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8 Attorney for Plaintiff Road Runner

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

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12 **The Road Runner**, a bird,
13 individually and on behalf of a class
14 of similarly situated birds,

15 Plaintiff;

16 vs.

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18 **Wile E. Coyote**, a mammal,
19 **Acme Corporation**, a California
20 corporation, and
21 **Does 1 through 100**, inclusive,

22 Defendants.
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Case No. BC5551212

**Plaintiff's Notice of Motion and
Motion to Compel Defendants Wile
E. Coyote and Acme Corporation to
Produce Financial Records at Trial;
Points & Authorities**

Complaint filed: June 9, 2008

Trial date: August 20, 2010

Assigned for all purposes to
Judge Mel Blanc, Dept. 1010,
Central Civil Division

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NOTICE OF MOTION

To all parties and their attorneys of record:

YOU ARE HEREBY NOTIFIED that at a date and time to be determined, in Dept. 1010 of the above-entitled court, plaintiff Road Runner will move the Court for a motion to compel defendants Wile E. Coyote and Acme Corporation to produce financial records requested by plaintiff.

This motion is made on the ground that Mr. Runner served each of these defendants with a valid notice to produce financial records at trial. (Code Civ. Proc. § 1987, subd. (c), Civ. Code § 3295, subd. (c).) Each defendant served objections and refused to comply.

Mr. Runner’s notice to produce seeks information directly relevant to his trial for punitive damages against these defendants. Therefore, the documents are material to Mr. Runner’s case and there is good cause to order them to be produced. (Code Civ. Proc. § 1987, subd. (c).)

The motion will be based on this notice, on the attached points and authorities, on the papers and records on file, and — if there is a hearing on this motion — on the evidence presented at the hearing.

June 9, 2010

BUTTERICK LAW CORPORATION

By: Matthew Butterick

Matthew Butterick

Attorney for Plaintiff

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3 **POINTS & AUTHORITIES**

4 **I. Background**

5 Previously, the Court denied the Defendants’ motion for summary adjudication
6 of Mr. Runner’s claims for punitive damages. (Butterick Decl. ¶ A.) Mr. Runner served
7 the Defendants with timely notices to produce financial records at trial. (Butterick
8 Decl. ¶ 1.) The Defendants responded with boilerplate objections to Mr. Runner’s
9 requests. None of the Defendants produced any financial records. (Butterick Decl.
10 ¶ 2.)

11 This motion seeks to compel the Defendants to produce these records.

12 **II. Mr. Runner is entitled to the financial records.**

13 Because this is a punitive damages case, Mr. Runner is entitled to subpoena
14 documents “to be available at the trial for the purpose of establishing the profits or
15 financial condition” of the Defendants. (Civ. Code § 3295, subd. (c).)

16 Mr. Runner has a right to these records even without showing that there is a
17 “substantial probability that [he] will prevail”. (*Ibid.*) That’s the rule for pretrial
18 discovery of financial records, but not for records to be brought to trial. (*Ibid.*)

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20 **III. The financial records are material to Mr. Runner’s case.**

21 If the jury finds any of the Defendants liable for punitive damages, the jury may
22 then consider “[e]vidence of profit and financial condition” of those defendants to
23 determine the amount of punitive damages. (Civ. Code § 3294, subd. (a) and § 3295,
24 subd. (d).)

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**IV. Mr. Runner will be prejudiced without the financial records,
so there is good cause to compel their production.**

The Defendants were ordered to stand trial on punitive damages. (Butterick Decl. ¶ A.) If the jury returns an initial verdict for punitive damages, Mr. Runner will need these financial records to prove the amount of punitive damages. The Defendants cannot circumvent the trial by withholding evidence that the jury must consider. (Civ. Code § 3295, subd. (d).)

V. Conclusion

For these reasons, Mr. Runner asks that the Court order the Defendants to produce the requested financial records.

June 9, 2010

BUTTERICK LAW CORPORATION

By: Matthew Butterick

Matthew Butterick

Attorney for Plaintiff