section 1040, and the Deliberative Process Privilege. I explained that the civil subpoenas were defective under Government Code section 68097.2, in that they failed to provide for any witness fees of $275 for a state employee.

5. During my meet and confer conference on April 28, 2014, Mr. George indicated that he would withdraw the subpoena for the Attorney General. Mr. George indicated that he sought testimony concerning whether Ms. Ibanez had talked to any third parties. I indicated that I would get back to him on whether Ms. Ibanez had spoken to any third parties. On April 29, 2014, I called Mr. George and told him that Ms. Ibanez did not speak to any third parties, and Mr. George told me that he was withdrawing both subpoenas. On April 29, 2014, I received an email from Mr. George withdrawing the subpoenas without prejudice. Attached as Exhibit A is a true and correct copy of his email.

6. The Motion to Shorten the time to serve a Notice to Appear suggests that Counsel seeks the examine the Attorney General and/or Ms. Ibanez to determine what information they relied on in filing the Consent on behalf of the undetermined beneficiaries of Deep Springs College. Yet respondents have sought this information and received all of the responsive records through two Public Act Requests. Counsel served Public Act Requests seeking this information on February 14, 2014 and again on April 16, 2014. Attached as Exhibit B and C are true and correct copies of counsel's request. The Attorney General's Office responded to the Public Act Requests on February 20, 2014 and on April 25, 2014, producing all of the records and communications received from Petitioners in their request for a consent. Respondent's counsel was also served by email with all of the submissions made by Petitioner's Counsel Mr. Campbell on March 3, 2014 in support of the request that the Attorney General consent.

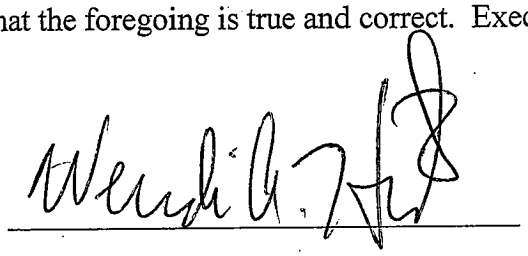
7. Respondents were given an equal opportunity to respond, and provide materials in support of their request that the Attorney General not consent. Respondents provided their arguments and materials in support of their request on March 21, 2014. While Respondent's counsel complains that the Attorney General consented on the eleventh hour, no promises were ever made by the Attorney General's Office that a decision would be made in time for the trial date. In fact, Ms. Ibanez informed Mr. Bibbero on March 21, 2014, that she could not guarantee that the Attorney General would make a decision by the time Mr. Campbell had proposed in his request. Attached as Exhibit D is a true and correct copy of an email from Ms. Ibanez to

respondent's counsel dated March 21, 2014, wherein Ms. Ibanez makes no promises on when the Attorney General's Office would be making a decision.

8. It would be an extreme hardship for Ms. Ibanez to travel to Inyo County given her medical condition. Ms. Ibanez is currently battling breast cancer and is undergoing chemotherapy treatments.

9. On or about April 29, 2014, Counsel for Petitioners, Christopher Campbell contacted the Attorney General's Office and advised that Mr. George was claiming that the Consent provided by the Attorney General on April 25, 2014, was defective because the Attorney General was not a party to the action and this was allegedly required pursuant to Government Code section 12591. Later on the same day, Mr. Campbell advised that the Court on its own motion joined the Attorney General as an indispensable party. On April 30, 2014, the Attorney General's Office was served with Notice of Entry of Order Joining the Attorney General as an Indispensable Party.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 7, 2014, at Los Angeles, California.



WENDI A. HORWITZ

."

EXHIBIT A

Tania Ibanez

From: Eric M. George <egeorge@bgrfirm.com>
Sent: Tuesday, April 29, 2014 5:48 PM
To: Wendi A. Horwitz; Ira Bibbero
Subject: Re: If you have time after court today, please give me a call. Thanks. Wendi

Wendi - Thanks for your professionalism and for being so responsive. Per our discussion, we are withdrawing, without prejudice, the subpoenas to your office. I will email Tania later tonight, and hope to speak with her soon. Regards, Eric

---

From: Wendi A. Horwitz [mailto:Wendi.Horwitz@doj.ca.gov]
Sent: Tuesday, April 29, 2014 03:03 PM
To: Eric M. George
Subject: If you have time after court today, please give me a call. Thanks. Wendi

Wendi A. Horwitz
Deputy Attorney General
Department of Justice
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
213-897-2178
wendi.horwitz@doj.ca.gov

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EXHIBIT B

Social Networks

February 14, 2014

Form submission from: Online Request Form

Submitted on Fri, 02/14/2014 - 17:22
Submitted by anonymous user: [74.11.122.130]
Submitted values are:

--Your Information--
First Name: Ira
Middle Initial: G
Last Name: Bibbero
Email Address: ibibbero@bgrfirm.com
Confirm Email Address: ibibbero@bgrfirm.com
Phone Number: 310-274-7100
Address: 2121 Avenue of the Stars
City: Los Angeles
State: California
Zip Code: 90067

--Record Requested--
Record Description:
1. All communications with the Trustees of the L.L. Nunn Trust (or anybody acting on their behalf) regarding either (i) modification of the L.L. Nunn Trust to permit the admission of female students at Deep Springs College, or (ii) whether the trust document establishing the L.L. Nunn Trust permits the admission of female students at Deep Springs College.

2. Any reports, memoranda of other such documents stating or discussing whether the Attorney General consents or will consent to modification of the L.L. Nunn Trust instrument to permit Deep Springs College to admit female students.
Comments: This issue is currently being litigated in Inyo County Superior Court, Case No. SICVPB 12-53232, In re the Matter of the L.L. Nunn Trust fo the benefit of Deep Springs College under the Deed of Trust dated Novembe 5, 1923.

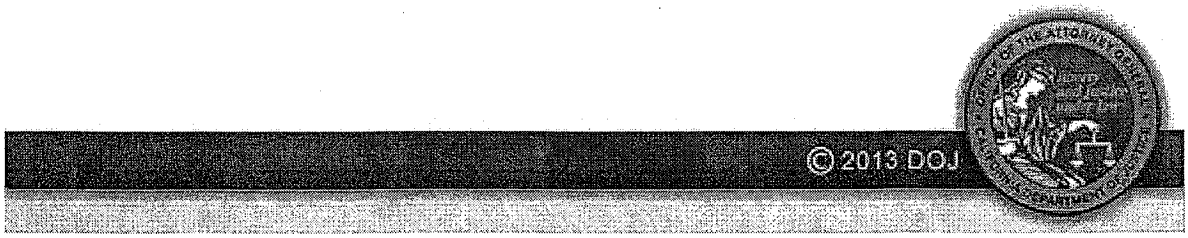

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EXHIBIT C

Social Networks

April 16, 2014

Form submission from: Online Request Form

Submitted on Wed, 04/16/2014 - 12:19
Submitted by anonymous user: [74.11.122.130]
Submitted values are:

--Your Information--
First Name: Ira
Middle Initial: G
Last Name: Bibbero
Email Address: ibibbero@bgrfirm.com
Confirm Email Address: ibibbero@bgrfirm.com
Phone Number: 310-274-7100
Address: 2121 Avenue of the Stars, Suite 2400
City: Los Angeles
State: California
Zip Code: 90067

--Record Requested--
Record Description:
1. All communications with the Trustees of the L.L. Nunn Trust (or anybody acting on their behalf) regarding either (i) modification of the L.L. Nunn Trust to permit the admission of female students to Deep Springs College, or (ii) whether the trust document establishing the L.L. Nunn Trust permits the admission of female students at Deep Springs College.

2. Any reports, memoranda or other such documents stating or discussing whether the Attorney General consents or will consent to modification of the L.L. Nunn Trust instrument to permit Deep Springs College to admit female students.
Comments: This request is for an update to the Department's response provided to my February 14, 2014 request. The response was sent on February 20, 2014. I do not require a copy of my communication with Tania M. Ibanez between March 3 and April 1, 2014, nor do I require any documents which have been served on the Department in the course of the litigation of In re Matter of the L.L. Nunn Trust, Inyo County Superior Court Case No. SICVPB 12-53232. Thank you.

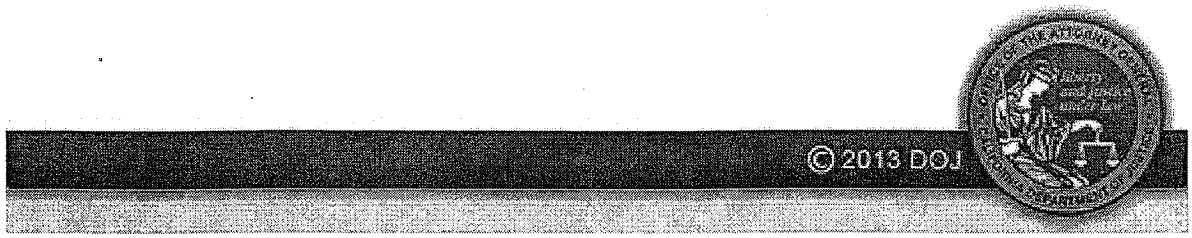

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EXHIBIT D

Tania Ibanez

From: Tania Ibanez
Sent: Tuesday, March 04, 2014 11:14 AM
To: 'Ira Bibbero'
Cc: Eric M. George; Liburt, Joseph C. (jliburt@orrick.com); heather.miya@gmail.com; Claudia Bonilla
Subject: RE: Deep Springs College

March 21 is fine. I cannot guarantee that the AG will make a decision by the time Mr. Campbell is proposing. But at least from my end, I would like to give the AG information by the end of this month that fairly represents both parties views on this matter.

Tania M. Ibanez
Senior Assistant Attorney General
California Attorney General's Office
Charitable Trusts Section
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
(213) 897-0218

From: Ira Bibbero [mailto:ibibbero@bgrfirm.com]
Sent: Tuesday, March 04, 2014 11:10 AM
To: Tania Ibanez
Cc: Eric M. George; Liburt, Joseph C. (jliburt@orrick.com); heather.miya@gmail.com; Claudia Bonilla
Subject: RE: Deep Springs College

Ms. Ibanez,

Thank you for your e-mail and for the opportunity to respond to Mr. Campbell's February 28, 2014 letter, which we received only yesterday when you forwarded it to us. We note that you advised Mr. Campbell on March 14, 2013 that he would be required to submit an "extensive package to the AG" and that approval "will take months to obtain." While Mr. Campbell could have requested approval at any time in the intervening year, he elected to make his request two month before trial (which is set for April 28, 2014), at a time when the parties are deeply involved in completing discovery and preparing for trial. (Mr. Campbell wrote to you that "time is of the essence," but it is his delay which caused it to be so.) We are, in fact, scheduled to take three depositions (of the petitioner, of the college's president, and of one of petitioner's retained experts) next week. In light of these pressing case-related deadlines, we request that you permit us an extra week, until March 21, to submit our response. Thank you for your consideration of our request and please let us know at your earliest convenience whether you agree to it.

BGR BROWNE GEORGE ROSS
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Los Angeles, California 90067
T 310.274.7100
F 310.275.5697

ibibbero@bgrfirm.com

From: Tania Ibanez [mailto:Tania.Ibanez@doj.ca.gov]
Sent: Monday, March 03, 2014 4:19 PM
To: Ira Bibbero
Subject: Deep Springs College

Mr. Bibbero

You asked me if this office would agree to a continuing PRA request. We cannot agree to such a request.

However, this office did receive a letter from the Law Offices of Baker Manock & Jensen requesting that the AG consent to the Modification of Trust under Probate Code section 15403. I attach a copy of the letter and consent request as I would like to obtain your client's views on this issue before we make a recommendation to the Attorney General. Please send me your client's response by March 14, 2014.

Thanks

Tania M. Ibanez
Senior Assistant Attorney General
California Attorney General's Office
Charitable Trusts Section
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(213) 897-0218

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DECLARATION OF SHARON OLIVER

I, SHARON OLIVER, declare as follows:

1. I am a legal assistant with the Los Angeles Office of the Attorney General. I have been a legal assistant for over thirty years and as such I have familiarity with the mail room drop procedures for Federal Express. The matters stated in this declaration are stated on my own personal knowledge. If called as a witness, I could and would testify competently and consistently thereto.

2. On May 1, 2014, I was instructed to file and serve the Attorney General's Answer to Petition for Court Order Construing Trust Provision. I was also assigned to file and serve the Attorney General's Consent to the Trust Modification.

3. I prepared the proof of service so that the Answer and Consent could be delivered by overnight mail by Federal Express on May 1, 2014. I deposited the Federal Express Envelope in the mail room on May 1, 2014. Based on my experience, Federal Express picks up mailing at the Los Angeles around 3:30 p.m.. My package was delivered to the mail room at 11:00 a.m. on May 1, 2014.

4. On May 2, 2014, I learned that Federal Express failed to pick up the envelopes deposited in the mail room because there was a demonstration downtown Los Angeles on May 1, 2014, which interfered with Federal Express making its routine pick up. Federal Express picked up the mailings on May 2, 2014.

I declare under penalty of perjury that the foregoing is true and correct. Executed ton May 7, 2014, at Los Angeles, California.

Sharon Oliver

SHARON OLIVER

."

DECLARATION OF SERVICE VIA E-MAIL

Case Name: L. L. Nunn Trust for the Benefit of Deep Springs College

No.: SI CV PB 1253232

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; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On May 7, 2014, I served the attached **OPPOSITION TO EX PARTE APPLICATION FOR LEAVE TO SERVE NOTICE TO APPEAR ON SHORTENED TIME; DECLARATION OF WENDI HORWITZ; AND DECLARATION OF SHARON OLIVER** by transmitting a true copy via electronic mail.:

Christopher L. Campbell Dirk B. Paloutzian Jeffrey A. Jaech **BAKER MANOCK & JENSEN, PC** 5260 N. Palm Ave., Ste. 421 Fresno, CA 93704 Tel: (559)432-5400 Fax: (559) 432-5620 Email: ccampbell@bakermanock.com dpaloutzian@bakermanock.com jjaech@bakermanock.com	Jon Michaelson **K & L Gates LLP** 630 Hansen Way Palo Alto, CA 94304 Tel: (650) 798-6700 Fax: (650) 798-6701 Email: jon.michaelson@klgates.com
Peter Tracy **Law Office of Peter E. Tracy** 106 South Main Street #200 P.O. Box 485 Bishop, CA 93514 Tel: (760) 872-1101 Fax: (760) 872-2971 Email: inyomono@StanfordAlumni.org	Ira Bibbero Eric M. George **BROWN GEORGE ROSS, LLP** 2121 Avenue of the Stars, Suite 2400 Los Angeles, CA 90067 Tel: (310) 274-7100 Fax: (310) 275-5697 Email: ibibbero@bgrfirm.com egeorge@bgrfirm.com

DECLARATION OF SERVICE BY VIA E-MAIL – Page 2

Case Name: L. L. Nunn Trust for the Benefit of Deep Springs College

No.: SI CV PB 1253232

Joseph C. Liburt **Orrick Herrington & Sutcliff, LLP** 1000 Marsh Road Menlo Park, CA 94025 Tel: (650) 614-7500 Fax: (650) 614-7401 Email: jliburt@orrick.com	Heather M. Hoekstra 420 Coventry Road Kensington, CA 94707 Tel: (510) 525-1514 Email: hmatsumoto@berkeley.edu

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 **May 7, 2014**, at Los Angeles, California.

Wendi Horwitz
Declarant

Signature

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