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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

CELA

Galen Capital Group  
and William P. Danielczyk

MUR 6143

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

(1) Authorize pre-probable cause conciliation with Galen Capital Group and William P.

Danielczyk;

II. INTRODUCTION

This matter involves the reimbursement of almost \$200,000 in federal political contributions by Galen Capital Group, a closely held merchant banking and private equity firm in McLean, Virginia. In 2006 and 2007, Galen's President and CEO, William P. Danielczyk, co-hosted two fundraisers for Hillary Clinton's Senate and Presidential campaigns. Danielczyk encouraged Galen employees, their spouses, and others to go to the events and make the maximum allowable contributions. In his effort to raise large amounts for the Clinton committees and draw large crowds to the events, he and others whom he directed told almost all of the invitees that they would be reimbursed for their contributions. In fact, Danielczyk used Galen's corporate treasury funds to reimburse almost 40 contributors at least once for their contributions to Clinton's committees. In addition, Danielczyk directed his assistant to plan the fundraisers, compile guest lists, and collect and forward contributions totaling between \$170,000 and \$180,000 to the Clinton committee.

On September 19, 2007, the day before the *Wall Street Journal* reported the reimbursements,

On

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1 December 2, 2008, the Commission found reason to believe that Galen and Danielczyk  
2 knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by reimbursing federal political  
3 contributions with corporate funds and that Galen and Danielczyk violated 2 U.S.C. § 441b(a)  
4 and 11 C.F.R. § 114.2 by using corporate resources to facilitate corporate contributions.<sup>1</sup>

5 : , the  
6 Commission also authorized the use of compulsory process. See MUR 6143, Commission  
7 Certification, Dec. 4, 2008.

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<sup>1</sup> The Commission also made reason to believe findings as to certain Galen corporate officers, directors, employees and other third parties.

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19 **IV. INVESTIGATION**

20 Because Galen and Danielczyk' acknowledged that they reimbursed  
21 contributors' contributions with corporate funds, our investigation effort has mainly focused on  
22 the roles of other Galen officers and directors, the extent to which Galen facilitated the making  
23 of corporate contributions, and whether the violations were knowing and willful. At the time we

1 circulated the First General Counsel's Report, it seemed likely that, because almost all of Galen's  
2 officers and directors had been reimbursed for their contributions, at least some of them may  
3 have been involved in perpetrating the scheme as well.

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9 **A. The 2006 Senate Fundraiser**

10 Galen held the Senate Fundraiser on September 12, 2006, at the Ritz-Carlton in Tyson's  
11 Corner, Virginia. Zahir Ahmad, the owner of a company with which Galen did business, co-  
12 hosted the event. Friends of Hillary, Clinton's Senate committee, paid for all of the expenses.  
13 Galen reimbursed 11 people, including six Galen officers and employees, for contributions to the  
14 2006 Senate Fundraiser totaling \$42,400. Because the reimbursement amounts did not exactly  
15 match the contribution amounts, the corporation actually paid out \$44,129.52 in reimbursements  
16 for these contributions. Danielczyk collected and forwarded approximately \$40,000 of these  
17 contributions to the committee.

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1 Danielczyk became involved in fundraising for Hillary Clinton in early 2006 after he  
2 attended a fundraiser for her co-hosted by Richard Sullivan, a long-time Democratic fundraiser.  
3 Sullivan introduced Danielczyk to Matthew Felan, then a campaign consultant to the Clinton  
4 Senate committee. Danielczyk expressed interest in helping the campaign and hosting or co-  
5 hosting a fundraiser himself.<sup>11</sup> Sullivan, Felan and Danielczyk had a telephone conference  
6 during which Danielczyk talked about his company and eventual co-host Ahmad, and Felan was  
7 able to gauge Danielczyk's interest and ability to host a fundraiser.<sup>1</sup> Felan approved Danielczyk  
8 to co-host a fundraiser in September 2006.<sup>1</sup>

9 Danielczyk told April Spittle, his then-personal assistant at Galen, that the Clinton  
10 campaign would be calling about hosting a fundraiser and that Spittle would be the primary point  
11 of contact with the campaign and responsible for coordinating the event. In an August 2, 2006,  
12 email to Spittle, Felan asked Spittle to arrange a phone call with Danielczyk so Felan could talk  
13 to him about the logistics of the fundraiser and applicable federal campaign finance laws.  
14 Felan told Danielczyk during this phone call that corporate funds could not be accepted by a  
15 federal political committee.<sup>11</sup> He also told him that all contributions had to be made with a

1 donor's personal funds and could not be reimbursed.<sup>1</sup> Felan states that he remembered going  
2 into a lot of detail with Danielczyk about the applicable law because Danielczyk had never  
3 hosted a federal campaign fundraiser and because he resided in Virginia, where corporations are  
4 permitted to contribute to state and local candidates.

5 At Danielczyk's direction, Spittle compiled a guest list for the 2006 Senate Fundraiser,  
6 which Danielczyk approved.<sup>1</sup> The guest list primarily included Galen directors and officers and  
7 spouses and employees of Executive Office Suites, co-host's Ahmad's company.<sup>2</sup> Danielczyk  
8 appears to have invited most, if not all, of the Galen and Executive Office Suites attendees  
9 himself, in person during work hours. Danielczyk may have also announced the fundraiser at a  
10 staff meeting. Danielczyk also directed Spittle to collect contributions and response/donor  
11 authorization cards.<sup>2</sup> Many Galen attendees said they agreed to attend the event to be  
12 supportive of Galen and Danielczyk, or that they attended because the job required it.

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1           When he invited his colleagues to the fundraiser, Danielczyk stated that he was co-  
2   hosting the event. He also told many, but apparently not all of them, that they would have to  
3   make the maximum permissible contribution to Clinton's committee to attend, but that their  
4   contribution would be reimbursed. He sometimes phrased the reimbursements less directly.  
5   Also, some were not told that their contributions would be reimbursed, but they received  
6   reimbursement anyway. Both before and after the fundraiser, Spittle and Biagi distributed the  
7   reimbursement checks to Galen and Executive Office employees. Reimbursement checks were  
8   for amounts greater than the purported contributions and contained ~~monies~~ entries stating, for  
9   example, "corporate un-reimbursed expense" and "August expenses."

10           **B. The 2007 Presidential Fundraiser**

11           Galen held the Presidential fundraiser on March 27, 2007, at Hillary Clinton's  
12   Washington, D.C. residence. Zahir Ahmad again co-hosted the event, and Clinton's  
13   Presidential committee, Hillary Clinton for President, paid for the associated costs of the  
14   fundraiser. Galen reimbursed 34 individuals, including eight Galen officers and employees and

1 six of their family members, for contributions to the 2007 Presidential Fundraiser totaling  
2 \$156,300. As with the 2006 Senate Fundraiser, because the reimbursement amounts did not  
3 exactly match the contribution amounts, Galen actually paid out \$154,551.19.<sup>5</sup> The event raised  
4 approximately \$192,000 in contributions, and Danielczyk collected and forwarded between  
5 \$130,000 and \$140,000 of these contributions to the committee.

6 The Clinton campaign contacted Danielczyk in early 2007 because it believed he could  
7 become a "Hillraiser," a term the campaign used for high-grossing supporters. The campaign  
8 told Danielczyk that he could host a fundraiser at Clinton's house, but that he had to commit to  
9 raising at least \$150,000. Danielczyk agreed, and Felan was appointed as the primary  
10 committee contact. Adam Goers assisted Felan.

11 As with the 2006 Senate Fundraiser, Danielczyk approached Zahir Ahmad to co-host the  
12 event, telling Ahmad that he would be expected to raise \$75,000 in addition to his and his  
13 spouse's own contributions. Ahmad agreed, and he extended some invitations to the 2007  
14 Presidential Fundraiser.

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1 Danielczyk again asked Spittle to be the point person between himself and the campaign  
2 committee.<sup>1</sup> He also told her that her "required" contribution would be "taken care of." He  
3 told her that corporations reimburse employees for their contributions all the time because it gets  
4 employees involved and gets around the prohibition on corporations making direct  
5 contributions.

6 Also in early 2007, Galen acquired IJM, a small private aircraft company based at Dulles  
7 Airport in Virginia. A couple of weeks before the Clinton fundraising event, Danielczyk told  
8 that he was having difficulty getting commitments from people to attend  
9 the fundraiser. Danielczyk asked to invite IJM employees, and Danielczyk told  
10 that he would reimburse the IJM attendees for the \$4,600 "required" contribution to attend the  
11 fundraiser. Eleven IJM employees and some spouses agreed to go. told many, if not  
12 all, of them that their contributions would be reimbursed by Danielczyk and/or Galen.

13 Danielczyk and Spittle also personally extended invitations to the 2007 Presidential  
14 Fundraiser.<sup>1</sup> Spittle collected response/donor authorization cards and distributed reimbursement  
15 checks to Galen and IJM employees.<sup>2</sup> Spittle also reserved a limousine and a sedan to transport

1 Galen employees to Clinton's house. She filed an expense report regarding the cost of the cars  
2 and was reimbursed \$1,000 by Galen.

3 On the day before or the day of the 2007 Presidential Fundraiser, Clinton campaign  
4 workers Goers and Felan received a package from Danielczyk containing contribution checks.  
5 They reviewed the checks along with the corresponding donor authorization cards. They  
6 immediately noticed that low-level and young Galen employees had made the maximum  
7 allowable contributions. In particular, they noticed the contributions made by Spittle, a young  
8 administrative assistant. Felan and Goers became suspicious  
9 that Galen had possibly reimbursed contributors, and they decided to call Danielczyk about their  
10 concerns.

11 On the phone with Danielczyk, Felan and Goers specifically questioned the contributions  
12 from Spittle and Felan stated that the committee would not accept reimbursed  
13 contributions, and that corporate funds cannot be used for contributions.<sup>11</sup> Danielczyk assured  
14 them that he would never reimburse anyone's contribution, and that Spittle and had made  
15 the contributions on their own. He said that Spittle had recently received a \$100,000 bonus,

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1 and that he paid all his employees very well in salaries and bonuses. Felan and Goers said that  
2 they believed Danielczyk's denials that he reimbursed contributions, and they accepted the  
3 contributions on behalf of the committee.'

4 **V. LEGAL ANALYSIS**

5 Our investigation establishes that Galen and Danielczyk knowingly and willfully violated  
6 2 U.S.C. §§ 441b(a) and 441f by reimbursing \$198,700 in federal political contributions, and  
7 violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2 by using corporate resources to facilitate the  
8 making of political contributions.

9 **A. Galen and Danielczyk Reimbursed Federal Political Contributions with**  
10 **Corporate Treasury Funds**

11  
12 The Act prohibits corporations from making contributions from their general treasury  
13 funds in connection with the election of any candidate for federal office. 2 U.S.C. § 441b(a).  
14 The Act also prohibits a person from making a contribution in the name of another or knowingly  
15 permitting his or her name to be used to effect such a contribution. 2 U.S.C. § 441f.<sup>65</sup>  
16 Commission regulations provide that examples of making a contribution in the name of another  
17 include:

- 18 (i) giving money or anything of value, all or part of which was provided to the  
19 contributor by another person (the true contributor) without disclosing the  
20 source of money or the thing of value to the recipient candidate or committee  
21 at the time the contribution is made, or

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<sup>65</sup> On June 8, 2009, a federal district court judge in California dismissed criminal charges that Pierce O'Donnell violated § 441f by reimbursing conduit contributions to the 2004 presidential campaign of Senator John Edwards, ruling in part that Congress did not intend that provision to outlaw indirect contributions made through conduits. *U.S. v. O'Donnell*, C.D. Cal., Criminal No. 08-872. On September 23, 2009, the Commission filed an *amicus curiae* brief supporting the government's appeal of that decision. Oral argument took place on January 13, 2010. While this case remains pending, the Commission should and has enforced § 441f. See MUR 5504 (Karoly) and MUR 5818 (Feiger) (recent Commission matters involving Section 441f violations).

(ii) making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.

11 C.F.R. § 110.4(b)(2)(i)-(ii).

Galen and Danielczyk admitted that they reimbursed \$198,700 in federal political contributions with corporate treasury funds in their submission. The investigation provided further confirmation: Galen spent \$42,400 by reimbursing 11 contributors in connection with the 2006 Senate Fundraiser, and \$156,300 by reimbursing 34 contributors in connection with the 2007 Presidential Fundraiser.

Moreover, these violations were knowing and willful. The phrase "knowing and willful" indicates that "acts were committed with a knowledge of all the relevant facts and a recognition that the action is prohibited by law . . . ." H.R. Rpt. 94-917 at 3-4 (Mar. 17, 1976) (*reprinted in* Legislative History of Federal Election Campaign Act Amendments of 1976 at 803-04 (Aug. 1977)); *see also* *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101 (D.C. Cir. 1980) (stating that "knowing and willful" means "'defiance' or 'knowing, conscious, and deliberate flaunting' of the Act"). Danielczyk was specifically advised by Matthew Felan before the 2006 Senate Fundraiser that reimbursing contributions and corporate contributions are prohibited. Then, on the day before or the morning of the 2007 Presidential Fundraiser, Clinton committee personnel advised Danielczyk again that contributions could not be reimbursed and corporate contributions are prohibited. When they asked if he had reimbursed employee contributions, which he had already done in connection with both fundraisers, Danielczyk denied doing so. *See supra*, pp. 8-9.

Danielczyk and Galen's attempts to conceal the reimbursements further indicate that their actions were knowing and willful. *See United States v. Hopkins*, 916 F.2d 207, 213-14 (5th Cir. 1990) (holding that taking steps to disguise the source of funds used in illegal activities might reasonably be explained as a "motivation to evade lawful obligations." (*citing Ingram v. United*

1 *States*, 360 U.S. 672, 679 (1959)). Danielczyk and Galen reimbursed contributors slightly more  
2 than the contribution amount and, rather than stating on the checks that the purpose was to  
3 reimburse a campaign contribution, the checks stated other inapplicable purposes, signifying an  
4 attempt to disguise the reimbursements. See MUR 5871 (Thomas W. Noe) (certain conduits  
5 reimbursed less than maximum allowable contribution amount to avoid suspicion); MUR 5903  
6 (PBS&J) (reimbursement checks stated false purposes such as "business development"); see also  
7 MUR 5628 (AMEC) (bonus checks actually reimbursed political contributions). While  
8 Danielczyk has represented that the extra amounts were intended to cover any expenses incurred  
9 in going to the fundraiser, the extra amounts vary and do not explain why the reimbursements  
10 were given false descriptions on the reimbursement checks. Although it appears that Eugene  
11 Biagi, as Galen's treasurer, wrote the checks, it is likely that Danielczyk directed him to do so.  
12 When he delivered reimbursement checks, Biagi routinely ignored questions from contributors  
13 regarding different reimbursement amounts.<sup>6</sup>

14 Galen and Danielczyk further tried to conceal the reimbursements as news of it was about  
15 to become public. Several months after the 2007 Presidential Fundraiser, in September 2007,  
16 *Wall Street Journal* reporters began contacting Galen and UJM employees about whether they  
17 had been reimbursed for their political contributions.<sup>7</sup> According to Galen and Danielczyk,  
18 when Danielczyk found out, he "caused to be drafted" a letter, backdated to March 20, 2007,  
19 addressed to the reimbursed contributors explaining that the March 2007 check they received

1 from Galen was a consulting fee regarding the acquisition of IJM.<sup>6</sup> Spittle drafted the letter at  
2 Danielczyk's instruction, and he told her what he wanted it to say. Shortly thereafter, he  
3 directed Spittle to draft a second letter to the reimbursed contributors, backdated to September 1,  
4 2007, which included a \$1,500 check, and told her to write that the enclosed check was the  
5 second installment of the IJM consulting fee. The letters were purportedly from Biagi, but it is  
6 not clear whether he signed any, some, or all of them.

7 While a section 441f violation is inherently self-concealing, in that the true source of  
8 funds is withheld from the recipient committee, Galen and Danielczyk took active steps to  
9 conceal their illegal actions by altering the reimbursed amounts, falsely stating the purpose of the  
10 reimbursement checks on the checks themselves, and then backdating two letters in an attempt to  
11 recharacterize the reimbursement checks as consulting fees in connection with a completed  
12 corporate merger. These facts establish a "knowing, conscious, and deliberate flaunting" of the  
13 Act. *See AFL-CIO, supra*.

14 **B. Galen and Danielczyk Facilitated the Making of Corporate Contributions**

15 Section 441b(a) prohibits any officer or director of any corporation from consenting to  
16 any contribution by the corporation. This prohibition extends to the facilitation of contributions  
17 to candidates or political committees by a corporation and its officers, directors or agents. *See* 11  
18 C.F.R. § 114.2(f)(1). Facilitation includes situations when officials of a corporation direct  
19 subordinates "to plan, organize or carry out the fundraising project as part of their work

responsibilities using corporate ... resources," 11 C.F.R. § 114.2(f)(2)(i)(A);<sup>73</sup> collect and forward contributions earmarked to candidates or their authorized committees, *see* 11 C.F.R. § 110.6(b)(2)(ii); *see also* 11 C.F.R. § 114.2(f)(2)(i)(E);<sup>74</sup> and paying transportation costs for employees to attend fundraising events.<sup>75</sup>

- Danielczyk used Galen resources in his fundraising efforts. He solicited Galen employees for contributions, apparently on company premises and during work hours. He directed April Spittle, his personal assistant, to be the liaison to the Clinton committee, and she said she felt that these activities were part of her job. Danielczyk also asked several other Galen employees to assist at the fundraisers. The full range of Spittle's work in connection with the fundraisers constitutes facilitation, from planning, extending invitations, collecting response cards and contribution checks, and delivering the bundled checks to the Clinton committee.
- Danielczyk also collected, bundled and delivered most of the contributions made by Galen employees and guests to the Clinton committees.<sup>76</sup> As part of Danielczyk's efforts to have more Galen, Executive Office and IJM employees attend the fundraisers, he or Spittle personally handed out invitations and collected authorization/response cards and contribution checks. Spittle would then mail all of the response cards and checks she had to the Clinton committee.
- Galen also paid approximately \$1,000 for limousine service to transport Galen employees to the fundraiser. It appears that Danielczyk encouraged and paid for out-of-town

<sup>73</sup> See MUR 5020 (Trump/Gormley) (corporation's vice president instructed assistant to plan and carry out fundraising activities).

<sup>74</sup> See MUR 5573 (Westar Energy) (employees and agents delivered bundled contributions to committees).

<sup>75</sup> See MUR 5390 (Freddie Mac) (corporation's payment for taxis to fundraising event constituted facilitation).

1 Galen employees to attend the fundraisers, but it is not clear that there was no other  
2 purpose for their travel.

3 We do not recommend pursuing the facilitation violation as knowing and willful because  
4 we do not have any information that Danielczyk was aware of the prohibitions regarding  
5 collecting and bundling contributions, or that he or other Galen personnel attempted to conceal  
6 these actions.

7 **C. Galen and Danielczyk are Liable for these Violations**

8 Galen has admitted liability for the violations resulting from Danielczyk's actions. A  
9 corporation can only act through its employees, including corporate officials. *United States v.*  
10 *Photogrammetric Data Services, Inc.*, 259 F.3d 229, 242 (4<sup>th</sup> Cir.), *cert denied* 535 U.S. 926  
11 (2001); *United States v. Wallach*, 935 F.2d 445, 462 (2d Cir. 1991). In *United States v. Sun-*  
12 *Diamond Growers of California*, 138 F.3d 961, 970 (D.C. Cir. 1998), the court held a  
13 corporation criminally liable for the actions of its vice president, who used corporate funds to  
14 reimburse campaign contributions in violation of 2 U.S.C. §§ 441b(a) and 441f. Even though the  
15 vice president actually hid the reimbursement scheme from others, the court held the corporation  
16 liable because the vice president acted within the scope of his employment, which was to  
17 promote the corporation's interests before the federal government, and undertook the scheme to  
18 benefit the corporation. *Sun Diamond Growers*, 138 F.3d at 970.

19 Here, Danielczyk acted to further his own and his corporation's interests and reputations  
20 by supporting a viable presidential candidate. When he initially introduced himself to Clinton  
21 campaign committee staffers, Danielczyk identified himself as the owner or CEO of Galen. He



1 directed Spittle to be "Galen's" liaison with the Clinton committee.<sup>1</sup> Danielczyk appears to  
2 have invited most, if not all, of Galen's employees and officers to at least one of the fundraisers,  
3 and many contributors considered them to be work events and attended because they were  
4 requested to do so by Danielczyk.<sup>1</sup> See also MUR 5366 (O'Donnell) (O'Donnell's firm also  
5 liable because O'Donnell is chairman, O'Donnell used firm resources to further his  
6 reimbursement scheme, and he remained in his position at firm); MUR 5504 (Karoly Law  
7 offices) (Commission found knowing and willful violations as to the corporation where officer  
8 acted in his official capacity when he approved the reimbursement of contributions); MUR 5390  
9 (Freddie Mac) (finding corporation liable for violation of § 441b based upon actions of corporate  
10 officers); accord MUR 5092 (Lazaroff) (no action as to law firm that denied knowledge of the  
11 reimbursements and fired the responsible partner when it learned he reimbursed employees).

12 In addition, because Danielczyk controls and dominates Galen as the CEO, courts will  
13 impute his conduct to the corporation. See *Thabault v. Chait*, 541 F.3d 512, 527 (3d Cir. 2008);  
14 *In re National Century Financial Enterprises, Inc., Inv. Litigation*, 604 F. Supp.2d 1128, 1144  
15 (S.D. Ohio 2009) ("Accordingly, wrongful conduct may be imputed to a corporation when those  
16 responsible for the conduct either are the sole decision-makers or control and dominate the  
17 corporation.").

18 **D. Other Corporate Officers and Directors**

19 The investigation revealed that Danielczyk directed the reimbursement scheme and did  
20 not consult any other officer or director about it, except perhaps treasurer Eugene Biagi.  
21

1 Danielczyk did not hold meetings with them to discuss the reimbursement plans. Cf. MUR 5903  
2 (PBS&J) (multiple corporate officers involved in decision-making regarding corporate  
3 contribution and reimbursement scheme). Although many Galen officers and directors received  
4 reimbursement from Galen for their political contributions, and thus consented to the  
5 reimbursement and facilitation of their own contributions, we do not recommend pursuing these  
6 officers and directors for their limited roles in the scheme. Galen is a relatively small company  
7 that is closely held by Danielczyk. It appears that Danielczyk is the corporation in essence, and  
8 that the officers and directors have the titles but not much power. Danielczyk appears to have  
9 treated Galen's officers and directors the same as he treated all of the other Galen employee  
10 conduits – they were invited to the fundraisers and received reimbursement, whether they were  
11 told that they would be reimbursed or not. Galen's other officers and directors appear to be  
12 subordinate to Danielczyk and unlikely to have been able to stop the reimbursements if they had  
13 known about their illegality. Some officers and directors, like other conduits, did not know that  
14 anyone else was being reimbursed. The investigation also revealed that three Galen employees –  
15 Phillip Layton, April Spittle, and Eric Wagner – whom we initially believed to be Galen officers  
16 actually were not.

**MUR 6143 (Galen Capital Group and William P. Danielczyk)  
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**MUR 6143 (Galen Capital Group and William P. Danielczyk)  
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**MUR 6143 (Galen Capital Group and William P. Danielczyk)**  
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**MUR 6143 (Galen Capital Group and William P. Danielczyk)**  
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**VII. RECOMMENDATIONS**

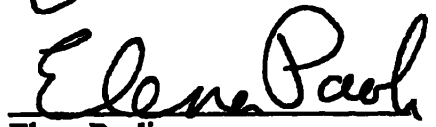
1. Authorize pre-probable cause conciliation with Galen Capital and William P. Danielczyk.
- 2.

2/22/2010  
Date

  
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