

## **AGENDA**

### **COMMITTEE OF THE WHOLE**

**Meeting:**           **11:45 a.m. Tuesday, September 18, 2007**  
**Glenn S. Dumke Auditorium**

Roberta Achtenberg, Chair  
Jeffrey L. Bleich, Vice Chair  
Herbert L. Carter  
Carol R. Chandler  
Debra S. Farar  
Kenneth Fong  
George G. Gowgani  
Melinda Guzman  
William Hauck  
Raymond W. Holdsworth  
Ricardo F. Icaza  
A. Robert Linscheid  
Peter Mehas  
Henry Mendoza  
Lou Monville  
Charles B. Reed, Chancellor  
Jennifer Reimer  
Craig R. Smith  
Glen O. Toney  
Kyriakos Tsakopoulos

#### **Consent Items**

Approval of Minutes of Meeting of May 16, 2007

#### **Discussion Items**

1. Litigation Report, *Information*

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

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

**May 16, 2007**

**Members Present**

Roberta Achtenberg, Chair  
Jeffrey L. Bleich, Vice Chair  
Herbert L. Carter  
Carol R. Chandler  
Debra S. Farar  
Kenneth Fong  
George G. Gowgani  
William Hauck  
Raymond W. Holdsworth  
Andrew J. LaFlamme  
A. Robert Linscheid  
Peter Mehas  
Lou Monville  
Charles B. Reed, Chancellor  
Jennifer Reimer  
Craig R. Smith  
Glen O. Toney

**Consent Items**

**Approval of Minutes of March 13, 2007**

Chair Achtenberg stated that the minutes of the March 13, 2007 Committee meeting was a consent item. She stated that unless there was an objection, the consent item would be considered approved.

**Discussion Items**

**Report on Emergency Preparedness**

Chancellor Reed reported that he and Vice Chancellor West had met with James Lee Witt, who was then Director of FEMA Emergency Preparedness, in Washington DC, in 2000. Their discussion included Mr. Witt's agreement to help CSU preparedness. Since that time, CSU was the first client of James Lee Witt Associates and has remained a contractual client ever since, with the agreement that Mr. Witt will be on-site in less than 4 hours for any major emergency that CSU experiences.

The Chancellor continued that, knowing the importance of documentation anytime an emergency event needs approval of the Governor for a state of emergency or for FEMA reimbursement, the first thing Mr. Witt did for CSU was prepare a Risk Assessment for all 23 CSU campuses and the Chancellor's Office. Mr. Witt recommended that CSU have in place emergency plans in case of earthquakes, fires, floods and terrorism attacks. Chancellor Reed reported that those emergency plans were all put together in the first year of CSU's contract with Witt Associates, and since that time have been continuously updated.

Chancellor Reed stated that Mr. Witt is invited annually comes to CSU and meet with presidents to talk about emergency plans. The next meeting was scheduled for June 28, 2007. CSU's plans are aligned with the State Standard Emergency Management System and also comply with the federally mandated National Incident Management System.

Chancellor Reed spoke of the fundamental need for good communications during an emergency. Prior to 9/11 and Hurricane Katrina, all CSU presidents, chiefs of police, vice chancellors and the chancellor had acquired satellite phones, making communications possible should landline and cell phones be unavailable because of an emergency. He noted that each CSU campus has an emergency plan tailored to their specific campus. The chancellor reported that, since the incident at Virginia Tech, CSU campuses have many instigated many means of communication – broadcast, e-mail, web sites, phones, bull-horns, and sirens.

The chancellor stated that another key element of preparedness is practice. CSU has held practice drills on the different scenarios identified. The most recent earthquake drill was held at Humboldt State University. He reported that CSU has done more than practice, noting that at CSU, San Bernardino the emergency fire plan had been put in place during the firestorms of last year.

Chancellor Reed said that the 3 things most stressed by James Lee Witt and Associates was: 1) with limited information available during an emergency, try to make decisions so that the event does not escalate any further; 2) prevent further death, injuries or damages to students, faculty, staff and people on campus after the event; and 3) report the truth to the media.

Among the tough decisions presidents have to make, the chancellor continued, was about the legal rights of students. After the killings at Virginia Tech, there were some instances of copy-cat threats on CSU campuses. The FBI strongly recommended the university put out a press release informing the public of what individuals were doing and that it was illegal to make threats, real or in jest. The FBI made arrests on behalf of the campus. Other tough decisions that have had to be made involved committing students who have mental health problems. CSU must make what administrators consider the absolute best judgment to protect all students on campus.

The chancellor spoke of CSU's active shooter plan which now calls for immediate action targeting the shooter. He reported that CSU has entered into mutual aid agreements with all emergency service agencies. Last year, FBI and CIA personnel were invited to CSU to meet

with Chancellor's Office staff and CSU presidents to discuss their communications and information systems. Periodically, the chancellor stated, he invites the FBI directors of San Diego, Los Angeles, San Francisco and Sacramento offices to meet with CSU presidents to talk about emergency planning and communications systems.

Chancellor Reed spoke of upcoming practice events and identified various CSU personnel who are instrumental in keeping CSU as prepared as possible for any possible emergency. He described different scenarios that have happened involving student suicides and disappearances and what CSU practice is in those cases.

Chancellor Reed called for questions or suggestions. Trustee Monville thanked the chancellor for his report and asked for his perspective on what should be done after an incident as far as debriefing. President Welty responded that, after the incident at CSU Fresno, a campuswide debriefing session had been called that included everyone who had been involved and those who held key positions who might not have been on campus at the time. The president reported that the detailed notes of that session would go back to the campus emergency planning team who will modify existing plans to reflect what had been learned from the incident. Secondly, he said, it was very important to have the counseling center staff deployed in the living areas for several days afterward until students have had an opportunity to work their feelings. The chancellor confirmed that the protocol calls for all emergency preparedness and senior staff to meet after an event and document what worked, what didn't work, and what needed to be changed.

The chancellor was asked if anything in CSU's communication plan had changed after Virginia Tech. The chancellor reported that many communications companies have contacted him in the last couple weeks. Vice Chancellor West and he are planning to meet with some companies who have volunteered to provide CSU with equipment. One of the programs being explored is text messaging.

### **Report on Student Loan Programs**

A report on student loan programs and preferred lenders was given at the meeting. Information was provided on current actions taken by the CSU in the context of recent inquiries by the New York Attorney General and several congressional hearings on the subject of the student loan administrative process. Chancellor Reed recognized that ten CSU campuses participated in direct lending provided by the federal government, which includes incentives for lenders to participate. However, Chancellor Reed acknowledged that it is alternative private lending practices including the federal Family Education Loan Program (and not direct lending) that has interested New York's Attorney General.

After surveying all 23 CSU campuses, the CSU noted that while none of the campuses violated federal or statutory requirements and none of the campuses participated in any illegal practices or violated any operating policies and procedures, 13 campuses participated in the federal Family Education Loan Program that included discontinued practices.

While no corrective action was required, a Coded Memorandum (dated 5/3/07) has been issued to provide suggested practices for all CSU campuses to follow. The Chancellor explained that this ensures that campuses and CSU financial aid personnel are providing unbiased information to students. For example, it is no longer a campus decision as to whether financial aid officers and directors must file Form 700 (conflict of interest). Everyone must file Form 700. In addition, banks and financial institutions will no longer be able to provide their logo on printed materials. Further, to avoid the appearance that the CSU is giving preferential treatment to one or more lending institutions, names of lending institutions on approved lender lists will be rotated periodically.

Chancellor Reed explained how loan consolidation agreements with CSU Alumni Associations are being cancelled, as well as agreements and contracts that may include prohibited practices for underwritten offers by lenders.

Assistant Vice Chancellor Allison Jones summarized the CSU's support of the Kennedy- Miller Student Loan Sunshine Act, HR 890 and S486. This legislation is designed to reinstate trust in schools, guarantee loan options, and ensure the best loans possible for students by developing a system for equal and timely processing of loans.

With the introduction of the coded memorandum mentioned earlier, Chancellor Reed concluded that the CSU has gone a step further than the Kennedy-Miller legislation—ensuring transparency and making certain that CSU students and families are receiving the best information possible without any bias.

Chair Achtenberg adjourned the meeting.

## **COMMITTEE OF THE WHOLE**

### **Litigation Report**

#### **Presentation By**

Christine Helwick  
General Counsel

#### **Summary**

This is the semi-annual report on the status of significant litigation confronting the CSU, which 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) which raises public policy issues of significant interest or concern; (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 108 currently active litigation files; CSU is the party pursuing relief in *three* of those cases.

#### **New Cases**

*City of Fresno v. CSU, et al.*

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

*Fresno County Superior Court*

*The City of Fresno filed an action challenging the approval of the EIR on Campus Pointe, a public/private retail and housing development on the CSUF campus. The timing and manner of the Board's approval and the failure to contribute its fair share for off-site mitigation are alleged CEQA violations. Settlement negotiations are ongoing. LandValue 77, a private business entity in Fresno, filed a companion CEQA challenge to the Campus Pointe project, including a claim of conflict of interest by former Trustee Moctezuma Esparza, whose company will operate a movie theater in the project. This second case was initially filed in Sacramento County but has been transferred to Fresno County and will be consolidated with the City of Fresno case. Both cases are in the initial pleading phase.*

*College Republicans, et al. v. Achtenberg, et al.*

*U.S. District Court, San Francisco*

*Plaintiffs are the College Republicans and two students at San Francisco State who complain that their First and Fourteenth Amendment rights were violated in connection with a five-month*

*investigation into the claims of another SFSU student that they stepped on Hamas and Hezbollah flags as an act of political protest at an anti-terrorism rally sponsored by the College Republicans in October 2006. The investigation, conducted by the Student Organization Hearing Panel, ultimately found there was no violation of campus policies. The matter is in the initial pleading phase.*

*Daniels v. The Fraternity Phi Gamma Delta, et al.*  
*Fresno County Superior Court*

*Parents of Danny Daniels, a 19 year old student who died of alcohol poisoning in the Phi Gamma Delta fraternity house in January 2007, have filed this wrongful death claim against CSU Fresno. Plaintiffs claim that CSU knew or should have known that the fraternity was serving alcohol to minors. The case is in the initial pleading stage.*

*Fayad v. CSU*

*U.S. District Court, San Jose*

*Mohamed Fayad was hired as a full professor in the computer engineering department at SJSU in 2002. He was denied tenure in May 2005 and subsequently hired as a part-time lecturer. He alleges that the denial of tenure and "demotion" were based at least in part upon his Egyptian national origin and his Muslim religion. The case is in the pleading stage.*

*Modarres v. California State University, Fullerton, et al.*

*Orange County Superior Court*

*Moshen Modarres was a full time lecturer in the Business Department at CSU Fullerton. Modarres alleges that he was discriminated against based on his race (Persian), national origin and ancestry because he applied but was not selected for a tenure track position. He also alleges he was wrongfully terminated when he was not reappointed as a lecturer. The case is in the pleading stage.*

### **Construction Cases**

**CH2M HILL v. BOT**

*San Francisco County Superior Court*

*Plaintiff is the general contractor on the campus technology infrastructure project. The project was scheduled to be completed in April 2006, but was only 50 percent complete on that date. Plaintiff filed an action to have the court declare that the contract was illegal and invalid and that the plaintiff should be excused from performing. In January 2007, the University terminated the plaintiff from the project. The case is in the discovery stage.*

## Employment Cases

### Carreira v. CSU, et al.

Los Angeles County Superior Court

Maria Carreira, a professor in the CSU, Long Beach Department of Romance, German and Russian Languages and Literature filed a lawsuit claiming that she was retaliated against for having previously filed a whistleblower complaint. Although Carreira's whistleblower complaint was intended to be confidential, it was released by faculty members to others in her department and Carreira claims she was then bullied and harassed as a result. The outside investigation concluded that some of her claims had merit, but that she had not suffered any adverse employment consequences. Appropriate action was taken against those found to be at fault. On December 19, 2006 the court granted a portion of the University's motion challenging the sufficiency of Carreira's complaint, but her claims for whistleblower retaliation, invasion of privacy, defamation and emotional distress still remain. *On June 26, 2007, the court granted CSU's motion for summary judgment on Carreira's whistleblower retaliation claim, but denied it as to her other claims. Carreira has filed a motion to amend her complaint to restate her retaliation claim, and also add a mandamus claim alleging that CSU abused its discretion in the way it investigated and acted upon her whistleblower retaliation complaint. A hearing on Carreira's motion is expected to be set for early September. Trial is set for October 9, 2007.*

### Giovannetti v. Trustees, et al

U.S. District Court, San Francisco

Joseph Giovannetti, a tenured professor in Native American studies, alleges that Humboldt State University subjected him to discriminatory treatment based on his ethnicity as a Native American. He alleges that HSU also retaliated against him for complaining about discrimination by unlawfully removing him as Chair of the Native American Studies Department, refusing to hire additional faculty for the department as promised in an earlier settlement, and canceling some of Plaintiff's courses. Giovannetti and two other complainants had an earlier lawsuit for similar discrimination claims that was settled. On June 12, 2006, the court granted part of CSU's motion for summary judgment and dismissed plaintiff's claims of racial discrimination and racial harassment. Plaintiff's retaliation claim remains. On July 12, 2006, the court granted plaintiff's attorney's request to withdraw from the case and continued the trial date. *In January 2007, plaintiff retained new counsel. Trial is scheduled to begin on October 22, 2007.*

### Johnson-Klein v. CSU, Fresno, et al.

Fresno County Superior Court

Stacy Johnson-Klein was terminated as CSU Fresno's head women's basketball coach in March 2005 for serious performance issues. In September 2005, she filed this lawsuit against CSU, President Welty, retired Athletic Director Scott Johnson, and Fresno State's athletic corporation for gender discrimination, sexual harassment, Title IX violations, retaliation and wrongful termination. She claims that her supervisors sexually harassed her by making inappropriate

comments about her breasts and clothing, and that she was inappropriately touched by one or more of her supervisors. Johnson-Klein alleges that she was terminated in retaliation for complaining about harassment, as well as gender inequities in athletics. *This matter is set for trial on October 1, 2007.*

Horsford, et al. v. Shell, et al.

Brown v. CSU, et al.

Snow v. CSU, Fresno, et al.

King v. CSU, et al.

Fresno County Superior Court

Daniel Horsford, Steven King, Richard Snow and three other former campus police officers filed a lawsuit claiming that they were victims of reverse discrimination in the CSU Fresno Police Department while it was under the direction of former police chief Willie Shell, who is black. Summary judgment was entered against three of the police officers. The case was tried in May 2000 against the three remaining plaintiffs, Horsford, King and Snow. The jury returned a verdict of \$4.25 million. The court reduced this verdict to \$1.17 million, which has been paid. The court also awarded \$3.2 million in attorney fees which has been paid. *Plaintiffs have filed an appeal from the attorney fee award, seeking a higher amount.*

Auwana Brown, a former employee in the CSU Fresno Police Department, settled a sexual harassment lawsuit against former police chief Willie Shell in 1998. She is represented by the same attorneys who are representing Horsford, King and Snow. As a part of the settlement, Brown agreed to resign. But after her resignation became effective, and the Horsford verdict came in, she petitioned the State Personnel Board to reinstate her. The State Personnel Board refused, and Brown then asked the Court of Appeal to order the State Personnel Board to set aside her resignation. The court instead sent the case back to the State Personnel Board for further findings. After three years of inactivity, the State Personnel Board issued a decision denying Brown reinstatement. *Her civil lawsuit has been stayed as Brown is challenging the SPB's decision in an amended writ petition.*

Richard Snow suffered a work-related hip fracture in November 2000 and was deemed disabled in workers' compensation proceedings. His disability retirement became effective in February 2003. Snow filed a new lawsuit shortly thereafter, alleging that the university discriminated against him because of his disability, failed to accommodate him, and retaliated against him because of the Horsford verdict. Steven King filed a lawsuit also claiming that the university discriminated and retaliated against him because of the Horsford verdict, because he was not appointed lieutenant and/or chief of police in the CSU Fresno Police Department. *These cases have been consolidated, designated as complex litigation, and are in the discovery stage. The parties have agreed to waive the five year statute of limitations and the combined trial is scheduled for June 16, 2008.*

Lalehzarian, et al. v. CSU, et al.

Los Angeles County Superior Court

Hamo Lalehzarian, Prakash Mahajan, Masud Mansui, all former faculty members in the College of Engineering and Computer Science at CSU Fresno, filed a wrongful termination case claiming race and age discrimination. They have a parallel grievance, which has not yet been assigned to arbitration. *This case is in the discovery stage. Trial is scheduled for May 19, 2008.*

May v. Trustees

Monterey County Superior Court

James May is a former faculty member at CSU Monterey Bay who retired in 2000. He alleged that he was forced to take an early retirement due to continuing mistreatment, race, disability and age discrimination, harassment, retaliation, failure to prevent discrimination, and wrongful termination. In 2002, the jury returned a \$375,000 verdict in favor of May for harassment and retaliation on the basis of race and national origin. The court granted CSU's motion for a new trial. May appealed both the trial court's grant of a new trial and the defense verdict on his discrimination claims. In 2005, the Court of Appeal affirmed the trial court's ruling and the defense verdict. In June 2005, the California Supreme Court granted May's petition for review. The issue of interest to the Supreme Court is the standard for granting a new trial, which is the same issue, raised in the Oakland Raiders v. National Football League case. The Court postponed briefing in the May case pending decision in the Raiders case. *The Supreme Court recently issued its ruling in the Oakland Raiders case and held that a higher standard of review applies to appellate review of a defective new trial order. A lower standard of review was applied by the Court of Appeal to affirm the trial court's new trial order in the May case. In light of the Supreme Court's ruling, the May case will likely be remanded to the Court of Appeal for reconsideration.*

Mendoza v. CSU

Los Angeles County Superior Court

Ramon Mendoza, a CSUN computer analyst in *Unit 9* filed this class action which challenges a systemwide classification of many computer analysts as exempt from wage and hour laws that govern overtime and breaks. Mendoza is the only named plaintiff. He purports to represent all analysts in over 20 analyst classifications. Because CSU is not subject to many of the laws claimed to be violated, CSU filed a legal challenge to the sufficiency of the complaint. *After receiving CSU's motion, plaintiff agreed to dismiss the action, and the case is now closed.*

Milutinovich v. CSU, Fresno, et al.

Fresno County Superior Court

Diane Milutinovich, formerly Associate Athletics Director and Senior Woman Administrator at CSU Fresno, was reassigned to be Director of the University Student Union after her position in Athletics was eliminated in an effort to cut administrative costs through reorganization. Milutinovich's first lawsuit for wrongful termination was dismissed because she failed to file a

government tort claim. She refiled this second action, asserting statutory claims that she was fired because of her alleged efforts to achieve Title IX compliance and in retaliation for her advocacy of gender equity issues in employment and athletics. In September 2006, the university terminated Milutinovich for poor performance, and she has amended her complaint to allege wrongful termination and further retaliation. *The trial is scheduled to begin November 19, 2007.*

Ohton v. SDSU, et al.

San Diego County Superior Court

David Ohton, SDSU's Athletics Department strength and fitness coach, sued the CSU and various individuals for alleged retaliation under the state "whistleblower" statute, claiming he was retaliated against for statements he made in the context of the CSU's investigative audit of alleged improprieties in the SDSU Athletics Department and its equipment room. The trial court granted CSU's motion for summary judgment. Ohton appealed. *The Court of Appeal reversed and remanded with instructions to give Ohton an opportunity to seek leave to amend his complaint. On August 24, 2007, the trial court granted him leave to file his first amended complaint adding a petition for writ of mandate.*

Runyon v. CSULB, et al.

Los Angeles County Superior Court

L.R. Runyon, a professor in the CSU Long Beach Finance Department of the College of Business, alleges he was removed from his position as department chair in retaliation for reporting alleged improper activities by the Dean of the College of Business, Luis Calingo. Runyon made various complaints to his supervisors and others that the Dean made inappropriate and wasteful business trips and spent too much time away from campus. The Dean subsequently removed Runyon as chair of the department citing Runyon's failure to meet certain performance objectives. An extensive investigation into Runyon's claims of retaliation concluded that he was removed as department chair for performance reasons and not in retaliation for his complaints about the Dean. In September 2006, the court granted CSU's motion for summary judgment and dismissed Runyon's case. Runyon has filed an appeal. *The parties have submitted their appellate briefs, but the court has not yet scheduled this case for oral argument.*

Villanueva v. CSUMB, et al.

Monterey County Superior Court

Villanueva is a former Associate Vice President at CSU Monterey Bay who was not retained in summer 2003. He alleges that he was let go for recommending the discipline of other employees and for reporting waste of public funds. He also claims that his former subordinates attempted to undermine his efforts to obtain new employment by distributing false and personal information about him. He states claims of wrongful termination in violation of public policy, defamation, violation of the Information Practices Act, and invasion of privacy. CSU filed a motion to dismiss the entire case. *After receiving the motion to dismiss, the parties entered into settlement discussions. The parties have agreed to settle the case for \$61,180, the equivalent of seven months of salary.*

Vivas v. CSU, et al.

Fresno County Superior Court

Lindy Vivas, former head women's volleyball coach at Fresno, filed this lawsuit for discrimination, retaliation and Title IX violations, based on her sexual orientation, gender and marital status, after her employment contract expired and was not renewed in December 2004. Vivas reapplied for the position, and was considered. After evaluating all of the applicants, Ruben Nieves was hired as the new head coach. *After a five week trial, a verdict was returned against CSU for \$5.85 million on July 9, 2007. Motions for new trial and judgment notwithstanding the verdict are pending.*

**Environmental Cases**

Alvarado Hospital Medical Center v. SDSU, et al.

City of San Diego v. Trustees, et al.

Del Cerro Action Council v. Trustees, et al.

San Diego County Superior Court

The environmental impact report for the 2005 SDSU campus Master Plan revision has been challenged in three lawsuits filed by the City of San Diego, the Alvarado Hospital, and the Del Cerro neighborhood association, each alleging the EIR does not adequately address necessary mitigation measures. These cases have been consolidated. As a result of the City of Marina decision, CSU has decertified its EIR and will prepare a supplemental one. The court granted petitioners' request for a total of \$224,788 in attorneys' fees to the three plaintiffs. *CSU appealed this award. CSU then settled with Alvarado and the City for a total payment of \$81,000. CSU is continuing the appeal of \$89,877.50 in attorney fees to Del Cerro.*

Carson Harbor Village v CSU

Los Angeles County Superior Court

Carson Harbor Village, a mobile home community situated across the street from the Dominguez Hills campus, filed two writ petitions alleging that CSU failed to comply with the California Environmental Quality Act. The first sought to enjoin the construction of the Home Depot Center Hotel and Training Facility on the grounds that CSU improperly submitted a Supplemental Environmental Impact Report instead of a separate Environmental Impact Report. The second sought to enjoin the use of permanent lights at the campus track stadium on the grounds that Carson Harbor Village failed to receive proper notice of the SEIR for that project. On August 17, 2006, the court denied both petitions. Both decisions have been appealed. A voluntary mediation on February 1, 2007 was not successful. *The parties have submitted their appellate briefs, but the court has not yet scheduled this case for oral argument.*

City of Marina v. CSUMB, et al.

FORA v. CSUMB, et al.

Monterey County Superior Court

Plaintiffs in these two lawsuits are challenging the adequacy of the final environmental impact report prepared for CSU Monterey Bay's Master Plan. They allege that the City and FORA will suffer unmitigated adverse impacts if the plan is implemented and that the CSU improperly fails to recognize the jurisdiction of FORA over campus development that does not involve education or research. The trial court issued a decision in favor of the City of Marina and FORA. CSU appealed. In 2003, the Court of Appeal reversed the trial court and ruled that CSU is not required to contribute to the cost of local infrastructure improvements, notwithstanding the mitigation requirements of environmental law. FORA filed a petition with the California Supreme Court. On July 31, 2006, the California Supreme Court ruled that the cost of environmental mitigation is voluntary and does not constitute a tax or assessment. CSU must therefore revise its environmental impact report to account for its fair share of environmental impacts caused by its projects. The Court held that CSU has the ultimate discretion to determine the value of its fair share, subject only to an abuse of discretion. The Court also required CSU to seek reimbursement for environmental mitigation costs from the Legislature. *The other side's attorneys' fees request was mediated for an award of \$730,000. After reviewing briefings from both parties, the trial court issued a writ requiring compliance with the Supreme Court decision. FORA and City of Marina recently filed a motion seeking additional attorneys fees related to the writ proceedings. CSU has opposed this motion. The court will hear this matter on September 7, 2007.*

### **Personal Injury Cases**

Eriksson v. CSU, Fresno, et al.

Fresno County Superior Court

Stan and Karan Eriksson are the parents of an equestrian student-athlete at CSU Fresno, who died as a result of massive head injuries suffered when her own horse fell on her, after being startled by a herd of cows in a pen. At the time of the accident, the student-athlete was on a recreational ride in an agricultural area of the campus. The parents allege that the university negligently failed to supervise and train their daughter, failed to warn her about the presence of the animals, maintained a dangerous condition of property in that the cows were "violent and aggressive," and failed to provide appropriate emergency medical assistance. On July 17, 2006, CSU prevailed on a motion for summary judgment on the theory of plaintiff's assumption of the risk. *Plaintiffs have filed an appeal. Briefs are filed. Oral argument is scheduled for September 11, 2007.*

Sneath v. CSU, et al.

Santa Clara County Superior Court

Rechelle Sneath was a San Jose State University cheerleader. On January 7, 2004, she suffered major injury and paralysis as a result of being thrown in the air as part of a cheerleading routine. Plaintiff alleges that the University and the coach are responsible for her injuries. *This case settled at mediation for payment of \$3 million.*

**Student Cases**

Alpha Chi v. CSU, Chico, et al.

Butte County Superior Court

Alpha Chi, a local sorority, along with individual members, alumni, and an advisor of the sorority filed this suit, alleging that the Chico campus' development, implementation, and enforcement of new rules adopted from the Greek System Review Task Force Report violates First Amendment, due process, and equal protection rights. The sorority seeks to regain university recognition, which was withdrawn when the sorority violated the fall 2005 "no recruitment" rule. The plaintiffs also seek an injunction prohibiting enforcement of the new rules, a declaration stating that the rules are unconstitutional, and money damages. Plaintiffs' motion for preliminary injunction was denied in May 2006. *CSU challenged the adequacy of plaintiffs' pleadings, and after four attempts to amend, all claims except those stated against defendants in their personal capacities were dismissed. A motion for summary judgment in the remaining claims will be filed in advance of the Mandatory Settlement Conference, which is set for October 26, 2008.*

Every Nation Campus Ministries, etc. 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 Trustees 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 homosexuals and others from joining or becoming officers. They allege that their First Amendment rights of freedom of religion and association trump the Trustees 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 partially granted CSU's motion to dismiss several claims. Both sides filed summary judgment motions, which were heard in July of 2006. The court took the matter under submission, *and later issued a statement that it would not rule until the Ninth Circuit issued its decision in a similar case. On August 24, 2007, the Ninth Circuit ruled in favor of a school district that had denied student club recognition to a Christian group, holding that First Amendment rights were not violated by the school district's nondiscrimination rule. A decision in this case is expected within 90 days.*

Jackson, et al. v. CSU, et al.

U.S. District Court, Riverside

A group of nine students at CSU San Bernardino sought to represent a class of students who claim that the campus does not provide adequate transportation for disabled students, nor provide timely course materials in a format accessible by students with visual or other disabilities. The students also complained about physical access and testing accommodations. Their claims were initially filed in both state and federal court. The state claim was dismissed. *The federal matter settled after three days of mediation. The settlement agreement provides class-wide injunctive relief that requires the university to make a number of programmatic and facilities modifications. Improvements include expanded office hours for the Services to Students with Disabilities office, easier access to information, increased accountability and training for professional staff and student assistants, quicker production timelines for alternate media, and quicker response times for the provision of other accommodations and services. The settlement also commits the University to remove architectural barriers throughout the campus. The settlement also includes damages for individual plaintiffs in the amount of \$315,000, and attorneys' fees in the amount of \$505,000.00. The court granted preliminary approval of the settlement on August 20, 2007. A fairness hearing will be held on November 19, 2007, with final approval of the settlement expected thereafter.*

Martinez, et al. v. Regents of the UC, et al.

Yolo County Superior Court

This is a class action filed by non-resident citizen students against UC, CSU, and the California Community Colleges, challenging the exemption from out-of-state tuition for those, including undocumented immigrants, who meet the three year California high school attendance requirement of AB540. Plaintiffs allege AB540 violates federal immigration laws, the U.S. and California Constitutions, and the Unruh Act. Plaintiffs seek an injunction enjoining enforcement of AB540, a declaration that the statute is unlawful, class-wide tuition restitution, damages, and attorney fees. Defendants collectively filed motions to dismiss, which were granted in October 2006. *Plaintiffs filed an appeal in June 2007.*

### **Other Cases**

CFA v. PERB

Court of Appeal

CFA filed an unfair labor practice charge asserting, among other things, that CSU unilaterally changed its parking practices to bar union employees from using new parking facilities that are limited to students who are paying the higher parking fees. An administrative law judge concluded that parking is within the scope of bargaining and that CSU had committed an unfair labor practice. CSU appealed. The full PERB Board reversed the decision and held that parking location is outside the scope of bargaining, and thus there was no unfair labor practice. CFA has filed this petition challenging this outcome in the court of appeal.

CSU v. Dynegy, Inc., et al.

San Diego County Superior Court

In October 2005, CSU filed this complaint against producers, marketers, traders, transporters, and distributors of natural gas for manipulating and fixing their price in violation of state antitrust laws. The case has been consolidated with many others in San Diego County Superior Court asserting the same claims. *In July, 2007, two of the smaller defendants agreed to settle for an agreement to provide plaintiffs with helpful documents that would otherwise be difficult to procure and cash payments of \$750,000 and \$1,500,000. These proceeds will be applied to litigation costs incurred to date and remaining funds will be kept in a separate trust to cover litigation costs going forward and allocated among all plaintiffs at the end of the cases. On July 10, 2007, the court ordered that the case be temporarily stayed until the Ninth Circuit Court of Appeal decides other energy cases that may impact this case.*

CSU v. PERB

Court of Appeal

CSU has filed a petition for writ of mandate against the Public Employment Relations Board seeking an order reversing PERB's decision that would bar CSU from bargaining for limitations on an arbitrator's authority in faculty status arbitrations. The briefs are filed. *Oral argument is scheduled for September 21, 2007.*

LAUSD v. LADWP, et al.

Los Angeles County Superior Court

The Los Angeles Unified School District filed this action against the Los Angeles Department of Water and Power to recover capital facilities fees and to invalidate a new ordinance imposing those fees as a part of a June 2004 water rate increase. The University of California and CSU, which are also subject to these new fees, joined LAUSD and cross-complained against LADWP. California law only permits LADWP to impose new capital facilities fees on educational institutions with consent and after negotiations between the parties. On February 14, 2007, the parties agreed to settle the case. LADWP will pay the plaintiffs \$2,125,000, subject to necessary board approvals and submission of documentation of qualifying expenses by plaintiffs. CSU will recover approximately \$212,000 as a result of this settlement. *To finalize the settlement, the plaintiffs are gathering documentation of water conservation expenditures to submit to LADWP.*

Marketing Information Masters, Inc. v. Board of Trustees of the

U.S. District Court, San Diego

Plaintiff Marketing Information Masters alleges that SDSU and its employee Robert Rauch violated MIM's copyright by including large portions of its 2003 Pacific Life Holiday Bowl report in SDSU's 2004 Holiday Bowl report. *CSU filed a motion to dismiss the complaint which has not been heard. On April 16, 2007, the court denied plaintiff's request for an early neutral and/or a status conference.*

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Travis v. CSU, et al.

Los Angeles County Superior Court

John Travis, former President of the CFA, alleges that the current Executive Transition Program is an unlawful gift of public funds and an unlawful dual government retirement benefit. Travis seeks to undo the Executive Transition Program in its entirety, and refund the payments made to former executives Peter Smith and David Spence. *This case is in the early discovery phase.*

Travis v. CSU, et al.

Los Angeles County Superior Court

John Travis, as President of the California Faculty Association, filed a petition for writ of mandate challenging that the appointment of former Chancellor Barry Munitz as Trustee Professor at California State University, Los Angeles violated the Open Meeting Act, and that John Travis, as President of the California Faculty Association, filed a petition for writ of mandate challenging that the appointment of former Chancellor Barry Munitz as Trustee Professor at California State University, Los Angeles violated the Open Meeting Act, and that CSU violated the Public Records Act by not disclosing certain unspecified documents in connection with this appointment. After CSU filed a motion to dismiss, Travis voluntarily dismissed the Public Records Act claim, abandoned his original theory on his Open Meeting Act claim, and amended his petition to state an entirely new theory of Open Meeting Act violation, claiming that Chancellor Reed was not permitted to inform the Board in closed session of Dr. Munitz's return to CSU. On January 11, 2007, the court denied the petition on the Open Meeting Act claim, finding that CSU lawfully discussed Dr. Munitz's return to employment in a closed session under the "personnel" exemption. *Travis appealed. The appeal is in the briefing stage.*