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9 **UNITED STATES DISTRICT COURT**  
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

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 13 RICHARD EDELMAN,  
 14 Plaintiff,  
 15 v.  
 16 UNITED STATES SECURITIES AND  
 17 EXCHANGE COMMISSION,  
 18 Defendant.

Case No.: 15-CV-2750-BEN-BGS  
**SUPPLEMENTAL DECLARATION  
 OF RICHARD EDELMAN IN  
 SUPPORT OF MOTION FOR  
 PARTIAL SUMMARY JUDGMENT**

Date: March 13, 2017  
 Time: 10:30 a.m.  
 Ctrm: 5A  
 Judge: Hon. Roger T. Benitez

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1 I, Richard Edelman, declare:

2 1. I am the plaintiff in this action. I have personal knowledge of the facts set  
3 forth in this declaration and, if called as a witness, could and would testify competently to  
4 such facts under oath.

5 2. I was previously filed a civil action against the Securities and Exchange  
6 Commission ("SEC"), *Edelman v. SEC*, Case No. 1:14-cv-01140-RDM in the District  
7 Court for the District of Columbia on July 3, 2014 ("DC FOIA Case"). The DC FOIA  
8 Case sought records generated and received by the SEC Division of Corporate Finance  
9 relating to the initial public offering of Empire State Realty Trust ("ESRT") and the  
10 consolidation of Empire State Building Associates ("ESBA") into ESRT. The complaint  
11 in that case sought records I had requested in six FOIA requests. I received no records  
12 from the SEC until I filed that complaint. After filing the case, the SEC released 2,000  
13 pages of records. The District Court also ordered the SEC to release additional records to  
14 me.

15 3. Among the records I received from the SEC after filing the DC FOIA Case  
16 was a "Memo to File" by Tom Kluck and Angela McHale, staff members of the SEC's  
17 Division of Corporate Finance, dated October 29, 2013. A true and correct copy of said  
18 documents is attached hereto and incorporated herein by reference as Exhibit 32. It reads  
19 in part as follows:

20 Throughout the course of our nearly two-year review of these transactions,  
21 we received hundreds of complaints and phone calls from many investors.

22 (...)

23 We received investor complaints mostly by email, but we also received  
24 phone calls and letters by mail.

25 (...)

26 All written complaints received have been scanned into a Sharepoint site so  
27 that Corp Fin and Enforcement could both view the complaint') at any time.

28 The Sharepoint site can be found at the following link:  
29 <https://collaboration/sites/IRSFI/tcrob/ESBREIT/default.aspx>.

30 (...)

1 All phone call complaints were returned and documented in a phone log  
2 which can be found on the AD8 J:// drive and also on the Sharepoint site.

3 4. A true and correct copy of the declaration of John J. Livornese, FOIA  
4 Officer in the SEC FOIA Office ("John Livornese"), filed on January 15, 2015, in the DC  
5 FOIA Case (Dkt. No. 15-1) is attached hereto and incorporated herein by reference as  
6 Exhibit 33.

7 5. A true and correct copy of the declaration of John Livornese, filed on April  
8 25, 2016, in the DC FOIA Case (Dkt. No. 26-1) is attached hereto and incorporated  
9 herein by reference as Exhibit 34.

10 6. A true and correct copy of the Second Declaration of Patti Dennis, Chief of  
11 the Office of Disclosure Support for the SEC's Division of Corporation Finance ("Patti  
12 Dennis"), filed on March 17, 2015, in the DC FOIA Case (Dkt. No. 18-1) is attached  
13 hereto and incorporated herein by reference as Exhibit 35.

14 7. A true and correct copy of the Declaration of Patti Dennis, filed on February  
15 10, 2015, in the DC FOIA Case (Dkt. No. 23) is attached hereto and incorporated herein  
16 by reference as Exhibit 36.

17 8. I filed my FOIA requests on this matter on February 9, 2015, and March 11,  
18 2015. After receiving no records from the SEC in response to these two requests, I filed  
19 this action on December 8, 2015.

20 Executed this 28<sup>th</sup> day of February 2017, in Los Angeles, California.

21 I declare under penalty of perjury under the laws of the United States that the  
22 foregoing is true and correct.

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RICHARD EDELMAN

**Exhibit List**

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Exhibit 32.....4  
Exhibit 33.....7  
Exhibit 34.....24  
Exhibit 35.....31  
Exhibit 36.....37