

Randall G. Simpson  
Raymond E. Goad, Jr.  
David L. Anderson  
JERMAIN, DUNNAGAN & OWENS, P.C.  
3000 'A' Street, Suite 300  
Anchorage, Alaska 99503  
Telephone: (907) 563-8844

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

TRUSTEES OF THE ALASKA LABORERS  
HEALTH AND SECURITY, RETIREMENT,  
TRAINING AND LEGAL SERVICES FUNDS,

Plaintiffs,

vs.

Case No. 3:09-CV-00120-RRB

RAINDANCE HEALTHCARE GROUP, INC.,  
ANDREW L. TURNER, Individually, and  
WILLIAM LASKY, Individually,

Defendants.

**PLAINTIFFS' OPPOSITION TO  
MOTION FOR PARTIAL SUMMARY JUDGMENT AND  
MEMORANDUM SUPPORTING PLAINTIFF'S RULE 56(f) MOTION  
AND CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT**

**I. INTRODUCTION**

This is an action to collect unpaid contributions, liquidated damages, interest, attorneys' fees and costs owed by defendants RainDance Healthcare Group, Inc., ("RainDance"), Andrew Turner and William Lasky to the Alaska Laborers Health and Security, Retirement, Training and Legal Services Trust Funds ("Trust Funds"). Plaintiffs brought this action pursuant to §§ 502(e)(1) and 515 of the Employee Retirement Income Security Act, as amended, 29 U.S.C. §§ 1132(e)(1) and 1145 (hereinafter "ERISA").

As the material facts will illustrate, there are genuine issues which preclude summary judgment relating to the individual liability of Andrew Turner and William Lasky. Additionally, Turner's and Lasky's Motion is premature under Civil Rule 56(f) because the motion was filed prior to providing the Trust Funds with any opportunity to obtain discovery of relevant facts the Trust Funds believe exist. The Trust Funds believe these facts would explain and verify Turner and Lasky's financial dealings with RainDance and the capitalization of RainDance. There are, however, no issues that can justifiably be disputed regarding the liability of RainDance. Accordingly, the Trust Funds are entitled to summary judgment against RainDance.

## **II. PROCEDURAL HISTORY**

Plaintiffs filed suit against RainDance, Andrew Turner, and William Lasky on June 12, 2009. Turner and RainDance filed an Answer and denied liability for RainDance's debts on July 7, 2009. Lasky filed his Answer denying liability on October 5, 2009. The parties exchanged initial disclosures on December 21, 2009. Plaintiffs served Discovery Requests, including Requests for Production on February 9, 2010. Those requests remain outstanding as of the date of this filing with Defendants' responses due on March 15, 2010.

On February 10, 2010, Defendants filed a Motion for Partial Summary Judgment, seeking summary judgment of Plaintiffs' claims alleging individual liability of Turner and Lasky.

## **III. STATEMENT OF FACTS**

Material facts relating to the individual liability of RainDance shareholders and board members Andrew Turner and William Lasky are in dispute and preclude their motion for partial summary judgment. Notwithstanding the known disputed facts, the full details regarding Turner and Lasky's involvement with RainDance remain unknown because this litigation is in the very early stages and only initial disclosures have been produced to date.

The corporate records disclosed by Turner and Lasky are sparse and incomplete. Andrew Turner and William Lasky incorporated RainDance or caused RainDance to be incorporated on September 26, 2007 in Delaware. *See generally* Exhibit A (RainDance incorporation documents). RainDance produced few corporate records in its initial disclosures. In the absence of further discovery, Plaintiffs presume the documents produced in their initial disclosures are the full extent of all corporate documents that Turner and Lasky maintained. If so, then corporate norms and legal status is in question.

Turner initially capitalized RainDance with a loan of \$560,000 on February 1, 2008. Exhibit B, page 1 (First Turner Promissory Note). On March 7, 2008 Turner loaned an additional \$200,000, for a total of \$760,000. Exhibit C, page 1 (Second Turner Promissory Note). Lasky loaned RainDance \$100,000 on February 1, 2008. Exhibit D, page 1 (Lasky Promissory Note). RainDance then apparently secured a revolving line of credit from CapitalSource Financing, LLC. Exhibit E, page 1 (Unanimous Written Consent of Board of Directors). The amount or existence of the Revolving Line of Credit and Security Agreement cannot be confirmed because Defendants have yet to produce it.<sup>1</sup> However, if Defendants' claims are accurate, RainDance was capitalized with a total of \$860,000 in loans and a \$2,000,000 line of credit.

RainDance's Bylaws require annual shareholder meetings and notice thereof. Exhibit G, page 5-6 (RainDance's Bylaws). Nevertheless, no annual or special meetings of shareholders or of directors were ever held. Defendants did not provide records of annual meetings or any meeting notices. Neither Turner nor Lasky signed the resolution authorizing the Revolving Line of Credit and Security Agreement between CapitalSource Financing LLC and RainDance. Ex.

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<sup>1</sup> The Trust Funds have requested production of the Revolving Line of Credit and Security Agreement. *See* Plaintiff's Discovery Requests, Exhibit F, page 9.

E, page 2. Other corporate documents enumerated in the Organizational Written Action do not exist, such as RainDance's IRS S Corp. election and banking authorizations. Exhibit H, page 1-2 (Organizational Written Action). Finally, although RainDance was authorized to issue 100 shares of stock, the Organizational Written Action states that only 91 shares were issued, with 61 belonging to Turner and 30 belonging to Lasky. Ex. H, page 2. Turner and Lasky therefore owed 67% and 33% of the company, respectively, at the time of that Organizational Written Action. However, RainDance's Certificate of Authority indicates that sometime between the issuance of the Certificate of Authority and the Organizational Written Action, Turner acquired an additional 9 shares (or 3%) of RainDance. Exhibit I, page 3 (State of Alaska, Certificate of Authority). Defendants have not provided any record of the sale of additional stock to Turner.

RainDance began operating its sole enterprise, the Mary Conrad Center, a 90-bed assisted living facility located in Anchorage, Alaska, in approximately January or February 2008. Exhibit J, page 1 (Historical Statement of Operations 12/31/08). While RainDance ceased operations entirely after only 17 months, it actually only operated the center until December 2008 when the State of Alaska revoked RainDance's license for failing to provide safe facilities and assumed operations. Exhibit K. (Alaska DHSS Notice).

The limited financial documents initially disclosed by RainDance indicate that the Mary Conrad Center lost money in at least 11 of the 17 months it was in operation. Ex. J, page 8; Exhibit L, page 8 (Historical Statement of Operations 06/30/09). It is impossible to analyze Defendants' claims that RainDance was profitable based on the Statement of Operations provided or the Solvency Trend table provided by RainDance Chief Financial Officer Raymond Bower. Affidavit of Restad, ¶¶ 5-10. Bower states he prepared the table with reference to true and accurate business records, but he did not identify those records or include them as exhibits.

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**JERMAIN DUNNAGAN & OWENS**  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

Despite Defendants' claim of profits, RainDance was habitually late in paying fund obligations. *See generally* Exhibit M (Plaintiffs' Remittance Reports); Affidavit of Guillen, ¶¶ 4, 7. It is impossible to determine whether RainDance properly accounted for these expenses or whether it accounted for them at all based on the records initially disclosed by RainDance. Affidavit of Restad, ¶ 10. The employer remittance reports show that RainDance did not pay paid fund contributions due on August 15, 2008 until November 10, 2008. Ex. M, page 24. An expense matching this amount is absent from the Statement of Operations for the months of August or November 2008. *See generally* Ex. J. If these expenses were not taken into account, it is entirely possible that RainDance's "profits" were illusory. Affidavit of Restad, ¶ 10. It is clear from the initial disclosures that if RainDance made a profit in any given month, those profits were modest and heavily outweighed by its losses. *See* Ex. J, page 8; Ex. L, page 8.

Despite RainDance's corporate losses and debts, including its debt to the Trust Funds, Turner and Lasky caused RainDance to pay them a combined salary of \$16,667 per month from February 2008 until December 2008 when the State of Alaska assumed control of RainDance. RainDance also paid for their travel expenses. The financial documents produced by RainDance in its initial disclosures show several expenses with no stated explanation or purpose. *See generally* Ex. J; Ex. L. As with RainDance's other financials, it is impossible to verify on the basis of the documents provided whether personal items were expensed, or whether the expenses were for legitimate business needs. Affidavit of Restad, ¶¶ 11-14. Because of the absence of discovery it is currently impossible to determine whether Turner and Lasky may have directed RainDance to make additional payments to themselves or to entities they controlled. Affidavit of Restad, ¶ 14.

The facts in this case with regard to the corporate liability of RainDance are not in

dispute and may be stated simply. RainDance signed a Collective Bargaining Agreement (“CBA”) with the Alaska State District Council of Laborers and its affiliated Local Unions. Exhibit N, page 16 (Collective Bargaining Agreement). Under the terms of the collective bargaining agreement RainDance agreed to pay and contribute to the Trust Funds various sums for each Certified Nurse Assistant employed by RainDance at the Mary Conrad Center, from February 1, 2002 to October 29, 2009. Ex. N, page 11.

During the term that RainDance operated the Mary Conrad Center, it first became delinquent in paying required contributions in February 2008. Ex. M, page 1; Affidavit of Guillen, ¶ 3. RainDance failed to make timely contributions to the Trust Funds for the months of February through December, 2008. Ex. M, pages 1-11; Affidavit of Guillen, ¶ 4.

On March 17, 2009 RainDance CFO Bower wrote that RainDance would pay the delinquent contributions within the time demanded by the Trust Funds, and requested that the Trust Funds waive liquidated damages because “[w]e have been experiencing difficult business conditions over the past few months and would much appreciate the waiver of damages.” Exhibit O (Bower Letter, 3/17/2009). RainDance was able to eventually satisfy a portion of those obligations, with the Trustees agreeing to hold the liquidated damages in abeyance on the condition of no future delinquency. Affidavit of Guillen, ¶ 6.

Almost immediately thereafter, RainDance again became delinquent in making contributions to the Trust Funds. RainDance failed to make timely contributions to the Trust Funds for the months of January through May, 2009.<sup>2</sup> Ex. M, pages 12-15; Affidavit of Guillen, ¶ 7. As a result of the subsequent delinquency, liquidated damages associated with the first

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<sup>2</sup> RainDance eventually made required contributions for January, 2009 on or about May 14, 2009. Ex. M, page 12.

delinquency became due and owing. Affidavit of Guillen, ¶ 8. The Trust Funds demanded payment from RainDance, but received no payments. Affidavit of Guillen, ¶ 10.

#### IV. STANDARD OF REVIEW

Under Fed. R. Civ. P. 56, a moving party is entitled to summary judgment only if “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issues as to any material fact and that the movant is entitled to judgment as a matter of law.”

To defeat a motion for summary judgment, the non-moving party must demonstrate, by affidavit or otherwise, the existence of specific facts showing a genuine issue for trial. Fed. R. Civ. P. 56(e). The non-moving party need only demonstrate facts such that a reasonable juror, drawing all inferences in favor of the non-moving party, could return a verdict in the non-moving party’s favor. *James River Ins. v. Schenk*, 523 F.3d 915, 920 (9th Cir. 2008) (citing *U.S. v. Shumway*, 199 F.3d 1093, 1103-04 (9th Cir. 1999)).

Under Fed. R. Civ. P. 56(f), the court may postpone ruling on or refuse to grant summary judgment where a party shows “how additional discovery would preclude summary judgment and why [it] cannot immediately provide specific facts demonstrating a genuine issue of material fact.” *Moss v. U.S. Secret Service*, 572 F.3d 962, 966 (9th Cir. 2009) (citing *Mackey v. Pioneer Nat’l Bank*, 867 F.2d 520, 524 (9th Cir. 1989)).

A party is entitled to a Rule 56(f) continuance where it makes (1) a timely application which (2) specifically identifies (3) relevant information, (4) where there is some basis for believing the information sought actually exists. *Kotrous v. Goss-Jewett Co. of N. California*, S-02-1520 FCD/JFM, \*6-7 (E.D.Cal. 2-17-2010) (citing *Visa Int’l Serv. Ass’n v. Bankcard Holders of Am.*, 784 F.2d 1472, 1475 (9th Cir. 1986)).

“Where ... a summary judgment motion is filed ... early in the litigation, before a party has had any realistic opportunity to pursue discovery relating to its theory of the case, district courts should grant any Rule 56(f) motion fairly freely.” *Burlington Northern Santa Fe R. Co. v. Assiniboine and Sioux Tribes of Fort Peck Reservation*, 323 F.3d 767, 773-74 (9th Cir. 2003) (citing *Metabolife Int’l, Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001) (“[T]he Supreme Court has restated the rule as requiring, rather than merely permitting, discovery ‘where the non-moving party has not had the opportunity to discover information that is essential to its opposition.’”)).

## V. ARGUMENT

Drawing all inferences in favor of the Plaintiffs, the pleadings, discovery, disclosure materials on file, and affidavits in this case show that there are genuine issues of material fact relating to Andrew Turner’s and William Lasky’s individual liability for the debts of RainDance. Summary judgment as to Plaintiff’s claims against Andrew Turner and William Lasky must therefore be denied.

Additionally, Defendants’ Motion for Partial Summary Judgment is premature. Defendants have filed their Motion for Partial Summary Judgment before the Plaintiff funds have had an opportunity to obtain discovery explaining and verifying Turner and Lasky’s financial dealings with RainDance and RainDance’s capitalization, or to obtain expert opinions.

This is not a case where the Trust Funds have failed to diligently pursue discovery. The Trust Funds are currently awaiting Defendants’ responses to outstanding discovery requests. Further discovery will reveal facts relating to Turner and Lasky’s governance of RainDance, as well as their financial relationship with RainDance. Such facts will permit the Plaintiff funds to demonstrate genuine issues of material fact the abuse or respect of the corporate form, the

undercapitalization of RainDance, any fraudulent intent, and the injustice to the Plaintiffs stemming therefrom. This Court must postpone ruling on Defendants' Motion for Partial Summary Judgment until adequate discovery has been had and the Trust funds have had time to review the information it obtains through discovery.

**A. Genuine Issues of Material Fact Relating to the Individual Liability of Andrew Turner and William Lasky are in Dispute.**

Piercing the corporate veil is appropriate where two elements are met. First, there must be a unity of interest and ownership between the corporation and the shareholder such that the two do not exist as separate entities. *Seymour v. Hull & Moreland Engineering*, 605 F.2d 1105, 1111 (9th Cir. 1979). Second, it must be shown that failure to disregard the corporation would result in either fraud or injustice. *Id.* Federal courts consider three factors when determining if both elements are present. Those factors are: (1) the amount of respect given to the separate identity of the corporation by its shareholders, (2) the degree of injustice visited on the litigants by recognition of the corporate entity, and (3) the fraudulent intent of the incorporators. *Id.* Generally, a plaintiff must show the existence of the first factor, as well as at least one of the second or third factors. *UA Local 343 United Association of Journeymen & Apprentices v. Nor-Cal Plumbing, Inc.*, 48 F.3d 1465, 1475 (9th Cir. 1995).

In this case, the pleadings, discovery and disclosure materials on record, and affidavits show that genuine issues of material fact exist with regard to (1) whether Turner and Lasky respected the corporate form and legal requirements of corporate status, (2) whether respecting the corporate form would result in injustice, and (3) whether Turner and Lasky organized or operated RainDance with fraudulent intent.

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**JERMAIN DUNNAGAN & OWENS**  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

1. Defendants failed to respect corporate formalities or to preserve corporate documents.

Whether a defendant has respected the corporate form can be shown by his failure to observe corporate formalities, to maintain corporate documents, the commingling of personal and corporate funds, or undercapitalization of the corporation. *See United States v. Standard Beauty Supply Stores, Inc.*, 561 F.2d 774 (9th Cir. 1977). Failure to respect the separate identity of the corporation is a necessary threshold element before a court will pierce the corporate veil. *Nor-Cal Plumbing, Inc.*, 48 F.3d at 1475 (citing *Board of Trustees v. Valley Cabinet & Mfg. Co.*, 877 F.2d 769, 773 (9th Cir. 1989)). A plaintiff can satisfy this element by showing the defendant did not follow corporate formalities or maintain corporate documents. *Seymour*, 605 F.2d at 1112. Defendants' initial disclosures show a significant lack of respect for the corporate form and legal requirements.

In *Bd. of Trustees v. Valley Cabinet & Mfg. Co.*, 877 F.2d 769 (9th Cir. 1989)<sup>3</sup>, the court found the corporate form respected where the corporation was adequately capitalized, stock was issued, director meetings were held, taxes were filed, and proper records were kept of meetings and other company business. *Id.* at 772.

As distinguished from *Valley Cabinet*, there is no indication that Turner or Lasky held any board of director meetings, shareholder meetings, or that proper records were kept of the company's business dealings. AS §§ 10.06.405; 10.06.410 (requiring shareholder meetings and notice thereof); 10.06.430 (requiring corporations keep various books and records); *see Audit Services, Inc. v. Rolfson*, 641 F.2d 757, 764 (9th Cir. 1981) (corporate identity not respected where sole shareholder did not hold shareholder or director meetings and had commingled funds).

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<sup>3</sup> *See also* [CASES] [stating that lack of meetings, no minutes, etc. constitutes lack of respect for corporate formalities].

Moreover, RainDance produced an “Organizational Written Action of Board of Directors of RainDance Healthcare Group, Inc.” showing that Turner and Lasky were issued 61 shares and 30 shares of stock respectively. However, Turner obtained an additional 9 shares (or 3%) of RainDance stock between the time the Resolution was executed and RainDance filed an application for a Certificate of Authority from the State of Alaska. There are no documents known to Plaintiffs showing how Turner acquired his additional 9 shares of stock or whether he paid value for those shares. AS §§ 10.06.338 (requiring payment of value for shares); *see Seymour*, 605 F.2d at 1112 (lack of formal issuance of stock a factor).

While Defendants may have filed the documents necessary to organize and operate in Alaska, the remaining documents demonstrate systematic failure to observe corporate formalities and to preserve corporate documents. This is not an instance where the shareholders engaged in a mere “degree of informality in the structure of the corporation.” *Seymour*, 605 F.2d at 1112. Rather, the majority of records so far provided, or alternatively the lack of such documents to be produced, indicate that Turner and Lasky organized RainDance, and then carried on business as individuals rather than as a corporation.

2. Defendants undercapitalized RainDance for its purposes.

Fraud is one of the two optional factors required before a court will pierce the corporate veil. *Nor-Cal Plumbing, Inc.*, 48 F.3d at 1475. Fraudulent intent can be satisfied “either by proof of fraud in the formation of the corporation or fraudulent misuse of the corporate form after incorporation.” *Valley Cabinet*, 877 F.2d at 773. Undercapitalization alone is sufficient to demonstrate fraudulent intent at incorporation. *Ministry of Defense v. Gould, Inc.*, 969 F.2d 764, 769 (9th Cir. 1992).

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FAX (907) 563-7322

Adequate capitalization means “capital reasonably regarded as adequate to enable [the corporation] to operate its business and pay its debts as they mature.” *Laborers Clean-Up Contract v. Uriarte Clean-Up*, 736 F.2d 516, 524 (9th Cir. 1984) (quoting N. Lattin, *Lattin on Corporations* § 15(a) at 77 (2d ed. 1971)). The records produced by RainDance show that from its first month of operation to its last, it continually posted negative equity. This indicates continuous undercapitalization. See *In re RJC Industries, Inc.*, 369 B.R. 845, 852-53 (M.D.Pa. 2006); *Hart v. Steel Products, Inc.*, 666 N.E.2d 1270, 1277 (Ind. App. 1996);

3. Recognizing RainDance’s corporate form would permit Turner and Lasky to unjustly retain their salaries and to escape the consequences of their undercapitalization.

Injustice results when the distinction between the individual and the corporation is illusory and it would be inequitable under the circumstances to recognize the corporate form. *Katzir’s Floor and Home Design v. M-MLS.com*, 394 F.3d 1143, 1149 (9th Cir. 2004); *Seymour*, 605 F.2d at 1111, 1113.

To the extent that Turner and Lasky undercapitalized RainDance and failed to respect RainDance’s corporate identity, it would be unjust to permit them to avoid paying owed fund contributions. Turner and Lasky constitute the whole of RainDance’s Board of Directors. As discussed above, the initial disclosures would indicate that Turner and Lasky did not pay due respect to the corporate form, conducting business as individuals rather than through RainDance. Both Turner and Lasky enjoyed the benefit of the union members’ labor and both drew salaries of \$100,000 per year. While drawing this salary, Turner and Lasky, who exercised executive control over RainDance, failed to remit owed contributions to the Plaintiff funds. See Affidavit of Guillen, ¶¶ 3-4, 7, 9. Turner and Lasky now seek to shield the salaries they drew behind

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RainDance's corporate form. Recognizing RainDance's corporate form would, under these circumstances, work an injustice against the Plaintiff funds.

Therefore, genuine issues of material fact exist with regard to both elements necessary to justify piercing the corporate veil. The Plaintiffs also dispute whether a unity of interest existed between Turner, Lasky and RainDance, and whether it would be unjust to allow Defendants to retain their salaries under those circumstances. On these basis, the Court must deny their Motion for Partial Summary Judgment.

**B. Further Discovery Will Reveal Facts Bearing the Liability of the Individual Defendants.**

Defendants Turner and Lasky filed their Motion for Partial Summary Judgment before responding to the Plaintiff Funds' discovery requests. Because the Defendants filed their motion at such an early stage, the Plaintiffs cannot yet fully present material facts bearing on the issue of Defendants' individual liability. The Plaintiffs therefore move this Court under Fed. R. Civ. P. 56(f) to deny or postpone ruling upon the Defendants' motion until Plaintiffs obtain the discovery necessary to present those disputed issues of material fact.

A party is entitled to a Rule 56(f) continuance where it makes (1) a timely application which (2) specifically identifies (3) relevant information, (4) where there is some basis for believing the information sought actually exists and (5) where the plaintiff has diligently pursued previous opportunities for discovery. *Kotrous v. Goss-Jewett Co. of N. California*, 2010 WL 618280, \*2-3 (E.D.Cal. 2-17-2010) (citing *Visa Int'l Serv. Ass'n v. Bankcard Holders of Am.*, 784 F.2d 1472, 1475 (9th Cir. 1986)); *Pfingston v. Ronan Engineering Co.*, 284 F.3d 999, 1005 (9th Cir. 2002) (stating the rule requiring diligence); *Walsh v. Irvin Stern's Costumes*, 2006 WL 166509, \*11 (E.D.Pa. 1-19-2006) (not reported) (finding diligence where the motion for summary judgment was filed before discovery could take place and plaintiff had demonstrated

what information was sought, how it would preclude summary judgment, and why it had not yet been procured). Denial of a Rule 56(f) motion is especially inappropriate where the material sought is also the subject of outstanding discovery requests. *Visa Int'l Serv. Ass'n*, 784 F.2d at 1475.

In this case, Plaintiffs filed suit on June 12, 2009. Plaintiffs served discovery requests on Turner and Lasky on February 9, 2010. Defendants' discovery responses are due on March 15, 2010. Discovery does not close until December 3, 2010, per the parties' scheduling and planning order. Plaintiffs have diligently pursued discovery by any measure.

The discovery requests propounded by the Plaintiffs will (1) reveal facts showing Turner and Lasky abused RainDance's corporate form; (2) show whether RainDance was undercapitalized; and (3) reveal whether Turner and Lasky converted corporate assets to personal use.

1. Discovery will reveal additional facts showing Turner and Lasky's lack of respect and abuse of the corporate identity of RainDance.

As noted above, failure to respect the separate identity of the corporation is a necessary threshold element before a court will pierce the corporate veil. Turner and Lasky argue they followed all corporate formalities and maintained all necessary corporate documents. As explained above, the records disclosed to date do not establish that Turner and Lasky maintained records of corporate meetings, or documents such as credit agreements, IRS tax elections or show that they paid value for shares of the corporation. *See* Ex. H; Ex. I. If RainDance maintained other documents relating to its operation of the Mary Conrad Center is not determinable without additional discovery.

Turner and Lasky's failure to follow corporate formalities and maintain corporate documents thus far warrants further investigation. Plaintiffs have propounded several discovery

requests tailored to revealing to what extent Turner and Lasky failed to follow corporate formalities and maintain corporate documents. Ex. F, page 6-7, 9-10.

Moreover, facts and records disclosed by Defendants thus far again warrant further discovery. Because this case is in its early stages, the Plaintiff Funds are not yet in a position to give examples of the more serious forms of abuse of the corporate entity, such as commingling of personal and corporate funds, or the use of corporate assets as personal assets. *See Katzir's Floor and Home Design*, 394 F.3d at 1149; *Standard Beauty Supply Stores, Inc.*, 561 F.2d at 778. For example, Turner and Lasky charged at least \$15,000 in travel expenses to RainDance. Yet, Mary Conrad Center was RainDance's sole enterprise. Michael and Michelle Rose handled management of RainDance in Alaska on a day-to-day basis. Turner and Lasky participated in teleconference management meetings. Defendants have not disclosed any information that would demonstrate or allow the Court to determine that the travel expenses were for legitimate purposes.

Given the short period RainDance operated the Mary Conrad Center, the management arrangement, and that Mary Conrad Center was RainDance's sole enterprise, the amount of travel expenses warrants further discovery. This, coupled with Turner's previous involvement with companies that have been the subject of claims of fraud justifies further discovery. Plaintiffs' requests for production seek the financial records necessary to perform an audit of RainDance's finances and to verify that those and other expenses were legitimately incurred. Ex. F, page 5-13.

The conversion of corporate funds to personal use also bears on whether the corporate form is abused. Whether Turner and Lasky abused the corporate form is, in turn, essential to

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ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

piercing the corporate veil and the Plaintiff Funds ability to show that summary judgment should not be granted.

2. Discovery will reveal facts bearing on the inadequacy of RainDance's capitalization

Fraud is one of the two optional factors required before a court will pierce the corporate veil. *Nor-Cal Plumbing, Inc.*, 48 F.3d at 1475. Fraudulent intent can be satisfied "either by proof of fraud in the formation of the corporation or fraudulent misuse of the corporate form after incorporation." *Valley Cabinet*, 877 F.2d at 773. Undercapitalization alone is sufficient to demonstrate fraudulent intent at incorporation. *Gould, Inc.*, 969 F.2d at 769.

Turner and Lasky argue RainDance was capitalized in the amount of \$2,860,000. Defendants attribute \$2,000,000 of that total to a revolving line of credit. Defendants have not produced such a credit agreement. The existence or non-existence of that credit agreement directly bears on whether RainDance was adequately capitalized.

Turner and Lasky additionally claim RainDance began to show a profit near the end of 2008 and that the amount of capitalization was adequate. Adequate capitalization means "capital reasonably regarded as adequate to enable [the corporation] to operate its business and pay its debts as they mature." *Laborers Clean-Up Contract*, 736 F.2d at 524 (quoting N. Lattin, *Lattin on Corporations* § 15(a) at 77 (2d ed. 1971)). Turner and Lasky argue RainDance began to show a profit near the end of 2008 and that this constitutes proof the corporation was adequately capitalized. However, whether RainDance actually turned a profit at all is not itself objectively verifiable by the Plaintiff funds on the basis of the documents disclosed. Affidavit of Restad, ¶¶ 5-10. Defendants have disclosed income and expense statements as well as balance sheets, but have not disclosed the records upon which those reports were based. When determining capitalization, a CPA would generally examine a company's bank records, check registers, aging

schedules, general ledger, financial statements, contracts, and any budget projections, pro forma financial statements, or business plans that it had developed. Affidavit of Briskey, ¶ 7.

None of these records have been disclosed by RainDance. There is no single amount of money that constitutes adequate capitalization under all circumstances, and an auditor could not reasonably rely on the reports thus far disclosed by RainDance without also reviewing the underlying records. Affidavit of Restad, ¶¶ 5-8; Affidavit of Briskey, ¶¶ 7-8. Accordingly, Lasky and Turners representation that RainDance's capitalization was adequate cannot be tested nor affirmed.

Moreover, the Trust Funds have adequate reason to question the representation of adequate capitalization made by RainDance. RainDance was unable to successfully operate the Mary Conrad Center for even a year and a half. The balance sheets disclosed show that from its first month of operation to its last, RainDance never had positive equity. *See generally* Exhibit P (Balance Sheets, February 2008 – June 2009). The Plaintiff Funds have requested the records typically examined by the funds' auditors to determine if an employer's finances are regular or whether the business is undercapitalized for its purposes. Ex. F, pages 5-10. Because inadequate initial capitalization can suffice to show fraudulent intent, further discovery into RainDance's finances is essential to the Plaintiff Funds' investigation and ability oppose Defendants' motion.

3. Discovery will reveal facts bearing on whether Turner or Lasky converted corporate funds to personal use.

Turner and Lasky also argue they did not convert corporate funds to personal use. Nevertheless, certain expenses detailed on those reports that have been disclosed by RainDance indicate funds could have been used to funnel assets from RainDance to Turner or Lasky. Affidavit of Restad, ¶¶ 11-14. RainDance's former CFO, Ray Bower, argues that RainDance's reported expenses were for legitimate purposes. However, the financial records disclosed to date

by RainDance are simply not sufficient to verify that claim. Affidavit of Restad, ¶ 14. The limited and thin records and information that are currently produced and available justifies further inquiry by the Plaintiff Funds: These are serious questions raised by the fact that RainDance was only solvent for a short period; RainDance's CFO admitted RainDance was experiencing difficult business conditions; RainDance was habitually late with Plaintiff trust fund remittances; companies managed by Turner have been the subject of at least two previous allegations of fraud; and although RainDance never posted positive equity during its entire term of operation, both Turner and Lasky drew generous salaries of \$100,000 per year. *See generally* Exs. J, L, P, M, S; *see Hambleton Bros. Lumber v. Balkin Enterprises*, 397 F.3d 1217, 1228 (9th Cir. 2005) (recognizing milking or draining of corporate assets as improper conduct).

The discovery which has been requested by the Plaintiffs is targeted to reveal whether Turner and Lasky did in fact funnel funds to themselves directly or through other entities controlled by them. As with capitalization, improper payments post-incorporation constitutes fraudulent use of the corporate form and can justify the imposition of individual liability. *Valley Cabinet*, 877 F.2d at 773. The discovery sought by Plaintiffs is therefore essential to its opposition to Defendants' motion.

The Plaintiffs have specifically identified relevant information bearing on Turner and Lasky's individual liability and there is sufficient reason to believe that the information sought exists. The Plaintiffs Rule 56(f) motion should therefore be granted.

**C. Defendants' Allegations Regarding Trust Funds Reasonable Basis In Fact To File A Complaint Concerning Individual Liability Are Both Irrelevant And Incorrect.**

Defendants' Motion devotes significant argumentation to the claim that the Plaintiff funds never had an adequate basis in fact to file claims against Turner and Lasky in their

individual capacity. This claim is both irrelevant to the current Motion before the Court as well as incorrect.

As set out above, under Fed. R. Civ. P. 56, the sole issue is whether any genuine issues of material fact exist and, if not, whether the movant is entitled to judgment as a matter of law. Defendants' repeated arguments regarding the facts known by the Plaintiff funds at the time of filing is an impermissible attempt to lead this Court into applying an incorrect standard to the Defendants' Motion. Decisions to grant or deny a motion under Rule 56 must be based on the pleadings, discovery and disclosure materials on file, and any submitted affidavits. The relevant question is whether the materials that are now before the Court entitle Defendants to summary judgment. Arguments as to what the Plaintiff funds knew at the time of filing are simply irrelevant. To the extent that Defendants rely on this argument to support their Motion for Partial Summary Judgment, the Motion must be denied.

Furthermore, Defendants' allegations are simply incorrect. The nature of alter-ego individual liability makes it extremely unlikely that a plaintiff will have in its possession all of the information required to prove its case before filing suit. In the majority of cases the evidence, if any, will be in the possession of the defendant corporation and its controlling shareholders. This is in fact the exact reason that rules such as Fed. R. Civ. P. 56(f) permit Plaintiffs to request that a court postpone ruling on motions for summary judgment until a reasonable opportunity for discovery has taken place.

Notwithstanding the fact that Plaintiffs may not have every single fact in their possession at filing, the Plaintiff Funds have an obligation under the law to pursue and investigate employer delinquencies in benefit payments under ERISA for reasonable, systematic, and coordinated collection actions. 29 U.S.C. § 1102-1105; *see* U.S. Department of Labor Field Assistance

LAW OFFICES OF  
**JERMAIN DUNNAGAN & OWENS**  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

Bulletin (FAB) No. 2008-01 (February 1, 2008). At the time of filing the Plaintiff Funds were aware of numerous facts and circumstances that, taken together, justified and continue to justify the filing of the current suit against Turner and Lasky in their individual capacity. Those facts include the very short period that RainDance operated the Mary Conrad Center; that RainDance had been previously and persistently delinquent in its payments to the employee benefit pension funds; that CFO Raymond Bower represented that RainDance had been experiencing difficult business conditions; that previous corporations Turner managed had settled claims of Medicare fraud; and that Turner and Lasky were the sole shareholders of RainDance. Additionally, it is not lost on the Plaintiff Funds that RainDance's license to operate the Mary Conrad Center was revoked by the state after less than 12 months of operations.

In this case, the allegations of illegality with regard to the corporations Turner previously managed, RainDance's frequent delinquencies, Bower's admissions of difficult business conditions, the very short operation of the company's sole enterprise, and RainDance's inability or refusal to comply with the terms of its license to operate the Mary Conrad Center amply justify Plaintiffs' suit against RainDance's director-shareholders Turner and Lasky.

**D. The Trust Funds Are Entitled to Summary Judgment Against RainDance.**

As explained below, the undisputed facts, as applied to the substantive law governing this action, demonstrate that the Trust Funds are entitled to summary judgment regarding RainDance's liability to the Trust Funds.

1. The evidence is undisputed that RainDance failed to make the employee benefit plan contributions required by the collective bargaining agreement on behalf of its employees.

The Plaintiff Funds are trust funds established pursuant to 29 U.S.C. §302 in ERISA, 29 U.S.C. §1001, *et seq.* As such the Trust Funds' cause of action is based upon ERISA for

LAW OFFICES OF  
**JERMAIN DUNNAGAN & OWENS**  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

enforcement of a collective bargaining agreement requiring contribution to Trust Funds pursuant to ERISA §515, 29 U.S.C. §1145.

Congress added §515 to ERISA to “simplify actions to collect delinquent contributions, avoid costly litigation, and enhance actuarial planning necessary to the administration of multi-employer pension plans.” *Central States v. Independent Fruit and Produce Co.*, 919 F.2d 1343, 1348 (8th Cir. 1990). Courts have consistently held that ERISA §515 strengthens the position of multi-employer plans by holding employers and unions to the literal terms of their written commitments. *See Central Pennsylvania Teamsters Pension Fund v. McCormick Dray Line, Inc.*, 85 F.3d 1098, 1102-03 (3rd Cir. 1996); *Central States, Southeast and Southwest Areas Pension Fund v. Gerber Truck Services, Inc.*, 870 F.2d 1148, 1151-54 (7th Cir. 1989) (en banc); *Bakery and Confectionary Union and Industry Int’l Pension Fund v. Ralph’s Grocery Co.*, 118 F.3d 1018, 1021 (4th Cir. 1997); *Bituminous Coal Operators Assoc., Inc. v. Connors*, 867 F.2d 625, 633 (D.C. Cir. 1989).

*a. Defendant RainDance is signatory to the collective bargaining agreement.*

“[ERISA] section 515 means that...suit [by a trustee] cannot be thwarted by defenses not apparent from the face of the Agreement.” *Central States v. Independent Fruit and Produce Co.*, 919 F.2d, at 1349. “In sum, the courts recognize only two defenses to a collection action: that the...contributions are themselves illegal or that the collective bargaining agreement is void.” *Id.*

In this case, on March 25, 2008, RainDance executed the collective bargaining agreement and agreed to be bound by the terms and conditions of the collective bargaining agreement. Ex. N, page 16; Affidavit of Merrick, ¶ 3. The collective bargaining agreement was effective until October 29, 2009. Ex. N, page 16; Affidavit of Merrick, ¶ 4. RainDance never repudiated the collective bargaining agreement. Affidavit of Merrick, ¶ 5. RainDance never alleged in its

LAW OFFICES OF  
**JERMAIN DUNNAGAN & OWENS**  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

Answer to the Trust Funds' Complaint that the contributions owed to the Trust Funds are illegal, or that the collective bargaining agreement is void, in any pleading or testimony. *See* RainDance's Answer to Plaintiffs' Complaint, at Docket No. 9. As a result, RainDance's actions clearly bound it contractually to the relevant collective bargaining agreement for the time period of February 1, 2008 to October 29, 2009.

*b. RainDance's employees performed work covered by the collective bargaining agreement.*

RainDance has never disputed that Certified Nurses Assistants at the Mary Conrad Center performed work covered by the collective bargaining agreement during the period of February 1, 2008 to October 29, 2009. Affidavit of Merrick, ¶ 6. The work of Certified Nurses Assistants is clearly covered by the subject collective bargaining agreement. Ex. N, page 5. Certified Nursing Assistants of RainDance were covered under the terms of the collective bargaining agreement where RainDance agreed, among other things, to pay and contribute to the Trust Funds various sums per hour for each employee covered by and subject to said agreement for the time period of February 1, 2008 to October 29, 2009. Ex. N, page 11.

RainDance employees performed work covered by the subject agreement, but RainDance failed to make employee fringe benefit contributions on behalf of its employees that performed work covered by the collective bargaining agreement for the time period of February 1, 2008 to October 29, 2009. Ex. M, pages 13-15; Affidavit of Merrick, ¶ 7; Affidavit of Guillen, ¶¶ 3-4, 7, 9. It is equally clear that RainDance failed to make the required employee fringe benefit contributions on behalf of its employees for such work for the time period covered by the collective bargaining agreement. Therefore, pursuant to ERISA §515, 29 U.S.C. §1145, Defendant RainDance is liable to the Plaintiff Funds for such delinquent contributions. Ex. M, page 13-15; Affidavit of Guillen, ¶ 10.

**VI. CONCLUSION**

For the forgoing reasons, Plaintiff Trust Funds are entitled to a judgment against defendant RainDance in an amount to be proven at trial, and partial summary judgment against the Trust Funds as to the individual liability of Mr. Turner and Mr. Lasky must be denied or postponed until the Plaintiff Trust Funds obtain further discovery.

LAW OFFICES OF  
**JERMAIN DUNNAGAN & OWENS**  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

DATED this 15<sup>th</sup> day of March, 2010.

JERMAIN, DUNNAGAN & OWENS  
Attorneys for Plaintiffs

By: s/Randall G. Simpson, Esq.

Randall G. Simpson, Esq.  
3000 A Street, Suite 300  
Anchorage, AK 99503  
(907) 563-8844  
(907) 563-7322  
rsimpson@jdolaw.com  
Alaska Bar No. 7710166

Raymond E. Goad, Jr, Esq.  
Alaska Bar No. 0111062

David L. Anderson, Esq.  
Alaska Bar No. 0911047

Certificate of Service

The undersigned hereby certifies that on the 15<sup>th</sup> day of March, 2010, a true and correct copy of the foregoing was Served via electronic mail on the following:

Stephen H. Hutchings, Esq.  
Gregory S. Fisher, Esq.  
Birch, Horton, Bittner & Cherot  
1127 W. 7th Ave.  
Anchorage, AK 99501

s\Raymond E. Goad, Jr.

LAW OFFICES OF  
**JERMAIN DUNNAGAN & OWENS**  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

Randall G. Simpson, Esq.  
Raymond E. Goad, Jr.  
JERMAIN, DUNNAGAN & OWENS, P.C.  
3000 A Street, Suite 300  
Anchorage, AK 99503  
(907) 563-8844  
(907) 563-7322

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

TRUSTEES OF the ALASKA  
LABORERS HEALTH AND SECURITY,  
RETIREMENT, TRAINING AND  
LEGAL SERVICES TRUST FUNDS,

Plaintiffs,

Case No. 3:09-CV-120

vs.

RAINDANCE HEALTHCARE GROUP, INC.,  
ANDREW L. TURNER, Individually, and  
WILLIAM LASKY, individually,

Defendants.

AFFIDAVIT OF KISHA GUILLEN

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

I, Kisha Guillen, being first duly sworn, deposes and states:

1. I am the Collection Administrator for the Alaska Laborers' Employers Trust.
2. This affidavit is prepared based on my personal knowledge of the facts.

LAW OFFICES OF  
JERMAIN DUNNAGAN & OWENS  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

3. During the term that RainDance operated the Mary Conrad Center, it first became delinquent in paying required contributions on or about February 2008.

4. Raindance failed to make timely contributions to the Trust Funds for the months of February through December 2008.

5. Due to these delinquencies, RainDance became liable to the Trust Funds for liquidated damages under the collective bargaining agreement.

6. RainDance eventually satisfied a portion of the February – December 2008 obligations on or about March 2009, and the Trustees agreed to hold liquidated damages in abeyance on the condition of no future delinquencies.

7. RainDance again became delinquent in making contributions to the Trust Funds. RainDance failed to make timely contributions to the Trust Funds for the months of January through May, 2009.

8. As a result of this second, subsequent delinquency, liquidated damages associated with the first delinquency became due and owing, in addition to the amounts owed resulting from the second delinquency.

9. RainDance did eventually pay \$37,898.18 in May 2009 for due and owing January 2009 contributions, but did not pay any amounts for contributions for February through June 2009.

10. The Trust Funds have demanded payment from RainDance for the delinquent contributions, but have received no payments.

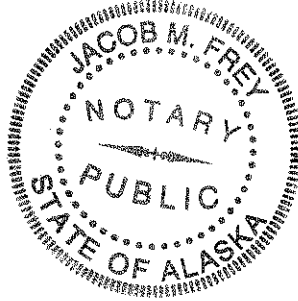
LAW OFFICES OF  
JERMAIN DUNNAGAN & OWENS  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

Further your affiant sayeth naught.

Kisha Guillen  
Kisha Guillen

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of March, 2010.

Jacob M. Frey  
Notary Public in and for Alaska  
My Commission Expires: 4-07-2013



LAW OFFICES OF  
JERMAIN DUNNAGAN & OWENS  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

Randall G. Simpson, Esq.  
Raymond E. Goad, Jr.  
JERMAIN, DUNNAGAN & OWENS, P.C.  
3000 A Street, Suite 300  
Anchorage, AK 99503  
(907) 563-8844  
(907) 563-7322

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

TRUSTEES OF the ALASKA  
LABORERS HEALTH AND SECURITY,  
RETIREMENT, TRAINING AND  
LEGAL SERVICES TRUST FUNDS,

Plaintiffs,

Case No. 3:09-CV-120

vs.

RAINDANCE HEALTHCARE GROUP, INC.,  
ANDREW L. TURNER, Individually, and  
WILLIAM LASKY, individually,

Defendants.

AFFIDAVIT OF JACQUELYN BRISKEY

STATE OF ALASKA )  
) ss.  
THIRD JUDICIAL DISTRICT )

I, Jacquelyn Briskey, being first duly sworn, deposes and states:

1. I am a certified public accountant and have been licensed as a CPA for 27 years.

LAW OFFICES OF  
JERMAIN DUNNAGAN & OWENS  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

2. I am experienced at assisting businesses with their start-up, including determining the adequacy for capitalization of their business.

3. There is no single amount or number of assets that could be determined to be adequate capitalization for a business under all circumstances.

4. Rather, to determine whether a company is adequately capitalized, one of the items a CPA would examine is the company's net current assets, or working capital.

5. A company's net current assets are the differences between the company's current assets, such as cash and accounts receivable, and the company's current liabilities, such as accounts payable and accrued items.

6. A company's receivables and payables are generated from its income and expenses.

7. To make a determination regarding adequacy of capitalization, a CPA would generally examine a company's bank records, check registers, aging schedules, general ledger, financial statements, contracts, and any budget projections, pro forma financial statements, or business plans that it had developed.

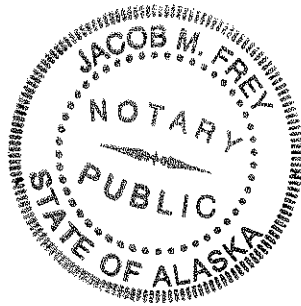
8. It is not possible to determine with reasonable assurance that a company is adequately capitalized on the basis of its income and expense statements and balance sheets alone, without also examining the documents those statements are based on, such as those documents set out in paragraph 7 above.

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JERMAIN DUNNAGAN & OWENS  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

Further your affiant sayeth naught.

*Jacquelyn Briskey, CPA*  
Jacquelyn Briskey

SUBSCRIBED AND SWORN to before me this 12<sup>th</sup> day of March, 2010.



*J. Frey*  
Notary Public in and for Alaska  
My Commission Expires: 4-07-09

LAW OFFICES OF  
JERMAIN DUNNAGAN & OWENS  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

Randall G. Simpson, Esq.  
Raymond E. Goad, Jr.  
JERMAIN, DUNNAGAN & OWENS, P.C.  
3000 A Street, Suite 300  
Anchorage, AK 99503  
(907) 563-8844  
(907) 563-7322

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

TRUSTEES OF the ALASKA  
LABORERS HEALTH AND SECURITY,  
RETIREMENT, TRAINING AND  
LEGAL SERVICES TRUST FUNDS,

Plaintiffs,

Case No. 3:09-CV-120

vs.

RAINDANCE HEALTHCARE GROUP, INC.,  
ANDREW L. TURNER, Individually, and  
WILLIAM LASKY, individually,

Defendants.

**AFFIDAVIT OF A.J. MERRICK, II**

STATE OF ALASKA )  
) ss.  
THIRD JUDICIAL DISTRICT )

I, A.J. Merrick, II, being first duly sworn, deposes and states:

1. I am the Business manager/Secretary Treasurer for Laborers Union Local  
341. I am also a Trustee for the Alaska Laborers' Employers Trusts.

2. This affidavit is prepared based on my personal knowledge of the facts.

LAW OFFICES OF  
JERMAIN DUNNAGAN & OWENS  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

3. On March 25, 2008, RainDance executed a collective bargaining agreement with the Trust Funds and agreed to be bound by the terms and conditions of the collective bargaining agreement.

4. The collective bargaining agreement was effective from February 1, 2008 to October 29, 2009.

5. RainDance never repudiated the collective bargaining agreement.

6. RainDance has never disputed that Certified Nurses Assistants at the Mary Conrad Center performed work covered by the collective bargaining agreement during the period of February 1, 2008 to October 29, 2009.

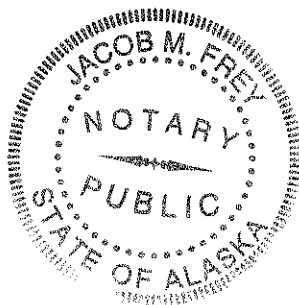
7. Although RainDance employees performed work covered by the collective bargaining agreement, RainDance failed to make employee fringe benefit contributions on behalf of its employees covered by said agreement.

Further your affiant sayeth naught.

*A.J. Merrick, II*

A.J. Merrick, II

SUBSCRIBED AND SWORN to before me this 12<sup>th</sup> day of March, 2010.



*Jacob M. Frey*

Notary Public in and for Alaska

My Commission Expires: 4-07-2013

LAW OFFICES OF  
JERMAIN DUNNAGAN & OWENS  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

Randall G. Simpson, Esq.  
Raymond E. Goad, Jr.  
JERMAIN, DUNNAGAN & OWENS, P.C.  
3000 A Street, Suite 300  
Anchorage, AK 99503  
(907) 563-8844  
(907) 563-7322

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

TRUSTEES OF the ALASKA  
LABORERS HEALTH AND SECURITY,  
RETIREMENT, TRAINING AND  
LEGAL SERVICES TRUST FUNDS,

Plaintiffs,

1. Case No. 3:09-CV-  
120

vs.

RAINDANCE HEALTHCARE GROUP, INC.,  
ANDREW L. TURNER, Individually, and  
WILLIAM LASKY, individually,

Defendants.

**AFFIDAVIT OF BRUCE RESTAD**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I, Bruce Restad, being first duly sworn, deposes and states:

1. I am a Certified Public Accountant and an auditor for Lockitch, Clements  
& Rice, P.S.

LAW OFFICES OF  
**JERMAIN DUNNAGAN & OWENS**  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300

2. This affidavit is prepared based on my personal knowledge of the facts.

3. I have worked as an auditor for ERISA Trusts for 25 years.

4. Two of the functions an auditor performs when reviewing a company's financial data are to verify that the revenue and expenses reported actually exist and that they are complete.

5. The Mary Conrad Center Statement of Operations, the Assets and Liabilities balance sheets, and the Solvency Table produced thus far by RainDance are internally generated financial data that to my knowledge has not been subjected to independent third-party review.

6. Typically, when reviewing a company's financials, an auditor will review records such as bank statement reconciliations, details of accounts receivables, details of accounts payable, details of notes payable, details of property and equipment accounts, and documents necessary to do analytical testing of cost center revenue.

7. I have reviewed the data produced by RainDance thus far in this litigation. RainDance has not produced financial records typically reviewed by an auditor, mentioned in ¶ 6, to verify existence and completeness.

8. Because RainDance has not provided any of the records mentioned in ¶ 6, the internally generated financial data provided has no guarantee of existence or completeness.

9. RainDance's Mary Conrad Center Statement of Operations, Solvency Table, and former CFO Ray Bower's affidavit all claim that RainDance made a profit in

June, August, September, October, and November of 2008.

10. For the reasons expressed above, it is not possible to independently verify with reasonable professional certainty whether RainDance properly accounted for its revenue and expenses. It is therefore impossible to independently determine if RainDance actually made the profits it claims.

11. Though many of the expenses reported on RainDance's disclosures are straightforward and appear to be self-explanatory, others are ambiguously titled.

12. Some are large, one-time, lump-sum payments, such as "General & Administration – Loss on Disposition" and "Laundry – Purchased Services". Other expenses contained in RainDance's disclosures are payments much larger than payments made under that same cost heading in previous or later months, such as "Purchased Services" "Plant & Maintenance" in December 2008 or "General & Administration – Interest Expense".

13. Unexplained, large, lump-sum payments, or irregularly large payment amounts can be used as a vehicle for fraudulent transfers.

14. Because RainDance has not provided any of the records mentioned in ¶ 6, it is not possible to verify with reasonable professional certainty that any of the expenses are not attempts to conceal payments to Andrew Turner, William Lasky, or to entities controlled by either of them.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

\_\_\_\_\_  
Bruce Restad

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of March, 2010.

\_\_\_\_\_  
Notary Public in and for Washington  
My Commission Expires: \_\_\_\_\_

LAW OFFICES OF  
**JERMAIN DUNNAGAN & OWENS**  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300

Randall G. Simpson  
Raymond E. Goad, Jr.  
David L. Anderson  
JERMAIN, DUNNAGAN & OWENS, P.C.  
3000 'A' Street, Suite 300  
Anchorage, Alaska 99503  
Telephone: (907) 563-8844

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

TRUSTEES OF THE ALASKA LABORERS  
HEALTH AND SECURITY,  
RETIREMENT, TRAINING AND LEGAL  
SERVICES FUNDS,

Plaintiffs,

vs.

RAINDANCE HEALTHCARE GROUP,  
INC., ANDREW L. TURNER, Individually,  
and WILLIAM LASKY, Individually,

Defendants.

Case No. 3:09-CV-00120-RRB

**PROPOSED ORDER GRANTING PLAINTIFFS'  
CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

This matter having come before the Court on Plaintiffs Cross-Motion for Partial Summary Judgment as to Defendant RainDance Healthcare Group, Inc., and the Court being fully apprised;

IT IS HEREBY ORDERED that Plaintiffs' Cross-Motion for Partial Summary Judgment as to Defendant RainDance Healthcare Group, Inc. is GRANTED

MADE AND ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2010.

---

Hon. Ralph R. Beistline  
U.S. District Court Judge

Certificate of Service

The undersigned hereby certifies that on the 15<sup>th</sup> day of March, 2010, a true and correct copy of the foregoing was Served via electronic mail on the following:

Stephen H. Hutchings, Esq.  
Gregory S. Fisher, Esq.  
Birch, Horton, Bittner & Cherot  
1127 W. 7th Ave.  
Anchorage, AK 99501

s\Raymond E. Goad, Jr.