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 8 **IN THE UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**

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 11 DON ROSE,

12 Plaintiff,

13 v.

14 SAMUEL ABRAHAM, BELLA ROBLES
 CORPORATION, INC., STEVEN DUCE,
 15 RICHARD WYNN, and BANK OF THE
 SIERRA,

16 Defendants.

Case No. 1:08-CV-00606-AWI-SMS

**APPLICATION FOR NUNC PRO
 TUNC ORDER EXONERATING
 BOND; DECLARATION OF
 COUNSEL; AND ORDER THEREON**

Judge: Anthony W. Ishii

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 20 Plaintiff DON ROSE, through counsel DOOLEY, HERR, PELTZER &
 21 RICHARDSON, LLP, hereby moves the court for an order *Nunc Pro Tunc* Exonerating
 22 Bond in the above-captioned case.

23 On May 20, 2008, Plaintiff made his Second Application for Writ of Attachment
 24 in the above captioned matter (Dkt. #13), securing the funds in Bank of the Sierra
 25 Account number 2220359270 (hereinafter, "the Account"). The Order covered the
 26 first \$1,500,000 in that account. The Court conditionally granted the Application on
 27 May 21, 2008, (Dkt. #15) simultaneously Ordering that Plaintiff post bond in an
 28 amount of \$10,000, pursuant to California Code of Civil Procedure

1 section 484.010, *et seq.* (hereinafter, all statutory references are to the California Code
2 of Civil procedure, unless otherwise indicated). The Notice of Undertaking was filed
3 with the Court on May 23, 2008 along with the original bond in the amount of
4 \$10,000. (Dkt. #17) On March 11, 2009, this Court entered Partial Summary
5 Judgment in this matter, Ordering the release of what was believed by Plaintiff to be
6 about \$800,000 in the Account. (Dkt. #56) The actual amount of monies in the
7 Account were substantially less; about \$408,000. The result is the same; the Account
8 has no money in it. Plaintiff is informed and believes that the Account was closed by
9 Bank of the Sierra soon after the funds were released.

10 Plaintiff respectfully requests that this Court enter an Order releasing Plaintiff
11 *nunc pro tunc* from the obligation to post the \$10,000 bond.

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13 Dated: July 15, 2009

14 DOOLEY, HERR, PELTZER & RICHARDSON, LLP

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16 By: /s/ Leonard C. Herr
17 Leonard C. Herr
18 Attorney for Plaintiff, Don Rose

19 **DECLARATION OF LEONARD C. HERR**

20 I, Leonard C. Herr, declare as follows:

- 21 1. I am the attorney for Plaintiff DON ROSE and have represented him throughout the
22 entire action.
- 23 2. The \$10,000 surety bond was Ordered as a condition to the Order granting
24 Plaintiff's second ex-parte motion for writ of attachment or temporary
25 protective order entered by this Court on May 21, 2008. (Dkt. #15) The
26 amount posted was \$10,000 pursuant to Section 489.220(a).
- 27 3. The Right to Attach Order allowed Plaintiff to Attach the first \$1,500,000 in
28 the Account.
4. The Account was cleared of all funds pursuant to this Court's Order on
Partial Summary Judgment entered on March 11, 2009. (Dkt. #56)
5. With the release of the funds in the Account, no reason exists for Plaintiff to
maintain the \$10,000 bond and no reason for the bond has existed since

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the Court Ordered the funds released and the Order was executed.
6. As the bond is no longer necessary, and has not been necessary since the release of the funds, Plaintiff requests an Order *Nunc Pro Tunc* releasing him of the obligation to post the Bond.

I declare under the penalty of perjury that the foregoing is true and correct.

This declaration is executed on July 15, 2009, at Visalia, California.

/s/ Leonard C. Herr
Leonard C. Herr

ORDER

IT IS HEREBY ORDERED that the bond in the above-captioned case be exonerated *nunc pro tunc* to the date of March 11, 2009.

IT IS SO ORDERED.

Dated: July 29, 2009 /s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE