

REES LLOYD, Attorney
Cal. State Bar No. 090538
3232 NW Luray Terrace,
Portland, OR 97210
951-867-1551; ReesLloyd@aol.com

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Attorney for Accuser/Plaintiff Rick Martin
and Accuser/Plaintiff Rees Lloyd *in pro per*

**BEFORE THE BOARD OF REVIEW
OF THE AMERICAN LEGION
DEPARTMENT OF CALIFORNIA**

In The Matter Of JOHN BART:)
Trial Manual Combined Complaint of:) TRIAL MANUAL COMPLAINT OF
) RICK MARTIN AND REES LLOYD
RICK MARTIN, and REES LLOYD,) AGAINST JOHN BART FOR
and each of them, as members in good) NEGLECT OF DUTY, DISHONESTY,
standing of The American Legion,) AND CONDUCT UNBECOMING A
Department of California,) MEMBER OF THE AMERICAN
) LEGION
Accusers/Plaintiffs,)
-vs-)
)
JOHN BART, in his official capacity)
as Judge Advocate of The American Legion)
Department of California for 2014-15)
) Trial Date:
Accused,Defendant.) Time:
) Place:
)
_____)

COME NOW Accusers/Plaintiffs RICK MARTIN and REES LLOYD , who jointly and individually, allege for complaint against Accused/Defendant JOHN BART as follows:

I. NATURE OF THIS TRIAL MANUAL COMPLAINT:

1. This is a complaint brought as a matter of right under Title I of the Trial Manual of The American Legion Department of California as adopted June 22, 2006 (hereafter, "TM") by Accusers/Plaintiffs Rick Martin ("Martin") and Rees Lloyd ("Lloyd"), each of whom is a

member in good standing of The American Legion Department of California (hereafter, "Department"). Accuser/Plaintiff Martin is also a member of the 2014-15 Department of California Executive Committee (DEC), as Commander of District 28.[Hereafter, Martin and Lloyd shall be jointly referred to as "Plaintiffs," and "Plaintiffs" shall include both and each of them unless otherwise stated.]

2. Plaintiffs Martin and Lloyd complain against Accused/ Defendant JOHN BART (hereafter, "Defendant Bart," or "Bart"), in his official capacity as Judge Advocate ("JA") of the Department of California for 2014-15, until his resignation on or about August 22, 2015.

3. Plaintiffs Martin and Lloyd, jointly and individually, accuse Defendant JA John Bart of conduct unbecoming a member of The American Legion, dishonesty, neglect of duty, including by conflict of interest, and including by violation of his fiduciary duties of "prudence," "care," "honesty" and/or "candor" imposed by law and owed to every member, as well as the mandatory duties imposed on JA Bart by Article IV, Section 5 of the Department Bylaws, by acts or omissions of Defendant Bart in connection with, in relation to, or pertaining to the purported permanent relocation of the Headquarters of the Department from the War Memorial Building in San Francisco by purchase of an abandoned bank building in Sanger, CA, for \$860,000 pursuant to a contract to purchase commercial property. (Hereafter, "Sanger Contract.").

II. JURISDICTION: BEFORE THE BOARD OF REVIEW

4. At all times relevant in this TM Complaint, Bart, as Judge Advocate, is an officer of the Department of California pursuant to Department By-laws, Article IV, Section 5. Therefore, original trial jurisdiction is in the Department Board of Review pursuant to TM Title IV, Sec. 6, which provides in relevant part: "The trial of all charges preferred against a Department Officer or Department Executive Committeeman shall be held in the first instance before the Department Board of Review."

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**III. ALLEGATIONS OF SPECIFIC FACTS OF CONDUCT UNBECOMING,
NEGLECT OF DUTY, AND DISHONESTY BY JA JOHN BART**

5. At all times relevant, the Department is a chartered Department of The American Legion and is operating as a non-profit, tax-exempt, membership corporation under the Non-Profit Corporations Code of California. The Department Executive Committee (DEC) is the Board of Directors of the corporation. As an officer of the non-profit membership corporation, JA John Bart owes, by imposition of law, a fiduciary duty to the Board of Directors, as well as to each member of the Department, which fiduciary duty includes the duties of prudence, care, honesty, and candor.

6. Pursuant to Article IV, Section 5, of the controlling Department Bylaws (i.e., 2013 revision) Judge Advocate John Bart has, in addition to his fiduciary duties imposed by law, the following express mandatory duties: “The Department Judge Advocate shall advise the Department Officers and the Department Executive Committee on all legal matters, including the construction and interpretation of the Department Bylaws and the National Constitution and Bylaws. The Judge Advocate shall be responsible for reviewing the legalities of all Department contracts which obligate the Department in excess of two thousand five hundred dollars (\$2,500), including those of Commissions and Committees, prior to their being signed and shall perform such other duties as are usually incident to the office.”

7. An extremely important matter was presented to the members of the DEC, i.e., the corporate Board of Directors, for decision, at a regularly scheduled meeting on March 14-15, 2015, at Santa Maria Post 56, Santa Maria, CA. That matter was to decide whether to vote to “accept the contract” to purchase an abandoned bank in Sanger, CA, for \$860,000 dollars (the “Sanger Contract”) and to move the Department’s Headquarters there from the newly renovated War Memorial Building in San Francisco, where the Headquarters had been located since 1932.

[CONFLICT OF INTEREST OF BART ACTING IN CONCERT WITH JANET WILSON]

8. Plaintiffs allege, upon information and belief, that at some time prior to presentation of the Sanger Contract matter to the DEC for decision on March 14, 2015, that Department Commander and CEO Janet Wilson (“Wilson”) had offered to Defendant JA Bart

— and Bart had accepted, subject to DEC approval — a separate paid position as director of the transition of the Department Headquarters to Sanger. Bart was to be paid in that position in an amount to be determined by the Finance Commission as a Department employee performing the duties of transition director. At the same time, Bart would continue to hold the position of Judge Advocate, in which he would be the legal adviser to the Department's Executive Board, Officers, and members as the Department Judge Advocate, including on the Sanger Contract and Bart's own performance as transition director. Plaintiffs allege that at all times after accepting Wilson's offer, Defendant Bart had a financial interest in approval of the Sanger Contract and was in a conflict of interest. Plaintiffs allege, therefore, that Bart acted in neglect of his duties as Judge Advocate, including his fiduciary duties of honesty and candor, by accepting Wilson's offer to be paid transition director while simultaneously holding the position of Judge Advocate, in which he would be advising the DEC, and the Department's officers and members, on the Sanger Contract in which he was financially interested. Plaintiffs allege that Bart did not fully disclose his financial interest in the compensated position of transition director while advocating to the DEC members that they should adopt the Sanger Contract, and while as JA giving them the legal advice that DEC members could under the Bylaws accept the Sanger Contract at the March 14, 2015 meeting as presented to them as Directors of the corporation by Wilson and Bart. Wherefore, Plaintiffs allege that Defendant Bart by these acts and omissions is guilty of dishonesty; neglect of duty, including by breach of his fiduciary duties of prudence, care, honesty and candor; and conduct unbecoming a member of The American Legion.

9. Plaintiffs allege it is the policy and practice of the Department of California to publish an Agenda for each DEC Meeting advising the DEC members of what matters will come before them as members of the corporation's Board of Directors. Despite the importance of the Sanger Contract, Wilson, as Commander and CEO, and in that capacity as Presiding Officer of the DEC meeting, deliberately did not include on the agenda for the DEC meeting any indication that the Sanger Contract would come before the DEC members for decision. Plaintiffs allege that Wilson acted with JA Bart's knowledge and agreement to fail to include in the Agenda notice to the DEC members that the Sanger Contract would come

before them for vote. Wherefore, Plaintiffs allege that Defendant Bart by these acts and omissions is guilty of dishonesty; neglect of duty, including by breach of his fiduciary duties of prudence, care, honesty and candor; and conduct unbecoming a member of The American Legion.

10. Plaintiffs allege more specifically, upon information and belief, that Bart, acted in concert or collusion with Bart with Wilson, aiding and abetting Wilson in deliberately failing to include notice in the DEC agenda that the Sanger Contract would be voted upon, for the purpose of limiting opposition to the Sanger Contract advocated by both Wilson and Bart. Plaintiffs allege that Bart was in a conflict of interest and financially interested in the DEC voting to accept the Sanger Contract, and (a) failed to instruct and advise Wilson that the policy and practice of the Department is to include important matters in the agenda to give notice to the DEC members and that it should be obeyed by Wilson; (b) that Bart failed to prevent Wilson from violating Department policy in that manner; (c) that Bart failed to inform the DEC members that notice that the Sanger Contract would be acted upon should have been included in the Agenda or otherwise been communicated to them in advance of the DEC meeting; (d) that Bart, knowing that as JA he would be called upon to give legal advice on the Sanger Contract to the DEC, failed himself to give prior notice that the Sanger Contract would be voted upon at that DEC meeting; (e) and Bart failed to disclose before or at the DEC meeting that he had been offered by Wilson, and had accepted appointment to the paid position of transition director if the DEC voted to approve the Sanger Contract. Wherefore, Plaintiffs allege that Defendant Bart by these acts and omissions is guilty of dishonesty; neglect of duty, including by breach of his fiduciary duties of prudence, care honesty and candor; and conduct unbecoming a member of The American Legion.

11 Plaintiffs allege that the failure of Wilson to include the Sanger Contract on the Agenda, or to provide the DEC with any advance notice that it would be voting to “accept the [Sanger] Contract” was not the result of staff failure or Wilson’s accident or incompetence, but rather was intentional and deliberate conduct carried out by design to forestall advance opposition and mitigate opposition at the DEC meeting to Wilson’s plan to induce the DEC members to accept the Sanger Contract without ever seeing it. Plaintiffs allege that Bart

knew Wilson withheld this and other information of importance, including copies of the Sanger Contract itself, from the DEC members deliberately and by design in order to prevent or mitigate opposition. However, Bart not only did nothing to prevent Wilson from such neglect of duty by violation of the fiduciary duties of honesty and candor but acted in concert with Wilson, aiding and abetting Wilson to do so. Wherefore, Plaintiffs allege that Defendant Bart by these acts and omissions is guilty of dishonesty; neglect of duty, including by breach of his fiduciary duties of prudence, care, honesty and candor; and conduct unbecoming a member of The American Legion.

12. One of the most egregious of Wilson's acts of misconduct was, after deliberately failing to include the issue of voting to "accept the [Sanger] contract" on the agenda or otherwise giving advance notice, Janet Wilson concealed from the DEC members the Sanger Contract they were urged to vote to accept. That is, Wilson never provided to the DEC members — each of whom, like Wilson, had a fiduciary duty of prudence, care, honesty, and candor — the contract they were to vote to accept, nor any writing setting forth the terms of the contract. On the contrary, Wilson structured the meeting in such a way as to have the DEC members vote on the Sanger Contract sight unseen. Defendant Bart knew of this, and acted in concert with Wilson to carry those acts out in that manner, including failing to provide the Sanger Contract to the DEC members for their consideration and deliberation. Bart urged the DEC members to adopt the Sanger Contract, sight unseen, without DEC members being provided with it or any writing accurately reflecting its terms. Bart failed to disclose his financial interest in advocating that DEC members adopt of the Sanger Contract, and gave them legal advice as JA that they were authorized to approve the contract in that manner, without seeing it or any writing reflecting its terms. Wherefore, Plaintiffs allege that Defendant Bart by these acts and omissions is guilty of dishonesty; neglect of duty, including by breach of his fiduciary duties of prudence, care, honesty and candor; and conduct unbecoming a member of The American Legion.

13. Further, as will be alleged in more detail below, Bart concealed from the DEC members the true fact that Wilson had already signed the form real estate agreement for purchase of commercial property on "March 6, 2015," offering on behalf of the Department to

purchase the abandoned bank for \$860,000. Bart failed to inform the DEC that the seller had signed the agreement accepting the offer on “March 10, 2015.” Thus a contract was established, before the DEC Meeting on March 14-15, binding the parties subject only to the contingent condition that it had to be approved by the DEC. Notwithstanding, Wilson, aided and abetted by Bart, failed to provide that Sanger Contract to the members of the DEC for review and consideration before calling on them to vote to approve the Sanger Contract sight unseen. Defendant Bart knew of these acts of Wilson, but did not act to prevent them; rather, Bart acted in concert with Wilson. Nor did Defendant Bart as Judge Advocate inform the DEC members of those true facts of Wilson’s conduct when Bart, himself, urged them to approve the Sanger Contract, advising them, as Department Judge Advocate, that they could, i.e., they had the authority to do so, and should do so, all without disclosing his own financial interest in the DEC vote to accept the Sanger Contract. Wherefore, Plaintiffs allege that Defendant Bart by these acts and omissions is guilty of dishonesty; neglect of duty, including by breach of his fiduciary duties of prudence, care honesty and candor; and conduct unbecoming a member of The American Legion.

14. Plaintiffs allege further that it is the policy and practice of the Department of California that financial matters involving expenditures or debt obligations involving other than minor amounts are first reviewed by the Finance Commission, which then recommends approval or rejection. Notwithstanding, Wilson, as CEO, never provided to the Finance Commission the Sanger Contract for its review and recommendation before Wilson sprang it on the DEC without prior notice as an off-agenda item. Thus, the DEC members did not have the benefit of analysis and recommendation by the Finance Commission. To this date, neither Wilson nor Bart has given any legitimate business reason for not providing the Sanger Contract to the Finance Commission for review pursuant to established policy and practice. Plaintiffs allege that Bart, who as Judge Advocate advises the Finance Commission, knew that the Sanger Contract had not been reviewed by the Finance Commission before the DEC members were called upon to vote to approve the Sanger Contract, but Bart did nothing to advise the Finance Commission members or the DEC members of that failure to follow established policy and practice before the vote to accept the Sanger Contract on March 14,

2015. On the contrary, knowing the Finance Commission had never been presented with the Sanger Contract for review and recommendation, Bart, when he addressed the DEC on March 14, in his own remarks advocated that the DEC vote to accept the Sanger Contract and, as their legal advisor, Bart informed the DEC it “could” do so as well as should do so, all without disclosure of his own financial interest in the DEC vote to accept the Sanger Contract. Wherefore, Plaintiffs allege that Defendant Bart by these acts and omissions is guilty of dishonesty; neglect of duty, including by breach of his fiduciary duties of prudence, care honesty and candor; and conduct unbecoming a member of The American Legion.

15. Plaintiffs allege further that Rules of the DEC require that there must be two readings regarding such a matter as the Sanger Contract separated by at least four (4) hours. The documents to be voted on must be presented to the DEC members at the first meeting, before voting on the matter in the second reading. Wilson utterly violated this DEC Rule, and instead rushed the DEC to judgment without giving them any documents to consider, and without a second reading. No explanation has been given for this egregious violation. Bart, as Judge Advocate, did absolutely nothing at the DEC to prevent this egregious violation. Instead, Bart acted in concert with Wilson in advocating immediate vote to accept the Sanger Contract, and never informed the DEC that its own rules required two readings, separated by four hours, and provision of the relevant documents to the DEC at the first reading. Bart so acted without disclosing that he had a financial interest in the DEC’s vote to accept the Sanger Contract. Wherefore, Plaintiffs allege that Defendant Bart by these acts and omissions is guilty of dishonesty; neglect of duty, including by breach of his fiduciary duties of prudence, care honesty and candor; and conduct unbecoming a member of The American Legion.

16. Although failing to include notice on the agenda that the Sanger Contract would be voted upon, and although failing to submit the Sanger Contract to the Finance Commission for review and recommendation, and although failing to provide the DEC members with the Sanger Contract or informing them that she had already signed it for the Department as buyer and offerer on March 6 and the seller had signed it on on March 10, 2015, and although ignoring the DEC Rule 7 requiring two readings on such matters like the

Sanger Contract — all done with JA Bart’s knowledge, and his wrongful complicity — Wilson called on her primary Officer confederates in support of the Sanger Move to urge the DEC to vote for the contract at the March 14 meeting. These were National Executive Committeeman Hugh Crooks, Finance Commission Chairman Al Lennox (although the Commission never received, reviewed, recommended, or had the contract presented to it), and Wilson’s key agent in negotiating the Sanger Contract, Judge Advocate John Bart. Significantly, neither Bart nor Wilson nor Crooks nor Lennox, all of whom owed a fiduciary duty of “candor” to the DEC, informed the DEC members about, or even mentioned, that the Finance Commission had not received, reviewed or recommended the Sanger Contract. Further, neither Bart, Wilson, Lennox, or Crooks informed the DEC members about, or even mentioned, the Fresno County Grand Jury 2014-15 Report No. 2, and prior reports, which made critical findings of racial tensions in Sanger, dysfunctional government, corruption, and threats of potential violence. The Grand Jury Report No. 2, Plaintiffs allege upon information and belief, was known or should have been known if due diligence had been carried out, not only by Bart, but also by Wilson, Crooks, and Lennox. Plaintiffs allege, on information belief that it was in fact known to Bart, who, on information and belief, is a Sanger resident and former police chief, who has close relations with Sanger City Officials. Bart was the chief negotiator of the Sanger Contract and Wilson’s direct representative, negotiating with Sanger City officials. The Grand Jury Report was reported on in Sanger media. However, in his remarks urging the DEC to accept the contract, Bart failed entirely to inform the DEC members of the Grand Jury Report, not even to refute it. Wherefore, Plaintiffs allege that Defendant Bart by these acts and omissions is guilty of dishonesty; neglect of duty, including by breach of his fiduciary duties of prudence, care honesty and candor; and conduct unbecoming a member of The American Legion.

17. Plaintiffs allege, further, that in his own advocacy of acceptance of the Contract by the DEC, Bart not only acted in concert with Wilson to conceal relevant and material facts, including not providing the DEC with the Sanger Contract they were called upon to vote to accept, and failing to inform the DEC that Wilson had already signed the contract on March 6 and the seller had signed on March 10 the form purchase of commercial property

agreement accepting the Department's offer of \$860,000, but Bart made inexplicable and misleading false statements to the DEC. First, he told the DEC members that they needed to act to accept the Sanger Contract because "as a matter of fact" it was what he called a "time limited offer" — although the Department, by Wilson, was the "offerer," not the seller, and the Department had complete control over the time the offer would remain open. According to the Reporter's Transcript (Vol. I, page 86, lines 1-11) after speaking as the negotiator of the Sanger Contract to extoll lower "cost of living" and "insurance" in Sanger, and the "crime rate," Bart then, as Judge Advocate, rendered legal advice to the DEC that it "has [had] the authority under the bylaws" to accept the Sanger Contract which he, himself, negotiated, and in which he had an undisclosed financial interest. That is, instead of disqualifying himself from rendering a legal opinion as Judge Advocate on a contract he, himself, negotiated, and in which he had a financial interest, Bart rendered a legal opinion that the contract he negotiated was proper under the Bylaws. Aside from failing to produce the actual contract, he advised the DEC it had authority to accept the Sanger Contract without ever seeing it, despite the DEC members own fiduciary duties of "care" and "prudence." Bart also failed entirely to disclose he had a financial interest in the DEC vote due to Wilson's offer to appoint him to the paid position of transition director. He also failed entirely to advise the DEC of the DEC's own rules requiring two readings, separated by four hours, with the contractual documents pressed at the first meeting. He failed also to advise that the Sanger Contract had never even been presented to the Finance Commission, let alone approved by the Commission as required. It was on such acts and omissions of Bart as Judge Advocate that the DEC voted to approve the motion which Wilson articulated on the record as a motion to "accept the [Sanger] contract." (R.T., Vol. I, page 99, lines 20-25). Wherefore, Plaintiffs allege that Defendant Bart by these acts and omissions is guilty of dishonesty; neglect of duty, including by breach of his fiduciary duties of prudence, care honesty and candor; and conduct unbecoming a member of The American Legion.

18. At the DEC meeting the following day, March 15, 2015, according to the Reporter's Transcript (Vol. III, page 292-294), Wilson asked for a motion to "ratify" her appointment of Bart to the paid position of "transitional director" for the move of Department

Headquarters to Sanger. Bart was not removed as Judge Advocate by the motion as articulated by Wilson. Rather, Bart would continue to serve as Judge Advocate, holding dual positions as Judge Advocate and paid employee in the same matter, rendering legal advice as JA on the Sanger Contract and move and on his own performance in a compensated employee position directing the transition to Sanger. Further, Bart did not recuse himself from rendering legal advice to the DEC as Judge Advocate even when the question of his own hiring to a paid employee position was acted upon by the DEC. There was no legal advice rendered to the DEC by anyone on the issue of whether the appointment of a Judge Advocate to serve simultaneously as a paid employee of the Department was legal, i.e., whether it would constitute a conflict of interest. Plaintiffs allege that Bart's acceptance of Wilson's offer created a manifest improper conflict of interest. Plaintiffs allege further that that conflict of interest could not be cured by "ratification" of Wilson's appointment of Bart by the DEC. The 2015 Convention cured the conflict of interest created by Wilson and Bart as they acted in concert and collusion by repudiating Bart's employment as paid transition director by adoption of a resolution, authored by Lloyd, a plaintiff herein, nullifying Bart's appointment. Wherefore, Plaintiffs allege that Bart, by these acts and omissions, acted dishonestly; neglected his duty, including by breach of his fiduciary duties of prudence, care, honesty, and candor; and committed acts unbecoming a member of The American Legion.

IV. CONCLUSION, REQUESTED REMEDY.

19. Reserving the right to amend this complaint upon discovery of other and further facts or as otherwise necessary, Plaintiffs, and each of them, allege in conclusion of this complaint that in committing the acts and omissions alleged in the paragraphs herein above, and each of them, and each allegation in each of paragraph, John Bart, in his position of Department Judge Advocate appointed by Commander Janet Wilson, is guilty of dishonesty; neglect of duty — including by violation of his fiduciary duties of prudence, care, honesty, and candor; and conduct unbecoming a member of The American Legion, and that by such conduct in the process followed by Wilson and Bart to induce acceptance of the Sanger Contract and move to Sanger, Bart, as Judge Advocate has brought great discredit to the reputation and integrity of The American Legion, as has Wilson as Commander.

20. Wherefore, Plaintiffs, and each of them, request as remedy imposition of appropriate discipline upon John Bart up to and including suspension or expulsion from membership in The American Legion.

Date: Sept. 2, 2015

Respectfully submitted,

Accuser/Plaintiff RICK MARTIN, and
Accuser/Plaintiff REES LLOYD

(ORIGINAL SIGNED)

By: _____
REES LLOYD, Attorney
for Plaintiff/Accuser RICK MARTIN; and for,
Plaintiff/Accuser REES LLOYD, *in pro per*

VERIFICATION

I, REES LLOYD, hereby declare, under penalty of perjury under the laws of California, that I am one of the Accusers/Plaintiffs in the within Matter of John Bart; that I am the attorney for Plaintiff/Accuser Rick Martin as well as a Plaintiff/Accuser *in pro per*; that I am familiar with the allegations set forth in the within Trial Manual Complaint against John Bart and I know the allegations stated therein are true to the best of my own knowledge, except for matters alleged upon information and belief, and, as to those, I am informed and believe them to be true; and that I executed this verification on September 2, 2015.

(ORIGINAL SIGNED)

REES LLOYD