



As we close out our fiscal year ending March 31, we have much good news to celebrate, thanks to the many contributions of our volunteers and staff.

Our community is growing, as we are at an all-time high of 4,323 members versus a goal of 4,257. This represents a 5.3% growth over last year, and looking forward, the numbers continue to be encouraging. We were pleased to welcome a new group to the fold, with AMEREF, the convention center association of Mexico, joining as full members. We look forward to seeing many of them at ICCA in the fall.

We are currently undergoing our audit, so financials aren't final, but we should come within \$9K or better of our budgeted profit goal of \$145K, which is a continuation of the forward momentum we have experienced in the last 2 years.

And hopefully you've noticed we launched a new website. It features a cleaner, more user friendly design, and puts our members front and center. If you haven't checked it out, please do, and let us know if you encounter any issues so we can keep making progress.

In April, we conducted a pilot of the new, live Trained Crowd Manager program for the Washington Nationals, and have a similar program planned for Walmart the end of this month. More details will be available soon for those who may be interested in becoming a trainer or bringing the program to their venue.

And, as I should have mentioned in the previous leadership report, we held our first IAVM China meeting in Shanghai in February, under the leadership of Cliff Wallace, CFE, Chairman of the Hong Kong – Shanghai Venue Management (Zhengzhou) Ltd.; Michael Enoch, General Manager of the Mercedes-Benz Arena in Shanghai; and Eric Gao, CEO of the Workers Stadium in Beijing. Special thanks to Cliff for not only his leadership, but for providing access to some of his staff to help manage the event. Participating were 35 venue leaders from across China, and with the positive feedback we received, we anticipate a second meeting in the future.

And last but not least I'm pleased to announce that the Court of Appeals for the Ninth Circuit ruled in favor of the San Diego Convention Center on an important antitrust issue. As you'll recall, the district court had determined that the San Diego Convention Center's ("SDCC") decision to implement an exclusives policy for cleaning services was immune from antitrust scrutiny under the state action doctrine. For the appeal, we submitted an amicus brief, thanks to the generous support of the IAVM Foundation. That brief supported the district's court reasoning, arguing that the legislation authorizing the SDCC must be understood as carrying with it a delegation of authority for management to

structure and manage the SDCC's internal operations, even if competition to perform those operations is displaced.

The Ninth Circuit agreed and affirmed the district court's conclusions on this point. The appeals court applied reasoning that draws from the IAVM brief, including our observation that legislation authorizing the SDCC necessarily contemplated a broad delegation of managerial authority. I have attached the opinion for your review; the relevant section is on pages 13-17. (The appeals court reversed the district court on other issues that are not germane to IAVM's brief, so the parties will now return to the district court to litigate those issues.)

This is an important and very favorable opinion for any public convention center or similar space that has (or is contemplating adopting) exclusives policies. Assuming those facilities operate pursuant to authorizing legislation that is similar in character to SDCC's authorizing legislation, this opinion suggests those exclusives policies are immune from antitrust review.

Once again, please thank the Foundation for making it possible to protect our venues' interests in this manner.

### **IAVM Staff Updates**



Jeff Mann, CFE  
COO

Jeff joined the IAVM team on March 24 as our Chief Operations Officer, reporting to the President & CEO. He brings over 14 years' experience in the field of public assembly management. A graduate of Springfield College in Springfield, MA, Jeff then received his Masters' Degree from the University of Massachusetts' graduate program in Sport Management. He spent six years with the FleetCenter/TD Garden in Boston, MA. Jeff moved on to Jobing.com Arena in Glendale AZ, home of the Phoenix Coyotes and spent the last seven years as the Assistant General Manager at Time Warner Cable Arena in Charlotte, NC.

Jeff has worked in all facets of venue management, including event operations, guest experiences, facility operations/engineering, security, capital planning and facility renovations. Jeff is active in the community having served as board chair for the Charlotte Chamber and as a board member for the Carolina International Charter School. Leading up to the 2012 election Jeff traveled as part of the Presidential Advance Team for several

campaign stops. In his role as IAVM's COO, Jeff has oversight of all sales and marketing, as well as responsibilities for ensuring IAVM operations exceed expectations.



Michelle Johnson  
Meetings & Education Coordinator

Michelle joined IAVM on March 10 as our Meetings & Education Coordinator reporting to Margot Angles, CMP, Director of Meetings. A 2009 English Literature graduate from the University of North Texas, Michelle has a strong background in English, library science and administration.

Michelle spent two years at Southern Methodist University's Fondren Library as Assistant Circulation Manager. Prior to that, she spent four years with the City of Plano's library system.

Michelle is the voice you hear when you call HQ in need of registration assistance for any of our conferences/meetings and so much more!



Val Bhakta  
Marketing Manager

Val joined IAVM's team on April 14. She brings a great skill set to IAVM, as her experiences have included extensive marketing for Boston's Restaurant & Bar, Meeting Professionals International, FastBucks Holding Corporation, and Y2 Marketing.

Val takes on a new role of expanded oversight over our online experiences, communications, and campaigns. You will meet Val on all our social media sites!

# Operations

## Financials

For the year ended March 2014 the Association had a net profit of \$136K on revenue of \$4.3M compared to a budgeted profit of \$145K on revenue of \$5.1M. The revenue shortage of \$773,000 was offset by a \$772,000 reduction in expenses. Investment gains were \$19,000 compared to a budgeted gain of \$27,000 resulting in an overall Net Profit of \$136,000 which was \$9,000 less than budgeted expectations of \$145,000. Final results will be published after the auditor's review.

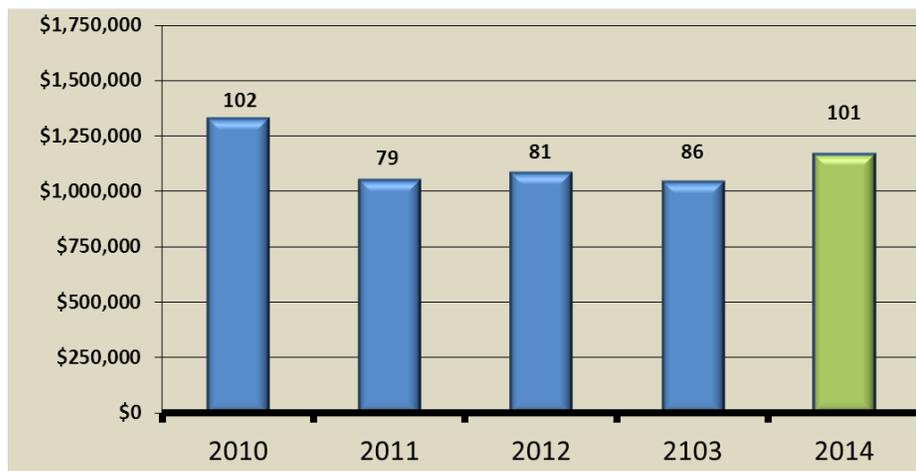
Membership revenue beat expectations and set a record for the highest dues revenue ever recorded at \$1.26M. Total revenue was down as a result of multiple revenue sources coming in under budget including: exhibit sales, advertising, sponsorship, registration, merchandise, leasing income and DHS grant funding.

Looking forward one key financial indicator is deferred membership or total dues payments that have not yet been recognized as revenue. As of year-end the deferred dues totaled \$699,000 which is the highest amount ever recorded and a \$62,000 increase from last year. As a comparison, when the fiscal year started in April the total deferred dues balance was \$1,000 above the prior year. The increase in deferred dues is an indicator that future dues revenue will be increasing and thus meeting expectations.

A second forward looking indicator is trade show billings for the July 2014 conference. As of March, trade show sales totaled \$577,000, a \$65,000 increase from last year's total at this time and is 85% of the budgeted sales goal of \$675,000.

## Cash and Investment Balance

A financial objective of the Association is increasing the company's Cash and Investment balance to a minimum target of 90 days of annual operating expenses. As of March the cash & investment balance was \$1,168,000 and represented 101 days of operating expenses. At the same time last year the Association cash balance represented 86 days.



## Operations / IT

Phase one of the Ungerboeck migration project from iMIS was launched on March 31. Phase one of the project included: event registration, member profile and an updated membership application. With the new database in place, the IT department continues to work with the Ungerboeck support team to make improvements and fine tune the system.

## Education

### Professional Development, Meetings and Events

#### ISMC – Atlanta, GA, January 13 – 14, 2015

After hosting ISMC as a hybrid meeting for the past two years, we were asked to re-launch ISMC as a face-to-face program. With the guidance of our program committee and strong support from the local host committee, we are looking forward to the results.

Though initially planned for May 2014, we have postponed the conference until January of 2015 to avoid industry conflicts. Please be on the lookout for registration and program materials in the coming months.

#### SES – Cornell University, Ithaca, NY, May 12 – 15, 2014

SES concluded with positive reviews from attendees, although a slight shortfall in budget expectations. The SES curriculum rotates each year through three areas of focus: Visionary Management, Strategic Planning and Leadership Culture. This year's curriculum was focused on Leadership Culture and covered topics such as diversity in the workplace, ethical dimensions of leadership, loyalty and brand management, and applied HR strategies.

Description	Actual	Budget	Last Year (Final)
Registration	\$99,207	\$142,449	\$113,908
Paid Attendees	48	60	48
Sponsorship	\$5,000	\$5,000	\$0
Total Revenue	\$104,207	\$147,449	\$113,908

#### VMS and VMS GI – Oglebay Resort, Wheeling, WV, May 31 – June 5, 2014

The application deadline has passed for the 2014 edition of VMS and VMS GI. We have surpassed goals for all three groups and are looking forward to our largest attendance at the school since its inception.

VMS is consistently ranked as the best professional education program available for venue managers. Both seasoned managers and people new to the industry find the schools to be exceptionally valuable.

The program consists of one week of intensive instruction in each of two consecutive years, followed by one year of the VMS Graduate Institute.

Description	2014	Goal	2013 (Final)
Year 1 Attendees	138	130	137
Year 2 Attendees	118	125	114
Grad. Institute Attendees	28	20	23

VenueConnect – Portland, OR, July 26-29, 2014

Registration for the 89<sup>th</sup> annual conference is currently up and running. We are forecasting record attendance at this year's conference. Please watch for continuous updates and information as we get closer to July.

Description	Actual (as of 5/7/14)	Budget	Last Year (Final)
Registration	\$131,745	\$142,449	\$492,575
Paid Attendees	196	685	746
Sponsorship	\$68,000	\$230,000	\$228,500
Total Revenue	\$104,207	\$147,449	\$721,075

AMC – Long Beach, CA, September 14-16, 2014

Keep an eye on your inbox for upcoming details and program information. Registration will go live this month.

ICCC – Vancouver, BC, October 2-4, 2014

Dust off your passport as the International Convention Centers Conference heads up north to Vancouver for this year's convention. Registration will go live in June.

**Research**

Online data and written reports for the 2014 Management Salary survey were made available to those individuals that completed the survey in late March. The reports are ready to be posted to the online website for sale as quickly as the website can be finalized.

The FY 2013 Operating Expense/Revenue survey began March 14 and will remain live until May 23.

We completed our first quarter survey for our new, panel based *Business Barometer* and shared the results with the panelists; these results are included below.

We're developing a Top 10 Venues to Work concept to test at VenueConnect. We believe that members may appreciate the value provided by this service, and if there is sufficient interest, we can consider expanding to other offer custom, online research services for a fee. Here is a description of the Top 10 Venues program that we're testing.

*IAVM is planning to introduce an annual Top 10 Venues to Work, a list of the ten venues rated the best places to work by its employees.*

**How It Works**

*IAVM members will be invited to nominate their organization. IAVM will offer a short satisfaction survey to all employees at the organization. All respondents will be promised absolute anonymity and individual responses will never be shared with anyone other than the IAVM Research Department.*

*Surveys will be tabulated at IAVM Headquarters and average scores calculated based solely on the responses of the employees. The Top 10 winners will be announced in IAVM's Facility Manager Magazine each year.*

**Why Should I Join**

*In addition to competing for the top honors, you'll receive a report of the average, aggregate scores on each individual attribute which was rated by your employees. You'll also be provided with the aggregate average score on each attribute for all organizations, allowing you to compare yourself to an overall average.*

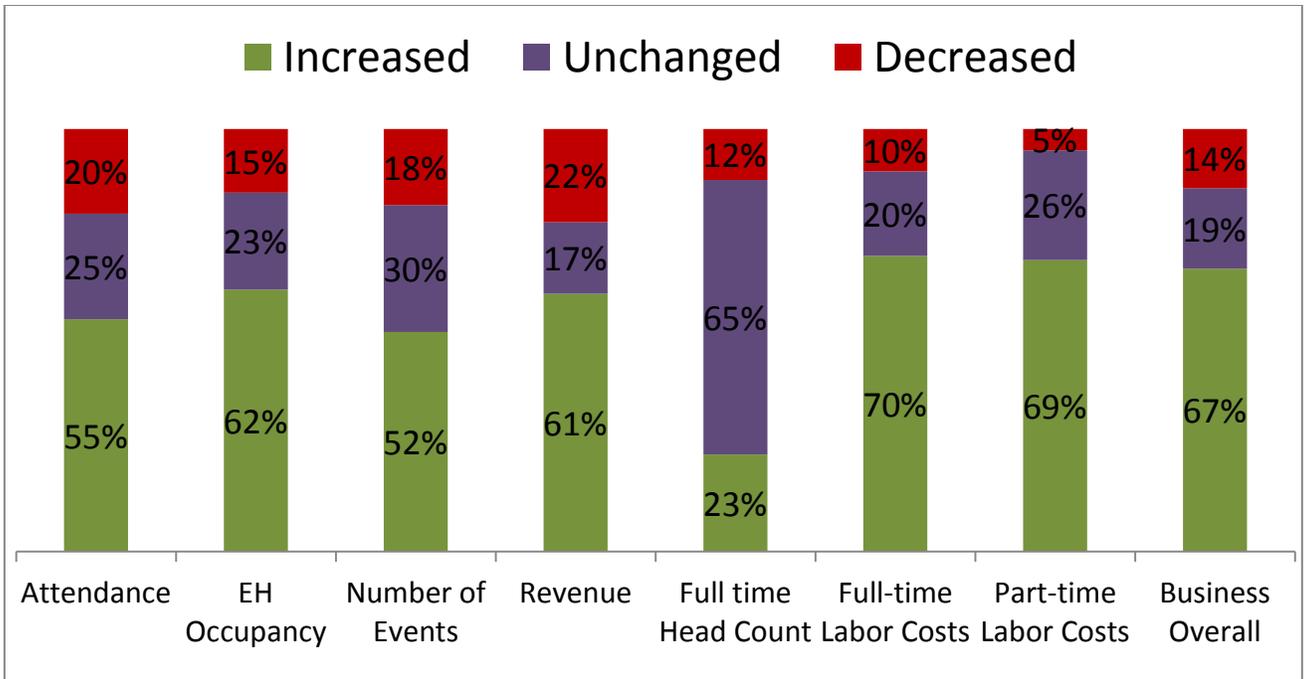
*This is a FREE Employee Satisfaction survey that you can use to gauge how your organization is perceived by the staff. Use it as an opportunity to strengthen employee relations by improving those areas in which you received lower than expected grades by your employees, or to recognize management for a better than average job it's doing to keep employees happy and engaged.*

Upcoming VenueDataSource presentations include the Region 1-3 meeting and ICCG, in addition to any other meetings that offer opportunities. Planning is ongoing for the VenueConnect Booth.

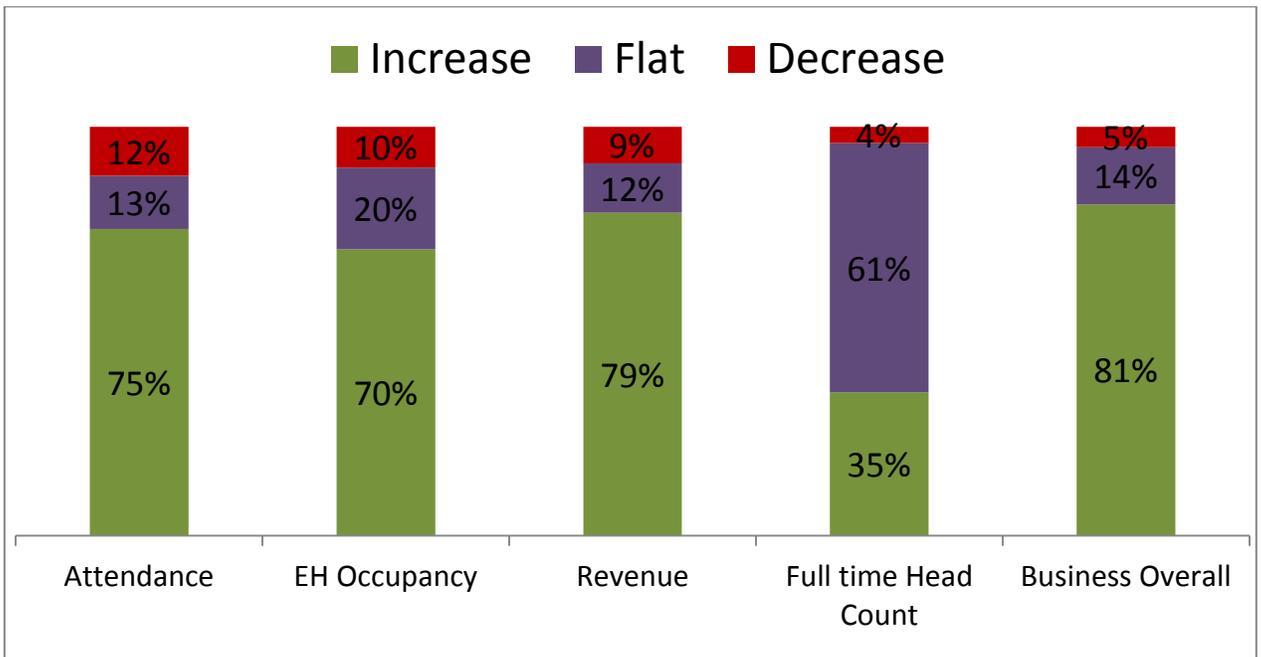
**RESULTS FROM THE IAVM BUSINESS BAROMETER 2014 QTR. 1 PERIOD**

*Most venues enjoyed increases in attendance, events, revenue and exhibit hall occupancy (for convention centers) compared to last year, but are hesitant to add full-time staff just yet, possibly because labor costs have increased and they're waiting to see if improvement in business can be sustained*

*Expectations for increases in attendance, occupancy and revenue over the next year are even brighter, and more expect to hire full time staff (23% compared to last year, 35% expect to hire more over the next year). Fully 4 out of 5 (81%) expect overall business conditions to improve.*



First Quarter 2014 Results – Compared to the same time Last Year



First Quarter 2014 Results – Outlook over the next year

## **Marketing & Creative Services**

The launch of the new IAVM.org was the most notable milestone for the marketing and creative services team. Working closely with IT and our development team, we made our way through a significant transition for both our front-end site and back-end database. The new site is on a responsive framework (tablet, phone compatible), includes an improved architecture, an updated membership area, and brings updated content immediately up to the front page of the site. We are still working our way through the multi-phase transition and will continue to implement additional features and improvements in the coming months.

Regarding outbound communications, several programs and products were included in our March/April marketing efforts. Targeted emails, blog and newsletter stories, direct mail postcards, digital banner ads and print-ad placements covered SES, ISMC, and VenueConnect. Direct outreach for two VenueDataSource initiatives occurred, including a focused reach to participants for the new Venue Business Barometer report that is currently in development.

### **Social Media:**

#### **Growth and Engagement**

- Facebook
  - 1,187 likes; an increase of 52
- Twitter
  - 1,872 followers, an increase of 58
- LinkedIn Group
  - 4,712 members, an increase of 168
- VenueNet Open Forum
  - 58 Discussions

#### **Email Marketing Campaigns**

13 standalone emails and 10 weekly newsletters were sent out in March/April. These emails promoted ISMC, SES, the Region 1-2-3 Meeting, registration opening for VenueConnect, the new IAVM.org, and two VenueDataSource initiatives. We are seeing higher open rates on our Your Membership and Your Events emails, with the open rates averaging above 30% compared to the 25% average experienced on our other standalone emails. We continue to look at the best way to keep our members and audience informed via email, and we are expecting to make additional improvements in the coming months.

#### **Blog and E-News Activity Report**

##### *Front Row News*

- Page views: 10,006
- Visits: 5,979
- Pages per visit: 1.67
- Avg. page duration: 1:18
- Bounce rate: 75.38%
- Mobile/Tablet visits: 1,254

Top 5 Blog Posts based on page views

- Pollstar 2014: How to Make Sure A Tour Loves Your Venue
- Super Stories from MetLife Stadium's IAVM Members
- The \$1 Billion Disney Guest Experience
- 12 Rules to Follow to be a Successful Leader
- 13 Traits of a Good Employee for Managers to Consider

## **Marketplace Sales**

### **Global Partnerships**

We recently sold a new Preferred Partner, Cvent, bringing our total up to 9 Partners and over \$500,000 in revenue. Cvent committed to a three year Partnership contact which will generate a total of \$90,000 in new revenue for IAVM. Current prospective partners we are in discussions with are Andy Frain, Skanska, Live Nation, and TicketsWest.

### **VenueConnect 2014 Trade Show**

By end of March, exhibit sales totaled \$577,000 with more than 1/3 of our total Allied membership participating.

### **DirectConnect**

DirectConnect has prequalified 37 Professional participants with over \$120 million dollars in buying power, an increase from last year's \$80 million dollars of buying power. We will continue to market DirectConnect to Professionals and also now begin to market this buying power to our Allied members for participation in DirectConnect and the opportunity for some of them to capture part of these dollars. Year to date we have eight (8) participating Allies with the goal of \$60,000 in allied participating revenue.

## **Membership**

### **FY 2013-2014 Membership Growth - Final Numbers**

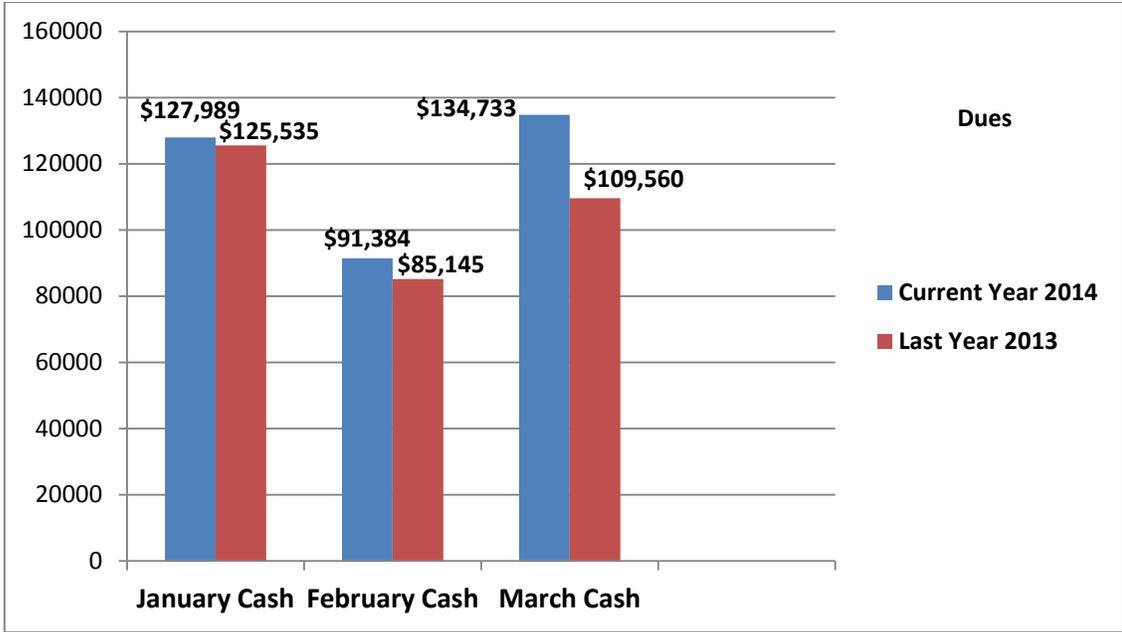
<b>Goals</b>	<b>Achieved</b>	<b>Percentage</b>
<b>4,257 Members</b>	4,323 Members**	220 Net Members
<b>Revenue: \$1,235,535</b>	\$1.26M**	5.36% Growth*
<b>Deferred Cash 2013: \$636K</b>	\$699K**	

\*Members 4,323 vs. 4,103 - March 2014 vs. March 2013

\*\*Highest Numbers in Association History

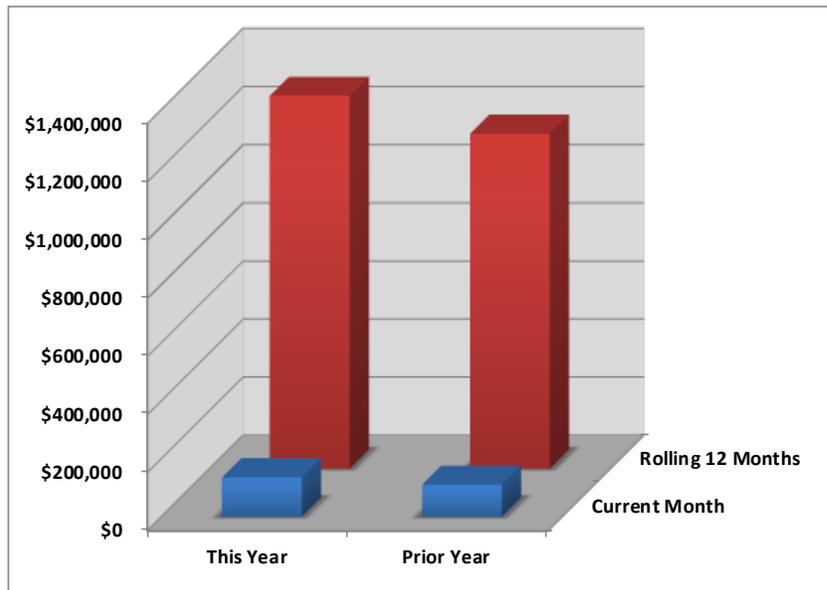
### **Cash Receipts by Month Comparison**

Last year, we posted \$109,560 in cash receipts; in the month of March 2014, we received \$134,733. Another great month in new member activations – we welcomed 153 new members.

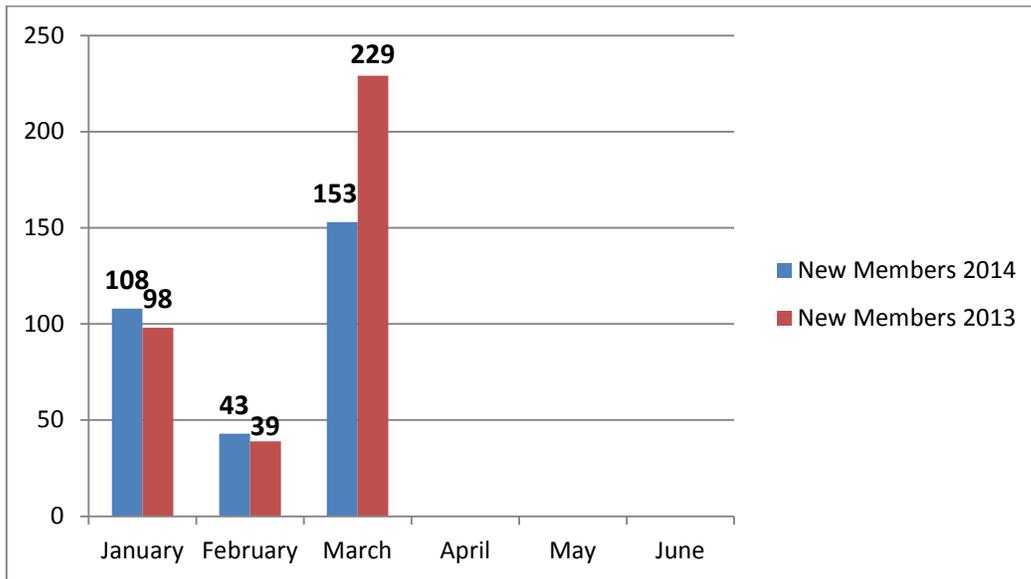


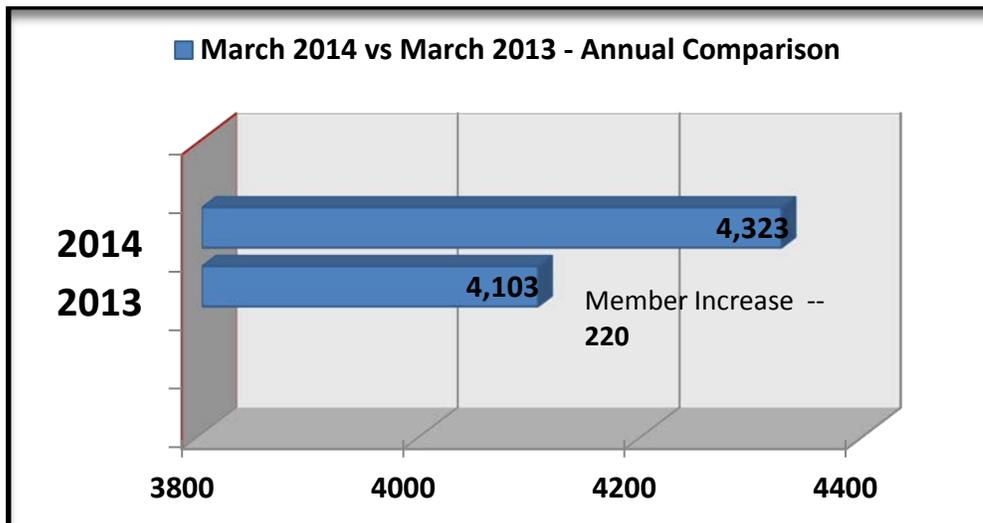
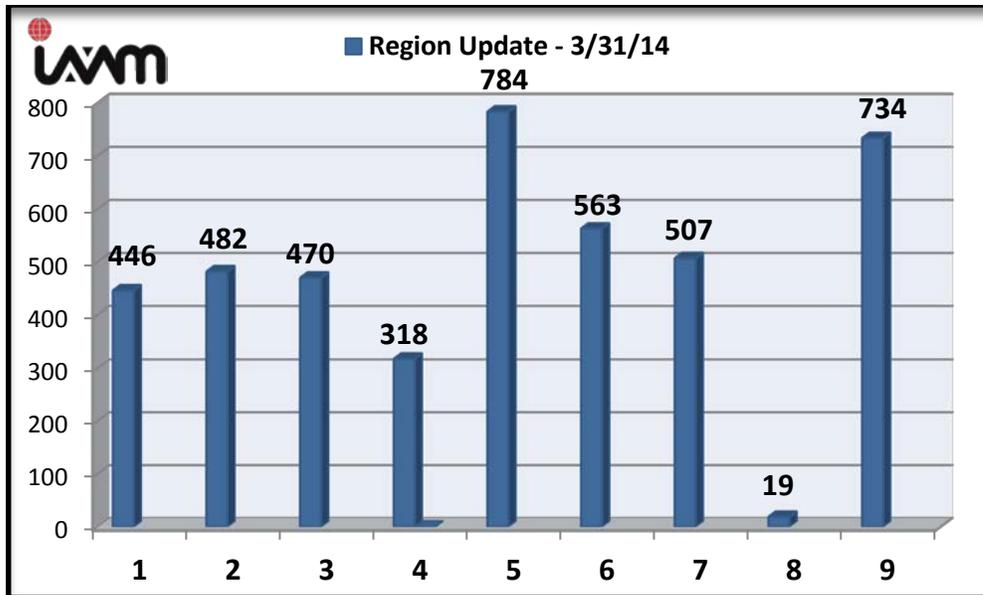
**March Cash Receipts Totals**

	<u>This Year</u>	<u>Prior Year</u>
Current Month	\$134,733	\$109,560
Rolling 12 Months	\$1,282,752	\$1,152,048



**New Members – 2014/13 - Month/Year**





### Recruitment/Retention Efforts

The member campaign, iCommit, officially ended on March 31. HQ encouraged participation via direct mail, a series of newsletter articles in IAVM News, Region Newsletters, VenueNet, a host of social media sites and blogs. We approved 47 new members as a result of the member referrals received. This is the second year that Ungerboeck Software International sponsored this campaign. The five winners of the five-\$500 Apple Gift Cards will be mailed soon.

The winners are: David Angeles, Assistant General Manager – City of Allen; Dr. Lance Hatfield, Director, Sport Venue Management - University of Missouri - Sport Venue Management/HRM; Brian Crow, Professor – Slippery Rock University; Steve Taylor, Director of Internships – University of South Carolina and Zach Rutkowski, Coordinator of Event Operations and Guest Experience - Ralph Wilson Stadium - Buffalo Bills.

Recruitment - Staff has reached out to the attendees of PAMC, AVSS and Severe Weather. While the results are not in yet, we have planted the seeds. After travel expenses to events, many individuals have to wait for budget approval at a later time before they can join.

Campaign Name	Launch Date	End Date	Reach	# of Apps Rcvd	As of Date
PAMC14 Non-Member Attendees	3/5/14	3/19/14	10 professional 27 allied	0	5/14/14
AVSS14 Non-Member Attendees	3/12/14	3/26/14	40	1	5/14/14
iCommit	1/31/14	3/31/14	4,200+	47	5/14/14

Communications - The charts below shows the outreach efforts to renew existing members and to activate pending new applicants.

Method of Contact	Date	Paid Thru Date	Number of Members
Mailed Invoice	3/3/14	June 2014	462
Mailed Invoice	4/1/14	July 2014	181
Mailed Invoice – 2 <sup>nd</sup> Mailing	3/25/14	March 2014	106
New Member Kits	3/27/14	n/a	19
Email – Invoice is in the mail	3/10/14	June 2014	462
Email – Renewal Reminder	3/13/14	January 2014 – May 2014	511
Email – Renewal Reminder	3/24/14	December 2013 – May 2014	576
Email – Due Now	3/24/14	March 2014	106
Email – Pending Applications	3/17/14	n/a	25
Faxed Invoices	3/26/14	March 2014	69

### Retention

- 91% through March

April Membership Report – Due to staff’s migration to the new database, we are still working on numbers. This information will be shared with the next report.

## IAVM Foundation

### Board of Trustees

During the month of March and April, Trustees met in their teams to discuss strategies for reaching their auction, golf tournament and wine tour goals. All teams have had great progress in reaching their goals.

### Annual Fundraising

The 2014 campaign had a budgeted goal of \$75,000 for total giving and a 20% member participation goal. The campaign, which ends December 31, has reached 1.8% member giving and \$21,675 in proceeds to date.

### Annual Fundraising Comparisons

	Amount Raised:	# of Donors:	% of Member Participation:	Chair's Circle Members:
<b>April 2011</b>	\$31,365	85	2.9%	23
<b>April 2012</b>	\$30,410	88	2.9%	22
<b>April 2013</b>	\$49,145	133	3.3%	33
<b>April 2014</b>	\$43,235	100	2.3%	30

*\*In 2012 numbers were slightly higher due to the generous contribution of \$30,000 from Feld Entertainment.*

### VenueConnect Fundraising: Silent Auction

Chair: Bob Hunter and Jason Rittenberry

Online Dates: June 15 – July 23, [www.biddingforgood.com/iavmfoundation](http://www.biddingforgood.com/iavmfoundation)

Onsite Dates: July 26 - 27

Raffle: three items with a value of \$500 or more, three \$500 sponsorships

Title Sponsor: Asking \$20,000; none confirmed

- Individual solicitations targeting previous years' donors were sent by Jason and Bob during the months of March and April. Target items continue to be concert & sports tickets, hotel packages, golf & spa packages and autographed memorabilia.
- Dave Brown was the first to rise to the challenge by donating TX/OU tickets, Cotton Bowl Classic tickets, Mavericks or Stars suite tickets, Trans-Siberian Orchestra tickets, Marvel Universe tickets, Andre Bocelli tickets and Katy Perry tickets! Thanks, Dave!

### Auction Comparisons

	# of Items	Sponsorship: Budget	Sponsorship: Actual	Total Revenue: Budget	Total Revenue: Actual
<b>2010 Houston</b>	136	\$15,000	\$15,000	\$50,000	\$50,963
<b>2011 Phoenix</b>	220	\$15,000	\$15,000	\$58,000	\$58,000
<b>2012 Ft. Lauderdale</b>	232	\$15,000	\$15,000	\$70,000	\$80,906

<b>2013</b> <b>New Orleans</b>	244	\$20,000	\$23,100	\$79,000	\$84,880
<b>2014</b> <b>Portland</b>	51	\$25,000	\$1,000	\$85,000	\$1,000

VenueConnect Fundraising: Golf Tournament

Chair: Stephanie Curran  
Date: Friday, July 25  
Time: 7:30 AM Shot gun start  
Where: Pumpkin Ridge Golf Club, Portland, OR  
Price: \$215 Registration; \$800 Foursome  
Title Sponsor: Asking \$20,000; none confirmed

Confirmed Sponsors:  
*Event Sponsors (\$5,000 - \$10,000):*  
TicketsWest – golf gift sponsor

*Contest Sponsors (\$2,000 - \$5,000):*  
Daktronics – longest drive

*Tee & Flag Sponsors (\$1,500 - \$2,000)*  
Robbins Sports Surfaces  
Ungerboeck  
Joe Floreano

Golf Comparisons

	Registered : Budget	Registered : Actual	Sponsorship : Budget	Sponsorship : Actual	Total Revenue: Budget	Total Revenue: Actual
<b>2010</b> <b>Houston*</b>	120	102	\$31,000	\$31,000	\$47,750	\$54,315
<b>2011</b> <b>Phoenix</b>	115	120	\$40,000	\$32,000	\$55,000	\$47,525
<b>2012</b> <b>Ft.</b> <b>Lauderdale</b>	115	126	\$60,000	\$50,750	\$82,400	\$69,685
<b>2013</b> <b>New</b> <b>Orleans*</b>	110	116	\$50,000	\$50,000	\$64,000	\$65,410
<b>2014</b> <b>Portland*</b>	80	16	\$60,000	\$14,500	\$76,000	\$17,940

\*denotes one 18-hole course

VenueConnect Fundraising: Wine Tour

General Wine Tour

Chair: Susette Hunter

Date: Friday, July 25

Time: 11:00 AM – TBD

Where: Willamette Valley “History of Oregon Wine Business”

Price: \$200 Registration

VIP Wine Tour

Chair: Robyn Williams

Date: Friday, July 25

Time: 11:00 AM – TBD

Where: Willamette Valley “Best of Oregon Wine”

Price: \$300 Registration

Confirmed Sponsors:

*Title Sponsor (\$20,000):*

Sodexo

*Supporting Sponsors (\$500 - \$5,000):*

Joe Floreano

Alternate Activity Comparisons

	Registered: Budget	Registered: Actual	Sponsorship: Budget	Sponsorship: Actual	Total Revenue: Budget	Total Revenue: Actual
<b>2012</b> <b>Ft. Lauderdale</b>	8	42	\$5,000	\$500	\$6,200	\$6,964
<b>2013</b> <b>New Orleans</b>	40	23	\$20,000	\$22,000	\$27,000	\$26,500
<b>2014</b> <b>Portland</b>	28	18	\$20,000	\$21,000	\$24,000	\$24,600

*2012 alternate activity was sport fishing*

*2013 alternate activity was cooking school*

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

UNITED NATIONAL MAINTENANCE, INC., a Nevada corporation, <i>Plaintiff-Appellant,</i>	No. 12-56809
v.	D.C. No. 3:07-cv-02172- AJB-JMA
SAN DIEGO CONVENTION CENTER, INC., a California corporation, <i>Defendant-Appellee.</i>	OPINION

Appeal from the United States District Court  
for the Southern District of California  
Anthony J. Battaglia, District Judge, Presiding

Argued and Submitted  
April 8, 2014—Pasadena, California

Filed May 14, 2014

Before: Myron H. Bright,\* Jerome Farris,  
and Andrew D. Hurwitz, Circuit Judges.

Opinion by Judge Farris;  
Concurrence by Judge Hurwitz

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\* The Honorable Myron H. Bright, Senior Circuit Judge for the U.S. Court of Appeals for the Eighth Circuit, sitting by designation.

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**SUMMARY\*\***

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**Antitrust/California tort law**

The panel affirmed in part and reversed in part the district court's judgment after a jury trial in favor of the San Diego Convention Center Corporation on claims by United National Maintenance, a vendor of trade show cleaning services, for intentional interference with contractual relationship, antitrust violations, and intentional interference with prospective economic advantage.

The panel reversed the district court's grant of judgment as a matter of law, which overturned the jury's verdict in favor of the maintenance company on its claim that the convention center intentionally interfered with contracts between the maintenance company and providers of trade show decorator services when the convention center instituted a policy mandating that it would be the exclusive provider of cleaning services staffing. The panel held that under California law, the tort of intentional interference with contractual relations does not apply only to parties that lack any legitimate interest in the underlying conduct.

The panel affirmed the district court's holding that it committed instructional error by not interpreting the terms of the contracts to enable the jury to understand whether the maintenance company's performance was disrupted.

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\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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UNITED NAT'L MAINT. V. SAN DIEGO CONVENTION CTR. 3

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The panel affirmed the district court's grant of judgment as a matter of law on the maintenance company's Sherman Act claim, holding that the convention center possessed state action immunity from this antitrust claim.

The panel affirmed the dismissal of the maintenance company's claim for intentional interference with prospective economic advantage because this claim turned on the antitrust claim. The panel also affirmed the district court's holding that under California law, the convention center was excluded from liability for punitive damages.

Concurring, Judge Hurwitz wrote separately to emphasize that the judgment as a matter of law as to the antitrust claims also comfortably rested on the district court's holding that no jury could reasonably find that the convention center engaged either in monopolization or an attempt to monopolize by mandating that its own employees clean its building.

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**COUNSEL**

Leonard J. Feldman (argued), Jason T. Morgan, and J. Will Eidson, Stoel Rives LLP, Seattle, Washington; James R. Lance, Jacob M. Slania, and Micaela P. Banach, Kirby Noonan Lance & Hoge LLP, San Diego, California, for Plaintiff-Appellant.

Joseph T. Ergastolo (argued), John H. L'Estrange, Jr., and Andrew E. Schouten, Wright & L'Estrange, San Diego, California, for Defendant-Appellee.

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**OPINION**

FARRIS, Senior Circuit Judge:

United National Maintenance, a nationwide vendor of trade show cleaning services, sued the San Diego Convention Center Corporation, alleging claims for 1) intentional interference with contractual relationship, 2) antitrust violations, and 3) intentional interference with prospective economic advantage. A jury returned a verdict in favor of United National on the intentional interference with contractual relationship claim but could not reach a verdict on the other claims. On a renewed motion for judgment as a matter of law by SDC, the district court found in favor of the convention center on all of the claims. The maintenance company appealed.

**I**

California has granted cities the statutory authority to construct public assembly or convention halls. Cal. Gov't Code §§ 37500–37506. Cities may appoint a commission to manage the use of the facilities. § 37506. Funds gained from operation of the convention center first go to paying the assorted expenses associated with its operation; any remaining money may then go to the city's general fund. § 37505.

In 1984, the San Diego City Council created the San Diego Convention Center Corporation to manage the operations of the San Diego Convention Center. SDC is a nonprofit public benefit corporation that is wholly owned by the city of San Diego. The San Diego City Council gave SDC the “exclusive authority to operate, market, and promote the Center.” The board of SDC is chosen by the mayor and city council of San Diego. The San Diego Municipal Code defines the city as including “Corporations wholly owned by the City . . . such as [SDC].” SDC receives city funding and annually submits a five year rolling budget.

Companies and organizations license the Center from the SDC for a specific period to host events. Licensees hire a general services decorator to coordinate event-related services. Champion Exposition Services, Freeman, and Global Experience Specialists provide decorator services for the majority of events held at the center. Each of the companies operates nationwide. Exhibitors rent booths from decorators and may also contract for other services such as cleaning. Trade show cleaning companies provide a variety of cleaning services through contracts with decorators. These services include both facility cleaning and booth cleaning.

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United National Maintenance is a trade show cleaning company that operates throughout the country. UNM has contracts with GES and Champion to provide nationwide trade show cleaning services. UNM has provided services since 1989 in San Diego. Most of its work in the area is done at the San Diego Convention Center. SDC also offers trade show cleaning services to decorators who use the convention center. In the fall of 2006, an SDC executive approached Champion and GES about them hiring SDC personnel to perform trade show cleaning services. Both companies declined the SDC proposal. In July 2007, SDC instituted a new cleaning services policy. The policy mandated that SDC would be the “exclusive provider of cleaning services staffing.” The policy also required that decorators pay SDC one half of all booth cleaning revenue that the decorator received as well as a \$17 per hour wage for SDC employees that provided cleaning services. UNM continued to perform on its contracts with GES and UNM while using SDC personnel to provide the cleaning services. The new requirements significantly increased the costs of performance for UNM on its contracts with Champion and GES.

On November 13, 2007, UNM filed a complaint against SDC. UNM alleged claims for interference with contract, interference with prospective economic advantage and antitrust violations. The case proceeded to trial. At the end of UNM’s case-in chief, SDC filed a motion for judgment as matter of law on each of UNM’s claims. The district court rejected SDC’s motion. On May 4, 2011, the jury returned a unanimous verdict on UNM’s intentional interference with contractual relations claim. The jury awarded UNM damages of \$668,905. The jury did not reach a verdict on UNM’s remaining claims.

SDC then filed a motion for new trial on UNM's intentional interference with contractual relations claim and a renewed motion for judgment as a matter of law on UNM's other claims. The district court construed SDC's motion for new trial as a motion for judgment as a matter of law. The district court granted SDC's motion on each of UNM's claims. The district court held that UNM could not assert an intentional interference with contractual relationship claim against SDC as SDC had an economic interest in the contracts. In the alternative, the district court held that SDC was entitled to a new trial as the district court had previously erred in not giving a legal interpretation of UNM's contracts with the decorators. The district court also held that UNM's antitrust claim was barred based on SDC's state-action and local government immunity. In the alternative, the district court held that UNM had failed to present sufficient evidence on the specific elements of its antitrust claim. Finally, the district court dismissed UNM's claims for interference with prospective economic advantage and punitive damages as well as UNM's motion for injunctive relief. UNM timely appealed.

## II

We review *de novo* a district court's order granting or denying judgment as a matter of law. *See Byrd v. Maricopa Cnty. Sheriff's Dep't*, 629 F.3d 1135, 1138 (9th Cir. 2011) (en banc). We review *de novo* whether the district court committed instructional error in its statements of the law, *Dang v. Cross*, 422 F.3d 800, 804 (9th Cir. 2005), as well as the district court's determinations of immunity from antitrust liability, *Grason Elec. Co. v. Sacramento Mun. Util. Dist.*, 770 F.2d 833, 835 (9th Cir. 1985).

### III

Under California law, the elements for the tort of intentional interference with contractual relations are “(1) a valid contract between plaintiff and a third party; (2) defendant’s knowledge of this contract; (3) defendant’s intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage.” *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 791 P.2d 587, 589–90 (Cal. 1990).

After the jury returned its verdict in favor of UNM, the district court issued a judgment as matter of law on the basis that the tort of intentional interference only applies to parties that lack any “legitimate interest . . . in the underlying contract.” The district court heavily relied on *dictum* from a prior opinion of this court that stated “California law has long recognized that the core of intentional interference business torts is interference with an economic relationship by a third-party stranger to that relationship, so that an entity with a direct interest or involvement in that relationship is not usually liable for harm caused by pursuit of its interests.” *Marin Tug & Barge, Inc. v. Westport Petroleum, Inc.*, 271 F.3d 825, 832 (9th Cir. 2001).

The district court’s reading of *Marin Tug* to add an additional requirement to the tort of intentional interference with contractual relationship is not justified for several reasons. First, under California law, the pertinent economic relationship is the one that exists between the two contracting parties. They are the ones that have a “direct interest or involvement in that relationship.” *Id.* at 832. Liability for this tort exists to protect the parties to that relationship from

“interference by a stranger to the agreement.” *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, 902 P.2d 740, 750 (Cal. 1995). Contractual liability, in turn, protects the contracting parties from the actions of their contractual partners. *See Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 869 P.2d 454, 459–63 (Cal. 1994) (rejecting an attempt to create tort liability under a theory of conspiracy for parties to the contractual relationship). To shield parties with an economic interest in the contract from potential liability would create an undesirable lacuna in the law between the respective domains of tort and contract. A party with an economic interest in a contractual relationship could interfere without risk of facing either tort or contract liability. This result is particularly perverse as it is those parties with some type of economic interest in a contract whom would have the greatest incentive to interfere with it. Such a result would hardly serve the established goal of protecting “a formally cemented economic relationship ... from interference by a stranger to the agreement.” *Della Penna*, 902 P.2d at 750.

Second, *Marin Tug* represented a hesitant attempt to clarify the unresolved question of the “precise type of wrongfulness necessary to trigger liability for intentional interference with prospective economic advantage.” *Marin Tug*, 271 F.3d at 831–32 (noting that it proceeded “with some trepidation into this area of California law”). Subsequent to *Marin Tug*, California courts have repeatedly held that “in California, the law is settled that ‘a stranger to a contract may be liable in tort for intentionally interfering with the performance of the contract.’” *See e.g., Reeves v. Hanlon*, 95 P.3d 513, 517 (Cal. 2004) (quoting *Pacific Gas*, 270 P.2d at 589). In a detailed discussion, the California Court of Appeal held that *Marin Tug* “was not extending immunity from contract interference claims to an even broader, more

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attenuated class of persons.” *Woods v. Fox Broad. Sub., Inc.*, 28 Cal. Rptr. 3d 463, 472 (Ct. App. 2005). Other California Court of Appeal decisions have reached the same conclusion. *See Powerhouse Motorsports Grp., Inc. v. Yamaha Motor Corp.*, 164 Cal. Rptr. 3d 811, 824–26 (Ct. App. 2013). This court “must follow the decision of the intermediate appellate courts of the state unless there is convincing evidence that the highest court of the state would decide differently.” *Owen ex rel. Owen v. United States*, 713 F.2d 1461, 1464 (9th Cir. 1983) (internal quotation marks omitted). SDC points to no convincing evidence that the California Supreme Court would change its long held position on the potential tort liability of strangers to a contract. *See e.g., Reeves*, 95 P.3d at 517.

Third, California courts have repeatedly held that parties with an economic interest in a contractual relationship may be liable for intentional interference with that contract. *See Applied Equipment*, 869 P.2d at 455–56; *Woods*, 28 Cal. Rptr. 3d at 465–67 (company potentially liable for interference in a contract between a partially-owned subsidiary and several of its employees); *Powerhouse Motorsports*, 164 Cal. Rptr. 3d at 824–26 (manufacturer may be liable for interference with a sales contract between a franchise operator and a potential new owner). SDC argues that there are several cases where a party with an economic interest in a contract was prevented from bringing an intentional interference claim. Those cases are distinguishable. In *Mintz v. Blue Cross of California*, the California Court of Appeal found that a claim could not arise as the defendant was “either a contracting party or its agent.” 92 Cal. Rptr. 3d 422, 430 n.3 (Ct. App. 2009). There is no suggestion here that SDC was the agent of either Champion or GES. In *PM Group, Inc. v. Stewart*, the California Court of Appeal reiterated that a contracting party could not be tortiously liable for interfering with the

performance of its own contract; thus, by extension, a contracting party could not be held liable for interfering with the performance of subcontracts if that claim hinged on the defendant's failure to perform on the original contract. 64 Cal. Rptr. 3d 227, 235–36 (Ct. App. 2007). UNM's theory of liability in this case is not based on SDC's failure to perform on a contract with Champion or GES.

We therefore reverse the district court holding that under California law, SDC cannot be held liable for the tort of intentional interference with contractual relationship. The JMOL granted on that ground is also reversed.

#### IV

During trial, the district court rejected SDC's request for a legal interpretation of potential conditions precedent in UNM's contracts with the decorators. The district court held that the model jury instructions on an intentional interference with contractual relationship claim were sufficient: the two elements at issue were "1. That there was a contract between plaintiff and defendant" and "4. That defendant's conduct prevented performance or made performance more expensive or difficult." California Civil Jury Instructions § 2201.

The fourth element examines whether plaintiff has suffered "a disruption or breach of their contractual rights." *Woods*, 28 Cal. Rptr. 3d at 473. After the jury returned its verdict, the district court held that a new trial was warranted because he should have legally interpreted UNM's contracts with GES and Champion in order to allow the jury to determine whether they contained relevant conditions precedent to the ability of GES and Champion to hire UNM for trade show cleaning services. If UNM's contractual rights

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were conditioned on the usage policies of SDC, then SDC's change in policy determined UNM's contractual rights instead of disrupting UNM's performance of the contract. The jury's request for clarification on this point indicates the importance of this issue.

UNM argues that a contract with a condition precedent may still be a valid, enforceable contract. UNM's argument focuses on element one of the claim – the validity of the contracts between UNM and the decorators. California law on this topic is somewhat murky. *Compare Reeves*, 95 P.3d at 519–20 (no intentional interference claim for at-will employment contracts) *with SCEcorp v. Superior Court*, 4 Cal. Rptr. 3d 372, 377 (Ct. App.1992) (potential claim for contract that was conditioned on regulatory approval). SDC's proposed jury instructions, however, focus on the separate element of disruption. For the jury to understand whether UNM's performance was disrupted required the district court to determine what contractual rights UNM possessed. This thus required a legal interpretation of the contract and the trial court correctly concluded that it erred in this case by not doing so.

In cases of instructional error, there is a presumption of prejudice. *Medtronic, Inc. v. White*, 526 F.3d 487, 493 (9th Cir. 2008). UNM has provided no argument for why the jury “would have reached the same verdict had it been properly instructed.” *Id* (quoting *Galdamez v. Potter*, 415 F.3d 1015, 1025 (9th Cir. 2005)) (internal quotation marks omitted). It has failed to rebut the presumption of prejudice.

We therefore affirm the district court's holding that it committed instructional error by not interpreting the terms of

the contract and that this error constituted prejudicial error that warrants a new trial.

## V

States receive immunity from potential antitrust liability as “‘nothing in the language of the Sherman Act or its history’ . . . suggested that Congress intended to restrict the sovereign capacity of the States to regulate their economies . . . .” *FTC. v. Phoebe Putney Health Sys., Inc.*, 133 S. Ct. 1003, 1010 (2013) (quoting *Parker v. Brown*, 317 U.S. 341, 350 (1943)). Nonstate actors may also receive “immunity from the federal antitrust laws” if they are “carrying out the State's regulatory program.” *Id.* at 1010.

The Supreme Court has articulated a two-part test to determine whether nonstate actors are entitled to this immunity: “First, the challenged restraint must be one clearly articulated and affirmatively expressed as state policy; second, the policy must be actively supervised by the State itself.” *Cal. Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980) (internal quotation marks omitted). The requirement of active supervision, however, does not apply “to the activities of local governmental entities,” as “they have less of an incentive to pursue their own self-interest under the guise of implementing state policies.” *Phoebe Putney*, 133 S. Ct. at 1011.

In order to pass the clear-articulation test, the “anticompetitive effect” in dispute should be the “foreseeable result of what the State authorized.” *Id.* (internal quotation marks omitted). It is not necessary, however, for a state legislature to “expressly state in a statute or its legislative history that the legislature intends for the delegated action to

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have anticompetitive effects.” *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 43 (1985). We review each challenged anticompetitive act to determine whether it was the foreseeable result of what the state authorized. *Phoebe Putney*, 133 S. Ct. at 1012; *City of Columbia v. Omni Outdoor Adver., Inc.*, 499 U.S. 365, 373 (1991). In applying the “clear-articulation test,” the Supreme Court has distinguished between general grants of either local authority or corporate power and specific delegations of an authority to act or regulate where “the displacement of competition . . . is the foreseeable result of what the statute authorizes.” *Omni*, 499 U.S. at 372–73 (internal quotation marks omitted). Only the latter qualifies for immunity. For example, the Court has found that Georgia’s grant of general corporate powers to a hospital authority did not also entail an authorization to use those powers in an anticompetitive fashion. *Phoebe Putney*, 133 S. Ct. at 1014. By contrast, the “clear-articulation” test was satisfied when Wisconsin expressly allowed cities to limit the municipal provision of sewage services to neighboring unincorporated areas and consequently gave those cities the authority to make the provision of sewage services contingent on annexation of the unincorporated areas. *Hallie*, 471 U.S. at 41. Similarly the test was fulfilled by South Carolina’s delegation of zoning authority over local billboards to a city as “[t]he very purpose of zoning regulation is to displace unfettered business freedom in a manner that regularly has the effect of preventing normal acts of competition . . . .” *Omni*, 499 U.S. at 373. The “clear articulation” test thus requires both a specific delegation of authority by the state and some indication that the state has “affirmatively contemplated the displacement of competition.” *Phoebe Putney*, 133 S. Ct. at 1006. The indication must be more than mere neutrality but need not rise to the level of explicit authorization. *See id.* at 1007.

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California's delegation of authority satisfies both of these elements with relation to SDC's decision to hire cleaning staff internally. California Government Code § 37506 states that "by ordinance the legislative body may appoint a commission to select the site for the building, supervise its construction, and manage its use. By ordinance, the legislative body shall prescribe the powers and duties of the commission." This grant of authority does not just give San Diego permission to play in the market by building a convention center. Rather, the legislature authorized San Diego to create a commission that would "manage the use" of the convention center. This type of managerial authorization is distinct from a general grant of corporate authority that simply allows a state subdivision to act.

There is also substantial evidence that the California legislature contemplated that the Convention Center need not hire outside contractors to clean its building. The California legislature's grant of statutory authority stated that funds from the convention center would be used first to pay for the convention center and second for the benefit of the municipality. Cal. Gov't Code § 37505. This specification naturally contemplates that the convention center will be operated in order to generate profits for the municipality. A convention center represents a substantial financial investment by a municipality. In order to ensure the success of that investment, it is foreseeable that an operator of the convention center may exclusively provide cleaning staff to ensure the success of that financial commitment. The ensuing profit-generating actions challenged here were the "ordinary result of the exercise of authority delegated by the state legislature." *Phoebe Putney*, 133 S. Ct. at 1013.

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The active supervision requirement “serves essentially an evidentiary function: it is one way of ensuring that the actor is engaging in the challenged conduct pursuant to state policy.” *Hallie*, 471 U.S. at 46–47. It prevents private actors from engaging in an anticompetitive activity solely to further “[their] own interests, rather than the governmental interests of the State.” *Id.* at 47. Those same concerns, however, do not apply to a municipality, as “there is little or no danger that it is involved in a *private* price-fixing arrangement.” *Id.* The danger that it may seek “purely parochial public interests at the expense of more overriding state goals” is satisfactorily addressed by the clear-articulation test. *Id.*

UNM argues that the active supervision requirement should be applied to SDC’s actions. UNM heavily emphasizes that SDC is a public, non-profit corporation rather than a municipality. San Diego’s municipal code, however, defines the city itself as including SDC. In a similar case, we found that a charitable corporation incorporated by a county board of health that provided exclusive ambulance services for the county served as an instrument of the municipality. *Ambulance Serv. of Reno, Inc. v. Nev. Ambulance Servs., Inc.*, 819 F.2d 910, 913 (9th Cir. 1987) (emphasizing that the district board of health supervised the services of the corporation and retained rights to the equipment of the corporation in the event of a corporate default). SDC’s relationship with San Diego also shows that SDC acts as the instrument of San Diego: (1) San Diego appoints all of SDC’s board members, (2) upon dissolution, SDC’s assets revert back to San Diego; (3) SDC must publicly account for its operations. Overall, SDC acts as an agent that operates the convention center for the benefit of its principal, the city of San Diego. It is an extension of the municipality of San Diego and thus does not require active

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supervision by the state in order to retain its immunity from antitrust liability.

Furthermore, the specific facts indicate there is no need for the evidentiary function of active supervision. Although SDC's actions may reflect the pursuit of parochial interests, there is no evidence that it entered into any kind of private price-fixing arrangement with other convention center operators. This fact distinguishes SDC from other cases where groups of private actors, entrusted with state regulatory authority over a profession, may have taken actions to further their own private interests. *See e.g., N.C. State Bd. of Dental Exam'rs v. FTC*, 717 F.3d 359 (4th Cir. 2013), *cert. granted*, 134 S. Ct. 1491 (2014) (need to fulfill the active supervision test where a state dental association, primarily composed of dentists, prevented non-dentists from offering teeth whitening services).

We affirm the district court's holding that SDC possessed state action immunity from UNM's antitrust claim. Thus, it's unnecessary to address the district court's alternative holding on the merits of the antitrust claim.

## VI

The district court dismissed UNM's claim for intentional interference with prospective economic advantage. This tort requires UNM to establish "that [SDC's] interference was wrongful by some measure beyond the fact of the interference itself." *Della Penna*, 902 P.2d at 751 (internal quotation marks omitted). UNM's assertion of independent wrongfulness is based on the antitrust claims. That claim's failure dooms this claim.

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UNM appeals the district court's order denying it permanent injunctive relief. No permanent injunction should issue as we hold that a new trial is warranted on UNM's claim for intentional interference with contractual relationship.

UNM also appeals from the district court's order that excluded any liability for SDC from punitive damages. In California, a public entity is not liable for punitive damages. Cal. Gov't Code § 818. SDC is a public entity as it is a public corporation that functions as the instrument or agent of San Diego. Under California law, it cannot be liable for punitive damages.

The judgment of the district court is **AFFIRMED IN PART AND REVERSED IN PART**. Each party shall bear its own costs on appeal.

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HURWITZ, Circuit Judge, concurring:

I concur in Judge Farris' thorough opinion. I write separately only to emphasize that the judgment as a matter of law as to UNM's antitrust claims also comfortably rests on another ground identified by the district judge: No jury could reasonably find that SDC engaged either in monopolization or an attempt to monopolize by mandating that its own employees clean its building. *See Cal. Computer Prods., Inc. v. Int'l Bus. Machs. Corp.*, 613 F.2d 727, 734 (9th Cir. 1979) (“[A] directed verdict is proper, even in an antitrust case, when ‘there is no substantial evidence to support the claim.’” (quoting *Santa Clara Valley Distrib. Co. v. Pabst Brewing Co.*, 556 F.2d 942, 945 n.1 (9th Cir. 1977))).

To succeed on its Sherman Act monopolization claims, UNM had the burden of proving that SDC possessed monopoly power over a specific product in a specific geographic market. 15 U.S.C. § 2; *Allied Orthopedic Appliances Inc. v. Tyco Health Care Grp. LP*, 592 F.3d 991, 998 (9th Cir. 2010). The district court concluded that the relevant downstream market was, at best, trade show cleaning services for exhibition and meeting spaces in the San Diego area. Despite the testimony of UNM's expert, no reasonable finder of fact could conclude that the relevant geographic market for cleaning services consisted *only* of the San Diego Convention Center. It beggars reason to define the relevant market as a single customer who decides to use its own employees to perform routine cleaning services, rather than hire others do so. *See Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 242 (1993) ("Expert testimony is useful as a guide to interpreting market facts, but it is not a substitute for them"). UNM employees—who perform typical cleaning services, such as vacuuming and wiping down exhibition booths—plainly could clean other meeting spaces and convention facilities in San Diego. *See Todd v. Exxon Corp.*, 275 F.3d 191, 202 (2d Cir. 2001) (Sotomayor, J.) ("A greater availability of substitute buyers indicates a smaller quantum of market power on the part of the buyers in question.").

SDC represents only 43% of the cleaning services market for convention and meeting facilities in the San Diego area. That is not enough to establish actual monopolization. *See Twin City Sportservice, Inc. v. Charles O. Finley & Co.*, 512 F.2d 1264, 1274 (9th Cir. 1975). Although SDC's market share might suffice in connection with an attempted monopolization claim, *see Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1438 (9th Cir. 1995), such a claim also requires

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“predatory or anticompetitive conduct,” *Supermarket of Homes, Inc. v. San Fernando Valley Bd. of Realtors*, 786 F.2d 1400, 1405 (9th Cir. 1986). The district correctly held that no rational finder of fact could conclude that SDC acted anticompetitively and without a legitimate business purpose by using its own employees to clean its own building.