

## AGENDA

### COMMITTEE OF THE WHOLE

**Meeting: 5:00 p.m., Tuesday, March 19, 2013**  
**Glenn S. Dumke Auditorium**

**8:30 a.m., Wednesday, March 20, 2013**  
**Glenn S. Dumke Auditorium**

Bob Linscheid, Chair  
Lou Monville, Vice Chair  
Roberta Achtenberg  
Bernadette M. Cheyne  
Rebecca D. Eisen  
Douglas Faigin  
Debra S. Farar  
Kenneth Fong  
Margaret Fortune  
Lupe C. Garcia

Steven M. Glazer  
William Hauck  
Peter G. Mehas  
Henry Mendoza  
Hugo N. Morales  
J. Lawrence Norton  
Ian L. Ruddell  
Glen O. Toney  
Cipriano Vargas

**5:00 p.m., Tuesday, March 19, 2013**  
**Glenn S. Dumke Auditorium**

#### **Consent Items**

Approval of Minutes of Meeting of September 18, 2012

#### **Discussion Items**

1. General Counsel's Report, *Information*

**\*\*Note**

**8:30 a.m., Wednesday, March 20, 2013**  
**Glenn S. Dumke Auditorium**

#### **Consent Items**

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#### **Discussion Items**

1. General Counsel's Report, *Information*

**\*\*Note:** Depending on the length of discussions on the afternoon of Tuesday, March 19, 2013, items may have to be carried over to Wednesday, March 20, 2013, for consideration.

**MINUTES OF MEETING OF  
COMMITTEE OF THE WHOLE**

**Trustees of The California State University  
Glenn S. Dumke Conference Center  
401 Golden Shore  
Long Beach, California**

**September 18, 2012**

**Members Present**

Bob Linscheid, Chair  
Roberta Achtenberg  
Bernadette M. Cheyne  
Debra S. Farar  
Kenneth Fong  
Lupe Garcia  
Steven M. Glazer  
William Hauck  
Peter G. Mehas  
Henry Mendoza  
Lou Monville  
Hugo Morales  
Lawrence Norton  
Charles B. Reed, Chancellor  
Jillian L. Ruddell  
Glen O. Toney  
Cipriano Vargas

**Approval of Minutes**

The minutes the meeting of March 20, 2012 were approved as submitted.

**General Counsel's Report**

General Counsel Helwick presented her semi-annual update on legal issues facing the CSU, including a PowerPoint presentation of litigation and claim statistics.

The meeting adjourned.

## **COMMITTEE OF THE WHOLE**

### **General Counsel's Report**

#### **Presentation By**

Christine Helwick  
General Counsel

#### **Litigation Report**

This is the semi-annual report on the status of significant litigation confronting the CSU, and is presented for information. "Significant" for purposes of this report is defined as litigation: (1) with the potential for a systemwide impact on the CSU; (2) that raises significant public policy issues; (3) brought by or against another public agency; or (4) which, for other reasons, has a high profile or is likely to generate widespread publicity. *New information since the date of the last report is printed in italics.*

The cases contained in this report have been selected from 68 active litigation files; CSU is the party pursuing relief in two of those cases.

#### **New Cases**

##### *Howard Jarvis Taxpayers Association, et al. v. CSU, et al.*

*Monterey County Superior Court*

*Howard Jarvis Taxpayers Association and Matthew Bolner, a student, sued CSU and a CSUMB professor alleging the professor unlawfully used state resources to advocate for political purposes when he sent an email from his CSUMB email account to a long list of students, urging them to vote in favor of Proposition 30. The plaintiffs seek the monetary value of the communication and a permanent injunction against CSU to cease from engaging in any future political advocacy. The professor has hired his own counsel. The case is in the pleading stage.*

##### *Western Association of Schools & Colleges v. CSU, et al.*

*Alameda County Superior Court*

*John Sheehan submitted requests for records under the California Public Records Act to multiple CSU campuses, seeking communications between campus personnel and the Western Association of Schools & Colleges. CSU agreed to produce some of the requested records. WASC filed a writ petition to seek a court order barring disclosure of all the records, alleging the documents regarding accreditation issues are confidential and proprietary. The case is in the pleading stage.*

## **Information Item**

Agenda Item 1

March 19-20, 2013

Page 2 of 8

### **Construction Cases**

#### CSU v. Clark, et al.

Santa Clara County Superior Court

CSU filed this complaint for breach of contract and negligence against the architect and general contractor for plumbing repair and replacement costs because of leaks that have occurred at SJSU's Campus Village dormitory complex. Construction was completed in 2005. CSU has repaired or replaced major portions of the plumbing system with final repair work completed in summer 2012. CSU has filed a statement of claims seeking \$29 million from the defendants. The case is in the discovery stage. *The parties have scheduled mediation for late June 2013.*

### **Employment Cases**

#### Corrales v. CSU

Los Angeles County Superior Court

Gretchen Corrales, a former cross country and track and field assistant coach at CSU Los Angeles, was not renewed in July 2010, because of several NCAA violations. Corrales alleges she was not renewed, and was falsely accused of violating NCAA rules, because she had complained about a sexual relationship between another coach and a track and field athlete, and her unequal pay. Corrales alleged discrimination, sexual favoritism, a failure to investigate or take remedial measures, and retaliation. The case is in the discovery phase. *In November 2012, Corrales was murdered, allegedly by her estranged husband. Plaintiff's counsel is attempting to substitute plaintiff's heirs as parties in the case.*

#### Gromacki v. CSU, et al.

Orange County Superior Court

Michelle Gromacki, the former head softball coach at CSU Fullerton, was placed on paid administrative leave in February 2011 because of potential misconduct. She alleges this action was intended to harass and retaliate against her because she had complained about the inequities between women's softball and men's baseball. Gromacki also raises a breach of contract claim stemming from the 10% reduction in pay because of furloughs imposed on all CSU employees during the 2009-2010 fiscal year, and that the deterioration in her performance during her three-year appointment resulted from a head injury she suffered while working that CSU allegedly failed to accommodate. Her lawsuit was filed and served two weeks before her three year appointment ended. Her appointment was not renewed. *The case settled at mediation. CSU will pay \$100,000 in cash and will reappoint Gromacki to a research position for 18 months to bridge her to retirement.*

Lee v. CSU, et al.

Los Angeles County Superior Court

Jonathan Lee was a tenure-track faculty member in the College of Business at CSU Long Beach. He alleged the University, the dean and two faculty members discriminated against him on the basis of national origin, ethnicity, age and physical disability. Lee alleged that because of the discrimination he was denied tenure and suffered emotional and psychological distress. *The case settled on September 19, 2012, for \$25,000.*

Mattiuzzi v. CSUS, et al.

U.S. District Court, Sacramento

Cici Mattiuzzi is the Director of Career Services in the College of Engineering and Computer Science at CSU Sacramento. In 2009 she filed her first lawsuit under various theories, including gender discrimination. That case was settled. This is her second lawsuit in which she alleges she was retaliated against for filing the first lawsuit, because she was excluded from meetings, denied office space, and subjected to other unfair actions. *The case has been stayed because of the bankruptcy filing of one of the individual defendants.*

Riulli v. CSU, et al.

Sacramento County Superior Court

Laura Riulli is a faculty member at CSU Sacramento. Following a similar and successful claim brought by one of her Business School colleagues, Riulli alleged violation of the California Equal Pay Act because she makes less money than the males in her department, which she claims has been a discriminatory practice since 2002. *CSU's motion for summary judgment was granted and judgment entered in favor of CSU in November 2012.*

Schulter v. CSU, et al.

U.S. District Court, San Jose

Martin Schulte, the former SJSU Director of Disability Services, sued SJSU and the administrator who decided to non-renew his employment, alleging this decision was based on his disability and was in retaliation for his work for disabled students and employees. *This case went through two rounds of mediation and ultimately settled for \$500,000.*

**Environmental Cases**

City of Hayward v. CSU

California Supreme Court

The City of Hayward filed a CEQA challenge to the 2009 CSUEB Master Plan Environmental Impact Report, claiming the University failed to adequately analyze impacts on public services,

## **Information Item**

Agenda Item 1

March 19-20, 2013

Page 4 of 8

including police, fire, and emergency services. The City demanded that the University provide funding for additional fire facilities.

The Hayward Area Planning Association and Old Highlands Homeowners Association, two local residential homeowners' associations, filed a second CEQA challenge to the 2009 CSUEB Master Plan EIR, alleging shortcomings in nearly every aspect of the environmental findings, with an emphasis on the University's alleged failure to consider bus and other improvements to public transit access to the campus. On September 9, 2010, the trial court ruled in favor of the petitioners on nearly every issue and enjoined the University from proceeding with construction. The University appealed.

In June 2012, the Court of Appeal ruled the CSU East Bay Master Plan EIR is adequate, except for failing to analyze impacts on local recreational facilities. The Court's ruling includes a finding that CSU's determination that new fire protection facilities will not result in significant environmental impacts was supported by substantial evidence. Importantly, the Court also held that the obligation to provide adequate fire and emergency services is the responsibility of the City of Hayward, and the need for additional fire protection services is not an environmental impact that CSU must mitigate. The City and HAPA/OHHA filed a petition for review with the California Supreme Court.

*The petition for review was granted in October 2012, but the matter has been deferred pending resolution of the SDSU Master Plan EIR case (below) awaiting oral argument.*

### City of San Diego, et al. v. CSU

California Supreme Court

The EIR for the 2005 SDSU Master Plan was challenged in three lawsuits filed by the City of San Diego, Alvarado Hospital and Del Cerro Neighborhood Association, each alleging the EIR did not adequately address necessary mitigation measures. The Alvarado lawsuit was dismissed.

After the Supreme Court's City of Marina decision, SDSU prepared a revised 2007 Master Plan EIR challenged again by the City of San Diego, the San Diego Metropolitan Transit System and the San Diego Association of Governments. Each alleged that the EIR did not adequately address necessary mitigation measures and that the CSU must fund all mitigation costs, irrespective of Legislative funding. The Del Cerro lawsuit and these three lawsuits have been consolidated.

In February 2010, the court denied the challenges to SDSU's 2007 Master Plan EIR, finding CSU met all of the requirements of the City of Marina decision and CEQA by requesting Legislative funding to cover the cost of local infrastructure improvements. CSU is not required to fund those projects on its own, or to consider other sources of funding for them. The decision also held that the EIR properly considered potential impacts, was supported by substantial evidence,

that CSU properly consulted with SANDAG, and that petitioners were barred from proceeding on other sources of funding because it was not raised in the underlying administrative proceedings. Del Cerro agreed to dismiss its lawsuit for CSU's waiver of costs; the City of San Diego, SANDAG and MTS appealed.

On December 13, 2011, the Court of Appeal reversed the trial court's decision and ordered the Master Plan be vacated. The California Supreme Court granted CSU's petition to review the case. *The matter has been briefed and is awaiting oral argument.*

Keep Fort Ord Wild v. County of Monterey, et al.

Monterey County Superior Court

Keep Fort Ord Wild filed a petition against the Fort Ord Reuse Authority and the County of Monterey alleging they failed to comply with the California Environmental Quality Act in connection with a proposed roadway project. Keep Fort Ord Wild also named CSUMB as a party because a portion of the roadway is on property that will be deeded to the campus in the future. The case is in the briefing phase.

LandValue 77, et al. v. CSU, et al.

Court of Appeal

LandValue 77, a private business entity in Fresno, filed a CEQA challenge to the Campus Pointe project, with a claim of conflict of interest involving former Trustee Moctezuma Esparza, whose company was slated to operate a movie theater in the project. In July 2009, the court determined the environmental impact analysis for Campus Pointe fully complies with CEQA, except for additional analysis required on overflow parking and traffic, and certain water and air quality issues. The court also determined that because former Trustee Esparza had a financial interest in a sublease between Maya Cinemas and Kashian Enterprises, the developer on the project, an irresolvable conflict of interest existed when the Board took the vote on the Campus Pointe EIR, and the theater sublease must be voided. LandValue appealed the trial court's ruling.

In February 2011, the appellate court ruled that voiding the Esparza theater sublease was a sufficient remedy to address the conflict of interest issue. The court formally set aside the EIR, and did not expand the scope of the required environmental review. The University was given an opportunity to fix the original three deficiencies identified by the trial court and reissue the EIR. A revised EIR addressing the court's concerns was circulated for public review and subsequently approved by the Board. In February 2012, the trial court found CSU had addressed all CEQA issues.

LandValue had requested attorneys' fees and costs as the prevailing party. Finding LandValue had pursued this action for primarily its own financial interests, and not for the benefit of the

## **Information Item**

Agenda Item 1

March 19-20, 2013

Page 6 of 8

public, the court denied LandValue's request. LandValue appealed the attorneys' fees decision. The appeal is in the briefing stage.

### **Personal Injury Cases**

#### Baird-Olson v. Fernandez, et al.

Los Angeles County Superior Court

Karren Baird-Olson, a 74 year old Associate Professor of Sociology, alleges that while she was participating in a March 4, 2010 demonstration at CSU Northridge protesting student fee increases, certain CSUN and LAPD officers knocked her to the ground, broke her arm and stomped on her chest while moving in to arrest a fellow protestor. She asserts causes of action for excessive force, and assault and battery. The case is in the discovery phase. *CSU's motion for summary judgment has limited the case to a claim for assault and battery only and the CSU was dismissed from the case, leaving the three individually-named CSU police officers and the LAPD. Trial has been set for September 30, 2013.*

#### Lane v. CSU, et al.

San Luis Obispo County Superior Court

Donna Lane is a member of the Cal Poly Presidential Advisory Board, and was injured on May 2, 2010, when she fell off the Cal Poly Performing Arts Center stage while attending an advisory board function. The insurance carrier for the Performing Arts Center accepted CSU's tender of defense. *The parties agreed to settle the case for \$1,000,000, paid by the insurance carrier.*

#### Naghash v. CSU, et al.

Sacramento County Superior Court

Ashley Naghash, a freshman at CSU Sacramento, alleges she was sexually assaulted in a campus dormitory by a fellow student after she had consumed numerous alcoholic beverages. She claims that CSU failed to prevent the incident from occurring and failed to provide adequate protection in the dorm. *The court granted CSU's challenge to the sufficiency of the original and first amended complaints, but gave plaintiff an opportunity to amend. CSU subsequently moved to dismiss plaintiff's second amended complaint and a hearing has been set for April 11, 2013.*

#### Sanchez-Graves v. CSU, et al.

San Bernardino County Superior Court

Yvonne Sanchez-Graves was a student in an Outdoor Education class at CSU Northridge that participated in a field trip to Joshua Tree National Park. As the group was preparing dinner, one of the gas camping stoves lit by a faculty member flamed up and plaintiff was significantly burned. The faculty member, Alan Wright, is also a named defendant. *CSU filed product liability cross-complaints against three entities that manufactured and sold the camping stove;*



*plaintiff then amended her complaint to name these three entities. The case is in the discovery phase.*

Steward v. Guseman

San Diego County Superior Court

Norma Steward alleges that Dennis Guseman, an employee of CSU San Marcos, struck her and her husband with his car while they were walking in an intersection. Steward suffered severe injuries and her husband died. Guseman was driving to meet friends for breakfast. Steward contends he was acting in the course and scope of his employment. On December 5, 2011, the court granted summary judgment in favor of CSU. Steward appealed. *The matter has been briefed and argued.*

**Student Cases**

Alpha Delta-Chi-Delta Chapter, et al. v. Reed, et al.

U.S. District Court, San Diego

A group of Christian student organizations and students at the San Diego and Long Beach campuses sued under various legal theories to challenge the constitutionality of the CSU anti-discrimination policy, which refuses recognition of student organizations that discriminate on the basis of religion, sexual orientation or marital status. The plaintiff groups exclude non-Christians, homosexuals and others from joining or becoming officers. They allege their First Amendment rights of freedom of religion and association trump CSU's anti-discrimination prohibition, and that they must be recognized and provided full access to University facilities. The court denied plaintiffs' motion for a preliminary injunction, and both sides filed summary judgment motions. In 2009, the court found CSU's non-discrimination policy constitutional, and granted CSU's summary judgment motion. Plaintiffs appealed. In 2010, the United States Supreme Court affirmed a judgment upholding a similar University of California policy.

On August 2, 2011, the Ninth Circuit Court of Appeals issued a ruling affirming CSU's non-discrimination policy is constitutional. The court also remanded the matter back to the trial court to examine whether the campus evenhandedly applied the policy to other student groups. Plaintiffs' petition for review with the United States Supreme Court was denied. *The case is back in the discovery stage. The court permitted discovery to be reopened to address the issues specified in the Ninth Circuit's decision (whether plaintiffs were treated differently than other groups).*

## **Information Item**

Agenda Item 1

March 19-20, 2013

Page 8 of 8

### Donselman, et al. v. CSU

San Francisco County Superior Court

Five students brought this class action to challenge the state university fee and non-resident tuition increases, and the Graduate Business Professional fee, from fall 2009. The court granted plaintiffs' motion to certify two subclasses that exclude four campuses where fees were posted late and/or students received financial aid to cover their increased fees. The two subclasses comprise approximately 175,000 students (down from over 400,000). CSU filed writs in the court of appeal and the California Supreme Court to challenge the class certification decision. Both were denied. Notice of the litigation was provided to the class members. After plaintiffs changed their legal theories to add alternative contract formation arguments, CSU moved to decertify the class, which was denied. *The case remains in the discovery phase. Trial has been set for March 17, 2014.*

## **Other Cases**

### SETC-United v. CSU, et al.

San Francisco County Superior Court

The State Employees Trades Council's collective bargaining agreement with CSU expired on June 30, 2008. The Education Code requires prevailing wages be paid to certain hourly laborers unless a collective bargaining agreement states otherwise. SETC claims that when its collective bargaining agreement expired, its employees should have been paid prevailing wages. Because CSU pays SETC employees on a monthly, not an hourly basis, the Education Code requirement should not apply. The case is in the discovery phase.

## **Administrative Hearings**

There is one administrative hearing result during this reporting period that raises significant public policy issues that have broad impact on the CSU system.

### Beal v. CSU Fresno

He Yan Beal, a tenure-track professor at Fresno was dismissed because she was simultaneously employed in another tenure-track position at a different university on the East Coast and not adequately fulfilling her responsibilities at Fresno. In this appeal from her dismissal, Beal claimed she had no obligation to disclose this additional employment and that she was fulfilling her Fresno faculty responsibilities. The arbitrator disagreed and affirmed the dismissal, concluding Beal's clandestine employment on the other side of the continent was in conflict with her position as a CSU Fresno faculty member. Newly negotiated terms in the CFA contract will strengthen faculty additional employment reporting requirements going forward.