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15 UNITED STATES BANKRUPTCY COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 In re:
18 THE ROMAN CATHOLIC BISHOP OF
SAN DIEGO, a California corporation
19 sole,
20 Debtor.

In Proceedings Under Chapter 11

Case No. 07-00939-LA11

**RESPONSE OF THE DEBTOR AND SUSAN
G. BOSWELL TO ORDER TO SHOW
CAUSE DATED APRIL 9, 2007**

Hearing Date: April 11, 2007

Hearing Time: 2:00 p.m. P.D.T.

**Location: Jacob Weinberger U. S. Courthouse,
325 West F Street, San Diego, California 92101-
6991**

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25 The Roman Catholic Bishop of San Diego, a California corporation sole, and the debtor
26 and debtor in possession ("RCBSD" or "Debtor") in the above captioned Chapter 11
27 reorganization case (the "Reorganization Case"), by and through its attorneys undersigned, and
28

1 Susan G. Boswell, hereby respond to the Court's "Order to Show Cause," dated April 9, 2007 (the
2 "OSC").

3 The Debtor and Ms. Boswell take the OSC very very seriously and their sole objective
4 here is to address and resolve credibility issues with this Court, so that the Court is informed
5 clearly now and on a continuing basis. Therefore, in compliance with the Court's OSC, this
6 Response supported through the attached declarations of Susan G. Boswell ("Boswell
7 Declaration") Exhibit "A", Richard M. Mirando ("Mirando Declaration") Exhibit "B", and
8 Christopher G. Linscott ("Linscott Declaration") Exhibit "C", signed under penalty of perjury is
9 hereby submitted. In this Response and the supporting Declarations, RCBSD and Ms. Boswell
10 will respond to the Court's concerns as set forth in the OSC and address what appears to be a
11 misunderstanding with respect to the information contained in the answer to Question No. 14 in
12 the Statement of Financial Affairs. In so doing, RCBSD and Ms. Boswell will attempt to correct
13 and/or clarify facts stated by them which have resulted in the concerns raised by the Court
14 regarding the issues addressed in the OSC.¹

15 **I. THE 770 BANK ACCOUNTS ARE NOT THE SAME AS THE PSDL TRUST.**

16 The Court has raised a number of questions about what are two different sets of bank
17 accounts--specifically, the accounts that were referred to in the Debtor's Cash Management
18 Motion as the "Service Recipient Accounts" and the separate Parish and School Deposit and Loan
19 Trust. As described in the attached Linscott and Mirando Declarations, the two sets of accounts
20 are not the same, and the funds in those accounts are not the same. To the extent that statements
21 or information provided by RCBSD or Ms. Boswell have created questions any basis for concern,
22 RCBSD and Ms. Boswell apologize to the Court. The Service Recipients Accounts consist of the
23 more than 770 bank accounts (the "770 Bank Accounts") opened by pastors or School principals
24 from the ninety nine (99) Parishes ("Parishes") and forty five (45) parochial Schools ("Schools")
25 located within the territory of the Diocese. The 770 Bank Accounts were opened using RCBSD's
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27 ¹ The Court is further respectfully referred to the pleadings filed by RCBSD on Friday,
28 April 6, 2007 in response to the objections of the Committee to the Cash Management Motion.

1 tax identification number ("TIN"); but they are not RCBSD accounts and are not held by the
2 Debtor. Completely separate are the funds held by the Debtor for the Parishes and Schools in the
3 Deposit and Loan Trust, which were described in response to question 14 in the Statement of
4 Financial Affairs (the "PSDL Trust Funds").

5 **A. The 770 Bank Accounts**

6 RCBSD has no access, possession, or control over the funds in the 770 Bank Accounts.
7 (Linscott Declaration ¶, Mirando Declaration ¶). The funds in the 770 Bank Accounts are
8 controlled by the Parishes and Schools that collected and deposited the funds. (Linscott
9 Declaration ¶, Mirando Declaration ¶). No officer of RCBSD, in his or her capacity as an officer
10 for RCBSD,² has the ability to sign on any of the 770 Bank Accounts at any of the financial
11 institutions where the accounts are located. (Linscott Declaration ¶, Mirando Declaration ¶). The
12 only connection between the 770 Bank Accounts and the Debtor is the fact that, in many
13 instances, pastors of Parishes and principals of parochial Schools used RCBSD's TIN when
14 opening their bank accounts. (Linscott Declaration ¶, Mirando Declaration ¶). The Debtor has
15 never represented that it holds the funds in the 770 Bank Accounts for others. RCBSD does not
16 have any interest in those funds and has not granted any interest in those funds that would create a
17 cash collateral issue under 11 U.S.C. § 363(a). Those accounts are not identified in Question 14
18 to the Statement of Financial Affairs.

19 Except for receiving annual reports from Parishes which contain account numbers and
20 account balances as of a specific date, RCBSD has no knowledge of the activity in the 770 Bank
21 Accounts. These annual reports do not provide RCBSD information regarding the deposit and
22 disbursement activity in the accounts. As described in the Mirando Declaration, the annual
23 reports provided by the Parishes, which include the referenced information regarding Parish
24 accounts, consist primarily of balance sheets and profit and loss statements that are used to
25 determine the amount of Chancery Tax that will be charged to each Parish. The reporting of

26 _____
27 ² The Vicar General Msgr. Steven Callahan is a pastor of St. Bridgid Parish, and therefore
28 has the ability to sign on the bank accounts of that Parish in his capacity as a pastor, but not in his
capacity as Vicar General.

1 accounts in the Parish annual reports is incidental to the chancery tax process. The Debtor does
2 not receive regular reports of the activity in the accounts. The account information provided is
3 not current and does not include deposit and disbursement activity. Furthermore, the account
4 information is not monitored by the Debtor.

5 Ms. Boswell acknowledges in her Declaration that certain statements made at the March
6 1, 2007 hearing should have included a statement about the limited information the Debtor
7 receives as to those accounts. As stated, at the time of the statements to the Court, she was not
8 aware of such information.

9 RCBSD does not understand that any steps taken by the Parishes and Schools regarding
10 TIN numbers for the 770 Bank Accounts dispose of any issue regarding ownership of the 770
11 Bank Accounts. Indeed, any such steps would seem to be inconsistent both with comments by
12 the Court on March 1, 2007, and with statements at that time by counsel for certain tort claimants,
13 and now proposed committee counsel, James Stang: "That if the service party wishes to get its
14 own tax ID number, that they take it outside the reporting obligation." Transcript March 1, 2007
15 p 20, lines 1-3.

16 **B. The Parish and School Deposit and Loan Trust**

17 The funds on deposit with the Parish and School Deposit and Loan Trust, formerly
18 referred to as the Diocesan Bank (the "PSDL Trust"), are completely different from the 770 Bank
19 Accounts. The PSDL Trust consists of funds which have been deposited by Parishes and Schools
20 with the RCBSD in its capacity as trustee of the PSDL Trust. (Linscott Declaration ¶, Mirando
21 Declaration ¶). These funds are held in a combination of bank accounts and securities accounts in
22 the name of the Debtor, or have been invested in loans used for Parish projects (primarily
23 construction) and to fund construction of Catholic Schools. (Linscott Declaration ¶, Mirando
24 Declaration ¶) The Funds held in the PSDL Trust are disclosed in response to question 14 of the
25 Statement of Financial Affairs. RCBSD does not believe that any of the PSDL Trust funds held
26 for others are cash collateral within the meaning of 11 U.S.C. § 363(a). The PSDL Trust Funds
27 are not and were not intended to be the subject of the Debtor's request in the Cash Management
28 Motion regarding the 770 Bank Accounts.

1 As described in the attached Linscott Declaration, RCBSD is not transferring the funds in
2 the PSDL Trust to the Parishes and Schools outside the ordinary course. In addition, RCBSD
3 has informed the Parishes and Schools that, unless they can establish that the funds deposited
4 with RCBSD were donated for a restricted purpose, the Parishes and Schools will not be able to
5 withdraw or have access to funds held by the RCBSD in the PSDL Trust. As described in the
6 Boswell Declaration, RCBSD took this position specifically to protect claims of creditors even if
7 disputed. It is RCBSD's intent to keep the unrestricted deposits frozen until the status of those
8 funds is resolved by court order, including such an order in conjunction with a settlement, or
9 confirmation of the Debtor's Plan of Reorganization. Furthermore, as described in the Boswell
10 and Linscott Declarations, RCBSD has proposed a mechanism for disclosing all post-petition
11 Parish and School Deposit and Loan Trust activity along with its monthly operating reports. The
12 Parishes' actions to change the taxpayer identification numbers of the 770 Bank Accounts have
13 no bearing on the funds held by RCBSD for the Parishes and Schools in the PSDL Trust because
14 they are different funds and accounts.

15 As described in the Mirando, Boswell, and Linscott Declarations, RCBSD understands
16 that the Organization of Parishes was working to establish a new account PSDL Trust account
17 (with its own separate TIN #) that will hold post-petition PSDL Trust loan payments and other
18 post-petition deposits by Parishes. No pre-petition PSDL Trust monies will be transferred to the
19 new account. The new account is merely being set up to clarify the situation with respect to post-
20 petition PSDL Trust operations. Again, all post petition PSDL Trust activity, including all of the
21 activity of the new account, will be disclosed to creditors in the Debtor's monthly operating
22 reports.

23 As described in the Boswell Declaration, Monsignor Gallagher's letter was not provided to
24 counsel for RCBSD before the Monsignor sent it. Furthermore, as described in the Mirando
25 Declaration, Monsignor Gallagher's letter was not provided to the Debtor before it was sent. That
26 letter contains misstatements regarding the Court's orders, the Parishes' 770 Bank Accounts, and
27 the PSDL Trust. Upon learning of the Gallagher letter, Ms. Boswell contacted counsel for the
28 Organization of Parishes regarding the misstatements contained in that letter; however, as stated

1 neither Ms. Boswell (or any other RCBSD counsel) nor RCBSD had any prior knowledge of the
2 letter or, therefore, the ability to prevent what Monsignor Gallagher mistakenly said.

3 **II. CONCLUSION**

4 Credibility is at the core of what RCBSD stands for and, in the Reorganization Case, it is
5 most critical that the Court be satisfied--because only the Court can and will permit the Debtor's
6 successful reorganization. Both the Debtor and its counsel have attempted to act credibly in
7 prosecuting the Debtor's reorganization; and there certainly has not been any intentional or
8 material misstatement to the Court. Again, to the extent that actions or statements by RCBSD or
9 Ms. Boswell have created concerns for the Court, it is their intent to address those fully to the
10 satisfaction of the Court.

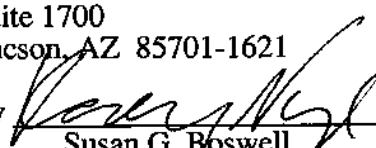
11 In all events, the Debtor and its counsel desire clarification of the record; and they are
12 prepared to put in place procedures to ensure that the Court is informed fully and accurately at all
13 times, including periodic status reports, status hearings, and any supplementation that the Court
14 considers appropriate.

15 As to the OSC, the Debtor and counsel respectfully request the Court's determination that
16 its concerns giving rise to the OSC are satisfied.

17 RESPECTFULLY SUBMITTED this 10th day of April, 2007.

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28 By 
Susan G. Boswell
Kasey C. Nye

Attorneys for Debtor, The Roman Catholic
Bishop of San Diego

EXHIBIT “A”

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11 Attorneys for Debtor, The Roman Catholic Bishop of
San Diego

12 **UNITED STATES BANKRUPTCY COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 In re:
15 **THE ROMAN CATHOLIC BISHOP OF**
16 **SAN DIEGO**, a California corporation
sole,
17 Debtor.

In Proceedings Under Chapter 11

Case No. 07-00939-LA11

**DECLARATION OF SUSAN G. BOSWELL
IN RESPONSE TO ORDER TO SHOW
CAUSE**

Hearing Date: April 11, 2007
Hearing Time: 2:00 p.m. P.D.T.
Location: Jacob Weinberger U. S. Courthouse,
325 West F Street, San Diego, California 92101-
6991

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19 I, Susan G. Boswell, declare under penalty of perjury as follows:

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23 1. I am an adult person and a resident of Pima County Arizona.
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25 2. I am a practicing lawyer, and a partner in the law firm of Quarles & Brady LLP
26 ("Q&B"). I am one of the attorneys of record for The Roman Catholic Bishop of San Diego
27 ("RCBSD"), the debtor and debtor in possession in the above-referenced chapter 11
28 reorganization.

1 3. This Declaration is being submitted in response to the Court's "Order to Show
2 Cause" dated April 9, 2007.

3 **The 770 Bank Accounts**

4 4. In the process of preparing the Cash Management Motion, we became aware that
5 the Parishes and Schools had opened numerous accounts using RCBSD's Tax Identification
6 Number. I understand that there are over 770 such accounts. We did not schedule the 770
7 accounts or the funds in those accounts because RCBSD has no access to or control over those
8 funds; instead, all indicia of ownership and possession reflect that the accounts and funds are
9 owned by the Parishes and Schools that collected and deposited the funds. It always has been and
10 continues to be my understanding that the only connection between the 770 Bank Accounts and
11 the Debtor is the fact that, in many instances, pastors of parishes and principals of parochial
12 schools used RCBSD's TIN when opening their bank accounts. To the best of my knowledge,
13 RCBSD does not have any interest in those funds and it has not granted, and cannot grant, any
14 interest in those funds to another entity that would create a cash collateral issue under 11 U.S.C. §
15 363(a). It continues to be my understanding that RCBSD does not have specific knowledge of the
16 balances in any of these accounts or the deposit and disbursement activity with respect to these
17 accounts.

18 5. When I addressed the Court at the hearing on March 1, 2007, I was not aware that
19 any information regarding the 770 Bank Accounts had been provided to the Debtor as part of the
20 annual reports from Parishes. If I had known that the Debtor received annual reports including
21 the balances of accounts, my comments would have noted and included the limited annual
22 information that the Debtor has received.

23 **The Parish and School Deposit and Loan Trust**

24 6. As the Court is aware, RCBSD holds funds for others in its capacity as trustee of
25 the Parish and School Deposit and Loan Trust, formerly commonly referred to as the Diocesan
26 Bank (the "PSDL Trust"). All of the funds held by the PSDL Trust are disclosed in response to
27 Question 14 of the Statement of Financial Affairs. It is my understanding that these funds are
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1 invested in a combination of segregated bank accounts, certain securities accounts in the name of
2 RCBSD, and in loans for parish projects or the construction of Catholic schools.

3 7. RCBSD has informed the Parishes and Schools that, unless they can establish that
4 the funds deposited with RCBSD were donated for a restricted purpose, the Parishes and Schools
5 will not be able to withdraw or have access to funds held by RCBSD in the PSDL Trust.

6 8. The Debtor and I have taken this position specifically to protect creditors, even if
7 their claims are disputed. Funds that are subject to donor restrictions, on the other hand, are
8 likely beyond the reach of creditors, even if considered property of the estate. See e.g., 11 U.S.C.
9 § 363(d)(1). It is RCBSD's intent to keep the unrestricted deposits frozen until the status of those
10 funds is resolved by Court order, including in conjunction with a settlement, or confirmation of
11 the Debtor's Plan of Reorganization. Furthermore, RCBSD has proposed a mechanism for
12 disclosing all post-petition Parish and School Deposit and Loan Trust activity along with its
13 monthly operating reports.

14 9. I did not understand the Parishes' attempts to change the taxpayer identification
15 numbers on the 770 Bank Accounts to have any bearing on the funds of the Parishes held by
16 RCBSD in the PSDL Trust because they are different funds and accounts.

17 10. I understand that the Organization of Parishes is working to establish a new
18 account for PSDL Trust (with its own separate TIN #) that will hold post-petition PSDL Trust
19 loan payments and other post-petition deposits by Parishes. No pre-petition PSDL Trust monies
20 will be transferred to the new account. The new PSDL Trust will be managed either by a
21 committee or by the Debtor in its capacity as Trustee. We are working with the Organization of
22 Parishes to finalize this arrangement. In all events, the post-petition account will be disclosed to
23 the Court and to creditors; and all post petition PSDL Trust activity, including all of the activity
24 of the new account, will be disclosed in the Debtor's monthly operating reports.

25 **The Gallagher Letter**

26 11. I did not see Monsignor Gallagher's letter before it was sent. When I saw the
27 letter, I recognized that it made some misstatements regarding both the Court's orders, the
28 Parishes' 770 Bank Accounts, and the PSDL Trust. Upon learning of the letter I contacted

1 Parishes' 770 Bank Accounts, and the PSDL Trust. Upon learning of the letter I contacted
2 counsel for the Organization of Parishes, Mr. Vilaplana, regarding the mistakes contained in that
3 letter and was informed of Reverend Orsborn's letter, which I understood to state correctly the
4 situation in lay terms. I do not believe that Rev. Orsborn's letter is inconsistent with the Court's
5 rulings in light of the fact that the 770 Bank Accounts are separate from and contain different
6 funds from the PSDL Trust.

7 I declare under penalty of perjury under the laws of the United States that the foregoing is
8 true and correct.

9 DATED: this 10th day of April, 2007.

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11 SUSAN G. BOSWELL

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EXHIBIT “C”

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11 Attorneys for Debtor, The Roman Catholic Bishop of
San Diego

12 **UNITED STATES BANKRUPTCY COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 In re:

15 **THE ROMAN CATHOLIC BISHOP OF**
16 **SAN DIEGO**, a California corporation
sole,

17 Debtor.

In Proceedings Under Chapter 11

Case No. 07-00939-LA11

18 **DECLARATION OF CHRISTOPHER G.**
19 **LINSCOTT IN RESPONSE TO ORDER TO**
20 **SHOW CAUSE**

21 **Hearing Date: April 11, 2007**

Hearing Time: 2:00 p.m. P.D.T.

Location: Jacob Weinberger U. S. Courthouse,
325 West F Street, San Diego, California 92101-
6991

22 I, Christopher G. Linscott, declare under penalty of perjury as follows:

23 1. I am an adult person and a resident of Pima County Arizona.

24 2. I am an accountant licensed in the State of Arizona and a shareholder of Keegan,

25 Linscott & Kenon, P.C. ("KLK"), located at 33 North Stone Avenue, Suite 1101, Tucson, Arizona

26 85701. KLK and I have been appointed as financial consultants to The Roman Catholic Bishop

27 of San Diego, a California corporation sole, and the debtor and debtor in possession ("RCBSD" or

28 "Debtor") in the above captioned Reorganization Case.

1 3. I am the individual at KLK primarily responsible for providing financial
2 consulting services to RCBSD. I have been a Certified Public Accountant since 1984. In
3 addition to being a CPA I am a Certified Fraud Examiner ("CFE"), and a Certified Insolvency and
4 Restructuring Advisor (CIRA). In my practice as an accountant I have worked extensively with
5 non-profit organizations over the years. In this part of my practice I have assisted non-profit
6 cemeteries, universities, social service organizations, affordable housing, museum, and healthcare
7 organizations with audit and consulting services. In addition I have extensive experience working
8 on insolvency, bankruptcy and related financing and litigation matters including:

- 9 • serving as a chapter 11 trustee;
- 10 • serving as an examiner in Chapter 11 cases;
- 11 • serving as receiver for corporate commercial entities and financial institutions in
12 Arizona and California;
- 13 • Performing various fraud analyses and forensic procedures; and,
- 14 • Preparing operating cash forecasts for commercial, municipal and non-profit
15 businesses.

16 Most significant to this case, I was the financial consultant to the Roman Catholic Church
17 of the Diocese of Tucson in its successful chapter 11 reorganization. In addition, I have worked
18 with other dioceses throughout the United States regarding their accounting and financial
19 practices. As such, I am very familiar with the operations, and the accounting and financial
20 practices of Catholic dioceses.

21 4. In my capacity as financial consultant to RCBSD, I have worked closely with the
22 financial and accounting staff at RCBSD, including reviewing and analyzing RCBSD's
23 accounting records kept in the ordinary course of business and reviewing and analyzing RCBSD's
24 financing and accounting systems. I have assisted with preparing the Schedules of Assets and
25 Liabilities, as well as the Statement of Financial Affairs, and I assisted with the recent amendment
26 to the Schedules and Statement of Financial Affairs. Further, I have worked with the finance and
27 accounting staff to create and implement procedures and controls for operating in Chapter 11 as a
28 debtor in possession including extensive work regarding the Debtor's operations with respect to

1 the Debtor's own funds, the assets that it holds for itself and others, and its operations with respect
2 to Service Recipients including the Parishes and Schools. I have also worked closely with
3 RCBSD finance and accounting staff to develop and implement the appropriate controls and
4 reporting mechanisms for monthly operating reports and other reports.

5 5. It is the practice and procedure of RCBSD to maintain records and to record
6 transactions, acts, conditions, or events concerning RCBSD. RCBSD relies on those records in
7 connection with its business dealings. The business records are created and maintained by
8 RCBSD as part of its regular business practice in the ordinary course of RCBSD's business. All
9 such business records are made by persons with knowledge of the relevant facts, or made from
10 information transmitted by persons with knowledge of the relevant facts, at or near the time of the
11 relevant acts, events, or conditions to which the business records relate. In my position as
12 RCBSD's financial consultant, I am familiar with the business records relating to the cash
13 management, financial controls and related matters and the manner in which these business
14 records have been created and maintained. The statements made herein are based on my personal
15 knowledge of the events or the facts at issue and/or my review of relevant business records.

16 6. This Declaration is being submitted in response to the Court's "Order to Show
17 Cause" dated April 9, 2007.

18 7. I understand that the Court has raised questions in the Order to Show Cause
19 regarding the bank accounts of Parishes and Schools that were described in Exhibit 2 to Richard
20 M. Mirando's declaration in Support of the Debtor's First Day Motions (the "770 Bank
21 Accounts") as well as certain questions regarding the Parish & School Deposit and Loan Trust
22 (the "PSDL Trust").

23 8. As I testified in my declaration in support of the RCBSD's Reply to the Unsecured
24 Committee's Objection to the Cash Management Motion, the PSDL Trust historically has
25 sometimes been referred to as the "Diocesan Bank". In the process of assisting RCBSD with
26 preparation of the Statement of Financial Affairs, I reviewed the books and records for the PSDL
27 Trust. In addition, I worked extensively with RCBSD to develop the procedures and protections
28 for the operation of the PSDL Trust post petition in relation to this Reorganization Case. I

1 worked extensively on the disclosures in the Statement of Financial Affairs regarding the PSDL
2 Trust. All of the funds held in the PSDL Trust are disclosed in the response to question 14 of the
3 Statement of Financial Affairs.

4 9. It is my understanding that RCBSD is not transferring the funds in the PSDL Trust
5 to the Parishes outside the ordinary course. In addition, I have assisted RCBSD in implementing
6 the controls necessary to prevent the Parishes and Schools from withdrawing funds from the
7 PSDL Trust unless they can establish that the funds deposited with RCBSD were donated for a
8 restricted purpose.

9 10. In addition, with respect to post-petition PSDL Trust activity, I have already had
10 discussions with the Office of the United States Trustee and proposed a mechanism for reporting
11 the activity of the PSDL Trust in the Monthly Operating Reports as well as reporting the activity
12 for the Service Recipients that I helped develop. A copy of similar reporting included in the
13 Monthly Operating Reports which I developed with the United States Trustee in the Diocese of
14 Tucson reorganization case have been forwarded to the United States Trustee's office in San
15 Diego for review and approval. The PSDL Trust is not a component of the Debtor's operational
16 cash management.

17 11. The 770 Bank Accounts and the funds therein are completely separate and distinct
18 from the PSDL Trust and the funds therein.

19 I declare under penalty of perjury under the laws of the United States that the foregoing is
20 true and correct.

21 DATED: this 16th day of April, 2007.

22 
23 CHRISTOPHER G. LINSCOTT

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