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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

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17 SECURITIES AND EXCHANGE
COMMISSION,

18 Plaintiff,

19 v.

20 CITY OF VICTORVILLE, et al.,

21 Defendants.

Case No. 13-cv-0776-JAK (DTBx)

**DEFENDANT KEITH C.
METZLER'S NOTICE OF MOTION
AND MOTION TO DISMISS THE
SEVENTH CLAIM FOR RELIEF IN
PLAINTIFF'S COMPLAINT AND
TO STRIKE PLAINTIFF'S
PRAYER FOR DISGORGEMENT**

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24 Date: September 16, 2013
Time: 8:30 a.m.
25 Judge: Hon. John A. Kronstadt
Courtroom: 750

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on September 16, 2013, at 8:30 a.m., or
3 as soon thereafter as the matter may be heard in the courtroom of the Honorable
4 John A. Kronstadt, United States District Judge, located at 255 East Temple Street,
5 Los Angeles, California, Defendant Keith C. Metzler will and hereby does move for
6 an order dismissing with prejudice the Seventh Claim for Relief for Aiding and
7 Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5, as
8 alleged against Mr. Metzler in the SEC's Complaint, and striking the SEC's prayer
9 for disgorgement against Mr. Metzler.

10 Mr. Metzler brings this motion pursuant to Federal Rules of Civil Procedure
11 8(a), 9(b) and 12(b)(6) on the basis that the sole claim asserted against him should
12 be dismissed because the Complaint fails to plead with the requisite specificity facts
13 to adequately state a claim of aiding and abetting securities fraud. Mr. Metzler
14 further brings this motion pursuant to Federal Rule of Civil Procedure 12(f) on the
15 basis that the SEC's prayer for disgorgement from Mr. Metzler must be stricken
16 because the Complaint fails to plead any facts alleging that Mr. Metzler received
17 any ill-gotten gains resulting from the conduct alleged in the Complaint.

18 This motion is based on this Notice of Motion, the Memorandum of Points
19 and Authorities filed in support hereof, the Request for Judicial Notice filed in
20 support hereof, the Motion to Dismiss concurrently filed by Defendants City of
21 Victorville and Southern California Logistics Airport Authority, and all other
22 papers, pleadings, documents, arguments of counsel, and other materials presented
23 before or during the hearing on this motion, and any other evidence and argument
24 the Court may consider.

25 This motion is made following the conference of counsel pursuant to Local
26 Rule 7-3, which took place on June 5, 2013.

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