September 6, 2012

Sonoma County Board of Supervisors
575 Administration Drive, Room 100 A
Santa Rosa, California 95403

Re: Review of Sonoma County Counsel’s Report Regarding Grand Jury’s Pension Report

Dear Board of Supervisors:

The County has asked our firm to provide an independent review of County Counsel’s Report to the Board of Supervisors (County Counsel’s Report) concerning the 2012 Grand Jury Report Entitled: “Sonoma County Pension Increases in 2002 – Legal or Not?”

The 2011-2012 Sonoma County Civil Grand Jury issued its report on June 27, 2012. A citizen’s complaint alleged the Board of Supervisors did not follow statutory procedures for approving an increased pension formula in the Sonoma County Employees’ Retirement Association (SCERA) plan in 2002. Though the Grand Jury explained a complete investigation was precluded by “time constraints and the difficulty of locating the necessary documents and people to verify whether or not proper procedures were followed in 2002,” it observed “[t]he California Employees Retirement Law requirements for approving the enhanced retirement benefits in 2002 do not appear to have been followed.”

The Grand Jury also made two recommendations, advising the Board of Supervisors to:

1. Examine the procedures and actions taken when the pension increase was approved in 2002 to determine if the required procedures were followed; and

2. Obtain legal advice on how to proceed regarding current pensions if legal procedures were not followed in 2002.

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1 We have been asked to focus on County Counsel’s legal analysis of California Government Code Sections identified by the Grand Jury: 7507, 23026, 31515.5 and 31516. We have not been asked to review, nor have we reviewed, other state or Federal laws, Sonoma County Ordinances, or County policies that might have been relevant to the actions taken by the Board of Supervisors or County employees in the 2002 to 2003 time period.
To assist the Board in responding to these recommendations as California Penal Code Section 933.05 requires, County Counsel has conducted its own investigation and legal analysis, as set out in County Counsel’s Report.

We were asked to perform this review because of our legal experience with public pension fund matters. Our firm has conducted a variety of sensitive and complex reviews of such matters, and has litigated a significant number of public pension cases in California. Our work relating to public pension matters has been noted publicly by the California Attorney General, among others. In the course of this review, we have been given access to the documents underlying County Counsel’s Report, and have had the opportunity to interview individuals familiar with the underlying events.

Context for Government Code Sections 7507, 23026, 31515.5 and 31516

Government Code Sections 7507, 23026, 31515.5 and 31516 impose important obligations on a county, like Sonoma County, with a retirement system governed by the County Employees Retirement Law of 1937 (the CERL or ’37 Act). While a ’37 Act county’s primary responsibility is to fund its share of liabilities under such a system, a county exercises some control over those liabilities by establishing the formula used to determine its employees’ pensions. See, e.g., Government Code Sections 31664.1, 31664.2 and 31676.17. Government Code Sections 7507, 23026, 31515.5 and 31516 encourage a ’37 Act county to engage in a reasoned decision-making process, based on actuarial input, before increasing such liabilities. These Sections also place a check on county action by giving a ’37 Act county retirement system the opportunity to offer up its own actuarial data to the Board of Supervisors. In fact, Sections 31515.5 and 31516 were added to the Government Code at the request of the State Association of County Retirement Systems (of which SCERA is a member) to address problems associated with “pension spiking” and to help ensure the financial integrity of county retirement systems.

The financial integrity of county retirement systems in turn protects those who ultimately share the cost of funding public pensions: taxpayers and county employees. Even if the Grand Jury Report is not entirely correct about the law applicable at the time, the spirit of the Report certainly calls for the Board of Supervisors to reflect on how well it may be implementing the relevant Government Code Sections.

General Comments

We note at the outset the public has a right to expect that its government is working properly. We respect the important role played by civil grand juries impaneled annually in each county in California under its State Constitution and Penal Code. Authorized to investigate and report on the accounts, records, operations, and functions of district, city and county governments and public officials, civil grand juries in California are able to devote attention to serious issues affecting local government and have the ability to gather information not always available to the public at large.
In this case, the Sonoma County Civil Grand Jury received a citizen complaint regarding the process used to approve pension increases for County employees in 2002. As described in further detail in County Counsel's Report, the Grand Jury seems to have been misinformed as to the provisions of the law that applied at the time. We suspect that this may be because many online versions of California statutes do not reflect the history or effective dates of relevant statutory language changes. Nonetheless, the Grand Jury Report did raise a valid question regarding whether the costs of employee pension enhancements were actuarially determined in 2002 and 2003 and disclosed as required by the Government Code.

Here, the available record indicates the costs of pension enhancements were actuarially determined in accordance with the law in effect at the time by an actuary paid by the County. However, that record also suggests more attention could have been paid to publicly and timely disclosing those costs in the proper format. Although there were numerous public meetings held by the Board with approvals of various MOUs addressing pension increases and a public meeting by the Board on increased pension contribution rates, as well as SCERA's own public meetings focused on cost increases, it is still unclear whether any single public meeting by the Board of Supervisors included a comprehensive discussion of costs during 2002. Fortunately, SCERA, the CERL-governed public employees' retirement system established by the County, was working closely with the County and was informed of the pension cost information. Absent compliance with Government Code Sections 7507, 23026, 31515.5 and 31516, one could envision a bad situation in which a '37 Act county retirement system could be kept in the dark as to potential changes affecting pension costs and given no opportunity to assess and respond to effects on the funding status of county employee pensions. The language in effect at the time suggests the primary purpose of Government Code Sections 7507, 23026, 31515.5 and 31516 was to prevent just that type of problem—a purpose clearly satisfied in this case.

Specific Comments and Observations Relating to County Counsel's Report

In the Report, County Counsel addresses the Grand Jury’s recommendations and concludes (a) there appears to have been substantial compliance with Government Code actuarial and disclosure requirements when the Board approved pension increases in 2002 and 2003; and (b) the County is bound by the increases whether or not there was substantial compliance. We have had the opportunity to thoroughly review County Counsel’s Report. It is our view that County Counsel accurately describes the state of the law, both in 2002 and currently, with regard to Government Code Sections 7507, 23026, 31515.5 and 31516. It is also our view that County Counsel appropriately analyzes the available facts in light of the 2002 and 2003 versions of those statutes and draws reasonable conclusions from that analysis.

The legal analysis in County Counsel’s Report stands on its own and we are not going to attempt to repeat the entire legal analysis here. However, we offer the following additional comments and observations, following the format used in County Counsel’s Report. We encourage you to read this portion of our letter in conjunction with County Counsel’s Report.
The County Substantially Complied with the Procedural Requirements

We agree the substantial compliance doctrine would likely apply—that the relevant Government Code Sections could be satisfied by complying with each of their reasonable objectives if not their strict letter. We also agree a reasonable case could be made that there was substantial compliance with the reasonable objectives of those Government Code Sections’ actuarial and disclosure requirements. However, it is important to understand that, even if it wanted to, the County could not shed the pension obligations it took on in 2002 and 2003 simply by going to court and arguing substantial compliance was insufficient. Rather, the burden would be on the County to prove that the disclosure requirements of Government Code Sections 7507 and 31516 were not met. California law presumes that “official duty has been regularly performed.” See Evidence Code Section 664; Gentry v. City of Murrieta (1995) 36 Cal.App.4th 1359 (city presumed to have released all documents required to be released as part of its proposed declaration that no substantial evidence showed project would have significant environmental impact).

It appears the only potential procedural lapse in approving the pension increases in this case was that future annual costs as determined by an actuary may not have been disclosed at a public meeting at least two weeks before the Board adopted those increases. But the increases were considered over a 15-month period, beginning in early 2002 and ending when the court approved settlement of the Ventura-based lawsuits in mid-2003. Given that the County apparently did not retain records beyond minutes of Board of Supervisors meetings—which may not have captured in detail every item discussed or every piece of information presented—actually proving that something was not otherwise disclosed may be very difficult. We know the costs were determined by an actuary (paid by the Board) during that period. Likewise, we know SCERA held public meetings on those costs during the period. Hence, even if the Board were able to overcome the presumption and prove it did not make the costs public at least two weeks before any of the occasions when it adopted the increases, there would still be a substantial compliance issue as to whether SCERA’s public meetings were sufficient. Even then, if the County could go on to persuade a court to find no substantial compliance based on SCERA’s meetings, the County would still have to face the daunting legal hurdles described in County Counsel’s Report.

The Consent Decree Ordered the Enhanced Retirement Formulas and Prevents the County from Independently Altering the Now Vested Pension Benefit

In our view, the existence of the Consent Decree settling the post-Ventura class action discussed in County Counsel’s Report renders the remaining legal discussion largely superfluous. As a practical matter, we see no possibility that the class members covered by the Consent Decree (SCERA plan participants) would agree to roll back their enhanced pension benefits and there is no realistic way the County could do so unilaterally. The enhancements appear to have been a material element of the settlement, from the time plaintiffs’ counsel put an offer on the table in April 2002, through the time the Board of Supervisors approved the first memorandum of understanding (MOU) in June 2002, and up to and including the time the court approved the final Consent Decree in June 2003.
The Enhanced Pension Benefit’s Validity is Not Dependent on Compliance with the Procedural Requirements in Government Code Sections 7507, 31515.5 and 31516

We agree with County Counsel that the notice/disclosure provisions of Government Code Sections 7507, 23026, 31515.5 and 31516 are directory—that, unlike so-called mandatory provisions, non-compliance does not void the Board of Supervisors’ actions. Even if one could infer the application of invalidation provisions similar to those found in the Brown Act, a variety of exceptions under the Brown Act would also apply to prevent invalidation here (e.g., that there was substantial compliance with procedures or that the action taken gave rise to a contractual obligation where there was detrimental reliance). As the Brown Act also illustrates, invalidation actions must be brought swiftly to avoid uncertainty in conducting local government business. See Government Code Section 54960.1 (imposing a 90-day deadline). Here, the Board approved the benefit enhancements nearly 10 years ago.

Moreover, by approving pension obligation bonds (POBs) in May 2003, the County guaranteed its obligation to fund all liabilities incurred in agreeing to apply the 2002/2003 enhancements to then-current members’ past service—a guarantee no longer subject to challenge. Under Government Code Section 53511, the County had only 60 days to bring a Code of Civil Procedure (CCP) Section 860 court action to resolve any question as to those POBs’ validity. There is no evidence it did so, nor any evidence that an interested person brought a so-called reverse validation challenge under CCP Section 863. within the same 60 days. Hence, the County’s action in issuing the POBs is likely immune from attack, whether or not it was legally valid. See Hollywood Park Land Co., LLC v. Golden State Transp. Financing Corp. (2009) 178 Cal. App. 4th 924, 932-33 (local agency may indirectly but effectively validate its action by doing nothing).

Promissory and Equitable Estoppel Render the County’s Pension Formulas Enforceable Obligations

We agree the County would be estopped from denying the pension enhancements it promised in 2002 and 2003, given that SCERA members have been entering and continuing in county service ever since. See, e.g. Crumpler v. Board of Administration (1973) 32 Cal.App.3d 567, 581-82 (city estopped from reclassifying animal control officers it said would earn safety classification benefits). The San Diego Firefighters, Local 145 v. Board of Administration (Local 145) case, declining to find estoppel and voiding an attempted pension change, is distinguishable on multiple grounds. First, as County Counsel points out, the benefit change there was never approved by a vote of system members—a substantive requirement unlike the procedural requirement assumed to have been omitted here. Second, Local 145 makes plain that,

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2 Smith v. Board of Supervisors (1989) 216 Cal.App.3d 862 suggests an open meeting notice requirement, set out in a Health and Safety Code Section, was mandatory. But that Health and Safety Code Section expressly required the notice contain a detailed list of all proposed changes to be considered at the meeting and specified the details to be provided for each such change. Moreover, despite finding the meeting notice before it invalid, the Smith Court voided no government action. It held the notice issue was moot based on a later (untimely issued) notice, and made its ruling only to address a matter of continuing public interest.
unlike local government open meeting requirements, which are generally directory, city charter requirements are uniformly mandatory. See 206 Cal.App.4th 594, 608-09 (ordinances and resolutions not in compliance with charter are void). Third, the benefit change that the court in Local 145 held did not estop the city violated federal tax law and would have defeated the primary purpose of every public pension scheme—to provide its members tax-qualified retirement benefits; in contrast, the CERL expressly permitted the enhancements at issue here.

Final Comments/Recommendations

A few final comments and practical considerations are worth emphasizing before we offer recommendations for ensuring future compliance with Government Code Sections 7507, 23026, 31515.5 and 31516.

First, we want to be very clear: the County remains legally obligated to fund current pensions. Not only did the County enter into a 2003 court-approved settlement in which it promised to provide those pensions, it signed multiple MOUs reiterating those promises and sold bonds guaranteeing it had taken on the resulting pension obligations. No one should mistake the lengthy legal analysis about notice requirements in County Counsel’s Report as an indication that reasonable minds may differ as to whether the County is still obligated to fund County employee pensions at their current level.

Second, as County Counsel also notes, the decision to pay benefits to retirees is within the jurisdiction of SCERA. The County could not unilaterally decide to roll back benefits paid by SCERA even if wanted to do so. SCERA is a separate legal entity and, under the California Constitution, has plenary authority to make decisions of that nature.

Third, the Board of Supervisors should always bear in mind that the legal rights of California public employees to their vested pensions are some of the strongest in the country. The notion that the County could somehow use a possible procedural notice deficiency for which the County was responsible to later shed its pension obligations is not one that courts in California will accept. In addition, we could easily spend many more pages discussing meritorious defenses to a lawsuit seeking to cut current pensions based on these facts, including statutes of limitations and laches.

For these reasons, we have little doubt the County would lose a case seeking to roll back pension benefits based on claimed deficiencies in satisfying a directory notice requirement a decade ago. Further, if the County brought such a lawsuit, it would almost certainly be ordered to pay the legal fees and costs of all the opposing parties. As a caution, one need only look to the lawsuit brought by the Orange County Board of Supervisors several years ago in connection with an attempt to roll back a pension increase under the Orange County Employees’ Retirement System—Orange County reportedly paid over $4 million for its own legal fees and to reimburse the fees of opposing parties. Perhaps as important, the costs there were minimized because, in contrast to what would be required here, that case did not require extensive discovery to resolve any real factual disputes.
We turn now to the actions that should be taken by the Board.

The public must be informed of the cost of pension increases on a timely basis. In this case, the public could have obtained this information if it chose to ask. Moreover, we think it highly unlikely that more timely, properly formatted disclosures would have prevented the pension enhancements' approval, given the statewide trend at the time to increase public employee pension benefits, the comprehensive collective bargaining taking place at the time, and the County's pressing need to address its legal exposure as a result of lawsuits filed in the wake of the Ventura litigation. But none of that made proper disclosures any less important.

The obligation to maintain transparency through disclosure makes it more likely a governmental entity will follow proper procedures and engage in a reasoned decision-making process. Given the renewed focus on public pension transparency and reform in California, the Board of Supervisors must ensure the public is notified on a timely basis whenever it considers changes affecting pension costs—that any future action affecting pensions not only fully complies with statutory notification requirements, but is fully documented, with the supporting documentation retained for future reference (regardless of general document retention policies). To that end, we strongly encourage the Board to require that:

- Responsible personnel be trained as to best practices for complying with the notice requirements of Government Code Sections 7507, 23026, 31515.5 and 31516;
- In the case of future benefit increases, the Board’s contract with the actuarial firm retained to advise the County specify that firm will prepare, in addition to standard actuarial reports, a statement that complies with Government Code Sections 7507, 23026, 31515.5 and 31516, which can be used to help fulfill the Boards’ disclosure obligations under those Sections;
- When a salary or benefit proposal comes to the Board of Supervisors for approval—even if it does not explicitly trigger pension benefit increases—someone be tasked with determining whether the notice requirements in Government Code Sections 23026 and 31515.5 are implicated (and certainly, whenever there will be an effect on the County retirement system, that cost should be quantified and disclosed); and
- Even in cases where it does not appear the retirement system will be financially affected (e.g., the Board is approving an agreement to keep salaries at current levels), a specific statement be issued providing the salary or benefit decision will not increase pension obligations from current levels, so it is clear that the issue was at least considered.

Please do not hesitate to contact us if we may be of further assistance to you.

Sincerely,

Ed Gregory

Donald Wellington
About Steptoe & Johnson LLP

Steptoe & Johnson LLP ("Steptoe") is a leading national law firm headquartered in Washington, D.C., with over 450 attorneys and offices around the country, including California offices in Los Angeles and Century City. We are probably best known in California for our work on public pension-related litigation and internal reviews. The California Attorney General, among others, has noted our work on public pension-related matters.

Steptoe’s tradition of public service dates back to 1949, when Louis Johnson, the firm’s co-founder, was named Secretary of Defense under President Harry Truman. Steptoe lawyers have held a wide range of elected and appointed positions in the U.S. Congress, the executive branch, federal regulatory agencies, and the Judiciary. This experience enables us to provide unique insight into the political, regulatory, and legislative processes.

In the past several years, Steptoe has litigated the following public pension-related cases in California:


- **Hicks v. Long-Term Care Administrators**, Monterey Superior Court # M108269—Action by former participant seeking return of state-run long term care program premiums.


- **Marchetti v. Blue Cross of California**, Los Angeles Superior Court # BC377038—Action by public employee spouse seeking benefits allegedly due under state-run health care plan.

- **Marzec, et al. v. CalPERS**, Los Angeles Superior Court # BC 461885—Class action by service credit purchasers seeking benefits over and above service-connected disability retirement, as well as return of alleged overpayments for such purchases.

• **Molina v. Board of Administration,** 200 Cal.App.4th 53 (2011)—Action by retired annuitant asking his pension allowance be recalculated to include wrongful termination settlement proceeds in his “final compensation.”

• **Ramirez, et al. v. City of Pasadena,** Los Angeles Superior Court # BC 265409—Class action by contingent workers seeking public retirement system enrollment.


• **Yadegar v. PERSCare,** Los Angeles Superior Court ## LC085123, LC085488—Action by healthcare provider challenging out-of-network service reimbursements below alleged “usual and customary” rates.

• **Yost v. CalPERS,** California Second District Court of Appeal # B232920—Class action by service credit purchasers seeking benefits over and above service-connected disability retirement.

Ed Gregory, a partner in Steptoe’s Los Angeles office, has been the lead attorney on nearly all of these cases. Don Wellington, another partner in Steptoe’s Los Angeles office and former Associate Benefits Tax Counsel at the U.S. Department of the Treasury, advises several governmental entities and public pension plans in California on a variety of matters. Philip Khinda, a partner in Steptoe’s Washington, D.C. office and former senior counsel with the U.S. Securities and Exchange Commission’s Division of Enforcement, led a recent special review of a major California pension fund and works with a number of clients on pension-related issues. All three gentlemen contributed to the independent review of the Sonoma County Counsel’s Report. Their biographies are attached. More information on Steptoe can be found at www.steptoe.com.
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Areas of Practice
- ERISA/Employee Benefits/Litigation/Executive Compensation
- Employment Advice & Litigation
- ERISA, Labor & Employment

Education
- Loyola Law School, J.D., cum laude, 1986
- Stevens Institute of Technology, B.E., 1970

Bar & Court Admissions
- California

Ed Gregory practices employee benefits law in Steptoe's downtown Los Angeles office. He represents public employee retirement systems and boards in class actions and other court and administrative cases. Ed also represents private sector ERISA plans, plan fiduciaries and plan sponsors and he advises and defends California employers.

Selected Publications
Employment Update - California Supreme Court Issues Opinion on Employer Meal and Rest Break Obligations
April 12, 2012
Don Wellington is a partner in the Los Angeles office of Steptoe and a member of the Employee Benefits, Taxation, and ERISA groups. He has 20 years of experience working in the areas of employee benefits and executive compensation. He represents some of the largest pension funds in the country on a variety of matters.

Prior to rejoining Steptoe in 2000, Mr. Wellington was the Associate Benefits Tax Counsel for the US Department of the Treasury's Office of Tax Policy in Washington. His primary responsibilities included advising the Assistant Secretary (Tax Policy) with respect to the development and implementation of tax policy regarding retirement, health, stock option, and other employee benefit plans.

While at the Treasury Department, Mr. Wellington was involved in the development or review of nearly every major piece of guidance relating to qualified retirement plans and deferred compensation issued by the Treasury Department and Internal Revenue Service between Fall 1996 and Spring 2000. This included guidance implementing tax-law changes under the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, and the Internal Revenue Service Restructuring and Reform Act of 1998, as well as guidance on IRS determination letter and correction programs.

Mr. Wellington also was heavily involved in the development and review of employee benefits-related legislation while at the Treasury Department, including drafting legislative language and working closely with Congressional staffers. He also participated in the development of a number of retirement savings proposals and initiatives while with Treasury.

Mr. Wellington's practice includes advising clients on a broad range of employee benefit plan design and compliance issues. He also advises clients on the employee benefits aspects of corporate mergers and acquisitions, including transactions relating to employee stock ownership plans (ESOPs). He has represented clients on a variety of matters before the Treasury Department, the Internal Revenue Service, and the Department of Labor. He also has experience representing clients as part
Don Wellington

of the legislative process. He also serves as outside tax counsel for a number of state and local pension plans.

Noteworthy
- Recommended, Legal 500 US 2012, Employee Benefits and Executive Compensation
- Recommended, Legal 500 US 2012, Domestic Tax: East Coast
- Former Associate Benefits Tax Counsel, Attorney-Advisor, United States Department of the Treasury (1996-2000)

Select Seminars & Events

Wellington on CNN FN, July 18, 2003

Professional Affiliations
American Bar Association

Chair, Subcommittee on Government Submissions, Tax Section Employee Benefits Committee (1996)

Chair, Subcommittee on Master and Prototype Retirement Plans, Tax Section Employee Benefits Committee (1995-1996)
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Areas of Practice

• Securities Litigation & Enforcement
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• White-Collar Criminal Defense
• FCPA/Anti-Corruption
• International Regulation & Compliance
• India
• China
• Litigation

Languages

• French

Education

• Columbia Law School, J.D., 1992
• Columbia College, B.A., 1986

Bar & Court Admissions

• District of Columbia

Philip S. Khinda is a partner in the Washington office of Steptoe, and focuses on internal investigations as well as securities enforcement and corporate governance matters. He is co-head of the firm's SEC Enforcement practice, and Chair of the Ethics and Investigations Subcommittee of the American Bar Association's Corporate Governance Committee.

Mr. Khinda regularly assists corporate boards and management in conducting internal investigations, and in addressing sensitive governance and financial issues, including in connection with related government investigations and securities litigation. His leadership of the CalPERS Special Review, its fee recovery of over $200 million for the nation's largest state pension fund, and its March 2011 public report on pay-to-play and public corruption issues are recent representative efforts.

Mr. Khinda also represents and defends public companies and institutions, their officers and directors, regulated entities, and others in matters before the Securities and Exchange Commission, the Department of Justice, state prosecutors and other regulatory authorities. He is well-known for the many government investigations and inquiries he has resolved for clients without any charges ever being filed, or any public disclosure of the government's interest ever being made. Those clients have included a broad group of public companies, private equity firms, hedge funds, and investment advisers as well as corporate executives and public figures. While Mr. Khinda has served as successor and settlement counsel for a variety of institutional and individual clients, no corporation or individual that he has represented from the outset of an investigation has ever been sued by the SEC or indicted.

Mr. Khinda has advised and represented individual, corporate, and board committee clients in connection with many of the most significant securities matters in the last decade, including publicly-disclosed government investigations and litigation involving Rite Aid, Enron, Adelphia, Global Crossing, AOL Time Warner, UBS and JPMorgan, among others, appearing before US and international securities regulators on their behalf. Over the last five years, he has also assisted a series of pension fund and
mutual fund boards and board committees that investigated matters underlying the highest-profile and most complex government investigations and actions ever to face the investment management community, including leading institutions in the mutual fund market timing matters, in the mutual fund marketing kickback matters, and in the current wave of pension fund pay-to-play and public corruption matters.

Earlier in his career, Mr. Khinda served as a staff attorney and senior counsel with the SEC’s Division of Enforcement, where he led a number of high-profile and sensitive investigations, including financial fraud, investment management, market manipulation, and insider trading matters. He was previously an analyst and associate with Morgan Stanley & Company in New York.

For over a decade, Mr. Khinda has served as an Adjunct Professor of Law at Georgetown University, and has published and taught on financial reporting and accounting, corporate governance, crisis management, securities regulation, and SEC enforcement matters. He is a frequent public speaker on these topics as well, and his work and legal commentary have been covered widely by the press, including The Wall Street Journal, The New York Times, Financial Times, the Los Angeles Times, the San Francisco Chronicle, Reuters, and Bloomberg, among others. Active in international matters, Mr. Khinda serves on the Financial Services Committee of the US-India Business Council. He also serves as a member of the firm’s Diversity Committee, and of its Multicultural Attorneys group.

Select Seminars & Events


"Internal Investigations and Board Committee Reviews: Dealing with Difficult Matters in Difficult Times," Moderator of Panel, ABA Annual Meeting, Chicago (July 2009)

"Citigroup and Countrywide: Their expected effects in the Boardroom and the Courtroom," ABA Webcast (June 2009)


"Hedge Funds: A Brave New World of Regulation and Enforcement," Securities Docket Webcast (May 2009)

Co-Chair, Executive Enterprise Institute Annual SEC Enforcement Conference, Moderator of SEC Enforcement Staff Panel and presenter on Corporate Governance (Chicago, June 2007 and New York, May 2007)

Selected Publications

The Longer Arm of the Law in New York
October 28, 2011, Securities Docket

FCPA Year in Review 2010
March 15, 2011

The Rise and Rise of the NYAG
May 2010, Securities Docket

International Law Advisory - Flurry of FCPA Cases Closes Out 2009; Enforcement Continues Apace in Early 2010
March 16, 2010

Private Investor Frederic Bourke Sentenced to Prison and $1 Million Fine
November 16, 2009, International Law Advisory

International Law Advisory - SEC Adopts Several Expansive Applications of the Federal Securities Laws in the Recent FCPA Enforcement Action Against Nature's Sunshine and Two Senior Executives
September 8, 2009

International Law Advisory - Private Investor Convicted for Involvement in Scheme to Bribe Officials in the Republic of Azerbaijan
July 22, 2009

The Nuances of Securities Reform

Professional Affiliations
Chair, Ethics and Investigations Subcommittee, American Bar Association's Corporate Governance Committee
Brown Files Suit Against Former CalPERS Officials
And Freezes Assets of Alfred Villalobos

*** Brown will hold a news conference today at 1 p.m. at 1300 I Street in Sacramento to discuss the lawsuit. ***

LOS ANGELES - Attorney General Edmund G. Brown Jr. today announced that his office has filed a civil suit against former California Public Employees Retirement System (CalPERS) Board Member Alfred Villalobos, his company ARVCO Capital, and former CalPERS CEO Federico "Fred" Buenrostro, charging them with fraud.

"Working as a placement agent for ARVCO, Villalobos spent tens of thousands of dollars to lavishly entertain key senior executives at CalPERS, who then influenced the Board to authorize investments that generated over $40 million in commissions to Villalobos," explained Brown. "None of these actions were disclosed as required by law, a state pension holders and taxpayers have every right to expect."

According to the complaint, Villalobos influenced these CalPERS officials by, among other things, taking two of them on an around-the-world trip, taking another on a private jet trip to New York, and giving Buenrostro a $300,000 job and a condo when he left the pension fund.

Brown also obtained a court order to freeze Villalobos' assets and place them in receivership to recover the more than $40 million in commissions that Villalobos earned during the period alleged in the complaint. Brown explained that the freeze order, granted yesterday, was necessary because Villalobos has transferred real estate suspiciously and lost millions of dollars in high-stakes gambling, and maintains over 20 bank accounts. Among the assets placed under receivership are two Bentleys, two BMWs, a Hummer H2, art work worth more than $2.7 million, $6 million in yet-to-be-paid placement-agent commissions, and 14 pieces of real property in California, Nevada and Hawaii.

Specific charges allege that:
- Villalobos and ARVCO falsely represented that they had the required securities licenses and complied with all law;
- Defendants gave, accepted, and failed to disclose gifts;
- Villalobos and ARVCO submitted bogus disclosure forms.

In addition to a permanent order preventing the defendants from violating state securities and unfair competition laws, and the imposition of civil penalties, Brown seeks to recover the more than $40 million in placement agent commissions that Villalobos and ARVCO collected. The receiver appointed by the court will be charged with recovering the money.

Brown's Office acknowledges the full support and assistance of CalPERS and its special review headed by Philip Khinda, Esq., of the Steptoe and Johnson law firm.

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