

AGENDA

COMMITTEE OF THE WHOLE

**Meeting: 9:00 a.m., Tuesday, March 26, 2014
Glenn S. Dumke Auditorium**

Bob Linscheid, Chair
Lou Monville, Vice Chair
Roberta Achtenberg
Talar A. Alexanian
Adam Day
Rebecca D. Eisen
Douglas Faigin
Debra S. Farar
Margaret Fortune
Lupe C. Garcia
Steven M. Glazer
Lillian Kimbell-Del Bosque
Hugo N. Morales
J. Lawrence Norton
Steven G. Stepanek
Cipriano Vargas

Consent Items

Approval of Minutes of Meeting of September 25, 2013

Discussion Items

1. Joint Presentation from California State University Chancellor, Timothy P. White; University of California President, Janet Napolitano; and California Community College Chancellor, Brice W. Harris, *Information*
2. General Counsel's Report, *Information*

**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 25, 2013

Members Present

Bob Linscheid, Chair
Roberta Achtenberg
Talar A. Alexanian
Rebecca D. Eisen
Douglas Faigin
Margaret Fortune
Lupe C. Garcia
Steven M. Glazer
William Hauck
Peter G. Mehas
Lou Monville
Hugo N. Morales
J. Lawrence Norton
Cipriano Vargas
Timothy P. White, Chancellor

Approval of Minutes

Chair Linscheid, hearing no objections, approved the minutes of March 19, 2013.

General Counsel's Report

Interim General Counsel G. Andrew Jones presented the 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

Joint Presentation from California State University Chancellor, Timothy P. White; University of California President, Janet Napolitano; and California Community College Chancellor, Brice W. Harris

Presentation By:

Timothy P. White
Chancellor, California State University

Janet Napolitano
President, University of California

Brice W. Harris
Chancellor, California Community College

Summary

The leaders of California's three systems of public higher education will appear before the Board of Trustees, Committee of the Whole to discuss areas of collaboration and common interest across the systems. This will be the third such meeting of the three system heads this year, having previously appeared before the University of California, Board of Regents and the California Community College, Board of Governors. The discussion will build upon the dialogue of previous appearances, discussing steps for improved collaboration on K-12 outreach, business services and transfers. These three formal meetings before the governing bodies of California systems of public higher education have been supplemented by regular and renewed communication between the three system heads and leadership teams.

COMMITTEE OF THE WHOLE

General Counsel's Report

Presentation By

Framroze Virjee
Executive Vice Chancellor
and 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.*

We currently have 68 active litigation cases, including two where CSU is the plaintiff. The cases contained in this report have been selected from those active during the last six months.

New Cases

*City and County of San Francisco v. Regents of the University of
San Francisco County Superior Court*

The City and County of San Francisco filed a lawsuit against the University, as well as the University of California and U.C. Hastings College of the Law. The City and County of San Francisco are asking the court to require the University to collect the S. F. Parking Tax of 25% on all University parking spaces. The case is in the early pleading stage.

*CSU v. Pacific Gas & Electric Company
Butte County Superior Court*

The campus and its Research Foundation have sued PG&E to recover money spent on costly remedial activities and disposal of waste discovered during the construction of an activity center on the Chico campus. The waste was created by an old manufactured gas plant. PG&E is responsible for the manufactured gas plant. The case is in the pleading stage.

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 for 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's complaint seeks approximately \$29 million in damages. *The parties participated in two rounds of mediation that were unsuccessful. This case is still in the discovery phase.*

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 both about a sexual relationship between another coach and a track and field athlete and her unequal pay. Corrales has alleged discrimination, sexual favoritism, a failure to investigate or take remedial measures, and retaliation. In November 2012, Corrales was murdered, allegedly by her estranged husband. *Plaintiff's counsel is attempting to substitute plaintiff's daughters as parties in this case. The case is on hold until June 9, 2014.*

Fayek v. CSU, et al.

Butte County Superior Court

Plaintiff, Abdel-Moaty Fayek, was a faculty member in the Department of Computer Science. He contends he entered into a self-funded buyout agreement with the campus where he would gain industry experience while on an approved leave. From approximately 1997 to 2006, plaintiff received his campus salary and reimbursed it to the Research Foundation as part of the alleged agreement. The campus discovered this arrangement and immediately contacted CalPERS and the State Controller's Office to correct the employee's payroll records. Plaintiff has sued the campus, the Research Foundation, three individual defendants and CalPERS to restore his service credit. *The CSU has filed a motion challenging the pleading.*

Gibson v. CSU, et al.

Los Angeles County Superior Court

Plaintiff Bruce Gibson is the former Senior Director of Human Resource Services and Systemwide EEO & Whistleblower Compliance. CSU terminated Gibson's employment in September 2012 based on performance. This lawsuit claims the termination was in retaliation

for his having made various disclosures he claimed were protected. *The case is in the discovery stage. Trial is scheduled for October 6, 2014.*

Mattiuzzi v. CSUS, et al.

Ventura County Superior Court

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 proceeded to trial on January 7, 2014. After three days of testimony, plaintiff elected to voluntarily dismiss the case and release her claims in exchange for a waiver of costs from the University.*

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. It is CSU's contention that because CSU pays SETC employees on a monthly, not an hourly basis, the Education Code requirement should not apply. *CSU filed a motion to dismiss for failure to prosecute that will be heard on April 30, 2014.*

Sharp v. CSU, et al.

Sacramento County Superior Court

Jeffrey Sharp, a Development Associate Alumni Relations at Sacramento State, has filed a complaint against CSU and a former employee alleging sexual harassment, retaliation and disability discrimination. The case is in the discovery stage.

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, 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, which is 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 which was 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 and 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 that it had failed to meet its burden to show the cost of bringing the litigation transcended the monetary benefits it received, the trial court denied LandValue's request. LandValue appealed the attorneys' fees decision.

In its January 2014 ruling, the Court of Appeals upheld the trial court's decision and denied LandValue's request for attorneys' fees. On February 26, 2014, LandValue filed a petition for review with the California Supreme Court.

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. 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. *In January 2014, the case settled for \$50,000.*

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, first and second amended complaints, but gave plaintiff an opportunity to amend. Plaintiff did not amend her complaint and the court subsequently granted CSU's motion to dismiss and for entry of judgment. Plaintiff has filed a notice of appeal.

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. *In November 2013, the case settled. CSU paid \$5.2 million, and the remaining defendants paid \$300,000.*

Student Cases

Donselman, et al. v. CSU

San Francisco County Superior Court

Five students brought this class action to challenge the increases to state university fee and non-resident tuition rates, and the implementation of the new Graduate Business Professional fee, in 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's motion to decertify the class was denied. *Plaintiffs' motion for partial summary judgment was recently denied. CSU's successfully sought summary adjudication of one breach of implied contract claim. Both sides are making cross motions for summary adjudication on the remaining liability issues. Those motions will be heard in July 2014, and the trial was moved to October 2014.*

Scoras, etc. v. CSU

U.S. District Court, Sacramento

Scoras is the sister of a former student (Ken Costello) at Sacramento State who is now deceased. She has filed a claim under the Americans with Disabilities Act alleging that CSU failed to provide appropriate accommodation to Mr. Costello and as a result Costello suffered emotional distress and took his life. *The case is in the discovery stage.*

Other Cases

Rowing Club v. CSU Sacramento, et al.

U.S. District Court, Sacramento

This case arises out of the temporary suspension of the Sacramento State University's Men's Rowing Club. In December 2011, the Rowing Club admitted that they used students that were not Sac State students to practice and compete, which was in direct violation of a CSU sports club rule. The Rowing Club asserts CSU should not have issued the suspension without prior notice and a hearing. *On February 11, 2014, the court granted the University's motion to dismiss without leave to amend and judgment was entered in favor of the University. The court held that the Club failed to state a valid claim because it had no property interest entitled to due process protections.*