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MAR 12 2010

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

9 Attorneys for Defendants
NEW HAVEN UNIFIED SCHOOL DISTRICT,
10 PAT JAUREQUI, DON MONTOYA,
11 MARCUS LAM and GRACE KIM

E-filing

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C10-01065

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 ALVETT FOBBS, AS GUARDIAN AD LITEM
15 FOR STEVE S., A MINOR; TEOLA
COLEMAN, AS GUARDIAN AD LITEM FOR
16 JESS L., A MINOR; AUZALEA GODFREY,
AS GUARDIAN AD LITEM FOR ASSATA G.
17 AND ELISA G., MINORS; TERESE
SANDERS, AS GUARDIAN AD LITEM FOR
18 ROBBIE J. AND JONATHAN J., MINORS;
TOYNICA LEDBETTER-FRANKLIN, AS
19 GUARDIAN AD LITEM FOR KHALIF L., A
MINOR; DAVID G.; D'ANGELO COLE AND
20 DANNY GODFREY, INDIVIDUALLY AND
ON BEHALF OF ALL PERSONS SIMILARLY
21 SITUATED,

~~Case No. [REDACTED]~~

**NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. § 1441(b)
(FEDERAL QUESTION)**

Complaint Filed: December 21, 2009

22 Plaintiffs,

23 v.

24 NEW HAVEN UNIFIED SCHOOL DISTRICT;
25 PAT JAUREQUI, INDIVIDUALLY; DON
MONTOYA, INDIVIDUALLY; MARCUS
26 LAM, INDIVIDUALLY; GRACE KIM,
INDIVIDUALLY; AND DOES 1 THROUGH
27 20, INCLUSIVE,

28 Defendants.

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL PARTIES
2 AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Defendants NEW HAVEN UNIFIED SCHOOL
4 DISTRICT, PAT JAUREQUI, DON MONTOYA, MARCUS LAM and GRACE KIM
5 (“Defendants”), hereby remove to this Court the state court action described below:

6 1. On or about December 21, 2009, an action was commenced in the Superior Court of
7 the State of California, County of Alameda, entitled “*Alvett Fobbs, as Guardian ad Litem for*
8 *Steve S., a Minor, Teola Coleman, as Guardian as Litem for Jess L., a Minor, Auzalea Godfrey,*
9 *as Guardian ad Litem for Assata G. and Elisa G., Minors, Tereese Sanders, as Guardian ad*
10 *Litem for Robbie J. and Jonathan J., Minors, Toynica Ledbetter-Franklin, as Guardian ad Litem*
11 *for Khalif L., a Minor, David G., D’Angelo Cole and Danny Godfrey, Individually and on Behalf*
12 *of All Persons Similarly Situated v. New Haven Unified School District, Pat Jaurequi,*
13 *Individually, Don Montoya, Individually, Marcus Lam, Individually, Grace Kim, Individually,*
14 *and Does 1 through 20, Inclusive,” (“Complaint”) as Case No. RG09-490113. A true and correct*

15 copy of the Complaint is attached hereto as Exhibit A.
16 2. Defendants were never served with the Complaint.

17 3. On March 11, 2010, Defendants filed and served an Answer to Complaint. A true and
18 correct copy of the Answer to Complaint is attached hereto as Exhibit B.

19 4. This action is a civil action of which this Court has original jurisdiction under 28
20 U.S.C. § 1331, and is one which may be removed to this Court by Defendants pursuant to the
21 provisions of 28 U.S.C. § 1441(b) in that the action purports to be one that arises under the laws
22 of the United States. Specifically, the action alleges violations of 42 U.S.C. § 1983 and 42
23 U.S.C. § 2000d. See Complaint at ¶¶ 45, 48, 50, and 56.

24 5. The United States District Court for the Northern District of California is the federal
25 judicial district and division embracing the Superior Court of the State of California, County of
26 Alameda, where the action was originally filed. Venue is therefore proper in this district under
27 28 U.S.C. § 1441(a) and related laws.


28 Pursuant to 28 U.S.C. § 1446(d), the undersigned counsel hereby certifies that a true and

1 correct copy of the Notice of Removal will be promptly filed with the Clerk of the Superior Court
2 of the State of California, County of Alameda, and served upon all adverse parties.

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Dated: March 11, 2010

LeClairRyan LLP

By: 

CHARLES H. HORN
JOSEPH A. WHITECAVAGE
Attorneys for Defendants
NEW HAVEN UNIFIED SCHOOL
DISTRICT, PAT JAUREQUI, DON
MONTROYA, MARCUS LAM
and GRACE KIM

EXHIBIT A



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FILED
ALAMEDA COUNTY
2009 DEC 21 AM 11:16
CLERK OF THE SUPERIOR COURT
BY Handy Lee
DEPUTY

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

ALVETT FOBBS, AS GUARDIAN AD LITEM)
FOR STEVE S., A MINOR, TEOLA COLEMAN,)
AS GUARDIAN AD LITEM FOR JESS L., A)
MINOR, AUZALEA GODFREY, AS GUARDIAN)
AD LITEM FOR ASSATA G. AND ELISA G.,)
MINORS, TERESE SANDERS AS GUARDIAN)
AD LITEM FOR ROBBIE J. AND JONATHAN J.,)
MINORS, TOYNICA LEDBETTER-FRANKLIN)
AS GUARDIAN AD LITEM FOR KHALIF L., A)
MINOR, DAVID G., D'ANGELO COLE AND)
DANNY GODFREY, INDIVIDUALLY AND ON)
BEHALF OF ALL PERSONS SIMILARLY)
SITUATED,

Plaintiffs,

v.

NEW HAVEN UNIFIED SCHOOL DISTRICT,)
PAT JAUREQUI, INDIVIDUALLY, DON)
MONTOKA, INDIVIDUALLY, MARCUS LAM,)
INDIVIDUALLY, GRACE KIM, INDIVIDUALLY,)
AND DOES 1 THROUGH 20, INCLUSIVE,

Defendants.

RC 09 - 400113

CLASS ACTION
COMPLAINT FOR VIOLATION
OF CIVIL RIGHTS AND RACE
DISCRIMINATION
(JURY TRIAL DEMANDED)

Original

Plaintiff STEVE S., a Minor, by
and Guardian Ad Litem, Plaintiff JESS L., a M

T FOBBS, his Mother
TEOLA COLEMAN,

1 his Mother and proposed Guardian Ad Litem, Plaintiffs ASSATA G. and ELISA G., Minors, by and
2 through Plaintiff AUZALEA GODFREY, their Mother and proposed Guardian Ad Litem, Plaintiffs
3 ROBBIE J. and JONATHAN J., Minors, by and through Plaintiff TERESE SANDERS, their
4 Sister and proposed Guardian Ad Litem, Plaintiff KHALIF L., a Minor, by and through Plaintiff
5 TOYNICA LEDBETTER-FRANKLIN, his Mother and proposed Guardian Ad Litem, DAVID G.,
6 D'ANGELO COLE AND DANNY GODFREY, and their attorneys, respectfully allege as follows:

7
8 **PARTIES**

9 1. Plaintiff STEVE S. is the minor child of ALVETT FOBBS. STEVE S. and
10 ALVETT FOBBS are both African-American citizens of the United States. STEVE S. brings this
11 action under a fictitious name because he is a minor and to protect his identity due to the nature of his
12 causes of action which involve racial harassment and physical attacks. Plaintiffs are, and at all times
13 mentioned herein were, residents of Union City, County of Alameda.

14 2. Plaintiff JESS L. is the minor child of TEOLA COLEMAN. JESS L.
15 and TEOLA COLEMAN are both African-American citizens of the United States. JESS L. brings this
16 action under a fictitious name because he is a minor and to protect his identity due to the nature of his
17 causes of action which involve racial harassment and physical attacks. Plaintiffs are, and at all times
18 mentioned herein were, residents of Union City, County of Alameda.

19 3. Plaintiff ASSATA G. is the minor child of AUZALEA GODFREY. ASSATA
20 G. and AUZALEA GODFREY are both African-American citizens of the United States. ASSATA G.
21 brings this action under a fictitious name because she is a minor and to protect her identity due to the
22 nature of her causes of action which involve racial harassment and physical attacks. Plaintiffs are, and
23 at all times mentioned herein were, residents of Union City, County of Alameda.

24 4. Plaintiff ELISA G. is the minor child of AUZALEA GODFREY. ELISA G. and
25 AUZALEA GODFREY both African-American citizens of the United States. ELISA G. brings this
26 action under a fictitious name because she is a minor and to protect her identity due to the nature of her
27 causes of action which involve racial harassment and physical attacks. Plaintiffs are, and at all times
28 mentioned herein were, residents of Union City, County of Alameda.

1 5. Plaintiff ROBBIE J. is the minor brother of TERESE SANDERS. ROBBIE J.
2 and TERESE SANDERS are both African-American citizens of the United States. ROBBIE J. brings
3 this action under a fictitious name because he is a minor and to protect his identity due to the nature of
4 his causes of action which involve racial harassment and physical attacks. Plaintiffs are, and at all times
5 mentioned herein were, residents of Union City, County of Alameda.

6 6. Plaintiff JONATHAN J. is the minor brother of TERESE SANDERS.
7 JONATHAN J. and TERESE SANDERS are both African-American citizens of the United States.
8 JONATHAN J. brings this action under a fictitious name because he is a minor and to protect his
9 identity due to the nature of his causes of action which involve racial harassment and physical attacks.
10 Plaintiffs are, and at all times mentioned herein were, residents of Union City, County of Alameda.

11 7. Plaintiff KHALIF L. is the minor child of TOYNICA LEDBETTER-
12 FRANKLIN. KHALIF L. and TOYNICA LEDBETTER-FRANKLIN are both African-American
13 citizens of the United States. KHALIF L. brings this action under a fictitious name because he is a
14 minor and to protect his identity due to the nature of his causes of action which involve racial
15 harassment and physical attacks. Plaintiffs are, and at all times mentioned herein were, residents of
16 Union City, County of Alameda.

17 8. Plaintiff DAVID G. is an African-American citizen of the United States, and a
18 resident of Union City, County of Alameda. DAVID G. brings this action under a fictitious name to
19 protect his identity due to the nature of his causes of action which involve racial harassment and
20 physical attacks.

21 9. Plaintiff D'ANGELO COLE is an African-American citizen of the United States,
22 and a resident of Union City, County of Alameda.

23 10. Plaintiff DANNY GODFREY is an African-American citizen of the United
24 States, and a resident of Union City, County of Alameda.

25 11. Defendant NEW HAVEN UNIFIED SCHOOL DISTRICT (hereinafter referred
26 to as "NHUSD") is, and at all times mentioned herein was, the School District where Plaintiffs resided
27 when the incidents complained of occurred, and is located at 725 Whipple Road, Union City,
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1 California. Plaintiffs are informed and believe and thereon allege that Defendant NHUSD is duly
2 organized and existing under the Constitution and the laws of the State of California.

3 12. Defendant PAT JAUREQUI was during most of the times mentioned herein the
4 Superintendent of Schools for Defendant NHUSD. Defendant JAUREQUI is being sued in her official
5 capacity as the Superintendent of Schools for Defendant NHUSD and in her individual capacity
6 pursuant to 42 U.S.C. Section 1983.

7 13. Defendant MARCUS LAM was during most of the times mentioned herein the
8 Principal of Logan High School, the only high school within Defendant NHUSD. Defendant LAM is
9 being sued in his individual capacity pursuant to 42 U.S.C. Section 1983.

10 14. Defendant DON MONTOYA was during most of the times mentioned herein the
11 Assistant Principal of Logan High School, the only high school within Defendant NHUSD. Defendant
12 MONTOYA is being sued in his individual capacity pursuant to 42 U.S.C. Section 1983.

13 15. Defendant GRACE KIM is, and was during most of the times mentioned herein,
14 an Assistant Principal of Logan High School, the only high school within Defendant NHUSD.
15 Defendant KIM is being sued in her individual capacity pursuant to 42 U.S.C. Section 1983.

16 16. Plaintiffs are ignorant of the true names and capacities of the Defendants sued
17 herein as Does 1 through 20, inclusive, and therefore sue these Defendants by such fictitious names.
18 Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendants is
19 responsible in some manner for the occurrences alleged herein, and that Plaintiffs' injuries were
20 proximately caused by their conduct. Plaintiffs will amend this complaint to allege their true names and
21 capacities when ascertained.

22 **CLASS ACTION ALLEGATIONS**

23 17. Plaintiffs bring this complaint pursuant to Code of Civil Procedure Section 382
24 on behalf of themselves and all similarly situated African-American students. This class is composed
25 of all past and present African-American students of the New Haven Unified School District during the
26 period from November 2006 to the present, and future African-American students, who have been, or
27 will be subjected to racial harassment at any educational institution with the Defendant NHUSD and
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1 whose complaint did not result in prompt effective remedial steps to address the racially hostile
2 environment. The action satisfies the numerosity, typicality, adequacy, commonality, predominance
3 and superiority requirements of Code of Civil Procedure Section 382.

4 18. The members of this class are so numerous as to make joinder impracticable.
5 Plaintiffs are informed and believe, and thereon allege that the number of class members exceeds one
6 hundred and one (101). The claims of the representative parties are typical of the claims of the class,
7 and the representative parties will fairly and adequately represent the interests of the class.

8 19. Common questions of fact and law exist as to all members of the class and sub-
9 class. The questions predominate over any questions affecting individual members of the class. These
10 common legal and factual questions do not vary from class member to class member and may be
11 determined without reference to the individual circumstances of any class member.

12 20. Plaintiffs' claims are typical of the claims of the members of the class and the
13 representative Plaintiffs' interests are coincident with and not antagonistic to those of the other class
14 members they seek to represent. Plaintiffs will fairly and adequately protect the interests of the
15 members of the class. Plaintiffs have retained counsel experienced in the prosecution of civil rights
16 violations and class actions. Plaintiffs intend to prosecute this action vigorously.

17 21. There are numerous African-American students who have been discriminated
18 against by Defendant NHUSD on account of their race, but who have not filed discrimination
19 complaints or joined in this suit because of fear of recrimination on the part of Defendant NHUSD.

20 22. There is a well-defined community of interest in the questions of law and fact
21 involved affecting the parties to be represented in that these students were subjected to severe and
22 pervasive racial harassment in, on and about school premises with the knowledge, consent and
23 acquiescence of NHUSD's administrators and senior officials. This racial harassment existed and
24 persisted for an extended period of time, such that a racially hostile environment for African-American
25 students was created throughout the NHUSD during the relevant time period. NHUSD's policies,
26 practices and procedures denied Plaintiffs and members of the class any remedy or right to even seek
27 relief from the hostile environment. Proof of a common state of facts will establish the right of each
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1 class member to recover damages.

2 23. A class action is superior to other available methods for the fair and efficient
3 adjudication of this controversy. The prosecution of separate actions by individual members of the
4 class would create a risk of inconsistent or varying adjudications with respect to said individual
5 members, thereby establishing incompatible standards of conduct for Defendant NHUSD. Individual
6 class members do not have a cognizable interest in pursuing individual actions against Defendants.
7 Individualized litigation would be unduly burdensome to the courts in which they would proceed.
8 Additionally, individual actions could result in contradictory and inconsistent judgments that would
9 magnify the delay and expenses to all parties and to the court system resulting from multiple trials of
10 the same factual and legal issues.

11 24. Due to the predominance of common issues among the class members along with
12 the availability of adequate records regarding the class membership, the conduct of this litigation as a
13 class action will encounter no significant manageability obstacles.

14 25. In allowing other students and non-students to engage in racial harassment so as
15 to create a hostile educational environment for African-American students, and refusing to take proper
16 preventive and remedial steps, NHUSD acted on grounds generally applicable to the class, thereby
17 making injunctive or corresponding declaratory relief appropriate to the class as a whole.

18 STATEMENT OF FACTS

19 26. During most of the relevant times mentioned herein when the incidents
20 complained of occurred, Plaintiffs STEVE S., JESS L., ASSATA G., ELISA G., ROBBIE J.,
21 JONATHAN J., KHALIF L., DAVID G., D'ANGELO COLE and DANNY GODFREY were students
22 within the NHUSD. The events at issue herein took place both in, at or around James Logan High
23 School and Bernard White Middle School in Union City, California, which are, and were, part of the
24 NHUSD.

25 27. Throughout all of the time encompassed by the allegations herein, up to and
26 including the present, Defendants have discriminated against STEVE S., JESS L., ASSATA G., ELISA
27 G., ROBBIE J., JONATHAN J., KHALIF L., DAVID G., D'ANGELO COLE, DANNY GODFREY
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1 and other similarly-situated African-American students on the basis of race, in violation of their rights
2 under the United States and the California Constitutions.

3 28. On December 21, 2007, Vernon Eddins, while lawfully on the premises of
4 Bernard White Middle School, was shot and killed. STEVE S., JESS L., ROBBIE J., JONATHAN J.,
5 KHALIF L., DAVID G. and D'ANGELO COLE were close personal friends of Mr. Eddins. STEVE
6 S., JESS L., ROBBIE J. and JONATHAN J. were present at the time of Mr. Eddins' murder, and were
7 also targets who barely escaped death and/or serious injury during the incident.

8 29. Prior to this incident, NHUSD was aware of on-going, racially motivated
9 violence and threats of violence, including shootings, directed against STEVE S., JESS L., ROBBIE J.,
10 JONATHAN J., KHALIF L., DAVID G., D'ANGELO COLE, DANNY GODFREY and other
11 similarly-situated African-American students, and had specifically been informed that acts of violence
12 against African-American students would take place on or near school grounds on
13 December 21, 2007. NHUSD had a duty to protect persons at said location, including but not limited
14 to, STEVE S., JESS L., ROBBIE J., JONATHAN J., KHALIF L. and Mr. Eddins, from such acts of
15 violence.

16 30. Subsequent to the murder of Mr. Eddins, Plaintiffs and other similarly-situated
17 African-American students continued to be subjected to racial violence and intimidation at and around
18 school, before, during and after school. On April 10, 2009, KHALIF L. was physically attacked inside
19 Logan High School in front of the Principal's office because of his race by a Latino gang member.

20 31. At all times herein mentioned, Defendant NHUSD intentionally failed to take
21 reasonable, adequate, necessary, and proper measures to secure and safeguard its premises and to
22 protect the safety of its students, including but not limited to, STEVE S., JESS L., KHALIF L.,
23 ROBBIE J., JONATHAN J., DAVID G. and Mr. Eddins. Defendant NHUSD's customs, practices and
24 policies were the proximate and legal cause of Mr. Eddins' death and the damages to the Plaintiffs, as
25 herein alleged.

26 32. Plaintiffs are informed and believe and thereon allege that NHUSD
27 never took any action in response to their complaints or the complaints of other African-American
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1 parents.

2 33. As a direct consequence of NHUSD's failure to take prompt effective remedial
3 action, STEVE S., JESS L., ASSATA G., ELISA G., ROBBIE J., JONATHAN J., KHALIF L., DAVID
4 G., D'ANGELO COLE, DANNY GODFREY and all similarly-situated African-American students
5 were deprived of an educational environment free of racial bias, racial harassment and violence, and
6 discriminatory animus.

7 34. Commencing in or about January 2008, ALVETT FOBBS enrolled STEVE S. at
8 Arroyo High School in the City of San Lorenzo, County of Alameda, California, which is outside
9 Plaintiffs' residential area, in order to remove him from any contact with any persons who might
10 threaten or assault him on the basis of his race. STEVE S. was forced to attend Arroyo High School,
11 rather than a school within the NHUSD, which he normally would have attended, because of concerns
12 for his safety and well-being.

13 35. Commencing in or about August 2008, TEOLA COLEMAN enrolled JESS L. at
14 San Leandro High School in the City of San Leandro, County of Alameda, California, which is outside
15 Plaintiff's residential area, in order to remove him from any contact with any persons who might
16 threaten or assault him on the basis of his race. JESS L. was forced to attend San Leandro High School,
17 rather than a school within the NHUSD, which he normally would have attended, because of concerns
18 for his safety and well-being.

19 36. Commencing in or about September 2009, TOYNICA LEDBETTER-FRANKIN
20 enrolled KHALIF L. in another school outside of Plaintiffs' residential area, in order to remove him
21 from any contact with any persons who might threaten or assault him on the basis of his race. KHALIF
22 L. was forced to relocate to another city to attend school, rather than a school within the NHUSD,
23 which he normally would have attended, because of concerns for his safety and well-being.

24 **DAMAGES**

25 37. As a result of the acts and omissions alleged herein, STEVE S., JESS L.,
26 ASSATA G., ELISA G., ROBBIE J., JONATHAN J., KHALIF L., DAVID G., D'ANGELO COLE,
27 DANNY GODFREY and all similarly-situated African-American students were denied the benefits of
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1 Defendant NHUSD's educational services, including equal educational opportunities on the basis of
2 their race.

3 38. As a proximate result of Defendant NHUSD's actions as alleged herein, STEVE
4 S., JESS L., ASSATA G., ELISA G., ROBBIE J., JONATHAN J., KHALIF L., DAVID G.,
5 D'ANGELO COLE and DANNY GODFREY were humiliated, hurt and injured in their health, strength
6 and activity, sustaining injuries to their nervous systems and persons, and have suffered and will
7 continue to suffer in the future, severe mental anguish and emotional distress, anxiety, worry, incidental
8 damages and out-of-pocket expenses, all to their damage in an amount in excess of \$5,000,000.00 to be
9 shown according to proof.

10 39. KHALIF L. incurred medical and psychotherapy expenses as a result of his
11 injuries, and has suffered special damages for medical services and treatment in an amount to be shown
12 according to proof.

13 40. As a further proximate result of the acts of the Defendants and each of them as
14 alleged herein, STEVE S., JESS L., ROBBIE J., JONATHAN J., KHALIF L., DAVID G., D'ANGELO
15 COLE and DANNY GODFREY's academic interests suffered considerably. At various times during
16 their attendance at schools operated by Defendant NHUSD, STEVE S., JESS L., ROBBIE J.,
17 JONATHAN J., KHALIF L. and DAVID G. expressed lethargy and reluctance to attend school because
18 of their reasonable fears of assault and injury, whereas they previously expressed enthusiasm. The
19 injuries inflicted by NHUSD have fundamentally altered and impaired STEVE S., JESS L., ASSATA
20 G., ELISA G., ROBBIE J., JONATHAN J., KHALIF L., DAVID G., D'ANGELO COLE and DANNY
21 GODFREY's entire educational experience and undermined their academic progress.

22 41. Defendant NHUSD has exacerbated Plaintiffs' emotional and physical suffering
23 by (1) refusing to acknowledge that racially-motivated attacks against African-American students have
24 occurred in and around its premises with frequency and/or the serious nature of the incidents; (2) failing
25 to promptly and effectively remedy the underlying discriminatory and harassing actions; and (3)
26 ratification of the discriminatory harassment.

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**FIRST CAUSE OF ACTION
VIOLATION OF 42 U.S.C. SECTION 1983
FOURTEENTH AMENDMENT**

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3 42. Plaintiffs refer to and incorporate by reference Paragraphs 1 through 41, as
4 though fully set forth at length herein.

5 43. Defendant NHUSD had a duty to provide and ensure an educational environment
6 for STEVE S., JESS L., ASSATA G., ELISA G., ROBBIE J., JONATHAN J., KHALIF L., DAVID G.,
7 D'ANGELO COLE, DANNY GODFREY and all other similarly-situated African-American students,
8 free of racial intimidation and discriminatory animus.

9 44. During the time that STEVE S., JESS L., ASSATA G., ELISA G., ROBBIE J.,
10 JONATHAN J., KHALIF L., DAVID G., D'ANGELO COLE and DANNY GODFREY were under
11 Defendant NHUSD's control and supervision, they were subjected to various acts of unwelcome
12 harassment because of their race. The harassment that STEVE S., JESS L., ASSATA G., ELISA G.,
13 ROBBIE J., JONATHAN J., KHALIF L., DAVID G., D'ANGELO COLE and DANNY GODFREY
14 were subjected to was sufficiently severe or pervasive to alter the conditions of their education and
15 create an abusive educational environment.

16 45. Prior to December 21, 2007, and continuing to the present, Defendant NHUSD
17 maintained discriminatory policies and/or customs which exhibited deliberate indifference to the safety
18 and constitutional rights of STEVE S., JESS L., ASSATA G., ELISA G., ROBBIE J., JONATHAN J.,
19 KHALIF L., DAVID G., D'ANGELO COLE and DANNY GODFREY, and other similarly-situated
20 African-American students, including, but not limited to, maintaining racially segregated sections inside
21 the schools, inadequately and improperly responding to and investigating on-going and repeated
22 complaints of racially motivated violence, threats, and intimidation directed against STEVE S., JESS
23 L., ROBBIE J., JONATHAN J., KHALIF L., DAVID G., D'ANGELO COLE and DANNY
24 GODFREY and other African-American students; failing to adequately discourage and sanction racially
25 motivated violence, threats, and intimidation directed against STEVE S., JESS L., ROBBIE J.,
26 JONATHAN J., KHALIF L., DAVID G., D'ANGELO COLE and DANNY GODFREY and other
27 African-American students, and instead creating the perception that such misconduct would be
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1 tolerated; and suggesting that African-Americans, including STEVE S., JESS L., ASSATA G., ELISA
2 G., ROBBIE J., JONATHAN J., KHALIF L., DAVID G., D'ANGELO COLE and DANNY
3 GODFREY and their families, move to another city in response to such racially motivated violence,
4 threats, and intimidation directed against them, instead of properly investigating, monitoring, and
5 prosecuting such activity. These discriminatory policies and/or customs demonstrated an indifference
6 on the part of said Defendant to the safety and rights of STEVE S., JESS L., ASSATA G., ELISA G.,
7 ROBBIE J., JONATHAN J., KHALIF L., DAVID G., D'ANGELO COLE and DANNY GODFREY,
8 and were a proximate and legal cause of their injuries and Mr. Eddins' death in violation of 42 U.S.C.
9 Section 1983.

10 46. The experiences of these individual students arise out of the same policy of
11 discrimination of Defendant NHUSD which condones and accepts racial segregation and racial violence
12 directed at African-American students. Their experiences are typical of the injury and harm suffered by
13 a class of African-American students attending schools within the New Haven Unified School District
14 who have been subjected to racial harassment and a hostile educational environment.

15 47. NHUSD's discriminatory policies and practices have substantially interfered with
16 their education on the basis of their race, requiring them to submit to physical assaults, intimidation and
17 threats as a condition of their education. Despite numerous complaints and reports of incidents of racial
18 harassment, Defendant NHUSD continues to refuse to take prompt, effective remedial action to address
19 the problem of racial harassment of African-American students on the basis of race.

20 48. Defendant NHUSD by its conduct as alleged herein, intentionally, wilfully and
21 without justification, did deprive STEVE S., JESS L., ROBBIE J., JONATHAN J., ASSATA G.,
22 ELISA G., DAVID G., D'ANGELO COLE and DANNY GODFREY on the grounds of their race of
23 their rights, privileges and immunities secured to them by the Constitution and the laws of the United
24 States, including but not limited to their rights to equal protection of the law as provided by the
25 Fourteenth Amendment of the Constitution and Title VI (42 U.S.C. Section 2000d) in violation of 42
26 United States Code Section 1983.

27 **WHEREFORE**, Plaintiffs pray for relief as hereinafter set forth.
28

**SECOND CAUSE OF ACTION
VIOLATION OF 42 U.S.C. SECTION 2000d
TITLE VI**

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49. Plaintiffs refer to and incorporate by reference Paragraphs 1 through 48, as though fully set forth at length herein.

50. Defendant NHUSD, by its conduct alleged herein, intentionally, wilfully and without justification did deprive Plaintiffs and all similarly-situated African-American students, on the basis of their race, of their rights and privileges secured to them by the laws of the United States, particularly their right to be free from discrimination in education on the basis of their race as provided by Title VI of the 1964 Civil Rights Act (42 U.S.C. Section 2000d).

51. Defendant NHUSD, despite knowledge and adequate opportunity to learn of the hostile educational environment, acted with deliberate indifference toward the constitutional rights and safety and security of the Plaintiffs and other similarly-situated African-American students.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

**THIRD CAUSE OF ACTION:
VIOLATION OF 42 U.S.C. § 1983
(EQUAL PROTECTION AGAINST INDIVIDUALS)**

52. Plaintiffs refer to and incorporate by reference Paragraphs 1 through 51, as though fully set forth at length herein.

53. This cause of action is brought by Plaintiffs against Defendants PAT JAUREQUI, MARCUS LAM, DON MONTOYA, GRACE KIM and DOES 1 THROUGH 15, in their individual capacities only.

54. In doing each and all of the acts alleged herein, Defendants were acting under color of state law.

55. Defendants knowingly and wilfully ignored complaints by Plaintiffs and other similarly situated African-American students about rampant racial harassment, and refused to enforce the law against the perpetrators despite their obligation to do so. In so refusing, Defendants were deliberately indifferent to Plaintiffs and all similarly situated African-American students who were placed in extremely offensive and dangerous situations. Defendants were aware that the perpetrators

1 targeted Plaintiffs and their similarly-situated African-American students because of their race.
2 Plaintiffs' race was a motivating factor for Defendants' refusal to prevent or remedy the racial
3 harassment.

4 56. Defendants, by their conduct herein alleged, intentionally, wilfully and without
5 justification, did deprive Plaintiffs and all similarly situated African-American students of their rights,
6 privileges and immunities secured them by the Constitution and the laws of the United States, including
7 but not limited to their rights to equal protection as provided by the Fourteenth Amendment in violation
8 of 42 U.S.C. § 1983.

9 57. Defendant PAT JAUREQUI knew that African-American students attending
10 schools with the New Haven Unified School District were being racially harassed, intimidated,
11 assaulted and attacked, creating a racially hostile educational environment. During her tenure as
12 Superintendent of Schools, Defendant JAUREQUI allowed the perpetrators to subject African-
13 American students to racial harassment without any consequences for their actions.

14 58. Defendant JAUREQUI had the authority and responsibility as the Superintendent
15 of Schools to address the overwhelming problem of racial harassment. Defendant JAUREQUI
16 deliberately refused to do so, turning a blind eye to the complaints and concerns of the Plaintiffs and
17 their parents. Defendant JAUREQUI actively tried to minimize and conceal the impact of racial
18 harassment on African-American students. Defendant JAUREQUI deliberately and intentionally tried
19 to make it appear as if Plaintiffs were exaggerating and fabricating reports of racial harassment. The
20 Plaintiffs' race was a motivating factor in Defendant JAUREQUI's refusal to take action to stop the
21 racial harassment.

22 59. Defendant MARCUS LAM knew that African-American students attending
23 schools with the New Haven Unified School District were being racially harassed, intimidated,
24 assaulted and attacked, creating a racially hostile educational environment. During his tenure as
25 Principal of Logan High School, Defendant LAM allowed the perpetrators to subject African-American
26 students to racial harassment without any consequences for their actions.

27 60. Defendant LAM had the authority and responsibility as Principal to address the
28

1 overwhelming problem of racial harassment. Defendant LAM deliberately refused to do so, turning a
2 blind eye to the complaints and concerns of the Plaintiffs and their parents. Defendant LAM actively
3 tried to minimize and conceal the impact of racial harassment on African-American students.
4 Defendant LAM deliberately and intentionally tried to make it appear as if Plaintiffs were exaggerating
5 and fabricating reports of racial harassment. The Plaintiffs' race was a motivating factor in Defendant
6 LAM's refusal to take action to stop the racial harassment.

7 61. Defendant DON MONTOYA knew that African-American students attending
8 schools with the New Haven Unified School District were being racially harassed, intimidated,
9 assaulted and attacked, creating a racially hostile educational environment. During his tenure as
10 Assistant Principal of Logan High School, Defendant MONTOYA allowed the perpetrators to subject
11 African-American students to racial harassment without any consequences for their actions.

12 62. Defendant MONTOYA had the authority and responsibility as Assistant
13 Principal to address the overwhelming problem of racial harassment. Defendant MONTOYA
14 deliberately refused to do so, turning a blind eye to the complaints and concerns of the Plaintiffs and
15 their parents. Defendant MONTOYA actively tried to minimize and conceal the impact of racial
16 harassment on African-American students. Defendant MONTOYA deliberately and intentionally tried
17 to make it appear as if Plaintiffs were exaggerating and fabricating reports of racial harassment. The
18 Plaintiffs' race was a motivating factor in Defendant MONTOYA's refusal to take action to stop the
19 racial harassment.

20 63. Defendant GRACE KIM knew that African-American students attending schools
21 with the New Haven Unified School District were being racially harassed, intimidated, assaulted and
22 attacked, creating a racially hostile educational environment. During her tenure as an Assistant
23 Principal of Logan High School, Defendant KIM allowed the perpetrators to subject African-American
24 students to racial harassment without any consequences for their actions.

25 64. Defendant KIM had the authority and responsibility as an Assistant Principal to
26 address the overwhelming problem of racial harassment. Defendant KIM deliberately refused to do so,
27 turning a blind eye to the complaints and concerns of the Plaintiffs and their parents. Defendant KIM
28

1 actively tried to minimize and conceal the impact of racial harassment on African-American students.
2 Defendant KIM deliberately and intentionally tried to make it appear as if Plaintiffs were exaggerating
3 and fabricating reports of racial harassment. The Plaintiffs' race was a motivating factor in Defendant
4 KIM's refusal to take action to stop the racial harassment.

5 **WHEREFORE**, Plaintiffs pray for judgment against all Defendants, and each of them
6 as follows:

7 1. Compensatory and special damages, including damages for mental and emotional
8 distress, and physical injuries, in an amount in excess of \$5,000,000.00 to be determined at the time of
9 trial;

10 2. Costs of suit incurred herein, including reasonable attorneys' fees;

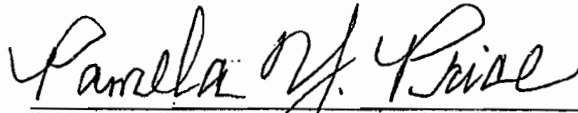
11 3. Injunctive relief against Defendant NHUSD and its agents and employees,
12 enjoining them from denying, or aiding and/or inciting the denial of the civil rights of STEVE S., JESS
13 L., ASSATA G., ELISA G., ROBBIE J., JONATHAN J., KHALIF L., DAVID G., D'ANGELO COLE,
14 DANNY GODFREY and all similarly-situated African-American students attending schools within the
15 New Haven Unified School District on the basis of race, and compelling Defendant NHUSD to take
16 prompt effective remedial action to ensure equal opportunity and a safe educational environment for
17 African-American students;

18 4. Punitive and exemplary damages against the individual Defendants in an amount
19 appropriate to punish and make an example of Defendants PAT JAUREQUI, DON MONTOYA,
20 MARCUS LAM and GRACE KIM to be determined at the time of trial; and

21 5. Such other and further relief as the Court deems just and proper.

22 Dated: December 21, 2009

PRICE AND ASSOCIATES

23
24 

25 PAMELA Y. PRICE, Attorneys for Plaintiffs
26 ALVETT FOBBS, TEOLA COLEMAN, AUZALEA
27 GODFREY, TERESE SANDERS, STEVE S., JESS L.,
28 ASSATA G., ELISA G., ROBBIE J., JONATHAN J.,
KHALIF L., DAVID G., D'ANGELO COLE and DANNY
GODFREY

EXHIBIT B

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Joseph A. Whitecavage (State Bar. No 154879)
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44 Montgomery Street, 18th Floor
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9 Attorneys for Defendants
NEW HAVEN UNIFIED SCHOOL DISTRICT,
10 PAT JAUREQUI, DON MONTOYA,
11 MARCUS LAM and GRACE KIM

ENDORSED
FILED
ALAMEDA COUNTY

MAR 11 2010

CLERK OF SUPERIOR COURT
By MARGARET J. DOWNE
Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF ALAMEDA

14 ALVETT FOBBS, AS GUARDIAN AD LITEM
15 FOR STEVE S., A MINOR; TEOLA
COLEMAN, AS GUARDIAN AD LITEM FOR
16 JESS L., A MINOR; AUZALEA GODFREY,
AS GUARDIAN AD LITEM FOR ASSATA G.
17 AND ELISA G., MINORS; TERESE
SANDERS, AS GUARDIAN AD LITEM FOR
18 ROBBIE J. AND JONATHAN J., MINORS;
TOYNICA LEDBETTER-FRANKLIN, AS
19 GUARDIAN AD LITEM FOR KHALIF L., A
MINOR; DAVID G.; D'ANGELO COLE AND
20 DANNY GODFREY, INDIVIDUALLY AND
ON BEHALF OF ALL PERSONS SIMILARLY
21 SITUATED,

Case No. RG09-490113

ANSWER TO COMPLAINT

22 Plaintiffs,

23 v.

24 NEW HAVEN UNIFIED SCHOOL DISTRICT;
PAT JAUREQUI, INDIVIDUALLY; DON
25 MONTOYA, INDIVIDUALLY; MARCUS
LAM, INDIVIDUALLY; GRACE KIM,
26 INDIVIDUALLY; AND DOES 1 THROUGH
20, INCLUSIVE,

27 Defendants.
28

1 Defendants, NEW HAVEN UNIFIED SCHOOL DISTRICT, PAT JAUREQUI, DON
2 MONTOYA, MARCUS LAM and GRACE KIM (hereinafter "Defendants") respond to
3 Plaintiffs' unverified Complaint as follows:

4 Pursuant to Code of Civil Procedure § 431.30(b) (1), Defendants generally and
5 specifically deny each and every allegation in the Complaint, and further deny that Plaintiffs have
6 suffered any loss, damage or injury, of any kind or character, whether in the amount set forth in
7 the Complaint, or in any other sum, or at all, by reason of any act, omission, fault, negligence or
8 carelessness on the part of Defendants.

9 **AFFIRMATIVE DEFENSES**

10 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
11 AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that the Complaint does not state
12 facts sufficient to constitute a cause of action against these answering Defendants.

13 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
14 AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that the Plaintiffs were careless
15 and negligent with respect to the matters alleged in the Complaint, and that such carelessness and
16 negligence proximately contributed to the loss and damages complained of, if any, and Plaintiffs'
17 contributory negligence either bars or proportionately reduces any potential recovery.

18 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
19 AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that another defendant or others
20 were careless and negligent, and that this carelessness and negligence proximately contributed to
21 the happening of the incidents referred to in Plaintiffs' Complaint.

22 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
23 AND EACH CAUSE OF ACTION THEREOF, it is alleged that the Plaintiffs failed and
24 neglected to use reasonable care to protect themselves and to minimize the losses and damages
25 complained of, if any such losses or damages exist.

26 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
27 AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that Plaintiffs assumed the risk
28 of suffering the losses and damages complained of, if any such losses or damages exist, at the

1 time and place of the incidents referred to in Plaintiffs' Complaint.

2 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
3 AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that Plaintiffs' claims for relief
4 herein are thereby barred and/or subject to proportional reduction according to comparative fault
5 principles.

6 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
7 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that Plaintiffs
8 failed to mitigate their alleged damages, and this failure to mitigate contributed to the amount and
9 extent of Plaintiffs' damages, if any there were.

10 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
11 AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that the non-economic injuries
12 and damages, if any, of which the Plaintiffs complain, were directly and proximately caused or
13 contributed to by other persons or entities, and that any judgment against these answering
14 defendants for non-economic damages may only be in direct proportion to these Answering
15 Defendants' percentage of fault, pursuant to California Civil Code Sections 1431, *et seq.*

16 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
17 AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that Plaintiffs' injuries, if any,
18 were proximately caused by an unforeseeable, independent, intervening and/or superseding event
19 beyond the control, and unrelated to any conduct of, these Answering Defendants. Defendants'
20 actions, if any, were superseded by the negligence and wrongful conduct of others.

21 AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
22 AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that the Complaint does not state
23 facts sufficient to constitute a cause of action in that the Complaint is barred by the Statute of
24 Limitations, including but not limited to those stated in part II, Title 2, Chapter 3, of the
25 California Code of Civil Procedure, beginning with Section 335 and continuing through Section
26 349.4, and specifically including but not limited to section 335.1.

27 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
28 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that these

1 Answering Defendants owed no duty of care towards Plaintiffs at the time of the incidents and
2 that Plaintiffs' injuries were not proximately caused by the acts or omissions of these Answering
3 Defendants.

4 AS AN TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
5 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that these
6 Answering Defendants allege that Plaintiffs' Complaint and each cause of action stated therein is
7 ambiguous and uncertain.

8 AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
9 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that these
10 Answering Defendants had no actual or constructive knowledge of the peril of which Plaintiffs
11 allege in their Complaint.

12 AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
13 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that these
14 Answering Defendants had no actual or constructive knowledge that the injuries of which
15 Plaintiffs complain were a probable result of Answering Defendants actions or omissions.

16 AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
17 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that these
18 Answering Defendants had no actual intent to act or fail to act to prevent the harm or type of
19 harm allegedly suffered by Plaintiffs, nor did they consciously fail to act to avoid the peril of
20 which Plaintiffs complain.

21 AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
22 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, these Answering Defendants
23 allege that the acts or omissions complained of in Plaintiffs' Complaint constitute no violation of
24 statute, regulation, or ordinance of which Plaintiffs were of the classes of people for whose
25 protection the statute, regulation, or ordinance was adopted.

26 AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
27 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, these Answering Defendants
28 allege that, to the extent that the acts or omissions complained of in Plaintiffs' Complaint

1 constitute a violation of statute, regulation, or ordinance, which violation Answering Defendants
2 expressly deny, said violation was not a proximate cause of the injuries or damages of which
3 Plaintiffs complain, nor are the injuries or damages of which Plaintiffs complain of the nature for
4 which said statute, ordinance, or regulation was designed to prevent.

5 AS AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
6 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that Plaintiffs
7 have failed to join indispensable parties and the Complaint is thereby defective, and Plaintiffs are
8 thereby precluded from any recovery whatsoever as prayed for herein.

9 AS A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
10 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that Plaintiffs'
11 Complaint and each and every claim purportedly set forth therein, is barred by the applicable
12 doctrines of waiver, laches and estoppel.

13 AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
14 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, it is alleged that Plaintiffs had
15 express knowledge of the risks and hazards set forth in the Complaint, as well as the magnitude
16 of the risks and hazards and thereafter knowingly and willingly assumed those risks.

17 AS A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
18 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants are immune from
19 liability pursuant to the provisions of California Government Code section 815.

20 AS A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
21 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants are immune from
22 liability pursuant to the provisions of California Government Code section 818.6.

23 AS A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
24 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants are immune from
25 liability pursuant to the provisions of California Government Code sections 818.8 and 815.2.

26 AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
27 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants are immune from
28 liability pursuant to the provisions of California Government Code sections 820.2 and 815.2.

1 AS A TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
2 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants are immune from
3 liability pursuant to the provisions of California Government Code sections 820.8 and 815.2.

4 AS A TWENTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
5 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants are immune from
6 liability pursuant to the provisions of California Government Code sections 822.2 and 815.2.

7 AS A TWENTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
8 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants are immune from
9 liability pursuant to the provisions of California Government Code section 835.

10 AS A TWENTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
11 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants are immune from
12 liability pursuant to the provisions of California Government Code section 835.2.

13 AS A TWENTY-NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
14 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants are immune from
15 liability pursuant to the provisions of California Government Code section 835.4.

16 AS A THIRTIETH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
17 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants are immune from
18 liability pursuant to the provisions of California Government Code section 845.

19 AS A THIRTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
20 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Plaintiffs' prayer for punitive
21 and exemplary damages is precluded pursuant to the provisions of California Government Code
22 section 818.

23 AS A THIRTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
24 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, these answering Defendants
25 allege that Plaintiffs failed to comply with the claim provisions of the California Governmental
26 Code with respect to the timely presentation of a Governmental Claim. Further, Plaintiffs'
27 claim, if submitted, differs materially from the allegations contained with the Complaint, and as
28 such, said claims not referenced in the Governmental Claim are barred.

1 AS A THIRTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
2 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants allege and aver
3 that they are immune from the allegations and causes of action contained within the Complaint
4 based upon the qualified and good faith immunities available under federal and California Law.

5 AS A THIRTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
6 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants allege and aver
7 that any recovery on Plaintiffs' Complaint, or any purportedly alleged claim therein, is barred
8 because Plaintiffs have failed to invoke and exhaust administrative remedies required to be
9 invoked and exhausted prior to the commencement of any action for recovery on the grounds
10 asserted in the Complaint.

11 AS A THIRTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
12 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants allege and aver
13 that they are immune from the allegations and causes of action contained within the Complaint
14 based upon the immunities available under California Government Code §§815 *et seq.* and §§820
15 *et seq.*, including but not limited to Government Code §§815, 815.2(b), 815.4, 815.6, 818, 820.2,
16 818.6, 818.8, 820.4, 820.6, 820.8, 821, 821.4, 821.6 and 821.8 and by virtue of California
17 Government Code §900 *et seq.* and all applicable discretionary immunities.

18 AS A THIRTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
19 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendants allege and aver
20 that the Complaint, or any purportedly alleged claim therein, is barred in whole or in part by
21 reason of Defendants' Eleventh Amendment Immunity.

22 AS A THIRTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
23 COMPLAINT AND TO EACH CAUSE OF ACTION THEREOF, Defendant New Haven
24 Unified School District asserts that it is not subject to suit for claims alleging violation of 42 USC
25 Section 1981 or 1983 as it is not a "person" subject to suit under these federal laws.
26

27 Defendants reserve their right to assert further affirmative defenses as the facts of the
28 matter are disclosed in discovery.

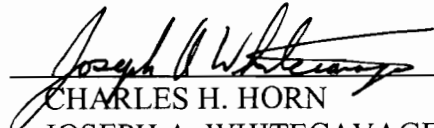
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WHEREFORE, Defendants pray for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by way of their Complaint;
2. That the Complaint be dismissed with prejudice;
3. That Defendants be awarded attorney fees and costs for suit; and
4. For such other relief that the Court deems proper and just.

Dated: March 11, 2010

LeClairRyan LLP

By: 
CHARLES H. HORN
JOSEPH A. WHITECAVAGE
Attorneys for Defendants
NEW HAVEN UNIFIED SCHOOL
DISTRICT, PAT JAUREQUI, DON
MONTAYA, MARCUS LAM
and GRACE KIM

Fobbse v. New Haven Unified School District, et al.
Alameda County Superior Court Case No.: RG09-490113

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PROOF OF SERVICE

I declare that:

I am a citizen of the United States, employed in the City and County of San Francisco, over the age of eighteen years, and not a party to the within cause. My business address is 44 Montgomery Street, 18th Floor, San Francisco, CA 94104. On this date, I served the within:


ANSWER TO COMPLAINT

on the parties in said cause, by placing a true and correct copy thereof addressed as follows:

<p><u>Attorneys for Plaintiffs</u> Pamela Y. Price, Esq. Price & Associates PLC 1611 Telegraph Avenue The Latham Square Bldg., #1450 Oakland, CA 94612</p>	<p><u>Co-Counsel for Defendants</u> New Haven Unified School District, Pat Jaurequi, Don Montoya, Marcus Lam and Grace Kim Louis A. Leone, Esq. Stubbs & Leone A Professional Corporation 2175 N. California Blvd., Suite 900 Walnut Creek, CA 94956</p>
---	---

 x (VIA U.S. MAIL) I placed for collection and deposit in the U.S. mail, copies of the above document(s) at 44 Montgomery St., 18th Fl., San Francisco, CA 94104, in a sealed envelope, addressed as above. I am readily familiar with the practice of LeClairRyan LLP for the collection and process of correspondence for mailing with the U.S. Postal Service. In accordance with the ordinary course of business, the above documents would have been deposited for first-class delivery on same day, with postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 11, 2010, at San Francisco, California.

BY: 
Judy M. Olson

Fobbse v. New Haven Unified School District, et al.
Alameda County Superior Court Case No.: RG09-490113

PROOF OF SERVICE

I declare that:

I am a citizen of the United States, employed in the City and County of San Francisco, over the age of eighteen years, and not a party to the within cause. My business address is 44 Montgomery Street, 18th Floor, San Francisco, CA 94104. On this date, I served the within:

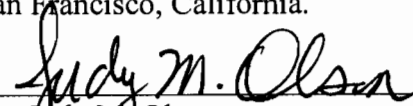
**NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §1441(b)
(FEDERAL QUESTION)**

on the parties in said cause, by placing a true and correct copy thereof addressed as follows:

<u>Attorneys for Plaintiffs</u>	<u>Co-Counsel for Defendants</u>
Pamela Y. Price, Esq. Price & Associates PLC 1611 Telegraph Avenue The Latham Square Bldg., #1450 Oakland, CA 94612	New Haven Unified School District, Pat Jaurequi, Don Montoya, Marcus Lam and Grace Kim Louis A. Leone, Esq. Stubbs & Leone A Professional Corporation 2175 N. California Blvd., Suite 900 Walnut Creek, CA 94956

 x (VIA U.S. MAIL) I placed for collection and deposit in the U.S. mail, copies of the above document(s) at 44 Montgomery St., 18th Fl., San Francisco, CA 94104, in a sealed envelope to Louis A. Leon, Esq. of Stubbs & Leone. I am readily familiar with the practice of LeClairRyan LLP for the collection and process of correspondence for mailing with the U.S. Postal Service. In accordance with the ordinary course of business, the above documents would have been deposited for first-class delivery on same day, with postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 12, 2010, at San Francisco, California.

BY: 
Judy M. Olson

10-10-1065-BZ

CIVIL COVER SHEET

JS 44 (Rev. 12/07) (CAND Rev 1/10)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<p>I. (a) PLAINTIFFS</p> <p>Alvett Fobbs, as Guardian Ad Litem for Steve S., a Minor, et al.</p>	<p>DEFENDANTS</p> <p>New Haven Unified School District, et al.</p>
<p>(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>Alameda</p>	<p>County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Alameda</p>
<p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p> <p>Pamela Y. Price, Esq., Price & Associates PLC (510) 452-0292 1611 The Telegraph Avenue The Latham Square Bldg., Suite 1450 Oakland, CA 94612</p>	<p>Attorneys (If Known)</p> <p>Charles H. Horn, Esq./Joseph A. Whitecavage, Esq. (415) 391-7111 LeClairRyan LLP 44 Montgomery Street, 18th Floor San Francisco, CA 94104</p>

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%;"> <tr> <td></td> <td style="text-align:center">PTF</td> <td style="text-align:center">DEF</td> <td></td> <td style="text-align:center">PTF</td> <td style="text-align:center">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align:center"><input type="checkbox"/> 1</td> <td style="text-align:center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align:center"><input type="checkbox"/> 4</td> <td style="text-align:center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align:center"><input type="checkbox"/> 2</td> <td style="text-align:center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align:center"><input type="checkbox"/> 5</td> <td style="text-align:center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align:center"><input type="checkbox"/> 3</td> <td style="text-align:center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align:center"><input type="checkbox"/> 6</td> <td style="text-align:center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES				
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;">PERSONAL INJURY</td> <td style="width:50%;">PERSONAL INJURY</td> </tr> <tr> <td> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> </tr> </table>	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
PERSONAL INJURY	PERSONAL INJURY							
<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability							
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY				
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 H1A (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))				
			IMMIGRATION	FEDERAL TAX SUITS				
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609				

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 USC Section 1983 and 42 USC Section 2000d

Brief description of cause:
 Alleged violations of civil rights by school district and its employees.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". C09-00687PJH and C09-02723PJH

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE: March 12, 2010

SIGNATURE OF ATTORNEY OF RECORD: *Joseph A. Whitecavage*

Fobbse v. New Haven Unified School District, et al.
Alameda County Superior Court Case No.: RG09-490113

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PROOF OF SERVICE

I declare that:

I am a citizen of the United States, employed in the City and County of San Francisco, over the age of eighteen years, and not a party to the within cause. My business address is 44 Montgomery Street, 18th Floor, San Francisco, CA 94104. On this date, I served the within:

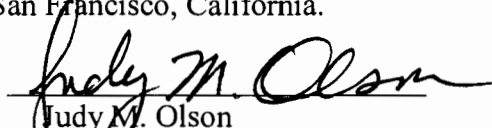
CIVIL COVER SHEET

on the parties in said cause, by placing a true and correct copy thereof addressed as follows:

<u>Attorneys for Plaintiffs</u>	<u>Co-Counsel for Defendants</u>
Pamela Y. Price, Esq. Price & Associates PLC 1611 Telegraph Avenue The Latham Square Bldg., #1450 Oakland, CA 94612	New Haven Unified School District, Pat Jaurequi, Don Montoya, Marcus Lam and Grace Kim Louis A. Leone, Esq. Stubbs & Leone A Professional Corporation 2175 N. California Blvd., Suite 900 Walnut Creek, CA 94956

x (VIA U.S. MAIL) I placed for collection and deposit in the U.S. mail, copies of the above document(s) at 44 Montgomery St., 18th Fl., San Francisco, CA 94104, in a sealed envelope to Louis A. Leon, Eq. of Stubbs & Leone. I am readily familiar with the practice of LeClairRyan LLP for the collection and process of correspondence for mailing with the U.S. Postal Service. In accordance with the ordinary course of business, the above documents would have been deposited for first-class delivery on same day, with postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 12, 2010, at San Francisco, California.

BY: 
Judy M. Olson