

BACKGROUND

The Rio School District (RSD or District) the Rio Teachers Association (Association or RTA), a local affiliate of the California Teachers Association and the National Education Association (CTA/NEA), are the parties in this fact finding matter. The certificated staff in this bargaining unit are members of RTA/CTA/NEA.

The negotiations were opened with a "Demand for Negotiations" by RTA on or about September 23, 2010. The District responded with a letter stating that they would be "sunshining" District proposals on October 7, 2010 at the Board meeting and suggested that the Association "sunshine" theirs as well. They also offered dates to commence negotiation on October 11 and 19, 2010. On October 7, 2010 they received a response indicating that RTA was not ready to negotiate. On February 24, 2011, RTA's proposals were "sunshined" and negotiations were scheduled to commence on February 24, 2011. The parties met on March 8 and 14, 2011 and the District filed a Declaration of Impasse with PERB. PERB acknowledged an impasse and assigned a State Mediator. Mediation sessions were held for extensive periods of time and long hours on May 9 and 10, 2011, June 16, 2011, March 5, 2012, April 10, 2012 and April 18, 2012. During the mediation sessions extensive hours were spent on the Associations numerous language items and little time was spent on the District's financial issues. (District Facts {DF} pgs 9-11 and Association Facts {AF} Tab 4). While initially the Association

identified some 80 issues before the Panel, the Association President and District Human Relations Assistant Superintendent met and reached tentative agreement (TA) on many of those issues based on reaching a full agreement in Fact Finding (AF Tabs 6 and 10, DF Tab 30).

The issues before this Panel are Inability to Pay, salaries, work year, health benefits, post retirement health benefits, PEER Assistance and Review Program, Sabbatical Leave, Definitions, Association Rights, Miscellaneous Rights, Miscellaneous Provisions, staff meetings, minimum days, transfers and reassignments and evaluation. Both parties briefly presented their documentation and facts regarding the issues before the Panel. The Panel Members then assisted the parties in reaching a Tentative Agreement. The Association bargaining team agreed to recommend a positive ratification and the final TA was drawn up. Three members of the Bargaining Committee signed the TA, however two members, including the President abruptly exited the Fact Finding/Mediation, thereby refusing to sign the TA. Subsequently, the Panel provided the Association over 11 days in which to conduct a mailed ballot. The results were counted on Tuesday, June 26, 2012 and the Association rejected the Tentative Agreement.

When this occurred the Panel Members immediately studied both parties' entire submissions thoroughly and the Chair drafted this Report and Recommendations.

In this matter, the Panel is guided by the California

Government Code Section 3548.2 of the EERA which states in pertinent part:

In arriving at their findings and recommendation, the Fact Finders shall consider, weigh, and be guided by all the following criteria:

1. State and federal laws that are applicable to the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the public school employer.
4. Comparison of the wages, hours, and conditions of employment of the employers involved in the fact finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.
5. The consumer price index for goods and services, commonly known as the cost of living.
6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment and all other benefits received.
7. Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations."

ADDITIONAL PERTINENT STATE LAWS

Government Code Section 3547.5

- (a) Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.
- (b) The superintendent of the school district and the chief business official shall certify in writing that the costs incurred by the school district under the agreement can be met by the district during the term of the agreement. This certification shall be prepared in a format similar to that of the reports required pursuant to Sections 42130 and 42131 of the Education Code and shall itemize any budget revision necessary to meet the costs of the agreement each year of its term.

- (c) If a school district does not adopt all of the revisions to its budget needed in the current fiscal year to meet the costs of the collective bargaining agreement, the county superintendent of schools shall issue a qualified or negative certification for the district on the next interim report pursuant to Section 42131 of the Education Code.

STIPULATIONS OF RSD AND RTA

1. The Rio School District is a public school employer within the meaning of Section 3540.1(k) of the Educational Employment Relations Act.
2. The Rio Teachers Association is a recognized employee organization within the meaning of Section 3540.1(I) of the Educational Employment Relations Act and has been duly recognized as the representative of the certificated non-management bargaining unit of the Rio School District.
3. The parties to this factfinding have complied with the public notice provisions of the Government Code section 3547 (EERA, "Sunshining" requirement)
4. The parties have complied with the Educational Employment Relations Act with regard to the selection of the Factfinding Panel and are properly and timely before the Panel.
5. The parties have complied with all the requirements for selection of the factfinding panel and have met or waived the statutory time limitations applicable to this proceeding.
6. The contract issues which are appropriately before the Factfinding Panel are as follows, all other matters were agreed upon by the parties during the course of the negotiations:

Article XIX Salaries and Work Year

Article XX Health Benefits and Post Employment Retiree Health Benefits

Some 80 plus language issues in current contract language with multiple TA's based on reaching Agreement in Fact Finding and about 8 left open as identified above and again in the recommendations.

7. An impasse in bargaining was declared by the Public

Employment Relations Board on March 21, 2011. The mediation process proceeded as scheduled, and the parties continued to meet with the mediator in an effort to reach an agreement until April 21, 2012 at which point the mediator certified the matter to factfinding.

8. The factfinding chairperson, Ms. Bonnie Castrey, was notified of her assignment on or about May 21, 2012.

COMPARISON DISTRICTS

The District used the comparison districts of elementary districts, in Ventura County, where they compete for teachers in this geographic commuting area.

They are :

- Briggs Elementary
- Hueneme Elementary
- Mesa Union Elementary
- Mupu Elementary
- Ocean View Elementary
- Oxnard Elementary
- Santa Clara Elementary
- Santa Paula Elementary
- Somis Elementary

The Association did not submit comparison districts, therefore the Chair adopts the District's comparison districts for this report.

The following is a discussion of the issue of the District's claim of Inability to Pay and finding.

ISSUES

INABILITY TO PAY

DISCUSSION AND FINDING

The first issue is the question of inability to pay.

When a district asserts inability to pay, they have the heavy

burden of proving that they cannot afford to continue paying salary and benefits at the level they currently are obligated to pay and/or that they cannot afford to negotiate increases in compensation.

State law requires that school districts must maintain a positive ending balance in the current year and two successive school years. In other words, the budget for fiscal year/school year (FY) 2012-2013, which commences July 1, 2012 and ends June 30, 2013, must have a positive ending balance and a minimum three percent reserve (3%) for economic uncertainties. In addition, FY 2013-2014 and FY 2014-2015 must also be able to show a positive ending balance with at least the 3% reserve. In this matter, the Chair notes for discussion purposes that FY 2011-12 is nearly history, so we are really talking about 2012-2015.

In considering this entire argument, it is a fact that schools in California are dependent on The State of California for their revenue. Furthermore, the State is and has been in fiscal crises for several years since at least 2007 with billions of dollars in deficit budgets. Some economists have described California's budget as being in "free fall". As a result of the State budget shortfall, due to decreased sales tax, income tax, and other revenues, the State has unceremoniously cut school districts' unrestricted and categorical (restricted) funding by literally billions of dollars. For this District this amounts to more than a twenty percent (20%) decrease in unrestricted funding and about

twenty percent (20%) in restricted funding from what would be required by statute (DF tab 7, pg 111-113). Had the State not cut its unrestricted funding, also referred to as Base Revenue Limit (BRL) over the past five (5) years, RSD would have received in the 2011-2012 FY, \$6,208.00 for each student attending class each day (Average Daily Attendance or ADA). With the State decreasing its funding of the BRL, the District received only \$4,929.00 a difference of \$1,279.00 equal to 20.6% (DF Tab 15 pg 125). Complicating this FY, 2011-12, is the fact that State revenues did not materialize as projected and the "Trigger Cuts" were implemented by the State. This District had to absorb an additional \$55.00 per ADA temporary cut at mid-year. This amounted to about a total of \$250,000 (DF tab 8 pg 114). This has caused the District to project spending down its reserves and therefore to project that it is deficit spending. Additionally, the State has deferred payments of monies to school districts which has caused a cash flow issue for districts. If the deferrals continue, the District may have to borrow externally and pay interest on the borrowed money in order to pay its bills including salaries and benefits (DF Tab 13, pg 123).

The District's ending fund balance is the lowest in Ventura County at just over three and a half million dollars which converts to \$845.00 per ADA. And, for unrestricted monies only, the net ending balance is just three million dollars or about \$696 per ADA (DF Tab 11, pg 121).

The District spends nearly 88% of its unrestricted dollars on personnel, including salaries and benefits. There simply is not enough money in the 12% to absorb the deep cuts the state has imposed, to say nothing of the proposed cuts (DF Tab 14, pg 124).

In FY 2012-2013 the RSD should receive \$6,411.00 per ADA, however, according to current State budget projections, the State will only fund the BRL at \$4983.00 per ADA, which represents a \$1,428.00 deficit, equal to 22.3%. So, for every one dollar this District should receive for each student, it is receiving just under 78 cents! (DF Tab 15 pg 125). Moreover, there are continuing threats to the District's funding from the State as the November ballot likely will have two competing tax initiatives for the voters of California to consider. The District shows that if the initiative, supported by the Governor, passes, they will be flat funded for FY 2012-2013. If it fails to pass, they will lose an additional \$441.00 per ADA (DF Tab 15, pg 125). Moreover today (June 26, 2012) it was announced that the legislative trailer bill has an additional \$14.00 per ADA cut, if the Governor's tax initiative fails in November. There is no question that these are huge losses in unrestricted revenues. Further, the District is projecting to spend down its reserves and thus is deficit spending in the current fiscal year.

From the Chair's study of the budget documents, it is a fact that the District is projected to continue spending down its reserves and thus will be continuing to deficit spend in the

current fiscal year. This is a major concern particularly considering the volatility of the State's structural deficit and budgeting processes including additional midyear trigger cuts to education if the Governor's tax initiative fails.

In Sum, with the lack of a fully funded BRL and the real possibility of additional mid-year trigger cuts combined with the uncertainty of the passage of an initiative, which only gives schools flat funding, the District's ability to continue to pay the salaries and health and welfare benefits at the current level is not sustainable and will put the District into a "Qualified" and/or Negative budget status unless they make deep and sustained cuts. The Chair therefore concludes that the District meets its heavy burden of proof and does have an inability to continue to pay salaries and benefits at the current levels.

ISSUES

SALARY AND WORK YEAR DISCUSSION AND RECOMMENDATION:

Overall, the District contemplates up to a 15% savings from this bargaining unit with a combination of salary, work year and health and welfare benefits. They will not need the full amount if the Governor's tax initiative passes and/or they can negotiate the savings over two to three years. Since this Panel can only recommend savings that can be implemented now, rather than over several years, we must look to a recommendation which generates the most savings in the shortest time, in order to meet the requirements of state law in AB 1200 and Government Code Section

3547.5.

That brings us to the issue of salary in Article XIX. While all factfinding proceedings are challenging in these horrific budgetary times, this matter presents the additional challenge of the parties having reached a tentative agreement in the fact finding/mediation process, which was rejected by the RTA membership. While the parties were able to agree to a longer term agreement, the fact finding panel can only recommend settlement for this year, 2011-2012 with terms which carry forward until different terms are negotiated. And, we must recommend terms which leave the District solvent through June 30, 2015.

The District calculated 1% to be \$119,552.00 for this bargaining unit (DF Tab 1, pg 14,15). Further, a furlough day is approximately \$65,688.00 for this unit (DF Tab 2, pg 17). The District CBA currently has a 182 day school year and State law currently allows districts to have a school year of 175 days.

Therefore, the Chair recommends five (5) furlough days and a school year of 177 days effective July 1, 2012. The student instruction year will be 175 days with two (2) teacher work days scheduled prior to the start of the student instructional year. One (1) of the two (2) teacher work days shall be reserved for District staff development and the other shall be reserved for teachers to prepare their classrooms. The two (2) teacher work days, which are student free days, for the for the 2012-2013 school year shall be August 28, 2012 (District staff development day) and

August 29, 2012 (teacher classroom preparation day). This will save the District approximately \$329,000.00 or 2.75% for this bargaining unit.

In addition the Chair recommends a 3% across the board salary decrease, applied to the salary schedule, effective July 1, 2012 which will save the District approximately another \$359,000.00.

HEALTH AND WELFARE BENEFITS

When total compensation is considered, that is both salary and health benefits, the District compares very favorably with the comparable districts. It is second in total compensation at the BA+30, Step 1; third at the BA+60, Step 10 and third at the maximum. The current health benefits are paid by the District and the contribution is the highest in the comparison districts. RSD paid \$14,539.00/year in 2010-11 and currently pays \$15,110/year (the District employs a composite rate structure).

Five of the districts paid less than \$10,000/year and the rest pay up to \$13,238.89/year in the last certified data from 2010-11 (DF Tab19, pg 138 A). Ventura County collects its own data and that shows that in the 2011-2012 school year, seven of the comparison districts, currently pay less than \$10,000/year and at \$15,110 (DF Tab 25 pgs 138 a,b,c,d,e). RSD is continuing to pay the highest premium and there is no cost sharing by RTA members.

The parties, including CSEA, RTA and the District, have agreed to a new carrier, Self-Insured Schools of California (SISC). The new carrier commences in October, 2012 and therefore they will be

realizing some savings after October, 2012. They have agreed further that \$521,864.00, which is set aside in the MOU signed by RTA, CSEA and the RSD from funds withdrawn from the current carrier, Coastal Schools Employees Benefits Organization (CSEBO), will be used to offset future health and welfare increases (DF Appendices at pg D-3 #4).

The Chair recommends that a cap on benefits be set at the 2010-11 rate of \$14,539 and that all rate increases above \$14,539 each year, once the \$521,864 is depleted, be shared 60/40 by the bargaining unit members and the District. Unit members shall pay their 60% share of the increases above the maximum contribution through equal monthly payroll deductions. The amount paid by the individual unit members will be determined based on the premium costs for the plans (health, dental and vision) selected by each individual unit member. The cap shall go into effect on July 1, 2012 and bargaining unit members payments shall commence once the \$521,864 set aside by the MOU referenced above is exhausted.

POST RETIREMENT HEALTH BENEFITS

Retiree medical benefits have escalated in the last decade from \$213,000 per year to over \$700,000 per year (DF Tab 27 pg 150). This is a total of 232.0% increase which comes directly out of the general fund. Eight of the comparison districts do not pay any health and welfare benefits for retirees over 65 years and three do not contribute for retirees under 65 years.

In addition this District has set aside in an unrestricted

Fund account 20, to pay for retiree benefits. Currently there are about 35 retirees who receive this a lifetime benefit and another 27 current employees who were hired prior to 1991 are eligible for this lifetime health benefit.

For employees hired after 1991 who meet the qualifications in the CBA, they may retire and remain on the District plan until they reach age 65 and they pay 50% of the total premium.

In order to fund these plans for retirees, the District, under current contract language is obligated to add \$625,000 annually to Fund 20.

Based on the District's inability to pay, the Chair recommends that the District no longer put \$625,000 per year into Fund 20. Rather, they should spend Fund 20 on all Retiree benefits until it is depleted and then continue to meet the contractual obligations to retirees on a "pay as you" go basis.

The Chair also recommends that in line with the majority of comparison districts, as mentioned above who pay no retiree benefits, as of July 1, 2012, any new hires should not be entitled to any health and welfare benefits upon retirement.

TENTATIVE AGREEMENTS REACHED BETWEEN MEDIATION AND FACT FINDING AND ALL LANGUAGE ISSUES LISTED IN TABS 6 AND 10 of the ASSOCIATION BINDER AND TAB 30 IN THE DISTRICT BINDER

The Chair has reviewed all of these in both the District and Association Binders and recommends that the language remain as in the current CBA.

The Panel Members representing the District and Association have met in Executive Session by conference calls on June 27, 2012. Based on the above Recommendations of the Chair they concur or dissent as follows:

For the District:

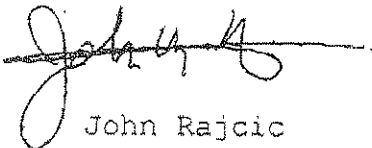
Concur
 Dissent
 Concur in part
 Dissent in part

For the Association:

Concur
 Dissent
 Concur in part
 Dissent in part

Report attached No

Report attached Yes

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John Rajcic

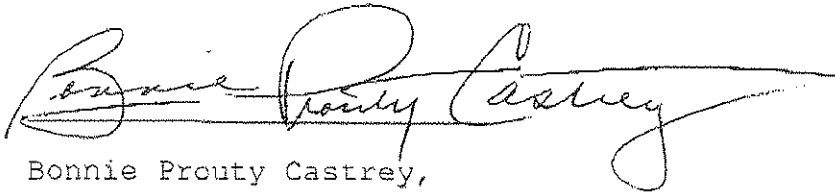
District Panel Member

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Cindy Heller

Association Panel Member

Issued with attachment on June 27 , 2012 by



Bonnie Prouty Castrey,

Panel Chair

FACT FINDING DISSENT REPORT

Between)
)
 Rio)
 School District)
)
 and)
)
 Rio Teachers)
 Association, CTA/NEA)
)
 _____)

Re: Case No. LA-IM-3633-E

I dissent and recommend the agreed upon June 15, 2012 Tentative Agreement that is attached.



Cindy Heller, Association Panel Member

TENTATIVE AGREEMENT June 15, 2012

1) Change Article XX, paragraph A.1(a) as follows:

The \$521,864.00 set aside in the MOU dated 4/11/12 shall be used to offset future health and welfare cost increases for all employee groups (hereinafter referred to as the "MOU Fund"). The MOU Fund will be augmented by any additional retained reserve funds released by CSEBO to the District. Should there be a balance remaining in the MOU Fund after the 12-13 fiscal year, that balance shall be subtracted from the increased costs of health benefits for the 13-14 fiscal year (and beyond if applicable) and if the cost increases exceed the balance remaining in the MOU Fund, to the extent that such excess costs exceed the maximum contribution set forth below, the excess will be paid by employees as set forth below. Effective 10/1/2012, the District will contribute toward the actual cost of health, dental, vision and life insurance benefits up to a maximum of \$15,110.00 per benefit year for each eligible unit member. Once the MOU Fund is depleted, any differences between the premiums for the plan selected by individual unit members and the maximum contribution rate set forth above shall be shared 50/50 by the District and the unit member, unless the parties agree otherwise. The unit member share of the premium costs that exceed the maximum contribution set forth above will be paid by unit members through ten equal monthly payroll deductions.

2) Article XX - Post Retirement Health Benefits

A) Eliminate paragraphs A.1(g) through (i) of Article XX. The Special Fund for Retiree Benefits shall be reserved for the payment of the post employment retirement health benefits referenced in Article XX for all eligible unit members hired prior to July 1, 2012. Effective July 1, 2012, all payments for retiree benefits will be paid from the Special Fund for Retiree Benefits. Once the fund is exhausted, the District will continue to pay for all post retirement benefits on a "pay as you go basis". The District will provide individual guarantees to be signed by each employee eligible for the post retirement benefits set forth in Article XX section A.1.b.

B) Unit members hired by the District on or after July 1, 2012, who have 20 or more continuous years of service with the District and have reached the age of 60, upon retirement, may elect to receive 50% of the premium cost of employee only coverage of the District's lowest cost health plan in effect at the time of retirement. The unit members listed on Exhibit A attached hereto will be deemed to have been employed prior to July 1, 2012 for purposes of eligibility for post employment retirement benefits set forth in Article XX, section A.1.c. (the start date of each employee listed on Exhibit A for purposes of calculating the years of service requirement is set forth next to each employee's name).

3) Restore the certificated work year to 185 days. The three additional days shall be professional development days. For the 2012-2013 school year, the certificated work year shall be reduced by nine days with a corresponding reduction in annual compensation. Should the Governor's proposed tax initiative pass in November 2012 and funding remain "level", 6 days shall be restored to the certificated work year for the 2012-2013 and 2013-2014 school years. The nine "furlough days" will continue through 13-14 if the Governor's tax initiative fails to pass in November 2012. Either party may re-open negotiations over the 13-14 work year if the funded BRL per ADA changes by \$75 per student from the funded 2012-2013 BRL per ADA. Further,

either party may re-open negotiations for 12-13 or 13-14 to address any unforeseen circumstances.

The reduction in compensation related to the reduced work year shall be distributed equally over ten paychecks starting in September. Should the Governor's tax initiative pass in November 2012 and six days are restored to the certificated work year, the compensation lost from September through November will be reimbursed to employees beginning with the December payroll.

The certificated work year for 2012-2013 and 2013-2014 shall consist of 176 work days, 174 of which will be student instructional days if the trailer bills to the 2012-2013 State Budget Act allow the student instructional year to be reduced below 175 days (otherwise the work year will be 176 days, 175 of which will be student instructional days). If the student instructional year can not be reduced below 175 days, the first day of the work year shall be a teacher preparation day except the Principals can hold a one hour staff meeting.

4) The District will convene each year a Curriculum Council (Grades 6-8) and Grade Level Leader Meetings (K-5) to discuss and review curriculum matters including the content of wall displays.

5) All the previously agreed to items are attached hereto.

6) The Agreement shall commence July 1, 2012 and terminate June 30, 2015. For the third year of this Agreement (2014-2015), either party may reopen salary, health and welfare benefits plus one additional article per party.

7) All other terms and conditions of the Agreement shall remain in full force and effect unless modified through the re-opener negotiation process referenced above.

8) This Tentative Agreement, upon ratification by the parties hereto, resolves any and all issues related to or arising out of the impasse and all negotiations associated therewith.

FOR THE DISTRICT:

Carolyn Bernal
Juanita M. Davila
Rebecca Rocha
Mark A. Krueger

FOR THE ASSOCIATION:

Doreen Matton
Gerardo Linares
Jeff Smith

22 pages

PROOF OF SERVICE BY MAIL and FACSIMILE
C.C.P. 1013A

I declare that I am a resident of or employed in the County of Orange, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my business is P.O. Box 5007, Huntington Beach, California 92615, Bonnie Prouty Castrey.

I am familiar with sending facsimile documents and have hereby issued and served the Fact Finding Report and Recommendations on the following parties by facsimile and/or USPS as noted below.

I am also readily familiar with the ordinary practice of the business in collecting, processing and depositing correspondence in the United States Postal Service and the correspondence will be deposited the same day with the postage thereon fully prepaid.

On June 27, 2012, I issued and served the Fact Finding Report, PERB Case No. LA-IM-3622-E on the parties listed below by sending a facsimile to the facsimile number noted and also placing a true copy thereof enclosed in a sealed envelope for the collection and mailing in the United States Postal Service following ordinary business practices at Santa Ana, California addressed as follows:

Rebecca Barbetti, President
Rio Teachers Association
780 Alverstone Avenue
Ventura, CA 93002
USPS and Fax to 805-485-1658

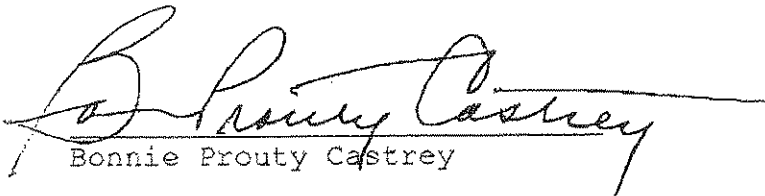
Kim Mina, CTA Representative
Rio Teachers Association
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USPS and Fax to 805-485-1658

Cindy Heller
Association Panel Member
Santa Maria RRC
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Howard Hamilton, Interim
Superintendent of Schools
Rio School District
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USPS and Fax 805-981-7736

John Rajcic, Esquire
District Panel Member
Atkinson, Andelson, Loya, Ruud and Romo
12800 Center Court Drive, Suite 300
Cerritos, CA 90703
USPS and Fax 562-653-3701

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 27, 2012 at Huntington Beach, California.


Bonnie Prouty Castrey

June 27, 2012

Date