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10 ASSOCIATES, LLC, and Defendant/Counter-Plaintiff  
11 GARY HARKINS

12 UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14 BRIAN DAWE; FLAT IRON  
15 MOUNTAIN ASSOCIATES, LLC,  
16 formerly known as Flat Iron Mountain  
17 Associates, a Partnership,

18 Plaintiffs,

19 v.

20 CORRECTIONS USA, a California  
21 Corporation; CALIFORNIA  
22 CORRECTIONAL PEACE OFFICERS  
23 ASSOCIATION, a California Corporation;  
24 JAMES BAIARDI, an individual;  
25 DONALD JOSEPH BAUMANN, an  
26 individual,

27 Defendants.

28 AND RELATED CLAIMS AND  
COUNTERCLAIMS

Case No. 2:07-CV-01790 LKK EFB

[Consolidated Master Case Number]

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO ALLOW  
POSTING OF ALTERNATIVE SECURITY**

Date: August 29, 2011  
Time: 10:00 a.m.  
Courtroom: 4  
Judge: Hon. Lawrence K. Karlton

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I.

**INTRODUCTION**

In this matter, Defendants ask the Court to relieve them from the requirements of Federal Rule of Civil Procedure 62 and Local Rule 151(d), under which a judgment debtor is to post a supersedeas bond securing the judgment pending appeal. In lieu of such a bond, Defendants propose to pledge four pieces of real property which—Defendants assert—are collectively valued at \$6,202,500.

For the reasons set forth below, Defendants’ motion should be denied.

II.

**FACTUAL BACKGROUND**

CCPOA is a financial behemoth—the largest correctional officers’ union in the country, and one of the richest and most powerful unions in California. At the time of judgment in this case, CCPOA had approximately 31,300 members, which number had held steady over recent years. (Trial Transcript [“TT”] Vol. 33, at 5164:5-5165:15.<sup>1</sup>) Monthly revenues from CCPOA members total approximately \$2.49 million, or about \$29.88 million per year. (*Ibid.*) According to CCPOA Chief Operating Officer and General Counsel David Sanders, CCPOA—even *before* the verdict in this action was remitted from approximately \$12.6 million to approximately \$5 million—would have been able to pay the full amount of the judgment. (Reporter’s Transcript of January 18, 2011 Oral Argument [Baxter Decl, Exh. 2], at 38:9-38:11); see, also, [www.ktvu.com/news/25491158/detail.html](http://www.ktvu.com/news/25491158/detail.html).)

Other facts relative to CCPOA’s financial strength include the following:

- In 2009, CCPOA purchased eight vehicles at a total cost of approximately \$160,000-\$176,000. CCPOA purchases between five and eight new vehicles *each year*. (TT Vol. 33, at 5185:8-5185:24.)
- CCPOA annually purchases half a box for Sacramento Kings games, costing approximately \$230,000 per year. (TT Vol. 33, at 5189:23-5190:8.)

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<sup>1</sup> All passages of the Trial Transcript cited herein are attached as Exhibit 1 to the concurrently-submitted Declaration of Daniel L. Baxter.

- 1 • CCPOA annually purchases a box for Sacramento River Cats games, costing  
2 approximately \$23,000 per year. (TT Vol. 33, at 5191:2-5191:16.)
- 3 • CCPOA has recently donated at least \$1,000,000 to the National Law Enforcement  
4 Museum located in Washington, D.C. (Declaration of Daniel L. Baxter [“Baxter  
5 Decl.”], ¶ 3, and Exh. 2 thereto.)<sup>2</sup>;
- 6 • CCPOA paid approximately \$5.3 million for the four pieces of property it  
7 proposes to pledge as alternative security, all of which are claimed to be owned  
8 free and clear. (TT Vol. 33, at 5180:17-5183:11.) CCPOA also pays for an  
9 apartment for the individual who, among other apparent duties, operates as Mike  
10 Jimenez’s driver. (*Id.* at 5183:15-5184:19.)
- 11 • CCPOA budgeted approximately \$3.6 million for political action committee  
12 expenditures for fiscal year 2010-2011. (TT Vol. 33, at 5176:10-5176:17; Exh.  
13 1183.)
- 14 • CCPOA’s four largest budget items for fiscal year 2010-2011—legal expenses,  
15 employee salaries, employee benefits, and political action committee funding—  
16 total approximately \$19.2 million. (TT Vol. 33, at 5176:22-5177:6; Exh. 1183.)
- 17 • Other budgeted items for fiscal year 2010-2011 include \$1.8 million for  
18 “advertising and public relations,” \$409,510 for “lobbyist expenses” (in addition to  
19 the above-referenced PAC costs), \$258,000 for “political coordination,” \$350,000  
20 for “executive board expenses,” \$380,000 for “travel, food, and lodging,” and  
21 \$525,000 for “legal defense.” (TT Vol. 33, at 5177:17-5180:5; Exh. 1183.)

22 Despite the above, Defendants now ask this Court to excuse them from complying with  
23 the usual protocols attending to securitizing a judgment, in favor of CCPOA’s pledge of not one,  
24 not two, but *four* separate pieces of real property (CCPOA’s West Sacramento headquarters, one  
25 vacant lot in Rancho Cucamonga, and two North Natomas residences) as security.

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26 <sup>2</sup> This is contrary to the trial testimony of CCPOA Chief Financial Officer Jeff Nicolaysen, who  
27 testified that “there’s a museum back east that we—I think we gave \$50,000 to, but, again I  
28 wasn’t aware you would be asking that so I don’t know for sure. I could be off on that number.  
But the only thing I can guarantee you is we gave nothing, nothing close, anywhere close to a  
million dollars on that.” (TT Vol. 33, at 5187:3-5187:12 [emphasis added].)

III.

LEGAL ANALYSIS

1  
2  
3 Upon an adverse judgment in federal court, judgment debtors in cases such as this must, in  
4 order to stay enforcement of the judgment, procure a supersedeas bond that securitizes the  
5 judgment for the protection of the judgment creditor. Fed. R. Civ. P. 62, subd. (d). Eastern  
6 District Local Rule 151(d) states that supersedeas bonds “shall be 125 percent of the amount of  
7 the judgment unless the Court otherwise orders.” (Citing Rule 62.) Here, given the total  
8 judgment amount of \$4,959,815,<sup>3</sup> the amount of the required bond—absent an order directing  
9 differently—is \$6,199,768.75. Though Defendants’ moving papers contain no description of the  
10 bond premium being required by the surety company/companies Defendants claim to have  
11 contacted, it is the undersigned’s understanding that the usual bond premium is 10% of the  
12 overall bond amount. If that understanding is correct, the necessary premium in this case would  
13 be approximately \$620,000.

14 There is no disagreement between the parties that the Court may—should it see fit—order  
15 the posting of security in an amount other than 125% of the judgment. See, e.g., L.R. 151, subd.  
16 (d). It is also true that, upon a proper and specific showing, a court may exercise its authority in  
17 favor of allowing “other forms of judgment guarantee.” Int’l Telemeter, Corp. v. Hamlin Int’l  
18 Corp., 754 F.2d 1492, 1495 (9th Cir. 1985). However, whether the Court should use its authority  
19 in *this* case to opt out of Local Rule 151(d)’s presumptive requirement of a supersedeas bond  
20 equaling 125% of the judgment is another matter, and a point of sharp disagreement. For several  
21 reasons, both legal and practical, Plaintiffs ask the Court to deny Defendants’ request.

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26 <sup>3</sup> As Defendants correctly observe (Motion [CM/ECF Doc. No. 603], at 2:16-2:19), that amount is  
27 spread among CCPOA, CUSA, and Messrs. Baumann and Baiardi (almost \$4.6 million is against  
28 CCPOA). However, as Defendants’ motion contemplates CCPOA posting security “for the  
entirety of the judgment” (ibid.), Plaintiffs’ discussion herein addresses the full amount of the  
judgment without regard to how it is broken down among the various Defendants.

1 **A. Defendants Have Failed to Make a Showing That is Adequate to Justify the Posting**  
2 **of Alternative Security**

3 First and foremost, Defendants have fundamentally failed to show sufficient grounds to  
4 depart from the strictures of Federal Rule of Civil Procedure 62 and Local Rule 151(d). That  
5 failure takes three forms.

6 1. Defendants Have Failed to Provide Sufficient Evidence of an Inability to Meet  
7 Bonding Requirements.

8 In Part II, *supra*, Plaintiffs identified facts regarding CCPOA’s financial solvency that, at  
9 the very least, raise significant questions about Defendants’ present cry of poverty relative to  
10 bond procurement. Given those facts, Defendants’ articulation of a need to post CCPOA’s real  
11 properties in lieu of a bond is startlingly bare-bones, particularly in light of the many months that  
12 CCPOA has had to address the matter. In that vein, the Court will recall that Defendants’ first  
13 stay request stemming from their claimed efforts to obtain a bond was submitted on November 1,  
14 2010. (CM/ECF Doc. No. 523.) Tellingly, in seeking that stay, Defendants wrote: “*CCPOA*  
15 *anticipates that it will be able to secure a bond within the next 45 days.*” *Id.* at 4:10-4:11  
16 (emphasis added). Even more tellingly, Defendants made that representation *before* the Court  
17 remitted the jury’s verdict by over \$7 million.

18 Despite that representation, Defendants now assert that CCPOA “has insufficient liquid  
19 assets to satisfy bank requirements” for procurement of a supersedeas bond. (Motion, at 2:9-  
20 2:10.) However, that statement is entirely conclusory (and is based on an equally conclusory  
21 statement in Paragraph 2 of Mr. Sanders’ supporting declaration), and Defendants fail to provide  
22 any specific information as to how or why CCPOA’s previously-stated “anticipation” was so  
23 wrong. Indeed, missing from Defendants’ paperwork<sup>4</sup> is *any* articulation of critical information  
24 regarding, among other things,

- 25 (a) How many—and which—surety companies CCPOA contacted;  
26 (b) What bond premiums were being sought by the surety company/companies;

27 <sup>4</sup> That paperwork includes the previously-submitted documents incorporated into Defendants’  
28 present motion (See, e.g., Declaration of David A. Sanders [“Sanders Decl.”], at 1:6-1:11, and Exhibit “A” thereto.)

- 1 (c) What other (if any) “liquid assets” that company/those companies were seeking or  
2 inquiring into;
- 3 (d) The difference between the amount of CCPOA’s “liquid assets” and the amount  
4 that the surety company/companies were requiring;
- 5 (e) Whether and to what extent CCPOA could have sold (or otherwise forgone) one or  
6 more of the assets or expenditures discussed in Part II, *supra*, in order to increase  
7 “liquidity”;
- 8 (f) Whether CCPOA assessed other methods to increase “liquidity” and, if so,  
9 whether it informed the surety company/companies of those methods;
- 10 (g) Whether Defendants sought to obtain one or more loans in order to fund the bond,  
11 including by borrowing against the properties they now propose to pledge;
- 12 (h) Whether CCPOA sought to obtain a bond for less than the full amount of the  
13 judgment (while securing the remainder of the judgment with real property or  
14 other alternative security);
- 15 (i) Whether CCPOA offered to pledge non-liquid assets—again, such as the real  
16 properties at issue here—in order to satisfy the purported requirements of the  
17 surety company/companies;
- 18 (j) What the surety company’s/companies’ response was to the types of inquiries  
19 posited in Items (f) and (g).

20 Instead of addressing any of the above items, Defendants devote a mere one sentence to  
21 describing their purported bonding efforts and the results thereof. (Sanders Decl., at 1:6-1:11; see,  
22 also, Exhibit “A” thereto, at 1:16-1:18 [a nearly identical sentence].) Such a poorly-honed  
23 showing cannot and does not suffice to justify shifting the burden and risk of Defendants’ claimed  
24 illiquidity onto Plaintiffs, especially in light of the now nine-odd months Defendants have had to  
25 make appropriate bonding arrangements. Put even more elementally, if Defendants’ assets truly  
26 aren’t good enough for a bonding company, why should they be good enough for Plaintiffs?

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1           2.     Defendants Have Failed to Address the Circumstances in Which the Bond  
2                     Requirement May be Waived.

3           Defendants' showing is not only facially inadequate on its own terms, but made more so  
4 by the limited circumstances in which forms of security other than a supersedeas bond are  
5 permitted. In that regard, while a court does possess authority to allow forms of judgment  
6 guarantee other than a supersedeas bond, the Eastern District appears to recognize only two  
7 instances where the exercise of that authority is warranted: (1) Where "defendant's ability to pay  
8 is so plain that the cost of the bond would be a waste of money," and (2) the opposite situation—  
9 where "the requirement would put the defendant's other creditors in undue jeopardy (in other  
10 words, the requirement is impracticable because it would, for example, force appellant into  
11 bankruptcy or paralyze the business." Albert D. Bolt v. Merrimack Pharmaceuticals, Inc., 2005  
12 U.S. Dist. LEXIS 46591, at \*9-10 (E.D. Cal. 2005); see, also, Brooktree Corp. v. Advanced  
13 Micro Devices, 757 F.Supp. 1101, 1104 (S.D. Cal. 1990); Olympia Equipment v. Western Union  
14 Telegraph Co., 786 F.2d 794, 796 (7th Cir. 1986).

15           Here, Defendants have established neither of those circumstances. As to the former,  
16 Defendants have come nowhere close to showing that they possess the "plain" ability to pay the  
17 judgment such that the bond would be a waste of money; indeed, Defendants don't even attempt  
18 to make such a showing, and in fact assert that they can't even pay for the bond itself. Similarly,  
19 as to the latter circumstance, Defendants have made no showing of an inability to pay creditors if  
20 the bonding requirement is enforced here, and no other demonstration relative to business  
21 interruption, much less bankruptcy.

22           Likewise, while Defendants cite several out-of-district cases for the proposition that the  
23 posting of "substitute" security may be ordered where "the posting of a full bond would impose  
24 an undue financial burden" (Motion, at 4:3-4:7), Defendants have made no legitimate showing of  
25 "undue burden." As mentioned above, Defendants' *only* nod to the issue is one vague and  
26 unilluminating sentence from CCPOA representative David Sanders stating that he was unable to  
27 get a bond due to allegedly insufficient liquidity. (Sanders Decl., at 1:8-1:11; see, also, Exhibit  
28 "A" thereto, at 1:16-1:18 [a nearly identical sentence].) Even on Defendants' best day, that

1 simply doesn't cut it.

2 3. Defendants Have Failed to Provide Sufficient Evidence of Ownership and Title  
3 Status.

4 Defendants' presentation also falls short in relation to ownership and title issues. In the  
5 Eastern District, when real property is to be provided as security, the posting party must deposit a  
6 trust deed with the Court naming the Clerk of the Court as beneficiary. Such deposit "shall be  
7 accompanied by an affidavit (accompanied by preliminary title report, litigation guarantee, or  
8 abstract from a title company, in the case of real property) that the property is unencumbered, or  
9 if encumbered, is encumbered in an amount specified, and that the property is of a specified value  
10 (assessed value, in the case of real property)." L.R. 151, subd. (j).

11 Here, Defendants' motion omits any documents evidencing CCPOA's ownership of and  
12 title to the properties at issue, much less ones demonstrating that the properties are  
13 unencumbered. Instead, and much like its non-particularized assertion relative to its bonding  
14 efforts, CCPOA simply declares that it owns the properties "free and clear." (Sanders Decl., at  
15 1:12-1:14; see, also, Exhibit "A" thereto, at 1:21-2:1.) This Court's rules require more, and  
16 CCPOA's unsupported assertion gives neither Plaintiffs nor the Court anything from which the  
17 respective properties' title statuses may be legitimately evaluated, and certainly nothing that  
18 would give a title company the comfort to issue insurance on the property.<sup>5</sup>

19 **B. Defendants' Motion Ignores the Practical Ramifications of Their "Alternative**  
20 **Security" Proposal.**

21 Even if one were to disregard the core deficiencies identified above, Defendants' lot  
22 would not improve. To be sure, perhaps the most striking feature of Defendants' motion—even  
23 more jarring than the omissions just discussed—is Defendants' failure to address the practical  
24 realities of what they are proposing. As the sole measure of security for Plaintiffs' \$5 million  
25 judgment, Defendants would have Plaintiffs look to four disparate pieces of real property which  
26 *only* have value and utility if Plaintiffs are willing to act as commercial and residential property

27 <sup>5</sup> Relatedly, Defendants have also not established that the proposed posting of their properties has  
28 been given the approvals necessary under California Corporations Code section 7910 et seq.,  
pertaining to the assets of non-profit mutual benefit corporations.

1 owners.

2 Simply examining the costs and burdens associated with taking ownership of *one* of the  
 3 properties at issue—CCPOA’s headquarters—will suffice to make the point. If Plaintiffs are left  
 4 to execute on that security, they are faced with the Hobson’s choice (to the extent they have a  
 5 choice at all) of leasing to the current occupant, CCPOA, or re-leasing the property. As a  
 6 specialized, two-story, 32,000 square foot office building, not only is the market for such a  
 7 building narrow,<sup>6</sup> but the costs associated with re-leasing the property are dear. According to  
 8 local appraiser Richard Ribacchi, MAI, who was asked by the undersigned to assess those costs,  
 9 the likely tab just to get a new tenant in the door would be approximately \$2,000,000. (Baxter  
 10 Decl., ¶ 4, and Exh. 3 thereto.)<sup>7</sup>

11 Furthermore, from an even broader level, consider the ramifications of forcing Plaintiffs  
 12 to potentially collect their judgment by entering a California real estate market that can be  
 13 described, at best, as “volatile.” Such is contrary to basic law and policy undergirding the  
 14 bonding requirement, pursuant to which the prevailing party has the right to ask for “concrete  
 15 assurances that its judgment will be collectable after the case has gone through the appeal  
 16 process....” Brooktree Corp., 757 F.Supp. at 1104. Even the cases referenced by Defendants on  
 17 the “undue burden” issue recognize that—even where an undue burden *is* found—the alternative  
 18 security proposed must “furnish *equal* protection to the judgment creditor.” Poplar Grove  
 19 Planting & Ref. Co. v. Bache Halsey Stuart, Inc., 600 F.2d 1189, 1191 (5<sup>th</sup> Cir. 1979) (emphasis  
 20 added); see, also, additional authorities cited at Motion, 4:3-4:12. Under no circumstance could  
 21 the properties tendered by Defendants here be described as “equal protection” to a good, solid,  
 22 bond in the required amount, and accepting those properties in lieu of such a bond effectively  
 23 shifts the risk and burden associated with Defendants’ meritless appeal onto Plaintiffs.

24  
 25 <sup>6</sup> Especially one with a “California Correctional Peace Officers’ monument” stuck in the ground.  
 (Sanders Decl., Exh. “B” [CM/ECF 603-3] at p. 11 of 35.)

26 <sup>7</sup> To the above circumstance, add the facts that none of the Plaintiffs are California residents, none  
 27 of the Plaintiffs own property in California (or have businesses in California), and none of the  
 28 Plaintiffs have any experience in real property management. What is more, the primary judgment  
 creditor, Mr. Dawe, maintains an itinerant existence that would preclude him from devoting *any*  
 legitimate attention to the role of landlord—even if he wanted to.

1 **C. If the Court is at All Inclined to Grant the Requested Relief to Defendants, It Should**  
2 **Require The Posting of Additional Security.**

3 Local Rule 151(l) permits a judgment creditor to “apply to the Court at any time for  
4 further or different security” than that presented by the judgment debtor. Here, as discussed  
5 above, Plaintiffs believe that Defendants have failed to make the showing necessary to support an  
6 order allowing alternative security, and urge the Court to decline Defendants’ invitation to make  
7 such an order. However, if the Court disagrees with Plaintiffs’ position, Plaintiffs ask that, at the  
8 very least, the Court require additional security to be posted.

9 District courts have the inherent discretionary authority to set the amount of a supersedeas  
10 bond. Rachel v. Banana Republic, Inc., 831 F.2d 1503, 1505, fn. 1 (9th Cir. 1987). While the  
11 Eastern District has determined that bonds should presumptively be set at 125% of the judgment,  
12 the Ninth Circuit has upheld amounts of over 250% of the judgment when the bond is “to cover  
13 costs on appeal and the money judgment,” which is certainly the case here. American Ass’n of  
14 Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1109 (9th Cir. 2000). And, although of no  
15 binding authority, it is also worth noting that the California legislature has declared that execution  
16 of a money judgment can be stayed based on security other than a surety bond only if that  
17 security has a value of *twice* the amount of the judgment. Cal. Code Civ. Proc. § 917.1. Such  
18 stands to reason inasmuch as the value of non-traditional security—and certainly that of real  
19 property—is far more subject to economic vagaries and vicissitudes than surety bonds. See, e.g.,  
20 Brooktree Corp., 757 F.Supp. at 1104 (noting that “[r]eal property values are subject to  
21 substantial variation”).<sup>8</sup>

22 Given the circumstances at issue here, if the Court is in any way considering allowing  
23 Defendants to utilize its four properties as a component of security in this case, Plaintiffs request  
24 that any such order include the following additional components:

- 25 1. That the total value of the security be in an amount equal or greater to 200% of the  
26 judgment in this case, or \$9,919,630.

27 <sup>8</sup> Plaintiffs find it too coincidental that Defendants’ four properties have been collectively  
28 appraised at \$6,202,500, which is 125.055% of the judgment, or a mere \$2,731.25 over the 125%  
required under Local Rule 151(d).





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5 Attorneys for Plaintiff/Counter-Defendant  
6 BRIAN DAWE, Plaintiff FLAT IRON MOUNTAIN  
7 ASSOCIATES, LLC, and Defendant/Counter-Plaintiff  
8 GARY HARKINS

8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 BRIAN DAWE; FLAT IRON  
12 MOUNTAIN ASSOCIATES, LLC,  
13 formerly known as Flat Iron Mountain  
14 Associates, a Partnership,

13 Plaintiffs,

14 v.

15 CORRECTIONS USA, a California  
16 Corporation; CALIFORNIA  
17 CORRECTIONAL PEACE OFFICERS  
18 ASSOCIATION, a California Corporation;  
19 JAMES BAIARDI, an individual;  
20 DONALD JOSEPH BAUMANN, an  
21 individual,

19 Defendants.

21 AND RELATED CLAIMS AND  
22 COUNTERCLAIMS  
23

Case No. 2:07-CV-01790 LKK EFB

[Consolidated Master Case Number]

**DECLARATION OF DANIEL L. BAXTER  
IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO DEFENDANTS'  
MOTION TO ALLOW POSTING OF  
ALTERNATIVE SECURITY**

Date: August 29, 2011  
Time: 10:00 a.m.  
Courtroom: 4  
Judge: Hon. Lawrence K. Karlton

24 ///  
25 ///  
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27 ///  
28 ///

1 I, DANIEL L. BAXTER, declare as follows:

2 1. I am an attorney duly licensed to practice before the United States District Court  
3 for the Eastern District of California, and am a partner in the law firm of Wilke, Fleury, Hoffelt,  
4 Gould & Birney, LLP, counsel of record in the above-entitled matter for BRIAN DAWE, FLAT  
5 IRON MOUNTAIN ASSOCIATES, LLC, and GARY HARKINS. The following is based on my  
6 personal knowledge and, if called to do so, I could and would competently testify to the same.

7 2. Collectively attached hereto as Exhibit 1 are true and correct copies of excerpts  
8 from Volume 33 of the trial transcript in this matter, setting forth the October 22, 2010 testimony  
9 of CCPOA Chief Financial Officer Jeff Nicolaysen.

10 3. Collectively attached hereto as Exhibit 2 are true and correct copies of excerpts  
11 from the July 18, 2011 oral argument on Defendants' motion for new trial and motion for  
12 judgment as a matter of law.

13 4. Collectively attached hereto as Exhibit 3 are true and correct copies of publications  
14 that I pulled on August 2, 2011 from the National Law Enforcement Officers Memorial Fund  
15 website, reflecting CCPOA's recent donation of at least \$1,000,000 to the National Law  
16 Enforcement Museum in Washington, D.C.

17 5. Attached hereto as Exhibit 4 is a true and correct copy of a report issued to my  
18 office on July 28, 2011 by Richard A. Ribacchi, MAI of Ribacchi & Associates. This report was  
19 generated pursuant to my request for Mr. Ribacchi to assess the costs associated with re-leasing  
20 the property located at 755 Riverpoint Drive, West Sacramento, California if it were vacant.

21 I declare under penalty of perjury under the laws of the United States of America that the  
22 foregoing is true and correct, and that this Declaration was executed this 3rd day of August, 2011  
23 in Sacramento, California.

24  
25  
26 697626.1

\_\_\_\_\_  
/s/ Daniel L. Baxter  
DANIEL L. BAXTER

# Exhibit 1

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

---000---

BEFORE THE HONORABLE LAWRENCE K. KARLTON, SENIOR JUDGE

BRIAN DAWE; FLAT IRON  
MOUNTAIN ASSOCIATE, LLC  
formerly known as Flat  
Iron Mountain Associates,  
a Partnership,

Plaintiffs,

Vs.

CASE NO. CIV. S-07-1790 LKK

CORRECTIONS USA, a California  
Corporation; CALIFORNIA  
CORRECTIONAL PEACE OFFICERS  
ASSOCIATION, a California  
Corporation; JAMES BAIARDI,  
an individual; DONALD JOSEPH  
BAUMANN, an individual,

VOLUME 33

Defendants.

\_\_\_\_\_  
AND RELATED CLAIMS AND  
COUNTERCLAIMS  
\_\_\_\_\_

---o0o---

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

FRIDAY, OCTOBER 22ND, 2010

VOLUME 33

---o0o---

Reported By: CATHERINE E.F. BODENE, CSR NO. 6926

1 First, CCPOA is the largest correctional officer  
2 union in the country, right?

3 A. I don't know. I know that claims have been made, but  
4 I've not looked at other unions to know that answer.

5 Q. Fair enough. It has approximately 31,300 members,  
6 right?

7 A. Within a thousand.

8 Q. And CCPOA has had roughly that number of members for  
9 the last several years, right?

10 A. Right.

11 Q. And CCPOA's primary source of revenue is membership  
12 dues and assessments?

13 A. Yes.

14 Q. And in fact, membership dues and assessments  
15 constitute over 95 percent of the revenue that CCPOA receives  
16 each year, right?

17 A. Yes.

18 Q. Okay. And the monthly dues for each member is at  
19 \$79.56 per month?

20 A. Correct.

21 Q. And I've put a calculator in front of you because I  
22 frankly don't trust my own math so I want somebody who knows  
23 what they are doing to run the numbers. But if we take  
24 31,300 members and multiply that by -- is it okay if I round  
25 up to \$80 per month?

1 A. Not a problem.

2 Q. Okay. That gets us to a revenue total of  
3 approximately 2.49 million dollars per month or about 29.88  
4 million dollars per year. Does that sound?

5 A. That's actually fairly close to our revenue.

6 Q. Okay. If nothing else happens today, I'll consider  
7 it a small victory that I got that so thank you.

8 And isn't it true that the estimated membership dues  
9 revenue for CCPOA's 2010-2011 fiscal year is that amount,  
10 \$29,882,736?

11 A. Very close to that.

12 Q. Okay. And isn't it also true that CCPOA's total  
13 annual revenue has been at or above approximately 30 million  
14 over the past few years?

15 A. Yes.

16 Q. And CCPOA's total revenue, it is your expectation,  
17 will probably be in that same range next year and the year  
18 after, right?

19 A. I don't know. The last few years we've actually had  
20 to lower the membership counts each year because they're not  
21 covering the positions, they're not putting the academies, so  
22 we've been losing about 200 members a month.

23 Q. So if we can accept the notion that the current rolls  
24 are approximately 31,300 members, and you lose 200 members  
25 per month for, let's say, even the next ten years, you're

1 up and down so much each year we actually don't look at the  
2 separate cases, we just estimate it based on the prior year.  
3 So no, this case wasn't specifically taken into  
4 consideration.

5 Q. Okay. Fair enough.

6 What about the jury's verdict?

7 This estimate also wouldn't include the amount of the  
8 jury's verdict?

9 A. No, it wouldn't.

10 Q. Okay. Now, CCPOA's third largest expense is for the  
11 Political Action Committee, which is still on that same page,  
12 line 40, correct? That's 3.6 million?

13 A. Let me double-check here.

14 Yes.

15 Q. Okay. And that's the amount that CCPOA spends  
16 basically on lobbying, right?

17 A. That's the amount we contribute to PAC.

18 Q. Okay. Fair enough. Then the next largest expense  
19 item is under the heading of Employee Benefits, which is on  
20 the first page, item 18. That's 3.37 million?

21 A. Right.

22 Q. And so if you can trust my math, those four items  
23 represent approximately 19.2 million dollars in budgeted  
24 expenditures for this fiscal year, right?

25 A. Well, I would have to add them up.

1 Q. Okay. Please, feel free to do so.

2 A. Do you want the budgeted or the actual?

3 Q. The budgeted.

4 A. Okay.

5 (Witness calculates expense.)

6 I got 19,222,000.

7 Q. Okay. Great.

8 And if you look at the last page -- the second to  
9 last page of what's been marked as Exhibit 1183, the total  
10 amount of budgeted expenditures is \$29,948,619, right?

11 A. Right.

12 Q. So those four items that we just went through  
13 represent approximately two-thirds of the entire budget,  
14 right?

15 A. Sixty-four percent.

16 Q. Okay. All right.

17 And then I just want to hit quickly a couple of -- a  
18 few of the other budgeted items.

19 So if you go to the first page and look at line 2,  
20 there's an entry there for Advertising and Public Relations  
21 in the amount of 1.8 million dollars, correct?

22 (Exhibit published.)

23 A. Correct.

24 Q. And if you go to page 2, line 31, there's a budgeted  
25 expenditure of \$409,000 and change, right?

1 This is -- Sharon, this is page 2.

2 (Exhibit published.)

3 There you go. Thanks.

4 Do you see that?

5 A. Yes, I do.

6 Q. And that's the budgeted expenditure for that item?

7 A. Uh-huh.

8 Q. Okay.

9 THE COURT: You have to say "yes" or "no," sir.

10 THE WITNESS: I'm sorry. Yes.

11 THE COURT: That's all right.

12 MR. BAXTER: I missed that one too. I apologize.

13 BY MR. BAXTER:

14 Q. Then there's page 2, line 45, called Political  
15 Coordination. That's \$258,000.

16 Do you see that?

17 A. Yes.

18 Q. What's that for?

19 A. That's for -- That's a hard one to explain because  
20 I'm not the one that defines what comes out of there. It's  
21 normally for events that are not considered under PAC issues  
22 but may have a political benefit for us.

23 Q. All right.

24 Is it fair to call that a lobbying fund too, or would  
25 that be inaccurate?

1 A. I don't know. You would need -- That is a real  
2 legal, legal, legal issue, and I really don't dwell in the  
3 legal part of the political action at all.

4 Q. Okay. All right.

5 And on the top of this page, item 22, there's  
6 something that's Executive Board Expenses, and that's in the  
7 amount of \$350,000, right?

8 A. Right.

9 Q. Okay. And in addition to that, on page 3, line 64,  
10 there's an expense item for Travel, Food and Lodging in the  
11 amount of \$380,000, right?

12 A. Right.

13 Q. Okay. And besides the legal fees that we talked  
14 about before, there's also on page 2, line 27, a \$525,000  
15 item called Legal Defense.

16 Do you see that?

17 A. Yes.

18 Q. What's that for?

19 A. That's actually -- We pay our benefit trust fund.  
20 And it is an insurance policy, legal policy for our  
21 membership to help represent them.

22 Q. Okay. And I'm not going to belabor this more than I  
23 already have, but if you add up all of the budgeted  
24 expenditures -- and if you want to go to the second to last  
25 page -- again, that gets us to \$29,948,000, right?

1 (Exhibit published.)

2 A. Yes.

3 Q. And did this sum -- Did these figures play a role in  
4 your analysis of net worth?

5 A. No.

6 Q. Okay. What role, if any, did they play?  
7 What did you take into account in calculating net  
8 worth?

9 A. Well, the difference is this is a modified cash  
10 basis. Okay. Because it is very difficult to get accrual  
11 basis statements. So I had to work really hard to get that  
12 done for the financial here.

13 It doesn't include all of the payables, all the  
14 accruals, so it doesn't include a lot of stuff for an accrual  
15 accounting system. This is for decision -- internal  
16 decision-making for the Board of Directors.

17 Q. Okay. All right. Let's talk about assets --

18 A. Uh-huh.

19 Q. -- of CCPOA.

20 CCPOA owns its headquarters in West Sacramento,  
21 correct?

22 A. Yes.

23 Q. How much is that building worth?

24 A. I don't know.

25 Q. Do you know how much CCPOA paid for it?

1 A. They both have a residence elsewhere.

2 Q. Do they spend most of their time, to your knowledge,  
3 in those residences, the ones in Natomas?

4 A. During the weekdays. You would have to ask them  
5 though.

6 Q. Well, do you have an understanding?

7 A. That it is for the work days, for Monday through  
8 Friday.

9 Q. And Mr. Helton and Mr. Speth are members of the CCPOA  
10 Executive Council?

11 A. Yes.

12 Q. Does CCPOA also own or have an interest in a  
13 townhouse?

14 A. No.

15 Q. Are you familiar with somebody named Juan Vasquez?

16 A. Yes.

17 Q. Who is that?

18 A. He's an employee.

19 Q. Is he Mike Jimenez' chauffeur?

20 A. You would have to ask Mike exactly what he does. I  
21 know he has chauffeured him, but I think his job duties are  
22 much more intricate than that.

23 I know he's -- he's done work setting up offices. He  
24 facilitates a lot of Mike's work.

25 Q. Does he get paid \$68,000 per year?

1 A. I don't know what he gets paid.

2 Q. Do you have an estimate?

3 A. No, I don't. That seems high, but I just -- I just  
4 don't know the answer to that without looking.

5 Q. Okay. I'm sorry.

6 Does CCPOA pay for any of Mr. Vasquez' living  
7 expenses or the location where he lives?

8 A. We have an apartment that we pay for because he has a  
9 Southern California residence.

10 Q. All right.

11 And so I probably just had this wrong when I said  
12 "townhouse." So there is an apartment that CCPOA rents?

13 A. Right. We don't own it.

14 Q. Where is that?

15 A. That is in the Natomas area, south of 80 though.

16 Q. So other than use by Mr. Vasquez, what else is that  
17 used for?

18 A. I think that's the only individual that stays there.  
19 I don't know if other members occasionally stay there or not.

20 Q. How often does Mr. Vasquez stay there?

21 A. I would have no idea.

22 Q. Okay. Does CCPOA also pay some or all of the housing  
23 costs for Mr. Jimenez?

24 A. No.

25 Q. What about -- What types of expenses does CCPOA pay

1 Mr. Jimenez?

2 A. Business expenses. We reimburse for business  
3 expenses.

4 Q. Okay. Anything else?

5 A. Not that I'm aware of.

6 Q. And I had asked you a little bit ago about the  
7 purchase of vehicles last year.

8 Did you know -- And I asked you if CCPOA purchased  
9 eight vehicles within the last year or so. What was your  
10 answer?

11 A. That would be approximate to what we buy each year,  
12 to be honest.

13 Q. Okay. So each year CCPOA purchases about eight  
14 vehicles?

15 A. Yeah. Mostly for our field reps.

16 Q. Okay. How much did that cost last year?

17 A. Well, we're getting the vehicles for about \$20,000 a  
18 car, 22,000. Again, I'm estimating. So what? That's 160 --  
19 176,000.

20 Q. That's a yearly expense essentially?

21 A. Sometimes we get six, sometimes we get five,  
22 sometimes we get eight. We take a look each year. We  
23 analyze how many miles the field reps' cars have on them, and  
24 when they're not safe to drive, we change them out.

25 Q. Okay. All right.

1 Now, what about political contributions?

2 I won't get into, you know, who the organization  
3 supports or doesn't support or anything like that, but in  
4 2008 didn't CCPOA contribute one million dollars relative to  
5 a proposition on the California ballot?

6 A. I have absolutely nothing to do with the political  
7 contributions. All the political checks get run through an  
8 attorney that specializes in political issues.

9 Q. Who's that?

10 A. Wayne Ordos.

11 Q. Let me ask you this: As the chief financial  
12 officer -- I mean, do you have any knowledge of the  
13 contribution that I just referenced?

14 A. No, I don't.

15 Just so you know, the money gets transferred over to  
16 that office, and I don't deal at all in the Political Action  
17 Committees or anything.

18 Q. Okay. Within the last year didn't CCPOA donate \$1  
19 million to something called the National Law Enforcement  
20 Memorial?

21 MR. MASTAGNI, SR: Your Honor, I object on the  
22 grounds of the First Amendment. We're getting into areas of  
23 what they did.

24 THE COURT: Overruled. That you may answer.

25 THE WITNESS: CCPOA did not give a million dollars to

1 any outside group like that.

2 BY MR. BAXTER:

3 Q. Okay. Did CCPOA donate any money to that  
4 organization?

5 A. Okay. Can you repeat the name of it?

6 Q. I'm sorry. The National Law Enforcement Memorial.

7 A. Is that -- I don't know. There's a museum back east  
8 that we -- I think we gave \$50,000 to, but, again, I wasn't  
9 aware you would be asking that so I don't know for sure. I  
10 could be off on that number. But the only thing I can  
11 guarantee you is we gave nothing, nothing close, anywhere  
12 close to a million dollars on that.

13 Q. Okay. Are you familiar with something called the  
14 Governor's Cup Gold Tournament?

15 A. Yes, I am.

16 MR. MASTAGNI, SR: Objection, Your Honor. We're  
17 right back to the same First Amendment issue on the right  
18 to --

19 THE COURT: The Governor's Cup Golf?

20 MR. BAXTER: Tournament.

21 THE COURT: Tournament.

22 MR. MASTAGNI, SR: Can we come to sidebar, Your  
23 Honor?

24 THE COURT: Come to sidebar.

25 ///

1 Honor?

2 THE COURT: You may.

3 (Whereupon, the following discussion was held at  
4 sidebar.)

5 THE COURT: Record will reflect we're at sidebar.

6 Before you say anything, you know this reminds me of  
7 what I said to David, which is when I rule on something, I  
8 rule on it. It is not an opportunity to go around the ruling  
9 and find some other way to ask the question.

10 Is that what you are going to object to?

11 MR. MASTAGNI, SR.: Yes. Because obviously -- I  
12 mean, there is a First Amendment right. I'm incensed with  
13 this.

14 THE COURT: I'm ruling it out. I'm ruling it out.  
15 You will find some people are republicans, some people are  
16 democrats.

17 MR. BAXTER: I wasn't trying to get cute.

18 THE COURT: Yes, you were.

19 MR. MASTAGNI, SR.: Can we please admonition --

20 THE COURT: Stop.

21 (Sidebar discussion concluded.)

22 BY MR. BAXTER:

23 Q. Okay. Mr. Nicolaysen, CCPOA has box seats at the  
24 Sacramento Kings games, right?

25 A. Right.

1 Q. How many seats does it maintain?

2 A. I don't know. It's actually half a box.

3 Q. Okay.

4 A. But I don't know how many seats.

5 Q. How much does it pay for those per year, or per  
6 season, I guess we should say?

7 A. It is actually one of the accounts payable. That's  
8 the only reason I know the answer. It is 230,000.

9 Q. So that \$230,000 item is on the accounts payable that  
10 is reflected on the sheet that you've prepared?

11 A. Right.

12 Q. Okay. That's a discretionary expense, right?

13 In other words, that's not something that you need in  
14 order to keep the organization going, right?

15 A. Yeah. It does have its benefits to the organization.

16 Q. I'm sure it does.

17 A. So it's, you know...

18 Q. Not mission critical to the continued life blood of  
19 the organization?

20 MR. MASTAGNI, SR.: Objection. Argumentative.

21 THE COURT: No. You may answer that, if you know.

22 THE WITNESS: Well, my belief is it is important to  
23 the members because there's a benefit to the members now when  
24 you look. So I don't know how to answer that any  
25 differently.

1 BY MR. BAXTER:

2 Q. Okay. What about the Sacramento River Cats? Is  
3 there a box that's maintained by CCPOA for that?

4 A. Yeah.

5 Q. Okay. How many seats does that encompass?

6 A. I don't know. I have never been there.

7 Q. How much is that per season?

8 A. We just paid 23,000 for it.

9 Q. That's also included in the accounts payable on your  
10 sheet, right?

11 A. I don't know because we've paid it. So I don't know  
12 if we paid it before September 30th or after so I don't know  
13 the answer to that.

14 Q. All right. And those -- Both of those sums are  
15 expenditures that CCPOA incurs every year, right?

16 A. Right.

17 Q. And intends to keep incurring in the foreseeable  
18 future, right?

19 A. Actually, no.

20 Q. Is that right?

21 A. We're trying to check the contract. So the answer to  
22 that is maybe, maybe not.

23 Q. So that would be money that at least potentially  
24 might be freed up; is that right?

25 A. Maybe.

# Exhibit 2

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

---000---

BEFORE THE HONORABLE LAWRENCE K. KARLTON, SENIOR JUDGE

BRIAN DAWE; FLAT IRON  
MOUNTAIN ASSOCIATE, LLC  
formerly known as Flat  
Iron Mountain Associates,  
a Partnership,

Plaintiffs,

Vs.

CASE NO. CIV. S-07-1790 LKK

CORRECTIONS USA, a California  
Corporation; CALIFORNIA  
CORRECTIONAL PEACE OFFICERS  
ASSOCIATION, a California  
Corporation; JAMES BAIARDI,  
an individual; DONALD JOSEPH  
BAUMANN, an individual,

Defendants.

\_\_\_\_\_  
AND RELATED CLAIMS AND  
COUNTERCLAIMS  
\_\_\_\_\_

---o0o---

REPORTER'S TRANSCRIPT

TUESDAY, JANUARY 18TH, 2011

RE: MOTION FOR NEW TRIAL

RENEWED MOTIONS FOR JUDGMENT AS A MATTER OF LAW

---o0o---

Reported By: CATHERINE E.F. BODENE, CSR NO. 6926

1 percent of net worth, those punitive damage awards are  
2 generally okay, over ten percent, not okay. And here we've  
3 got 150 percent as to CCPOA and a couple 100 percent as to  
4 CUSA.

5 So even putting all the ratio stuff aside, we've  
6 still got to keep that in mind as to what the amount is  
7 vis-a-vis net worth of the entities.

8 MR. BAXTER: Your Honor, this is where frustration  
9 starts to set in. I mean, I have had to beat back two dozen  
10 arguments, and this was not made in their moving papers. So  
11 to the extent you are going to use that as a jumping off  
12 point as to remittitur, I would like to an opportunity to  
13 respond.

14 But at any rate, a continuous stream of 33 million  
15 dollars per year as testified to by -- or approximately -- as  
16 testified to by their chief financial officer, it's a union,  
17 they can always raise their dues, CCPOA is not going  
18 anywhere --

19 THE COURT: You can't raise your dues if you're  
20 members won't stand for it. I don't know the answer to that,  
21 but frankly, neither do you, nor does counsel.

22 You know -- Well, go ahead.

23 MR. BAXTER: Last point on this, and this is why it  
24 is particularly frustrating. I know for a fact that CCPOA  
25 would be able to pay this judgment. David Sanders, their

1 spokesman, has announced that they would be able to pay the  
2 judgment. So not having had the opportunity to be able to  
3 bring that to bear in opposition is a little frustrating.

4 THE COURT: I think we've exhausted this issue, but I  
5 think it is more difficult -- I think it is difficult. Have  
6 we said what needs to be said?

7 MR. ZIPSER: The only thing I need to respond to is  
8 Mr. Baxter's self-opinion. I can represent to the Court that  
9 the punitive damage awards would be catastrophic as to both  
10 of our clients.

11 THE COURT: All right.

12 Anything that we haven't said that needs to be said?

13 MR. BAXTER: I don't think so, Your Honor.

14 THE COURT: Okay. Let's take up the next issue,  
15 which I think is surprising, but may be true.

16 What do we do about what appears to be California  
17 law, which says interference with a contract, if you have a  
18 corporation, then the agents of the corporation and their  
19 misconduct, however awful, is simply the conduct of the  
20 corporation. And therefore, you're saying that the  
21 corporation interfered with its own contract, and we know  
22 that can't be so.

23 A, is that the law; and B, if it's the law, how does  
24 it apply in this case?

25 MR. BAXTER: The answer is this: If Mr. Baiardi -- I

# Exhibit 3



National Law Enforcement  
MUSEUM  
A MATTER OF HONOR

**A Matter of Honor: The Campaign to Support the National Law Enforcement Museum**

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Panasonic^

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Bell Helicopter Textron, Inc.

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American Police Beat

LexisNexis Group

National Law Enforcement Officers Memorial Golf Classic

Peace Officers Research Association of California\*

Adam R. Rose and Peter R. McQuillan^

**Protectors of the Law (\$100,000 - \$249,999)**

A&E Television Networks

Anonymous

Arizona Conference of Police and Sheriffs

Arizona Highway Patrol Association\*

Association for Los Angeles Deputy Sheriffs (CA) ^

Association of Orange County Deputy Sheriffs (CA) ^

August A. Busch III Charitable Trust

Blauer Manufacturing Co., Inc.

Boston Police Patrolmen's Association (IUPA/AFL-CIO,  
NAPO) (MA) ^

Mrs. Cynthia Brown & Mr. James Brown

Burbank Police Department/Burbank Police Association  
(CA) ^

California Organization of Police and Sheriffs^

The Cleveland Police Historic Society

Deputy Sheriffs' Association of San Diego County (CA)\*

Detectives' Endowment Association of New York City  
(NAPO) (NY)\*

Eli Lilly and Company

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^ Indicates a Groundbreaking Society Member

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## News Room

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### California Correctional Peace Officers Association Pledges \$1 Million to National Law Enforcement Museum

Representing 30,000 correctional peace officers and parole agents, the CCPOA is sponsoring the Corrections exhibition, providing Museum visitors with a first-hand look at one of law enforcement's toughest beats  
*August 13, 2008*

**Washington, DC** — It's often called one of law enforcement's toughest beats: maintaining order and security inside the nation's prisons and jails. Now, when the National Law Enforcement Museum opens in 2013, visitors will be able to experience first-hand the challenges, dangers and professionalism of America's 200,000 correctional officers, thanks to a \$1 million pledge from the California Correctional Peace Officers Association (CCPOA).

The National Law Enforcement Officers Memorial Fund (NLEOMF) has announced that the CCPOA will sponsor the "Corrections" exhibition within the Museum's "Being an Officer" gallery. Here, visitors will experience life as a correctional officer and see how officers are trained to maintain order and protect themselves and inmates. Walking into real prison cells and seeing actual contraband seized from inmates, Museum visitors will hear the stories of officers who have worked in maximum- and minimum-security prisons, an all-female institution and a juvenile facility.



"In our correctional facilities, inmates typically outnumber officers by a ratio of seven to one or more, and most correctional officers walk their beat armed only with a radio, a baton and their considerable people skills," said Craig W. Floyd, Chairman and CEO of the NLEOMF, which is leading the effort to build the first-ever National Law Enforcement Museum in Washington, DC. "Through the leadership of CCPOA President Mike Jimenez and their generous \$1 million commitment, we will be able to ensure that all Americans can understand and better appreciate not only the dangers faced by our brave correctional peace officers, but also their incredible dedication to duty," he added.

In addition to showcasing the modern-day challenges facing correctional officers, the Museum will document the history of corrections in the United States. Several historic prison riots and escapes will be featured, including the Newgate Prison riot of 1774, the escape of three inmates from San Francisco's Alcatraz Prison in 1962, and the violent 1971 riot at the Attica State Prison in New York that resulted in the deaths of seven correctional officers.

Authorized by Congress in the year 2000, the planned National Law Enforcement Museum is a 95,000 square foot, mostly underground museum to be located just blocks from the U.S. Capitol and adjacent to the National Law Enforcement Officers Memorial. When it opens in 2013, the Museum will provide visitors with a comprehensive and compelling look at law enforcement in America. The Museum will feature high-tech, interactive exhibitions, interesting historical and contemporary artifacts, and extensive educational programming.

The privately funded Museum has launched an \$80 million capital campaign, with approximately \$36 million raised to date. The CCPOA is one of eight organizations that have contributed \$1 million or more to the Museum's capital campaign, called "A Matter of Honor." Former Presidents Bill Clinton and George H.W. Bush are the national honorary co-chairs of the "Matter of Honor" campaign. For more information about the National Law Enforcement Museum, including a virtual tour, visit [www.LawEnforcementMuseum.org](http://www.LawEnforcementMuseum.org).

#### About the California Correctional Peace Officers Association

CCPOA represents the more than 30,000 correctional peace officers working inside California's prisons and youth facilities, and the state's parole agents who supervise inmates after their release. Since its founding in 1957, CCPOA's mission has been to promote and enhance the correctional profession, protect the safety of those engaged in corrections and advocate for the laws, funding and policies needed to improve prison operations and protect public safety. CCPOA has a long, proud history of safeguarding the rights and welfare of the



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men and women it represents—dedicated professionals who do a tough, dangerous and essential job.

**Contact: Kevin Morison**  
202-737-7134 - [kevin@nleomf.org](mailto:kevin@nleomf.org)

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Website: 2004-2011 National Law Enforcement Officers Memorial Fund

# Exhibit 4

# Ribacchi & Associates

10301 Placer Lane, Suite 100, Sacramento, CA 95827 ph (916)361-2509

**DATE:** July 28, 2011

**TO:** **Mr. Daniel L. Baxter**  
Wilke, Fleury, Gould & Birney, LLP  
400 Capitol Mall  
Sacramento, CA 95814

**FROM:** Richard A. Ribacchi, MAI  
Ribacchi & Associates

**SUBJECT:** **Single Tenant Office Building**  
**CCPOA Headquarters**  
755 Riverpoint Drive  
West Sacramento, California, 95605

**REFERENCE:** Costs associated with re-leasing the building if it were vacant.

---

Mr. Baxter:

In response to your request, I have completed the investigation and the analysis that is necessary to estimate the monetary costs associated with releasing the office building at 755 Riverpoint Drive, West Sacramento, California.

In order to accomplish this task, it was necessary to conduct interviews with several individuals that are actively involved in the leasing of office properties within the Sacramento Metropolitan market place. The individuals contacted were:

- Thomas Wolcott, Grubb & Ellis
- Darron Whittle, Ethan Conrad Properties
- Chad Cook, Cassidy Turley

In the course of the interview, the property was identified and it was assumed that the current interior improvements were of good quality and design, however, if the current occupant were to vacate, the improvements would show normal wear and tear from the use over the years. The second assumption is that the likely tenant would either be a full building, or full floor user.

**RIBACCHI**  
& Associates

With the basic assumptions in place, the following questions were posed:

- In today's economy, what is the estimated period of time that the office space is likely to remain vacant prior to securing a new tenant?
- In today's economy, what dollar amount is likely to be negotiated for interior tenant improvements?
- In today's economy, how much if any free rent or similar leasing incentives will be required to secure a tenant?
- In today's economy, what are the professional leasing fee schedules that are most likely to be required?

The answers to these questions are presented in the following table:

Broker	Time Vacant	Tenant Improvements	Lease Incentives	Term of Lease	Commission Schedules
Darron Whittle Ethan Conrad Properties	6 to 18 months	\$15 to \$25 per SF	6 months rent abatement	7 years	5% of the first 5 years, 2.5% of rent for the balance of the lease term
Thomas Wolcott Grubb & Ellis	12 to 18 months	\$18 to \$20 per SF	1 month of free rent for each year of lease	5 to 10 years	7.5% of the entire lease term
Chad Cook Cassidy Turley	6 to 18 months	\$15 to \$20 per SF, plus \$4 to \$5 per SF moving expense, plus \$1 to \$2 per SF for FF&E	1 month of free rent for each year of the lease	5 to 10 years	7.5% of the first five years rent, 2.5% of the rent for years 6 through 10

Predicated upon the responses presented in the table above, the costs associated with releasing the office space are calculated in the following table.

**RIBACCHI**  
& Associates

COST ASSOCIATED WITH LEASING IF VACANT 758 Riverpoint Drive, West Sacramento				
<b>Vacant Time</b>				
	Probability			
6 months	25%	\$329,532	\$82,383	
12 months	50%	\$659,064	\$329,532	
18 months	25%	\$988,596	<u>\$247,149</u>	
				\$659,064
<b>Tenant Improvements</b>				
	Probability			
32,679	25%	\$15	\$122,546	
32,679	50%	\$20	\$326,790	
32,679	25%	\$25	<u>\$204,244</u>	
				\$653,580
<b>Free Rent</b>				
7 months		\$54,917		\$384,419
<b>Lease Commissions</b>				
7.5% per year, 1-5		\$659,064	\$247,149	
2.5% per year, 6-7		\$659,064	<u>\$32,953</u>	
<b>Total Cost to Re-lease</b>				<b>\$1,977,165</b>
<b>Rounded to</b>				<b>\$2,000,000</b>

As can be seen the total costs associated with re-leasing the office building in the present economic conditions, were the current occupant to vacate it, amounts to \$1,977,165, rounded to \$2,000,000.

Respectfully Submitted,



Richard A. Ribacchi, MAI  
CA Certificate No: AG003669

Date: July 28, 2011



## CERTIFICATION

I certify that, to the best of my knowledge and belief:

1. The facts and data reported by the appraiser and used in the process are true and correct.
2. The analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this report, and are my personal, unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.
4. My involvement in this assignment was not contingent upon developing or reporting predetermined results.
5. My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
6. My analyses, opinions, and conclusions were developed and this review report has been prepared in conformity with the *Uniform Standards of Professional Practice (USPAP)*, Standard 3, 2011 Edition.
7. I completed an exterior inspection the subject property of the report.
8. No one provided me with appraisal assistance.
9. Based upon my appraisal experience and education, I am competent to perform this assignment in a reliable manner.
10. I am licensed by the State of California Office of Real Estate Appraisers as a "Certified General Real Estate Appraiser," OREA Number AG003669, expiration date December 22, 2012.
11. The Appraisal Institute conducts a program of continuing education for its designated members. As of the date of this review, Richard A. Ribacchi, MAI, has completed the requirements of the continuing education program of the Appraisal Institute.
12. The reported analyses, opinions, and conclusions were developed, and this review has been prepared, in conformity with the requirements of the *Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute*.
13. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized members.

A handwritten signature in black ink that reads "Richard A. Ribacchi". The signature is written in a cursive style with a horizontal line underneath the name.

Richard A. Ribacchi, MAI  
CA Certificate No: AG003669

Date: July 28, 2011

**ADDENDA**

**APPRAISER'S QUALIFICATIONS**

**Qualifications of  
RICHARD A. RIBACCHI, MAI**

Richard has been actively engaged as a Real Estate Appraiser and Consultant since 1981. He has offices located at:

*Ribacchi ♦ Weck, Inc.  
10301 Placer Lane, Suite 100  
Sacramento, CA 95827*

**EDUCATION**

B.S. Degree in Business Administration with a Finance Emphasis from the University of Southern California

Has successfully completed the following courses and seminars offered by the Appraisal Institute:

- |  |  |
|--|--|
| • Real Estate Appraisal Principles                 | Introduction to Appraising Real Property         |
| • Basic Valuation Procedures                       | Principles of Income Property Appraisal          |
| • Capitalization Theory and Techniques             | Understanding Limited Appraisals-General         |
| • Case Studies                                     | Residential Subdivision Analysis                 |
| • Standards of Professional Practice               | Accrued Depreciation                             |
| • Single Family Residence Seminar                  | Analysis, Sales Comparison Approach              |
| • Report Writing Seminar                           | Condo Appraisal Theory and Techniques            |
| • Litigation Valuation                             | Lease Abstracting and Analysis                   |
| • Public Interest Value vs. Market Value           | Apartment Appraising Circa 1998                  |
| • Attacking & Defending an Appraisal in Litigation | Appraising Development Land Impacted by Wetlands |
| • Litigation Skills for the Appraiser              | Federal & State Laws & Regulations               |
| • Mather Air Force Conversion Workshop             | California Condemnation Process                  |
| • Appraisal of Non-Conforming Uses                 | Partial Interest & Theory Case Law               |
| • Case Studies Commercial                          | Highest & Best Use                               |

**Professional Designation/Membership**

- MAI designated member Appraisal Institute
- Certified General Real Estate Appraiser, California State License No. AG003669
- Past President - Sacramento Sierra Chapter Appraisal Institute
- Past Region 1 Associate Guidance Representative - Appraisal Institute
- Past Membership Development and Retention Committee - Appraisal Institute
- Past BIA of Superior California - North Valley Chapter

RICHARD A. RIBACCHI, MAI  
Page -2-

**Court Recognition**

Qualified as an expert witness in Superior Court of California, Counties of El Dorado & Sacramento, U.S. Bankruptcy Court, Eastern District of California and Northern District of California, and U.S. Bankruptcy Court, Dallas, Texas.

**Areas of Expertise**

Feasibility and Market Analysis      Involves financial profitability studies, supply & demand studies, and market penetration analysis.

**Appraisal Services for the Following Real Property Types**

Vacant Land	Residential, commercial, and industrial sites; multi-use holdings with acreage suitable for residential, commercial, industrial and other uses.
Residential	Residential subdivisions, condominiums, planned unit developments, mobile home parks, apartments and SFR's.
Commercial	Office buildings, office condominiums and PUD's, retail buildings, R&D facilities, shopping centers, fast-food restaurants, RV parks, etc.
Industrial	Industrial parks, business parks, warehouses, manufacturing plants, mini-warehouse projects, etc.
Special Purpose	Congregate care facilities, solid waste transfer station.
Litigation Support	Right of way taking, condemnation, partial interest, permanent agricultural easements, bankruptcy, tax appeal, estate planning

## Client List

AF Evans Company, Inc.	Dr. Fahn
Affinity Bank	Dunmore Homes
AKT Development Corporation	Earthworks Industries
Alice Calahan	EDH Community Service District
Amador County Counsel	Elk Grove Unified School District
American Business Bank	Ellicon & Robie
Appraisal Pacific	Farmers and Merchants Bank
Arkad Development Corporation	Feather River State Bank
Atlantic Bank of NY	Federal Deposit Insurance Corporation
Bank of America	Financial Institutional Partners Mtge. Co
Bank of Lodi	First Bank of California
Bank of Sacramento	First California Realty
Bank of Stockton	Five Star Bank
Bank of the West	Folsom Lake Ford
Bankers Mutual	Four G's Development
Beazer Homes California	Frank Stathos
Berkshire Mtge. Finance Ltd. Partnership	Garaventa Properties
Biola University	Garland & Associates
Brent Lee	George Tsakopoulos Land Development Co., Inc.
Browman Development Co., Inc.	Giannoni Development
Brown & Rawles Properties	GMAC Commercial Mortgage
Brown, Stevens, Elmore & Sparre	Good Shepard Fund
Business Property Trust	Grace L. Lusk M.D.
Butte Community Bank	Greenback Townhomes East
California Federal Bank	Greve, Clifford, Wengel & Paras, LLP
CB Richard Ellis	Guaranty Bank
Citi-Bank	H & B Orchards, Inc.
Civic Bank of Commerce	H.K. Greens General Partnership
Coast National Bank	Hackard, Holt & Heller
Commerca Bank-California	Hanzlick Enterprises
Commercial Capital Bank	HGW / Shasta
Community Bank of San Joaquin	Home Savings of America
Cotton and Lee Rosser Ranch	Humbolt Bank
County of Sacramento	IMPAC Commercial Capital Corp
Cresleigh Homes	Imperial Capital Bank
Crosbie Real Estate, Inc.	Imperial Thrift
Cummings Properties	Integrated Financial Associates
Daniel Cameron	Interbay Funding
Daniel Sinclair	Intervest Mortgage Investment Co.
David Zarka	Ironstone Bank
Diablo Funding Group	J & L Properties
Diversified Realty Appraisal	J.J. Irvine Trust

James F. Little  
JAS Development, Inc.  
Jason Allen  
Jeff Rouse  
Jim Loughridge  
John Mourier Construction Inc.  
Josip Odzak  
Ken Stone  
Kline & Lee  
LandAmerica Comm. Real Property  
LandAmerica OneStop  
Law Office Michael Gums  
Lawerence Properties  
Lester Labour  
Lodi Bank  
Lucus & Mercier  
Mc Donough, Holland & Allen  
McMorgan & Company  
Mechanics Bank  
Nancy Pearne  
Newmark Realty Capital, Inc.  
Norman Jacobson  
Norman O. Williams, Inc.  
North Valley Bank  
Norwest Bank, AZ  
Norwest Mortgage  
Novogradac & Company, LLP  
NOW Ltd.  
Okada Bros. Inc.  
Pacific Capital Bank  
Pacific Capital Investments, Inc.  
Pacific Diversified Group  
Pacific State Bank  
Palisades Properties, Inc.  
Philbin Capital Corporation  
PIR Development, Inc.  
Placer Sierra Bank  
Pointe Center Financial  
Provident  
Prudential Home Building Investors  
Quaker City Savings & Loan Assn.  
Rader, Rader, Goulart & Gray  
Ray Shurtz  
Realty Services International, Inc.

Redwood Mortgage  
ReProp Financial  
Residential Funding Corporation  
Retirement Housing Foundation  
Rich, Fuidge, Morris & Iverson, Inc.  
Richard Warren  
Richard Will  
River City Bank  
Robert Shaw, MAI  
Rocky Stitch Construction  
Roseville Banking Center  
Sacramento Real Estate Financing  
Sacramento Commercial Bank  
Salomon Smith Barney  
Santa Rosa Investments Associates, L.P.  
Sanwa Bank California  
Scotty Walton  
Shanghai Commercial Bank  
Shasta Real Estate Company  
Siemens Transportation Company  
Sierra West Bank  
Six Rivers National Bank  
Smith, Grant & Kliegman  
Solutions  
Sondra S. Benadum  
Spec District Risk Mgmt Authority  
Sterling Savings Bank  
Stewart Title  
Stockmans Bank  
The Bank of Hemet  
The Cal-Bay Mortgage  
The Counties Bank  
The Hartford Insurance Company  
The Scurfield Company  
Treasure Homes  
Turnball & McLaughlin  
U.S. Bankcorp  
Umpqua Bank  
Union Safe Deposit Bank  
United Auburn Indian Communities  
United California Bank  
United Commercial  
USDA Rural Housing  
Vulcan Materials

Walker, Donand & Company

Walter C. Kiedaisch

Washington Mutual Bank

Wells Fargo Arizona

Wells Fargo Bank

Wells Fargo RETECHS

Wells Fargo RETECHS/ Business Banking Group

Western Sierra Bank

Yolo Community Bank

STATE OF CALIFORNIA

Business, Transportation & Housing Agency

OFFICE OF REAL ESTATE APPRAISERS

REAL ESTATE APPRAISER LICENSE



RICHARD A. RIBACCCHI

has successfully met the requirements for a license as a general real estate appraiser in the State of California and is, therefore, entitled to use the title "Certified General Real Estate Appraiser".

This license has been issued in accordance with the provisions of the Real Estate Appraisers' Licensing and Certification Law.

OREA APPRAISER IDENTIFICATION NUMBER

AG003669

Date Issued: December 23, 2010

Date Expires: December 22, 2012

*Bob Clark*

Director, OREA

Audit No. 130574

THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD UP TO LIGHT TO SEE - SAFE AND VERIFY FIRST