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IT IS ORDERED that the Judgment be entered (1) approving and adopting this Report and Recommendation; (2) granting Defendant Cate's Motion to Dismiss for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure; and (3) directing the action be dismissed with prejudice as to Defendant Cate only.

DATED: 9-21-11

HONORABLE DEAN D. PREGERSON United States District Judge

Prepared by:

HONORABLE OSWALD PARADA United States Magistrate Judge