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9 Attorneys for Petitioner,
Lycurgan, Inc.

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

14 LYCURGAN, INC., a California
15 corporation, d/b/a Ares Armor,

16 Plaintiff,

17 vs.

18 B. TODD JONES, as Director of
the Bureau of Alcohol, Tobacco,
19 Firearms, and Explosives, EARL
GRIFFITH, an individual,
20 UNKNOWN NAMED
TECHNOLOGIST, an
21 individual, UNKNOWN
NAMED AGENTs I-VII,
22 individuals, and DOES I-XI, in
their individual capacities.

Case No.: 14-cv-00548-JLS-BGS

**DECLARATION OF SCOTT A.
McMILLAN IN SUPPORT OF AMENDED
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL/AMENDED
COMPLAINT PURSUANT TO FEDERAL
RULES OF CIVIL PROCEDURE
SECTION 15(d)**

Hon.: Judge Janis L. Sammartino

Dept.: 4A

Date: October 30, 2014

Time: 1:30 P.M.

24 **DECLARATION OF SCOTT A. McMILLAN**

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26 I, Scott A. McMillan, declare as follows:

27 1. I am counsel for Plaintiff Lycurgan, Inc. ("Lycurgan") in the above
28 captioned case, and if called before this court or any other court I could and

1 would testify competently to the following from my own personal knowledge,
2 except as to those matters I state on information and belief, and as to those
3 matters I believe them to be true.

4 2. This declaration is made in support of Lycurgan's amended motion for
5 leave to file a supplemental/amended complaint pursuant to Federal Rules of
6 Civil Procedure section 15(d).

7 3. On March 11, 2014, Plaintiff Lycurgan, Inc. ("Lycurgan") filed the
8 initial complaint in this case for deprivation of Civil Rights against the BATFE,
9 styled as *Lycurgan, Inc. v. B. Todd Jones*. Plaintiff then sought a declaratory
10 judgment that its "EP Arms unfinished lower receiver" is not a firearm. Plaintiff
11 also sought a temporary restraining order and injunctive relief forbidding the
12 Bureau of Alcohol, Tobacco, Firearms and Explosives ("BATFE") and/or its
13 officers, agents, servants, and employees from seizing Lycurgan's EP Arms
14 unfinished lower receivers and customer list. Defendants did not, and have not,
15 filed an answer to the original complaint.

16 4. On March 11, 2014, Judge Sammartino, District Judge for the District
17 Court for the Southern District of California, granted Lycurgan's request for a
18 temporary restraining order.

19 5. On March 12, 2014, an ATF agent appeared at Plaintiff's office with the
20 stated purpose of taking possession of Plaintiff's unfinished lower receivers and
21 the customer list for those customers that had purchased the EP Arms unfinished
22 lower receivers. At that time, Plaintiff caused the ATF to be served with a copy
23 of the Court's order issued on March 11, 2014.

24 6. On March 14, 2014, the United States Attorney's Office filed an ex parte
25 application challenging the temporary restraining order. Paul J. Ware, the
26 Division Counsel for the Los Angeles Field Division, BATFE supported the
27 ex-parte application with his unverified statement referring to the EP Arms
28

1 unfinished receivers as both "receivers" and "firearms."

2 7. On the same day, Judge Sammartino ruled on the United States's ex
3 parte application, stating in part: "the Court's March 11, 2014 TRO DOES NOT
4 ENJOIN lawful criminal proceedings, including the application for or lawfully
5 executed seizure of evidence and contraband pursuant to a search warrant issued
6 by a sworn United States Magistrate Judge pursuant to Federal Rule of Criminal
7 Procedure 41 . . ."

8 8. On or about March 14, 2014, proposed Defendant Unknown Named
9 Agent 1 submitted an affidavit to the Honorable Bernard G. Skomal of this Court
10 for the purpose of applying for a search warrant (hereinafter referred to as
11 "Warrant") authorizing the search of Lycurgan's four business facilities, all
12 located in San Diego County, California.

13 9. On March 15, 2014, heavily armed personnel, draped in body armor,
14 some toting fully automatic weapons, all with pistols strapped to their thighs in
15 urban-assault/tactical configuration, conducted a raid of Plaintiff. Agents of the
16 BATFE entered the premises of Plaintiff Lycurgan's four separate facilities,
17 located at: (1) 206/208 N. Freeman Street, Oceanside, (2) 416 National City
18 Blvd., National City, California, (3) 180 Roymar Street, Oceanside, California,
19 and (4) 2420 Industry, Oceanside, CA. The raid was executed pursuant to the
20 Warrant.

21 10. Lycurgan wished to amend or supplement its complaint to account for
22 the new claims and damages incurred from Defendants' raid of its businesses. On
23 September 5, 2014, this Court granted Plaintiff's Emergency Ex Parte Motion for
24 Extension of Time to Seek Leave to File Amended Complaint and further ordered
25 Plaintiff shall file a motion seeking leave to amend the complaint on or before
26 September 18, 2014.

27 11. On September 18, 2014, Plaintiff filed a motion for leave to file a
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1 supplemental/amended complaint, with the Supplemental Complaint attached.

2 12. On September 19, 2014, the Court rejected Plaintiff's motion for leave
3 due to the absence of a hearing date and time.

4 13. On September 19, 2014, I scheduled the hearing date for this motion
5 for October 30, 2014 at 1:30 P.M. On September 20, 2014, I filed Plaintiff
6 Lycurgan, Inc.'s Amended Motion for Leave to File Supplemental/Amended
7 Complaint and supporting documents with the newly set hearing date.

8 14. A true and correct copy of the proposed "FIRST AMENDED
9 COMPLAINT FOR DAMAGES; DEPRIVATION OF CIVIL RIGHTS (BIVENS
10 ACTION); INJUNCTIVE AND DECLARATORY RELIEF; JURY TRIAL
11 DEMAND" is submitted herewith.

12 I declare under the penalty of perjury according to the laws of the United
13 States, that the foregoing is true and correct and that this declaration was signed
14 on September 22, 2014, in the County of San Diego, California.

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16 _____
17 Scott A. McMillan
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