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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARC DAWSON,

Plaintiff,

vs.

S. LATHAM, et al.,

Defendants.

No. C 08-00741 JF (PR)

ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT

(Docket No. 31)

Plaintiff, a California prisoner, filed in pro se the instant civil rights action pursuant to 42 U.S.C. § 1983 against Pelican Bay State Prison (“PBSP”) officials. The Court found the complaint, when liberally construed, stated a cognizable claim of deliberate indifference to a serious medical need in violation of the Eighth Amendment. Defendants S. Latham, M. Edwards, and B. Jain filed a motion for summary judgment. Plaintiff filed opposition to Defendants’ summary judgment motion, and Defendants filed a reply. After reviewing the complaint and all submitted papers, the Court concludes that Defendants are entitled to summary judgment and will GRANT Defendants’ motion.

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1 **DISCUSSION**

2 **I. Standard of Review**

3 Summary judgment is proper where the pleadings, discovery and affidavits show
4 that there is ‘no genuine issue as to any material fact and [that] the moving party is
5 entitled to judgment as a matter of law.’ Fed. R. Civ. P. 56(c). A court will grant
6 summary judgment “against a party who fails to make a showing sufficient to establish
7 the existence of an element essential to that party’s case, and on which that party will bear
8 the burden of proof at trial . . . since a complete failure of proof concerning an essential
9 element of the nonmoving party’s case necessarily renders all other facts immaterial.”
10 Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). A fact is material if it might affect
11 the outcome of the lawsuit under governing law, and a dispute about such a material fact
12 is genuine “if the evidence is such that a reasonable jury could return a verdict for the
13 nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

14 Generally, the moving party bears the initial burden of identifying those portions
15 of the record which demonstrate the absence of a genuine issue of material fact. See
16 Celotex Corp., 477 U.S. at 323. Where the moving party will have the burden of proof on
17 an issue at trial, it must affirmatively demonstrate that no reasonable trier of fact could
18 find other than for the moving party. But on an issue for which the opposing party will
19 have the burden of proof at trial, the moving party need only point out “that there is an
20 absence of evidence to support the nonmoving party’s case.” Id. at 325. If the evidence
21 in opposition to the motion is merely colorable, or is not significantly probative, summary
22 judgment may be granted. See Liberty Lobby, 477 U.S. at 249-50.

23 The burden then shifts to the nonmoving party to “go beyond the pleadings and by
24 her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on
25 file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” Celotex
26 Corp., 477 U.S. at 324 (citations omitted). If the nonmoving party fails to make this
27 showing, “the moving party is entitled to judgment as a matter of law.” Id. at 323.

28 The court’s function on a summary judgment motion is not to make credibility

1 determinations or weigh conflicting evidence with respect to a disputed material fact. See
2 T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir.
3 1987). The evidence must be viewed in the light most favorable to the nonmoving party,
4 and the inferences to be drawn from the facts must be viewed in a light most favorable to
5 the nonmoving party. See id. at 631. It is not the task of the district court to scour the
6 record in search of a genuine issue of triable fact. Keenan v. Allan, 91 F.3d 1275, 1279
7 (9th Cir. 1996). The nonmoving party has the burden of identifying with reasonable
8 particularity the evidence that precludes summary judgment. Id. If the nonmoving party
9 fails to do so, the district court may grant summary judgment in favor of the moving
10 party. See id.; see, e.g., Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026,
11 1028-29 (9th Cir. 2001).

12 **II. Legal Claims and Analysis**

13 Plaintiff alleges that Defendants Latham, Edwards and Jain acted with deliberate
14 indifference to his serious medical needs in connection with wrong medication that was
15 administered to him on June 8, 2006, and the manner in which they treated the resulting
16 physical ailments he suffered thereafter.

17 **A. Statement of Facts**

18 The following facts are undisputed unless otherwise indicated. On June 8, 2006,
19 Defendant S. Latham, a prison psych tech, came to Plaintiff’s cell to deliver his usual
20 dose of Neurontin. Immediately after swallowing the colorless liquid, Plaintiff realized
21 by the taste that it was not Neurontin. Plaintiff told Defendant Latham that the medicine
22 he had just ingested was not Neurontin. Defendant Latham believed it was Neurontin but
23 left the tier to check after Plaintiff insisted that it was not. She returned approximately
24 fifteen minutes later with another dose of medication which she told Plaintiff was
25 Neurontin. Plaintiff took the second dose. Plaintiff does not allege that the second dose
26 was not Neurontin. Plaintiff claims that about thirty minutes later, he began experiencing
27 “disorientation and sleepiness.” (Compl. at 5.) Plaintiff slept for the rest of the day.

28 The following day, June 9, 2006, Plaintiff awoke when a correctional officer came

1 to escort Plaintiff to group therapy. Plaintiff alleges that he felt disoriented, had blurry
2 vision particularly in his left eye, had “tense muscles,” and “felt as if someone was
3 pushing down on his head.” (Id.) Within minutes of arriving at group therapy, Plaintiff
4 notified prison staff of his symptoms, and Plaintiff was immediately escorted to the
5 nurse’s office. Plaintiff was examined by Dr. Hutchinson, who is not a party to this
6 action, in the presence of Defendant Latham. Plaintiff alleges that he told Dr. Hutchinson
7 about the medication incident from the day before, and that Dr. Hutchinson asked
8 Defendant Latham to identify the first dose of medicine which Plaintiff ingested. Plaintiff
9 alleges that Defendant Latham was unable to identify the medication, and that she
10 informed Dr. Hutchinson that the bottle had been discarded. Dr. Hutchinson prescribed
11 Benadryl and bed rest for Plaintiff. Plaintiff alleges that the rest of June 9, 2006, was
12 “foggy.” (Id. at 6.)

13 On June 10, 2006, the next day, Plaintiff awoke still feeling the effects of the extra
14 medication. Plaintiff alleges that he felt “constant pressure pushing down on his head,”
15 muscle spasms, blurred vision and a severe headache. (Id.) Plaintiff alleges that he was
16 seen by Nurse Kirkpatrick, who is not a party to this action. According to Plaintiff, Nurse
17 Kirkpatrick became concerned after taking Plaintiff’s vital signs, and ordered Plaintiff to
18 be taken to the Critical Treatment Center (“CTC”). (Id. at 7.) At CTC, Plaintiff was
19 examined by Defendant Nurse Edwards, who prescribed more Benadryl and bed rest.
20 Defendant Edwards advised Plaintiff that she would put him on the next sick-call list.
21 Plaintiff alleges that Defendant Edwards refused to draw blood for tests, believing it was
22 unnecessary. (Id. at 8.) On the same day, the first dose of medication that Plaintiff was
23 given on June 8, 2006, was identified as Haldol, which is an antipsychotic medication
24 used in the treatment of schizophrenia, and more acutely, in the treatment of acute
25 psychotic states and delirium. (Defs.’ Mot. at 4.) Haldol can cause sleepiness, dizziness
26 and blurred vision. (Id.)

27 The next sick-call list was June 13, 2006, but for unknown reasons, Plaintiff was
28 taken off the list. Plaintiff alleges for the first time in opposition that the next sick-call

1 list was June 12, 2006, according to the notation on a “Interdisciplinary Progress Notes”
2 by Defendant Edwards. (Oppo. at 19, Ex. P.) However, by Plaintiff’s own admission,
3 sick-call takes place only on Tuesdays and Thursdays, which means that as of June 10,
4 2006, the next sick-call day was Tuesday, June 13, 2006. There is no evidence to show
5 that Defendants were responsible for Plaintiff’s removal from the sick-call list for June
6 13, 2006. Although Plaintiff alleges again for the first time in opposition that Defendant
7 Dr. Jain had to be responsible for the removal because she was the doctor on June 13,
8 2006, (Oppo. at 19), there is no evidence in the record to support this conclusory
9 allegation.

10 On June 15, 2006, the following sick-call day, Plaintiff was examined by
11 Defendant Dr. B. Jain. Plaintiff alleges that Defendant Jain inaccurately noted his
12 symptoms in her medical report, such as the notation that his right eye was twitching
13 which Plaintiff denies ever complaining of and the characterization of his rigid muscle in
14 his back as simply a “tight lump in the back of head.” (Compl. at 9-10.) Defendant Jain
15 ordered Plaintiff to continue to take Benadryl and ordered an optometry evaluation and
16 blood tests for Haldol and Artane, which is an antispasmodic drug that can also cause
17 blurred vision. (Defs.’ Mot. at 4.) The blood tests were performed the next day, June 16,
18 2006, and revealed that both substances were present in trace amounts. (*Id.*) Defendant
19 Jain followed up on these results with Plaintiff on June 22, 2006.

20 On June 23, 2006, Plaintiff received the eye examination ordered by Defendant
21 Jain. The results were a mild correction for farsightedness, *i.e.*, Plaintiff needed reading
22 glasses, with no other reported vision problem.

23 **B. Deliberate Indifference**

24 Deliberate indifference to serious medical needs violates the Eighth Amendment's
25 proscription against cruel and unusual punishment. See Estelle v. Gamble, 429 U.S. 97,
26 104 (1976); McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other
27 grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en
28 banc); Jones v. Johnson, 781 F.2d 769, 771 (9th Cir. 1986). A determination of

1 “deliberate indifference” involves an examination of two elements: the seriousness of the
2 prisoner's medical need and the nature of the defendant's response to that need. See
3 McGuckin, 974 F.2d at 1059.

4 A “serious” medical need exists if the failure to treat a prisoner's condition could
5 result in further significant injury or the “unnecessary and wanton infliction of pain.”
6 McGuckin, 974 F.2d at 1059 (citing Estelle, 429 U.S. at 104). The existence of an injury
7 that a reasonable doctor or patient would find important and worthy of comment or
8 treatment; the presence of a medical condition that significantly affects an individual's
9 daily activities; or the existence of chronic and substantial pain are examples of
10 indications that a prisoner has a “serious” need for medical treatment. Id. at 1059-60
11 (citing Wood v. Housewright, 900 F.2d 1332, 1337-41 (9th Cir. 1990)).

12 A prison official is deliberately indifferent if he knows that a prisoner faces a
13 substantial risk of serious harm and disregards that risk by failing to take reasonable steps
14 to abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994). The prison official must not
15 only “be aware of facts from which the inference could be drawn that a substantial risk of
16 serious harm exists,” but he “must also draw the inference.” Id. If a prison official
17 should have been aware of the risk, but was not, then the official has not violated the
18 Eighth Amendment, no matter how severe the risk. Gibson v. County of Washoe, 290
19 F.3d 1175, 1188 (9th Cir. 2002).

20 In order for deliberate indifference to be established, therefore, there must be a
21 purposeful act or failure to act on the part of the defendant and resulting harm. See
22 McGuckin, 974 F.2d at 1060; Shapley v. Nevada Bd. of State Prison Comm'rs, 766 F.2d
23 404, 407 (9th Cir. 1985). A finding that the defendant's activities resulted in “substantial”
24 harm to the prisoner is not necessary, however. Neither a finding that a defendant’s
25 actions are egregious nor that they resulted in significant injury to a prisoner is required to
26 establish a violation of the prisoner's federal constitutional rights, McGuckin, 974 F.2d at
27 1060, 1061 (citing Hudson v. McMillian, 503 U.S. 1, 7-10 (1992) (rejecting “significant
28 injury” requirement and noting that Constitution is violated “whether or not significant

1 injury is evident”)), but the existence of serious harm tends to support an inmate’s
2 deliberate indifference claims, Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing
3 McGuckin, 974 at 1060).

4 A claim of medical malpractice or negligence is insufficient to make out a
5 violation of the Eighth Amendment. See Toguchi v. Chung, 391 F.3d 1051, 1060-61 (9th
6 Cir. 2004); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Franklin v. Oregon,
7 662 F.2d 1337, 1344 (9th Cir. 1981); see, e.g., Frost v. Agnos, 152 F.3d 1124, 1130 (9th
8 Cir. 1998) (finding no merit in claims stemming from alleged delays in administering pain
9 medication, treating broken nose and providing replacement crutch, because claims did
10 not amount to more than negligence); McGuckin, 974 F.2d at 1059 (mere negligence in
11 diagnosing or treating a medical condition, without more, does not violate a prisoner’s 8th
12 Amendment rights); O’Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990) (repeatedly
13 failing to satisfy requests for aspirins and antacids to alleviate headaches, nausea and
14 pains is not constitutional violation; isolated occurrences of neglect may constitute
15 grounds for medical malpractice but do not rise to level of unnecessary and wanton
16 infliction of pain); Anthony v. Dowdle, 853 F.2d 741, 743 (9th Cir. 1988) (no more than
17 negligence stated where prison warden and work supervisor failed to provide prompt and
18 sufficient medical care).

19 Applying these principles to the instant case, the Court concludes that Plaintiff’s
20 claims against Defendants are appropriate for summary judgment. First of all, there is no
21 genuine issue of material fact as to Plaintiff’s claim that the various ailments he suffered
22 due to the single overdose of Haldol constituted a “serious” medical condition, see
23 McGuckin, 974 F.2d at 1059-60. Furthermore, there is no evidence to support Plaintiff’s
24 claim that Defendants acted with deliberate indifference and consciously disregarded an
25 excessive risk to Plaintiff’s health in the treatment they provided after the overdose. See
26 Farmer, 511 U.S. at 837.

27 In support of their motion, Defendants have submitted the declaration of
28 Defendant S. Latham. (See Defs.’ Mot. Attach. 3; Latham Decl.) Defendant Latham

1 states that she believed that the first dose of medicine that she gave to Plaintiff on June 8,
2 2006, was Neurontin. (Latham Decl. at 2.) Plaintiff concedes in his opposition that the
3 medication error was “accidental” and that “no intent exists.” (Oppo. at 22.) Plaintiff
4 does not dispute that Defendant Latham later gave Plaintiff his regular prescribed dosage
5 of Neurontin. Based on these facts, this isolated incident by Defendant Latham
6 administering a single dose of wrong medication amounts to nothing more than
7 negligence, which is not sufficient to make out a violation of the Eighth Amendment. See
8 Toguchi, 391 F.3d at 1060-61; O’Loughlin, 920 F.2d at 617. Furthermore, there is no
9 evidence to suggest that Defendant Latham knew or should have known that Plaintiff
10 faced a “substantial risk of serious harm” since Plaintiff slept the rest of the day on June
11 8, 2006, and did not appear to be in any distress. Accordingly, it cannot be said that
12 Defendant Latham failed to take reasonable steps to abate a “substantial risk of serious
13 harm” where none was apparent. See Farmer, 511 U.S. at 837.

14 Defendants have also submitted the declaration of Dr. Jeff Gould, a board-certified
15 psychiatrist and neurologist, who has reviewed Plaintiff’s medical history to render a
16 professional opinion about the overdose of medication Plaintiff received, the alleged
17 resulting harm, and the quality of medical care rendered thereafter. (See Defs.’ Mot.
18 Attach. 2; Gould Decl.) Dr. Gould concludes that Plaintiff’s condition following the
19 overdose, which he characterizes as being “groggy and uncomfortable,” was not serious.
20 (Id. at 2.) Plaintiff continued to feel the effects of the overdose for several days, but he
21 concedes that his symptoms were improving by the time he met with Defendant Jain.
22 (Oppo. at 19.) Accordingly, the Court finds that Plaintiff’s physical ailments, which were
23 temporary and insubstantial, were not of the type that significantly affected his daily
24 activities or constituted chronic and substantial pain to warrant a “serious” need for
25 medical treatment. McGuckin, 974 F.2d at 1059-60; see e.g., O’Loughlin v. Doe, 920
26 F.2d at 617.

27 Furthermore, there is no evidence in the record to indicate that Defendants
28 unreasonably delayed in providing treatment for Plaintiff’s medical needs, assuming they

1 were serious. When Plaintiff notified prison officials about feeling unwell the day after
2 the overdoes, he was promptly taken to the prison clinic where he was examined by a
3 physician against whom Plaintiff makes no allegation of wrongdoing. After examining
4 Plaintiff, Dr. Hutchinson found no reason to prescribe anything other than Benadryl and
5 bed rest. When the symptoms persisted the next day, prison official again responded
6 promptly with medical attention by taking Plaintiff to the CTC where he was examined
7 by Defendant Edwards. The examination revealed that Plaintiff was in no apparent
8 distress: Plaintiff's vital signs were stable; his heart rate, blood pressure, respiration and
9 temperature were normal; his skin was cool and dry; his skin color was normal; and his
10 responses as registered on the Glasgow Coma Scale were normal. (Id. at 3.) Plaintiff
11 disputes the report as inaccurate, claiming that Nurse Kirkpatrick's observations of
12 Plaintiff's vital signs at the time were "not within normal range." (Oppo. at 24.)
13 However, Plaintiff has offered up no evidence by way of a declaration or other medical
14 report to support this hearsay testimony as to Nurse Kirkpatrick's observations. Plaintiff
15 also alleges that Defendant Edwards refused to draw blood because she felt it was
16 unnecessary, and that the only thing she prescribed was more Benadryl and bed rest. This
17 allegation is insufficient to show that she acted with deliberate indifference because "[a]
18 difference of opinion between a prisoner-patient and prison medical authorities regarding
19 treatment does not give rise to a § 1983 claim." Franklin v. Oregon, 662 F.2d 1337, 1344
20 (9th Cir. 1981). Similarly, a showing of nothing more than a difference of medical
21 opinion as to the need to pursue one course of treatment over another is insufficient, as a
22 matter of law, to establish deliberate indifference, see Toguchi, 391 F.3d at 1058, 1059-
23 60. Furthermore, there was no evidence to show that Defendant Edwards knew or should
24 have known that Plaintiff faced a "substantial risk of serious harm" since her examination
25 revealed that Plaintiff's vital signs were normal. Accordingly, it cannot be said that
26 Defendant Edwards failed to take reasonable steps to abate a "substantial risk of serious
27 harm" where none was apparent. See Farmer, 511 U.S. at 837. Defendant Edwards did
28 not purposely act or fail to act in response to Plaintiff's medical needs as she examined

1 him when he came to CTC, prescribed treatment, and placed Plaintiff on the next sick-call
2 list to be seen by a physician. See McGuckin, 974 F.2d at 1060.

3 In his opposition, Plaintiff makes much of the fact that the medical records state
4 that the first dose of medication was identified as Haldol on June 10, 2006, even though
5 Defendant Latham had stated that she did not know what the medicine was and that she
6 had disposed of the bottle the day before. However, this inconsistency is not significantly
7 probative on the issue of whether Defendants acted with deliberate indifference to
8 Plaintiff's medical needs. It is undisputed that Plaintiff received medical attention as
9 soon as he alerted prison staff to his physical ailments the following day, and that he
10 continued to receive care in the days thereafter when his complaints persisted.
11 Furthermore, the blood tests confirmed the presence of trace amounts of Haldol in
12 Plaintiff's system, which is consistent with the identification of the unknown medication
13 on June 10, 2006, according to the medical records.

14 With respect to the alleged damage to Plaintiff's vision, Dr. Gould notes that the
15 medical records show some differences in Plaintiff's pupils and pupillary response
16 between the right and left eyes but accounts for the difference as normal or due to a
17 previous injury to the right eye which Plaintiff concedes resulted in some permanent
18 damage. (Id.) (Oppo. at 24.) Dr. Gould concludes that Plaintiff's claim of permanent eye
19 damage due to the medication is medically improbable. The blurry vision can be
20 accounted for by the dose of Haldol which can cause sleepiness, dizziness and blurred
21 vision. (Id. at 4.) According to Dr. Gould, Haldol has a half-life of 21 to 24 hours when
22 administered orally, which means that after a single dose like the one Plaintiff received,
23 its side effects would generally not be expected to last more than 24 hours. Dr. Gould
24 states that in his own personal practice and in his review of medical literature, he has
25 found no reports of cases where any amount of Haldol resulted in permanent vision
26 damage. (Id.) Lastly, Dr. Gould states that "[c]ombining Haldol and Neurontin would
27 not increase or affect in any way the serious side effects of either, although it is possible
28 that the intended sedative affects of both might have lasted longer in combination, which

1 the records seem to bear out.” (Id. at 4.) Although the question of whether the overdose
2 was the direct cause of Plaintiff’s blurry vision is a material fact, the Court finds that
3 there is no genuine dispute over this material fact because the evidence presented is not
4 such “that a reasonable jury could return a verdict for the nonmoving party.” Anderson,
5 477 U.S. at 248.

6 Lastly, with respect to the treatment Defendant Jain provided Plaintiff, the bulk of
7 Plaintiff’s allegations involve disagreements with how Defendant Jain documented
8 Plaintiff’s complaints in her medical report, copies of which he received on June 21,
9 2006. (Compl. at 9-10.) Plaintiff was seen by Defendant Jain as scheduled on June 15,
10 2006. Defendant Jain ordered the blood tests which Plaintiff had been seeking, as well as
11 an urine analysis. Defendant Jain informed Plaintiff of the results of these tests on June
12 22, 2006. Plaintiff claims that Defendant Jain misinformed him that the results were
13 “negative” when the actual test results showed that there were still trace amounts present.
14 However, even assuming that Defendant Jain gave incorrect information to Plaintiff, this
15 fact alone does not constitute deliberate indifference since these trace amounts did not
16 warrant further medical attention; the amounts were “out of range” and otherwise
17 undetectable. (Gould Decl., Ex. F.) Defendant Jain also provided treatment for
18 Plaintiff’s blurry vision with an ophthalmologic examination on June 23, 2006. Lastly,
19 Defendant Jain’s alleged refusal to refer Plaintiff to a specialist is also without merit since
20 a difference of opinion as to the course of treatment does not give rise to a § 1983 claim.
21 See Franklin, 662 F.2d at 1344; see Toguchi, 391 F.3d at 1058, 1059-60.

22 Having reviewed the pleadings and all submitted papers on this matter, the Court
23 finds that Plaintiff’s allegations do not establish that Defendants acted with deliberate
24 indifferent to his serious medical needs. Accordingly, Defendants are entitled to
25 judgment on this claim as a matter of law. See Celotex Corp. v. Cattrett, 477 U.S. 317,
26 323 (1986).

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1 **CONCLUSION**

2 For the foregoing reasons, Defendants S. Latham, M. Edwards, and B. Jain's
3 motion for summary judgment (Docket No. 31) is GRANTED.

4 Defendants Morgan and McLean's motion for summary judgment is DENIED as
5 unnecessary. All claims against these defendants were dismissed in an earlier order, and
6 they are no longer parties to this action. (See Docket Nos. 6 & 8.)

7 IT IS SO ORDERED.

8 DATED: 9/23/09

9 
10 JEREMY FOGEL
11 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARC C DAWSON,
Plaintiff,

Case Number: CV08-00741 JF

CERTIFICATE OF SERVICE

v.

S LATHAM, et al.,
Defendants.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 9/28/09, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Marc Charles Dawson P13296
High Desert State Prison
P.O. Box 3030
B3-209L
Susanville, CA 96127-3030

Dated: 9/28/09

Richard W. Wieking, Clerk