

# Conflict of Interest Policy Packet



The IRS wants to know if your YMCA has a written conflict of interest policy and a procedure for reporting potential conflicts of interest. This packet includes a Sample Policy and a Sample Reporting Procedure and Questionnaire.

**These are only samples and should be reviewed with your local attorney to ensure that your policy and procedure conforms to state law.**

## **Why is a Conflict of Interest Policy Important?**

- Key staff and volunteers must make decisions based on the best interests of the YMCA, not decisions that, directly or indirectly, further their own interests or the interests of a third party.
- This duty of loyalty is a legal duty that is imposed under state and federal law.
- A conflict of interest policy protects both the YMCA and its leaders by assuring that potential conflicts are timely and appropriately addressed.
- The IRS Form 990 asks whether your organization has a written conflict of interest policy; the attached sample policy is based on the IRS template but modified for YMCAs.

## **How do Potential Conflicts Arise at YMCAs?**

- A potential conflict of interest can arise when your YMCA is considering taking some action that also benefits the private interests of an influential person at the Y (i.e. board and committee members, key employees). For example, a contract with a company owned by a Board member, or his/her family member, could create a conflict of interest.
- Even if the person thinks s/he can be impartial, it is important to report the potential conflict so that the YMCA is aware of it before any action is taken.

## **Resolving Potential Conflicts of Interest**

- It is very important that any potential conflict be disclosed and resolved before the board takes action on the matter where a conflict may exist.
- Typically, disclosure is made as a written response to an annual "Conflicts of Interest Questionnaire". Use the attached sample Disclosure Questionnaire to inquire about potential conflicts on an annual basis.
- When potential conflicts are disclosed, have an independent body evaluate whether or not they pose a true conflict.
- This evaluation should not involve the interested party.
- The independent review and the decision reached must be documented in the minutes of the meeting.

## **Conflicts Aren't Wrong; Not Reporting Them Is**

- Because YMCA leaders are also often business leaders who have relationships with the YMCA, it is not unusual for potential conflicts of interest to occur.
- It is important to report all potential conflicts of interest so that the YMCA has complete transparency when making decisions.
- If a YMCA makes a decision without knowing all the facts, it can lead to public embarrassment, legal penalties and loss of public trust.
- There is nothing wrong with having a conflict of interest; it is wrong not to disclose it.

- A reporting procedure and annual questionnaire encourages YMCA leaders to be forthcoming in notifying the YMCA of any potential conflict of interest so that the YMCA’s integrity and reputation are not harmed by a perception of inappropriate conduct.
- Use the sample reporting procedure and questionnaire to help your leaders report potential conflicts.

### **Duty of Continuous Reporting**

- All YMCA leaders must understand that the “duty to disclose” is continuous.
- If any potential conflict of interest arises after the Questionnaire has been submitted, it should be disclosed in writing to the appropriate person at the Y.
- Failure to timely and adequately respond to the Questionnaire, or to make any subsequent disclosure, is grounds for board action.

### **How to Use this Packet**

- Review the complete document to ensure that all the pieces speak appropriately for your YMCA. Note that the sample Questionnaire is very broad and asks about activities that may not be financial in nature, but which could nevertheless create a potential conflict of interest.
- Discuss the Package, including the policy, the reporting procedure and the disclosure questionnaire, with your board and key staff.
- Use the sample template to develop your own document that conforms to state law.
- Ensure that your YMCA attorney reviews the policy and the questionnaire; your attorney should be familiar with the current practices of the board, board members, key employees, and their families in order to provide appropriate counsel.
- Educate your YMCA on the Policy. If you adopt this Conflict of Interest Policy, the expectation is that you will comply with the provisions set forth in the Policy.
- Provide a copy of the Conflict of Interest Policy with the Disclosure Questionnaire each time the Questionnaire is to be signed.
- Assure that Questionnaires are completed, the affirmation statement is signed, and the document is returned to you. Keep the signed copies in a safe place.
- Continue to educate your board and key employees on the policy and the importance of prompt disclosure of any potential conflicts. If there is a particular individual/officer who will serve as the point of reference for conflicts of interest at your YMCA, provide that information in the questionnaire.
- If you have any questions, please contact your YMCA of the USA Resource Director or YMCA legal counsel.

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## Sample Conflict of Interest Policy and Procedures

### I. PURPOSE OF THE CONFLICT OF INTEREST POLICY

The purpose of this conflict of interest policy of [[the Dearborn insert legal corporate name of YMCA YMCA](#)], hereinafter referred to as Y, is to protect the Y when it is contemplating entering into a contract, transaction or arrangement that has the potential for benefiting the private interest of a “Significant Person” as defined below. This Policy is intended to supplement, but not replace, any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

### II. STATEMENT OF POLICY

The Y will not engage in any contract, transaction or arrangement involving a Conflict of Interest without establishing appropriate safeguards to protect the interests of the Y. To that end:

- a. Each Significant Person must promptly, fully and timely comply with the disclosure requirements set forth in this policy, or as otherwise adopted by the Board in accordance with this policy.
- b. All transactions, contracts or arrangements involving a conflict of interest must be reviewed by the board or by a designated body of disinterested persons.
- c. The Board, or designated body, must determine by a majority vote of disinterested persons that appropriate safeguards are in place to protect the interests of the YMCA and are consistent with the purposes of this Policy.
- d. Where appropriate, the Board or designated body shall seek advice of legal counsel.

This Policy applies to (a) Significant Persons, and (b) any contract, transaction or arrangement involving the Y.

### III. DEFINITIONS APPLICABLE TO THE POLICY

**Significant Person.** Any director, officer, key employee or committee member with board delegated powers is a Significant Person. *Note: This reflects an intentional shift (from “Interested Person”) to focus on a broader class of individuals; it is intended to apply to all decision makers, not just those Significant by the Intermediate Sanctions regulations.*

**Conflict of Interest.** A “Conflict of Interest” exists whenever a Significant Person has a significant personal interest in a proposed contract, transaction or arrangement to which the Y may be a party. *Note: Attention should also be placed on the organizational costs associated with the “appearance” of impropriety created by a personal interest even if it does not constitute an actual conflict of interest.*

**Significant Personal Interest.** A Significant Personal Interest exists if the Significant Person, directly or indirectly, through business, investment, or family member, has a(n):

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- a. ownership or investment interest in any entity with which the Y has a contract, transaction or arrangement;
- b. compensation arrangement with the Y;
- c. compensation arrangement with any entity or individual with which the Y has a contract, a transaction or arrangement;
- d. potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Y is negotiating (or is proposing to negotiate) a contract, a transaction or arrangement; or
- e. fiduciary position (*e.g.*, member, officer, director, committee member), whether compensated or uncompensated, with another, unaffiliated organization (i) which directly competes with the Y in terms of services or for charitable contributions; or (ii) with which the Y has (or is proposing to enter into) a contract, transaction or arrangement.

Compensation includes direct and indirect remuneration, consulting fees, board or advisory committee fees, honoraria, as well as gifts or favors that are not insubstantial.

*A Significant Interest is not necessarily a conflict of interest.* Article IV, Section 4 describes the procedure that will be used to decide whether or not a conflict of interest exists.

**Family Member.** With respect to a Significant Person, a “Family Member” means:

- a. the Person’s spouse;
- b. a brother, sister, parent, grandparent, child, grandchild, great grandchild (by whole or half blood) of the Person or the Person’s spouse, or
- c. the spouse of an individual listed in paragraph (b),

However, a Family Member includes individuals listed in paragraphs (a) and (b) (other than a child) *only* if the individual lives in the Person’s household, the Person manages the individual’s financial affairs, or the Person is aware without special inquiry that the Family Member holds a particular Interest.

## **IV. PROCEDURES FOR IDENTIFICATION OF POTENTIAL CONFLICTS OF INTEREST**

**Annual Questionnaire.** Each Significant Person shall completely, accurately and timely submit the annual *Conflict of Interest Questionnaire* (the “Annual Questionnaire”) as prepared and distributed by the Board [~~or Executive~~ or Committee]. *Note: A ~~sample~~ Questionnaire is attached to the end of this document.*

**Duty to Disclose.** A Significant Person must disclose the existence of any Interest and be given the opportunity to disclose all material facts to the persons the board has designated to consider the proposed contract, transaction or arrangement. Such information must be provided so that decisions are made with full knowledge and understanding of the Significant Person’s interest. *Note: It is important for the Y*

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*board to closely monitor the timeliness and completeness of the Questionnaire responses to assure that there is full disclosure.*

**Continuing Disclosures.** If, after completion of the Annual Questionnaire, any Significant Person becomes aware of anything that could give rise to a potential Conflict of Interest with respect to a proposed contract, transaction or arrangement involving the YMCA, the Significant Person shall promptly disclose that Interest to the Board or its designee, [[Eric Barnett Jefferson-CEO](#)~~insert name of any designee~~]

## **V. PROCEDURE FOR DETERMINING WHETHER A CONFLICT OF INTEREST EXISTS**

The Board [or Committee] shall determine by a majority vote of disinterested directors whether the disclosed Interest may result in a conflict of interest after meeting, discussing and voting on the matter.

The Board [or [Executive](#) Committee] shall:

- a. review responses to the Annual Questionnaire and any continuing disclosures that are made during the year;
- b. take such steps as are necessary to identify Interests and review any so identified;
- c. make such further investigation as it deems appropriate with regard to Interests disclosed or identified; and
- d. determine whether any such Interest gives rise to a Conflict of Interest.

The Board [or [Executive](#) Committee] may request additional information concerning the relevant Interest from all reasonable sources before reaching a determination. A Significant Person may make a presentation at the Board [or Committee] meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

## **VI. PROCEDURE WHEN A CONFLICT OF INTEREST EXISTS**

Where a conflict of interest is determined to exist, the YMCA shall not enter into the proposed contract, transaction or arrangement unless the Board [or [Executive Committee](#)~~Committee thereof~~] has complied with the following:

- a. The chairperson of the Board [or Committee] shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed contract, transaction or arrangement.
- b. After exercising due diligence, the Board [or [Executive Committee](#)~~Committee~~] shall determine whether the Y can, with reasonable efforts, get a more advantageous contract, transaction or arrangement from a person or entity without a conflict of interest.
- c. If a more advantageous transaction or arrangement is not reasonably possible, the Board [or [Executive](#) Committee] shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Y's "best interest", for its own benefit, and whether it is

fair and reasonable. In conformity with the above determination, the Board shall make its decision as to whether to enter into the contract, transaction or arrangement.

## **VII. PROCEDURE FOR VIOLATIONS OF THE POLICY**

- a. If the Board [~~or Executive Committee~~or [Committee](#)] has reasonable cause to believe a Significant Person has failed to comply with the disclosure requirements in this Policy, it shall inform the Person of the basis for such belief and afford the Person an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the Significant Person's response and after making further investigation as warranted by the circumstances, the Board or committee determines the Significant Person has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

## **VIII. DOCUMENTATION OF PROCESS**

The minutes of the Board (and all committees with board delegated powers) shall contain:

- a. The names of the Significant Persons who disclosed or otherwise were found to have an Interest being considered at such meeting by the Board [[Executive Committee](#)], the nature of the Interest, any action taken to determine whether a Conflict of Interest was present, and the Board's [[Executive Committee's](#)] decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions relating to the contract, transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.
- c. If appraisals (for tangible property) or third party comparable data (for compensation) were considered by the Board [[Executive Committee](#)], the nature and source of the data.

## **IX. ANNUAL AFFIRMATION STATEMENT**

Each Significant Person shall annually sign the statement at the end of the attached Annual Questionnaire and affirm:

The person has received a copy of this Conflict of Interest Policy,

The person has read and understands the Policy,

The person agrees to comply with the Policy, and

The person understands the Y is a charitable organization and, in order to maintain its federal tax exemption, it must continuously engage primarily in activities that accomplish one or more of its tax-exempt purposes.

## **X. PERIODIC REVIEWS**

To ensure that the YMCA operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

Whether compensation arrangements and benefits are reasonable, are based on competent survey information, and are the result of arm's length bargaining.

Whether partnerships, joint ventures, and arrangements with management organizations conform to the "Y's" written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

#### **XI. USE OF OUTSIDE EXPERTS–**

When conducting the periodic reviews as provided for in Article VII, the YMCA may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

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## Sample Conflict of Interest Questionnaire (Use with Sample Conflict of Interest Policy)

~~Note: Larger YMCAs may want to consider using two separate disclosure forms; one for board members, trustees, board committee members, and key employees and another for other employees and vendors.~~

### Purpose of this Questionnaire

The Conflict of Interest Policy (the “Policy”) adopted by the Board of Directors of the Dearborn YMCA requires disclosure of certain Interests. It is not uncommon to have these interests, but it is very important to make them known to the YMCA you serve.

Use this questionnaire to disclose where you or your Family Members have certain affiliations, interests or relationships, and/or have taken part in transactions that, in light of your relationship to the YMCA, might possibly give rise to an actual, apparent or potential conflict of interest.

### How to Use this Questionnaire

1. Please read the Conflict of Interest Policy for the definitions of all capitalized terms used in the Questionnaire.
2. Answer all questions. Check “No” where applicable (please do not leave any question blank if the correct response is “no”).
3. Any response should take into consideration your relationship with and your role within the Dearborn YMCA.
4. Where this Questionnaire refers to “you,” it is also referring separately to each Family Member. For purposes of this Questionnaire, the definition of “Family Member” is extremely inclusive. “Family Member” includes a brother, sister, parent, grandparent, child, grandchild or great grandchild (by whole or half blood) of the “Significant Person” or his/her spouse.
5. Your response should indicate whether you are disclosing an Interest of you or of a Family Member (and, in the case of a Family Member, the nature of your relationship with that Family Member).
6. Include all material facts as requested by this Questionnaire.
7. Disclose all possible Interests that currently exist, even if you previously reported them. Interests that are new either since the filing of your last Questionnaire, or since the beginning of your relationship with the YMCA should also be reported on this Questionnaire. A potential Conflict of Interest can arise from many circumstances, not just those described in this Questionnaire. **You must report to the Board any relationship that creates an Interest that occurs between now and the completion of the next annual Questionnaire.** Any potential conflicts of interest that arise after the questionnaire has been completed should be immediately reported to:

*Eric Barnett Jefferson-CEO insert name or title of person to whom conflicts should be reported.*

Note: It will be helpful to designate a specific officer authorized to respond to conflicts and disclosure questions.

- 8. Complete the questionnaire, date it and sign the affirmation at the end of the document.

**CONFLICT OF INTEREST QUESTIONNAIRE AND ACKNOWLEDGMENT**

(To be completed by Officers, Directors, Trustees, Key Employees and members of Board committees)

NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

In accordance with the purposes and intent of the Conflict of Interest Policy adopted by the Board of Directors of the Dearborn \_\_\_\_\_ YMCA, a copy of which has been furnished to me, I hereby disclose that I or my Family Members have the following affiliations, interests or relationships, and/or have taken part in the following transactions:

**I. BACKGROUND**

- A. What position(s) do you hold and what relationship(s) do you maintain with respect to the Organization (e.g., trustee, director, committee member, officer, executive, professional advisor, vendor, etc.)?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**II. OUTSIDE INTERESTS**

- B. Do you or any Family Member (as defined on previous page, number 4) hold, directly or indirectly, through business, investment or immediate family, any of the following:
  - i. An ownership or investment interest in a company that does or may do business with, or that competes with, ~~the~~ the Dearborn YMCA, regardless of the percentage of ownership or value of the ownership interest?

( ) No ( ) Yes - Explain below

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ii. A compensation arrangement with any Company that does or may do business with, or that competes with, the [Dearborn -YMCA](#) (such as compensation for employment or independent contractor services, consulting fees, board stipends or fees, advisory committee fees, honoraria and the like)?

No  Yes - Explain below

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iii. A director, trustee, officer or board committee position with any other Company that does or may do business with, or that competes with ~~the~~ [the Dearborn YMCA](#) (including competition for grants or donations)?

No  Yes - Explain below

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iv. Any personal loans, advances or other borrowing from, or indebtedness to, any customer or supplier who also does or may do business with any the [Dearborn YMCA](#)? (You may exclude charge cards, and personal or mortgage loans at market rates at financial institutions such as banks, finance companies, insurance companies, and savings and loan associations.)

No  Yes - Explain below

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C. Do you or any Family Member compete, directly or indirectly, with the [Dearborn YMCA](#) in the purchase or sale of property rights, interests or services?

No  Yes - Explain below

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D. Do you or any Family Member provide directive, managerial, consultative or other services to or on behalf of any other Company that does or may do business with, or that competes with, the services of the [Dearborn YMCA](#)?

No  Yes - Explain below

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E. Do you or any Family Member employ or otherwise retain any [Dearborn YMCA](#) personnel for work on non-[Dearborn YMCA](#) business done outside of the [Dearborn YMCA](#)?

No       Yes - Explain below

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F. Have you or any Family Member used [Dearborn YMCA](#) property to conduct business that is not [Dearborn YMCA](#) business, without prior approval of an executive of the [Dearborn YMCA](#)?

No       Yes - Explain below

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G. If you are employed by ~~the~~ [the Dearborn YMCA](#), have you or any Family Member accepted assignments outside of ~~the~~ [the Dearborn YMCA](#), either as an employee or as an independent contractor, over and above your primary or full-time assignment with any [Dearborn YMCA](#)?

No       Yes - Explain below

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H. Do you or any Family Member hold an elected or appointed office or other position of public responsibility that serves residents in the [Dearborn YMCA](#)'s service area?

No       Yes - Explain below

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I. Have you or any Family Member been a party to any action, suit or proceeding during the past five years that might be deemed material to evaluating your ability, your integrity or your interests with respect to the [Dearborn YMCA](#)?

No       Yes - Explain below

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J. Do you or any Family Member know of any recent or pending actions, suit or proceeding in which you have an interest adverse to the interests of, or are a party adverse to any the [Dearborn YMCA](#)?

( ) No ( ) Yes - Explain below

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**INSIDE ACTIVITIES**

K. In your area of direct responsibility within ~~the~~ [the Dearborn YMCA](#), do you employ or otherwise retain any Family Member or other individual with whom you have a business or personal relationship? Have you or any Family Member attempted to influence the [Dearborn YMCA](#) concerning the employment or retention of any immediate family member or other individual with whom you have a business or personal relationship?

( ) No ( ) Yes - Explain below

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L. Attached to this form is a complete list of the directors, officers, key employees and significant service providers for the [Dearborn \\_\\_\\_\\_\\_ YMCA](#). We need certain additional information to complete the annual Form 990 tax return for the [Dearborn YMCA](#). -We are required to ask each person or entity on the attached list the following questions:

i. **Is any person on the list a Family Member?**

If yes, please specify name and relationship: \_\_\_\_\_

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ii. **Are you an employee of any person or entity on the list?**

If yes, please specify employer(s): \_\_\_\_\_

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iii. **Do you (PERSONALLY, and not through any business interests) have a written contract with any person or entity on the list?**

If yes, please specify name and relationship: \_\_\_\_\_

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- iv. **Do you (PERSONALLY, and not through any business interests), together with any person or persons on the list, have more than a 35% ownership interest in any corporation, partnership or trust?**

If yes, please specify name and relationship: \_\_\_\_\_

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~~Note: You may wish to use the list created from Part VII of the 2008 Form 990 for this section. See also, the [sample DOTKE tracking form available on YMCAexchange.](#)~~

**III. GIFTS, GRATUITIES AND ENTERTAINMENT**

- M. Have you or any Family Member accepted gifts, entertainment, benefits, discounts or other favors from any outside entity that does, or is seeking to do, business with, or is a competitor of, the Y, under circumstances from which someone might think that such action was intended to influence or possibly would influence you in the performance of your duties on behalf of ~~the~~ [the Dearborn YMCA](#)? This does not prohibit the acceptance of reasonable entertainment by suppliers or prospective suppliers or items of nominal value that are clearly tokens of respect or friendship and not related to any particular transaction or activity when the value of such entertainment or items does not exceed One Hundred Dollars (\$100.00).

( ) No ( ) Yes - Explain below

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- N. Have you or any Family Member accepted any gifts, honoraria, perquisites, favors or benefits valued in excess of One Hundred Dollars (\$100.00) from customers, suppliers or agents of ~~the~~ [the Dearborn YMCA](#)?

( ) No ( ) Yes - Explain below

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**IV. OTHER**

In the space below, please disclose any other interest, activities, investments or involvement that you think might be relevant for full disclosure of all actual, apparent or possible conflicts of interest. If none, indicate "none." **[Use additional pages as necessary.]**

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**VII. AFFIRMATION**

I hereby state that:

- (i) I have received a copy of the Dearborn YMCA's Conflict of Interest Policy,
- (i) I have read and understand the Policy,
- (ii) I agree to comply with the Policy,
- (ii) I understand that [the Dearborn insert legal corporate name of YMCA-YMCA] is a charitable organization and that, to maintain its federal tax-exempt status, it must engage primarily in activities that accomplish one or more of their tax-exempt purposes,
- (iii) I agree to report to the appropriate person (1) any change in the responses to each of the foregoing questions that may result from changes in circumstances or (2) any further financial interest, situation, activity, interest or conduct that may develop before completion of my next annual Questionnaire, and
- (iv) The information contained in this Questionnaire is true and accurate to the best of my knowledge and belief as of the date below.

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_