

FILED

DEC 17 2009

KIM TURNER, Court Executive
MARIN COUNTY SUPERIOR COURT
By: D. Taylor, Deputy

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9 Attorneys for Petitioners/Plaintiffs CINDIE FONSECA, GARY DANIEL, and
10 SEIU LOCAL 1000

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF MARIN**

13 CINDIE FONSECA, GARY DANIEL, and
14 SERVICE EMPLOYEES INTERNATIONAL
15 UNION, LOCAL 1000,

CASE No. *CV 096315*

16 Petitioners/Plaintiffs,

**VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF
(C.C.P. §§ 1085 and 1060)**

17 v.

18 ARNOLD SCHWARZENEGGER, as
19 Governor, State of California;
20 DEPARTMENT OF CORRECTIONS AND
21 REHABILITATION, and DOES 1
22 THROUGH 20, INCLUSIVE,

23 Respondents/Defendants.

24 _____ /
25
26 Petitioners/Plaintiffs CINDIE FONSECA, GARY DANIEL, and SERVICE EMPLOYEES
27 INTERNATIONAL UNION, LOCAL 1000 (Plaintiffs) bring this Writ of Mandate pursuant to
28 California Code of Civil Procedure sections 1085 and 1060, requesting the Court to issue a writ of
mandate or mandamus, declaratory judgment, and injunctive relief to Respondents and
Defendants, determining that they have violated and continue to violate the provisions of the state
law, regulations and policy by arbitrarily and capriciously failing to implement the provisions of
AB 900, and other portions of the law pertaining to inmate rehabilitation programs through prison
education - vocational and academic. Such arbitrary and capricious action fails to meet
requirements for education opportunities, removes educators from the state prisons, ignores the

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By Fax

1 State mandate for rehabilitation, and jeopardizes the rights of the few teachers left to maintain the
2 remaining education programs at grave risk to their credentials. Moreover, such arbitrary and
3 capricious action effectively dismantles rehabilitation programs (through academic and vocational
4 education), and further does so in a manner that fails to reduce recidivism - at great cost to the
5 taxpayers and at great risk to public safety.

6 Plaintiffs allege as follows:

7 **GENERAL ALLEGATIONS**

8 **I. The Parties**

9 1. Plaintiff SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000
10 ("SEIU Local 1000") is, and at all times herein mentioned was, a non-profit corporation organized
11 and existing under the laws of the State of California. SEIU Local 1000 is the exclusive
12 recognized employee organization representing approximately 90,000 state employees in State
13 Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20 and 21.

14 2. SEIU Local 1000 and its respective members are all beneficially interested in
15 Defendants' faithful performance of their legal and constitutional duties. SEIU Local 1000 brings
16 this action on behalf of themselves and their members, having standing to do so, to ensure that
17 civil service employees receive the full benefits and protections of the Constitution and laws of the
18 State of California. Moreover, SEIU Local 1000 has paid taxes in the State of California within
19 the past three years.

20 3. Plaintiff CINDIE FONSECA ("FONSECA") is a member of State Civil Service
21 Bargaining Unit 3, and is a member of SEIU who currently serves as its elected Bargaining Unit
22 Chair. Plaintiff is employed by the State of California Department of Corrections and
23 Rehabilitation at the California Rehabilitation Center at Norco as a Graphic Arts Teacher and is
24 within the class of persons beneficially interested in Defendants' faithful performance of their
25 duties. Plaintiff is also a taxpayer. Plaintiff is gravely concerned that CDCR's arbitrary and
26 capricious action removes educators from the state prisons, ignores the State mandate for
27 rehabilitation, and jeopardizes the rights of the few teachers left to maintain the remaining
28 education programs at grave risk to their credentials. Moreover, such arbitrary and capricious

1 action effectively dismantles rehabilitation programs (through academic and vocational education)
2 in a manner that fails to reduce recidivism - at great cost to the taxpayers and at great risk to public
3 safety.

4 4. Plaintiff GARY DANIEL ("DANIEL") is a member of State Civil Service
5 Bargaining Unit 3, and is a member of SEIU who currently serves as its elected bargaining
6 representative on the Unit 3 Bargaining Team. Plaintiff is employed by the State of California
7 Department of Corrections and Rehabilitation at San Quentin State Prison and is within the class
8 of persons beneficially interested in Defendants' faithful performance of their duties. Plaintiff is
9 also a taxpayer. Plaintiff is gravely concerned that CDCR's arbitrary and capricious action
10 removes educators from the state prisons, ignores the State mandate for rehabilitation, and
11 jeopardizes the rights of the few teachers left to maintain the remaining education programs at
12 grave risk to their credentials. Moreover, such arbitrary and capricious action effectively
13 dismantles rehabilitation programs (through academic and vocational education) in a manner that
14 fails to reduce recidivism - at great cost to the taxpayers and at great risk to public safety.

15 5. Defendant ARNOLD SCHWARZENEGGER is the Governor of the State of
16 California, sued herein in his official capacity.

17 6. Respondent/Defendant CALIFORNIA DEPARTMENT OF CORRECTIONS AND
18 REHABILITATION ("CDCR") is, and at all times herein mentioned was, a department of the
19 State of California with the responsibility of managing the state prison system as dictated by law.
20 Respondent CDCR is an agency bound by the provisions of the Constitution and laws of the State
21 of California. Respondent is the agency responsible for implementing the requirements of the law
22 concerning inmate rehabilitation, inmate literacy, inmate re-entry into communities, the mandates
23 of the law and AB 900, and provide adequate inmate education - through academic and vocational
24 programs.

25 7. Plaintiffs are ignorant of the true names and capacities of Defendants herein sued as
26 DOES 1 through 20, and therefore sue these Defendants by such fictitious names. Plaintiffs will
27 amend this Petition/Complaint to state their true names and capacities once they have been
28 ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of these

1 Defendants is in some manner responsible for the acts complained of herein.

2 **II. Venue**

3 8. Defendants engaged in the acts alleged herein within the County of Marin. San
4 Quentin State Prison is located in the County of Marin. Accordingly, venue in this County is
5 proper.

6 9. Furthermore, CDCR has an office within Marin County making it an appropriate
7 venue. (Code Civ. Proc. § 401(1).)

8 **III. Irreparable Harm to Plaintiffs and Their Members**

9 10. In or about October 4, 2006, Governor Schwarzenegger declared a state of
10 emergency in the state prisons concerning overcrowding - a proclamation which remains in effect.
11 He declared that all 33 of the state prisons are "at or above maximum operational capacity, and 29
12 of the prisons are so overcrowded that the CDCR is required to house more than 15,000 inmates in
13 conditions that pose substantial safety risks." He further avowed that the severe overcrowding
14 causes "substantial risk to the health and safety of the men and women who work inside these
15 prisons." Schwarzenegger confirmed in this proclamation that "the overcrowding crisis gets worse
16 with each passing day, creating an emergency" in the prison system which requires "immediate
17 action" to "prevent death and harm."

18 11. In or about May 2007, the Legislature adopted and Governor Schwarzenegger
19 signed a bill into law contained in AB 900. This bill set forth several mandates concerning inmate
20 rehabilitation. Not the least of which required CDCR to establish pilot programs that provided
21 training and counseling for parolees to assist in their successful reintegration into the community.
22 It also required CDCR to implement a system of incentives to increase inmate participation in,
23 and completion of, academic and vocational education, consistent with the inmate's educational
24 needs, as specified. Moreover, it required CDCR to implement a plan to obtain additional
25 rehabilitation and treatment services for prison inmates and parolees. This bill added to existing
26 state legal mandates to reduce recidivism through meaningful prison education programs - both
27 academic and vocational.

28 ///

1 reducing recidivism and improving rehabilitation and ultimately reentry of inmates into society.
2 That action added the provisions of AB 900 to already existing law which required rehabilitation
3 to occur in order to support the system of "good time credits" and early release programs. (Penal
4 Code section 2931.) These laws required state employees - particularly civil service credentialed
5 teachers to perform this function. (Penal Code section 2054)

6 17. AB 900 also required CDCR to establish pilot programs that provided training and
7 counseling for parolees to assist in their successful reintegration into the community. It further
8 required CDCR to implement a system of incentives to increase inmate participation in, and
9 completion of, academic and vocational education, consistent with the inmate's educational needs,
10 as specified. AB 900 required CDCR to implement a plan to obtain additional rehabilitation and
11 treatment services for prison inmates and parolees.

12 18. These legal requirements have been in effect since in or about May 2007 and
13 continue in effect. This bill added to existing state legal mandates to reduce recidivism through
14 meaningful prison education programs - both academic and vocational.

15 19. One such existing mandate for education was through literacy requirements. Penal
16 Code section 2053(a) and (b) state as follows:

17 (a) The Legislature finds and declares that there is a correlation
18 between prisoners who are functionally literate and those who
19 successfully reintegrate into society upon release. It is therefore the
20 intent of the Legislature, in enacting "The Prisoner Literacy Act," to
21 raise the percentage of prisoners who are functionally literate, in
22 order to provide for a corresponding reduction in the recidivism rate.

23 (b) The Department of Corrections shall determine the reading level
24 of each prisoner upon commitment.

25 20. Another existing mandate for education through literacy is found in Penal Code
26 section 2053.1 which states as follows:

27 2053.1. The Director of the Department of Corrections shall

28 implement in every state prison literacy programs that are designed

1 to ensure that upon parole inmates are able to achieve a ninth-grade
2 reading level. The department shall prepare an implementation plan
3 for this program, and shall request the necessary funds to implement
4 this program as follows:

5 (a) To make the program available to at least 25 percent of eligible
6 inmates in the state prison system by July 1, 1991.

7 (b) To make the program available to at least 60 percent of eligible
8 inmates in the state prison system by January 1, 1996. In complying
9 with the requirements of this section, the department shall give
10 strong consideration to computer assisted training and other
11 innovations which have proven to be effective in reducing illiteracy
12 of disadvantaged adults.

13 21. Further, CDCR is required to maintain an educational program in order to
14 accomplish the required mandate to improve and increase inmate participation in, and completion
15 of, academic and vocational education, consistent with the inmate's educational needs as identified
16 in the assessment performed pursuant to Section 3020, including, but not limited to, a literacy level
17 specified in Section 2053.1, a high school diploma or equivalent, or a particular vocational job
18 skill. (Penal Code sections 2054.2. and 2062.)

19 22. Both the CDCR and the Governor have repeatedly acknowledged that inmate
20 education and rehabilitation through adequate training and education programs - (both academic
21 and vocational) - is the primary means to ensure inmates will successfully return to their
22 community while reducing the chances of returning to prison. Conversely, overly generic or
23 inadequate education programs - failing to provide rehabilitation through education, both academic
24 and vocational - jeopardize the State's good time credits systems, and either fail to reduce or
25 actually increase recidivism.

26 23. Both the CDCR and the Governor have proposed the expansion of earned good
27 time credits for inmates - in order in part to provide for meaningful opportunities to engage in
28 programs that will permit a shorter duration of incarceration but will also allow inmates a more

1 successful reentry into communities and provide communities a reduced risk of recidivism. State
2 taxpayers have a vested interest in the success of such programs both regarding the reduced
3 expenditure of funds in the future and for public safety.

4 24. Both the CDCR and the Governor have a mandate to not permit rehabilitation
5 programs through education programs to be implemented in a manner that endangers public safety.
6 Moreover, CDCR has stated that it will not propose plans that endanger public safety. However,
7 the education program cuts, being implemented by CDCR, are so arbitrary and capricious that the
8 result is to endanger and threaten public safety and cause an unnecessary waste in public funds.

9 25. The Governor's 2008 and 2009 budget proposals included enhancements in the
10 award of good time credits for completion of education programs because such programs reduce
11 inmate violence and facilitated inmates' successful return to community through employability and
12 reduced recidivism. (Governor's Budget, Special Session 2008-2009; Governor's Budget, Special
13 Session, 2009-2010.) Indeed, the Governor has affirmed that it is a top priority of his
14 administration to "reform California's prison system by focusing on rehabilitation programs that
15 will reduce recidivism and increase public safety."¹

16 26. The Governor further affirmed that while the State has some rehabilitation
17 programs, they are not enough. Only when the State prepares those prisoners to go out into
18 communities and be able to get jobs and to be able to function, can the State cut down the
19 recidivism rate.

20 27. The Governor and CDCR have asserted to the federal court receivers (3 judge panel
21 for Plata, Coleman) that they are in the beginning process of **expanding** rehabilitation
22 programming in the State's prisons. Indeed, CDCR has told the federal court that they are recently
23 beginning to implement an "evidence-based system of rehabilitation programming to reduce
24 recidivism, and it has also taken steps to increase utilization of existing educational, vocational,
25 and substance abuse programs." (Three-Judge Opinion and Order, August 4, 2009, p. 142.)²

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27 ¹ Public Safety: Comprehensive Prison Reform, California Office of the Governor. Webpage:
<http://gov.ca.gov/issue/prisons/>

28 ² *Coleman, et al. v. Schwarzenegger* U.S.D.C Eastern District CIV S-90-0520- LKK JFM P and *Plata, et al.*
v. Shwarzenegger U.S.D.C. Northern District No. C01-1351 TEH

1 28. At the same time as stating these mandates to the federal court, as well as taxpayer
2 and citizens, CDCR is in fact reducing the educational programs (academic and vocational), and
3 arbitrarily and capriciously reducing their effectiveness, availability and decreasing utilization.
4 CDCR is engaged in a systematic misrepresentation to the federal courts, the legislature, and the
5 taxpayers about education programs.

6 29. In or about October 2009, the federal court - three judge panel - rejected CDCR's
7 report and assertions citing serious questions about how the Governor can slash the very programs
8 that he is claiming to increase and to use to reduce prison population through earned good-time
9 credits.

10 30. At the same time as stating these mandates to the federal court, the CDCR is also
11 obligated to abide by the following legislative mandates found in the Budget Act of 2009:

12 The Budget Act of 2009 reflects a reduction in funding for inmate
13 and parolee programs designed to reduce recidivism. The
14 Department of Corrections and Rehabilitation shall implement these
15 reductions **consistent with the following requirements:** (a) the
16 department shall prioritize the preservation of programs for which
17 there is evidence-based on studies of the programs operated by the
18 department or in the national literature—that they are effective at
19 reducing recidivism, (b) the department shall seek to achieve savings
20 through more efficient operations in the delivery of these programs,
21 (c) the department shall seek to place inmates and parolees into
22 programs for which they are best suited by prioritizing the placement
23 of offenders who are assessed as higher risk to reoffend, demonstrate
24 a significant need for the services provided for a particular program,
25 and who have a sufficient amount of time left to serve in prison to
26 reasonably complete the program or, at a minimum, make a
27 reasonable amount of progress that it is possible to have an impact
28 on their likelihood of recidivating, (d) the department shall seek to

1 prioritize the elimination of vacant positions over laying off existing
2 staff, (e) the department shall seek to use available resources to
3 maximize the number of inmates and parolees who have access to
4 and complete programs, and (f) the department shall seek to
5 maximize the use of federal or other funds to maintain or enhance
6 inmate and parolee programs. No later than August 15, 2009, the
7 department shall report to the Joint Legislative Budget Committee a
8 detailed plan as to how it will achieve savings from inmate and
9 parolee programs, as well as how that plan is consistent with the
10 requirements of this provision. No later than April 15, 2010, the
11 department shall report to the joint committee regarding its progress
12 in achieving these savings.

13 31. The CDCR's and Schwarzenegger's arbitrary and capricious reductions in
14 programs fail to abide by the Legislative mandates set forth in the Budget Act of 2009. CDCR is
15 presently dismantling education programs - academic and vocational - throughout the 33 prisons
16 statewide. It is reducing education programs at San Quentin in academic and vocational areas that
17 lead to reemployment and reentry of inmates into the neighboring communities. It is disengaging
18 educational programs in multiple areas in such an arbitrary and capricious manner that the CDCR
19 is ignoring its legal obligations.

20 32. CDCR is dismantling multiple education programs throughout the state in an
21 arbitrary and capricious manner at all 33 institutions. At the same time that it is supposed to
22 maintain programs that provide for the successful reentry of inmates into the community, it is
23 disbanding the various programs that effectively retrain and reskill inmates who are being released.
24 It is disengaging educational programs in multiple subject areas in such an arbitrary and capricious
25 manner that the CDCR will fail to meet its legal obligations. It is restructuring the education
26 model in such an fallacious and unsound manner that it is ignoring its legal mandate. Moreover, it
27 is saddling its remaining educators with untenable requirements to adhere to the education model.

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1 33. CDCR maintains and operates 33 institutions across the state. Approximately
2 171,000 inmates are secured in these institutions. Over 90% of the inmates are male with an
3 average age of 37. Approximately 10% of the inmates (or 17,000) are incarcerated solely because
4 of technical parole violations. Aside from the approximate 23,000 of inmates who are serving a
5 life sentences (approximately 15% of the population), the remaining 98,000 inmates will reenter
6 communities across the State. Under the CDCR's fallacious and unsound education model, those
7 inmates will fail to successfully reenter their communities.

8 34. CDCR projects that the average time served from inmates is approximately 24-25
9 months. After serving their sentences, based on ongoing experience, 90% of inmates are released
10 to their county of commitment. Presently, before the cuts to programming, CDCR is only able to
11 offer academic or vocational programs to approximately 15% of inmates. While CDCR and
12 Schwarzenegger claim to the federal courts that it is increasing the availability of education
13 programs, it is dramatically reducing the program by 50%. If CDCR's and Schwarzenegger's cuts
14 to programming are permitted, less than 7% of inmates will have education programs made
15 available to them. At the same time, with only approximately 7000 inmates in education
16 programs, the State will continue to release tens of thousands of inmates to communities after
17 serving an average 2 year prison term and no vocational, academic, General Education, or skills
18 training.

19 35. The State's recidivism rate problem is a national - if not international - failure.
20 Correctional experts agree, and the State has admitted, that attending school while in prison
21 reduces re-incarceration by 29%. In savings, every dollar spent on prison education returns more
22 than \$2 to the taxpayers in reduced prison costs.

23 36. Correctional experts agree, and the State has admitted, that education programs
24 reduce prison violence. In the State's prisons, the five prisons with the highest percentage of
25 inmate involvement and participation in education have approximate half the in-prison violence as
26 compared to the five prisons with the lowest percentage of education programs and participation.

27 37. As the organization representing civil service employees in teaching positions in the
28 State prisons and employed by Defendants, SEIU is beneficially interested in upholding the

1 California law and in preserving the laws and duties of the State. Plaintiffs and their members,
2 including Plaintiffs Fonseca and Daniel have a clear, present and substantial right to require
3 Defendants to perform their duties.

4 38. Plaintiffs lack any plain, speedy and adequate remedy in the ordinary course of law
5 to enforce Defendants' mandatory duties under the laws of the State of California. Plaintiffs have
6 no right of appeal from the failure of the Defendants to act as required by law, nor do Plaintiffs
7 have any available administrative remedy to contest the action, nor do Plaintiffs have a plain,
8 speedy or adequate remedy in the ordinary course of law other than the relief sought in this action.

9 39. Plaintiffs have necessarily engaged the services of counsel to represent them in the
10 preparation and prosecution of the within action resulting from the conduct and threatened conduct
11 of Defendants. The legal services rendered will thus inure to the benefit of all persons employed
12 in the state civil service and to all citizens and taxpayers of the State of California. Such benefits
13 will be derived in part through the efforts of Plaintiffs herein. Therefore, Plaintiffs will, upon
14 entry of final judgment, request the court in its discretion, to award the reasonable value of
15 Plaintiffs' attorney's fees and other litigation expenses and to assess the amount thereof against
16 Defendants, and each of them.

17 **Second Cause of Action**

18 **(Declaratory Relief)**

19 40. Plaintiffs hereby incorporate by reference all of the foregoing paragraphs as though
20 fully set forth herein.

21 41. An actual and present controversy has arisen and now exists between Plaintiffs and
22 Defendants concerning their respective rights, duties, and obligations under the law (under the
23 applicable laws and regulations.)

24 42. Plaintiffs contend that through their acts and/or omissions, the Defendants abused
25 their discretion with regard to these obligations. Plaintiffs are informed and believe that
26 Defendants dispute this contention.

27 43. Plaintiffs desire a judicial determination of their rights and a declaration of the
28 Defendants' obligations under these laws.

1 education programs in violation of legal mandates.

2 B. Pending issuance of a peremptory writ, that this Court issue a temporary
3 restraining order and preliminary injunction, directing Defendants to cease and desist unlawful
4 actions in violation of the law including but not limited the arbitrary and capricious reductions in
5 education programs in violation of legal mandates.

6 2. A. That this Court, on hearing this petition and on consideration of any return
7 filed thereto, issue an alternative and peremptory writ of mandate directing Defendants to cease
8 and desist in their violations of law or in violation of their duties including but not limited the
9 arbitrary and capricious reductions in education programs in violation of legal mandates and other
10 actions in an arbitrary and capricious manner.

11 B. Pending issuance of a peremptory writ, that this Court issue a temporary
12 restraining order and preliminary injunction, directing Defendants to cease and desist in their
13 violations of law or in violation of their duties including but not limited the arbitrary and
14 capricious reductions in education programs in violation of legal mandates and other actions in an
15 arbitrary and capricious manner.

16 3. For its costs of suit;

17 4. For its attorney's fees; and

18 5. For such other and further relief as the Court deems appropriate.

19 **On the Second Cause of Action:**

20 1. A. For a declaratory judgment and declaration of rights that Defendants have
21 violated and continue to violate their mandatory duty and/or abuse their discretion with regard to
22 actions in violation of the law or in violation of their duties including but not limited the arbitrary
23 and capricious reductions in education programs in violation of legal mandates and other actions in
24 an arbitrary and capricious manner.

25 B. Pending issuance of a peremptory writ, that this Court issue a temporary
26 restraining order and preliminary injunction, directing Defendants to cease and desist from actions
27 in violation of the law or in violation of their duties including but not limited the arbitrary and
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capricious reductions in education programs in violation of legal mandates and other actions in an arbitrary and capricious manner.

2. For its costs of suit;
3. For its attorney's fees; and
4. For such other and further relief as the Court deems appropriate.

DATED: December 17, 2009

Respectfully submitted,
SEIU Local 1000

By 

ANNE M. GIESE
Attorney for Plaintiffs/Petitioners

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VERIFICATION

I, Cindie Fonseca, declare under penalty of perjury under the laws of the State of California, that I am the Chair of Bargaining Unit 3 of SEIU Local 1000, a Petitioner in this action, and an employee of the California Department of Corrections and Rehabilitation. I have first-hand knowledge of the facts stated in the PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and could competently testify to them as a witness at a hearing or trial. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and state that the facts stated therein are true and correct, except as to those facts alleged on information or belief, and as to those facts, I believe them to be true.

DATED: December 17, 2009


CINDIE FONSECA

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VERIFICATION

I, Gary Daniel declare under penalty of perjury under the laws of the State of California, that I am in Bargaining Unit 3 of SEIU Local 1000, a Petitioner in this action, and an employee of the California Department of Corrections and Rehabilitation at San Quentin State Prison. I have first-hand knowledge of the facts stated in the PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and could competently testify to them as a witness at a hearing or trial. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and state that the facts stated therein are true and correct, except as to those facts alleged on information or belief, and as to those facts, I believe them to be true.

DATED: December 17, 2009



GARY DANIEL