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ENDORSED
FILED
Superior Court of California
County of San Francisco

JUL 16 2010

CLERK OF THE COURT
BY: WESLEY RAMIREZ
Deputy Clerk

Attorneys for Petitioner

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

9 FIRST AMENDMENT COALITION,
10
11 Petitioner,
12
13 v.
14 CALIFORNIA PUBLIC EMPLOYEES'
15 RETIREMENT SYSTEM,
16
17 Respondent.

No. **DPF-10-510552**
**PETITION FOR WRIT OF MANDATE
UNDER THE CALIFORNIA PUBLIC
RECORDS ACT (Government Code
sections 6258 and 6259)**
Date: *August 31, 2010*
Time: *9:30 a.m.*
Place: *Draft, 302*

16 1. This Petition for Writ of Mandate under the California Public Records Act
17 ("PRA"), seeks records related to the California Public Employee Retirement System's (hereafter
18 CalPERS') disastrous investment in Page Mill Properties II. At a time when CalPERS is under
19 close scrutiny because of inflated payments to "placement agents" who steered CalPERS' money
20 to disastrous investments, CalPERS has taken the position that it will not disclose records related
21 to this investment. CalPERS' position is in direct defiance of article I, section 3(b) of the
22 California Constitution, which opens records to public scrutiny. This Petition seeks to shed light
23 on how CalPERS lost \$100 million in a socially-irresponsible investment. Socially-responsible
24 investors aim to do well and do good. CalPERS did very poorly and did bad. This Petition aims
25 to find out why.

26 **FACTS AND PROCEDURAL HISTORY**

27 2. Petitioner First Amendment Coalition (hereafter FAC") is a section 501(c)(3) non-
28 profit organization headquartered in San Rafael, California dedicated to safeguarding access to

1 information for the public and to free speech and free press rights. On January 13, 2010, FAC's
2 executive director, Peter Scheer, write a Public Records Act request to CalPERS' general
3 counsel, Peter Mixon, requesting the Private Placement Memorandum and Partnership
4 Agreement in connection with CalPERS' investment in an East Palo Alto apartment complex,
5 Page Mill Properties II. A copy of Mr. Scheer's request is attached hereto as Exhibit A.

6 3. On January 27, 2010, CalPERS denied the request in a letter from its staff counsel,
7 Javier Plasencia, who took the position that the documents requested were exempt on various
8 grounds. A copy of Mr. Plasencia's response is attached as Exhibit B.

9 4. On February 24, 2010, petitioner's counsel, Karl Olson, wrote a letter to Mr.
10 Plasencia which (a) requested that CalPERS reconsider its position on FAC's first request, and
11 (b) supplemented First Amendment Coalition's request by requesting additional public record
12 from CalPERS related to the Page Mill Properties investment. A copy of Mr. Olson's February
13 24, 2010 letter is attached hereto as Exhibit C.

14 5. On March 4, 2010, Mr. Plasencia wrote to Mr. Olson, stating that, "The
15 appropriate real estate program staff is currently reviewing your request to determine which
16 documents we have and are subject to disclosure under the Public Records Act. We estimate that
17 this review will be completed in approximately two weeks" (i.e., by March 18). A copy of Mr.
18 Plasencia's March 4 letter is attached hereto as Exhibit D.

19 6. Thereafter, petitioner's counsel called Mr. Plasencia in late March, to see what
20 was happening with the Public Records Act request. Mr. Plasencia assured Mr. Olson that
21 records would shortly be produced. When Mr. Plasencia did not comply with this deadline, Mr.
22 Olson called Mr. Plasencia again on April 5, 2010, warning that petitioner might soon file a
23 lawsuit: "we're not going to wait forever and we're not going away." Another call to Mr.
24 Plasencia later in April was not returned. On May 12, 2010, petitioner's counsel wrote to
25 CalPERS again, reiterating the request that records be produced. A copy of this letter is attached
26 hereto as Exhibit E. On May 20, 2010, CalPERS wrote to petitioner's counsel, producing a few
27 documents but reiterating CalPERS' refusal to produce the private placement memorandum,
28 other business records provided to CalPERS by the general partner, real estate valuations of the

1 properties, and documents related to CalPERS' decision to invest. (See Exhibit H hereto.)
2 Finally, on July 9, 2010, Mr. Plasencia - nearly five months after the February 24, 2010 request -
3 wrote Mr. Olson, "As you are aware, I still owe you additional documents, per your request," but
4 said he was going out of the country and would not be able to "finalize" his response until he
5 returned in two weeks. This response utterly failed to comply with Government Code section
6 6253(c) which, even in "unusual circumstances," requires public agencies to respond to Public
7 Records Act requests within 24 days. (A copy of the July 9, 2010 e-mail is attached as Exhibit I.)

8 7. CalPERS' investment in Page Mill Properties II has been the subject of great
9 public interest and controversy. On February 23, 2010, the *Wall Street Journal* reported,
10 "CalPERS took a hit last year when its investment in Manhattan's Peter Cooper Village and
11 Stuyvesant Town apartment complex collapsed. But Stuyvesant Town wasn't the huge pension
12 fund's only foray into real-estate investments that involved ousting low-rent tenants." The
13 *Journal* reported that CalPERS invested \$100 million in the Page Mill Properties II project in
14 East Palo Alto in 2006, and that CalPERS had partnered with firms that have bought and
15 converted rent-regulated properties not just in East Palo Alto but also in New York City
16 neighborhoods, including Harlem and Manhattan's Upper East Side. A copy of the *Wall Street*
17 *Journal's* article is attached hereto as Exhibit F.

18 8. Page Mill Properties isn't CalPERS' only ill-fated foray into real estate. CalPERS
19 invested \$1.12 billion in the new community of Mountain House in San Joaquin County. That
20 investment is now worth \$200 million - a loss of \$920 million (see article attached hereto as
21 Exhibit G).

22 REASONS FOR GRANTING WRIT

23 9. This Petition is brought under the California Public Records Act, Government
24 Code section 6258 and 6259, which is the enforcement mechanism of the California Public
25 Records Act. Petitioner has no plain, speedy and adequate remedy in the ordinary course of law
26 to secure release of the records sought, other than this Petition.
27
28

1 10. The records sought here are vital to shed light on the conduct of the people's
2 business under Government Code § 6250 and article I, section 3(b) of the California Constitution,
3 which grant petitioner a right of access to the records. The records are not exempt from
4 disclosure.

5 WHEREFORE, Petitioner prays as follows:

6 1. That CalPERS be ordered to release the records sought in Exhibits A and C
7 hereto;

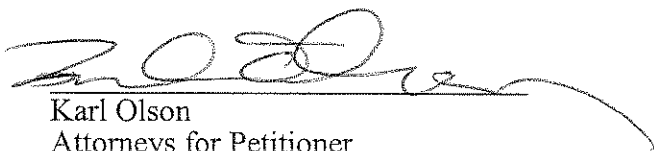
8 2. Alternatively, that the court order CalPERS to show cause why the records should
9 not be released, and thereafter order the records released.

10 3. For an award of attorney's fees and costs pursuant to Government Code section
11 6259(d); and

12 4. For such other and further relief as the court may deem just and proper.

13 Dated: July 14, 2010

RAM & OLSON LLP

14
15 By: 
16 Karl Olson
17 Attorneys for Petitioner
18 FIRST AMENDMENT COALITION

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VERIFICATION

I, Peter E. Scheer, am the executive director of the First Amendment Coalition, petitioner in this action. I have read the foregoing Petition for Writ of Mandate under the Public Records Act. The matters stated therein are true and correct, except as to matters stated on information and belief and as to them I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Rafael, California on July ____, 2010.

Peter E. Scheer

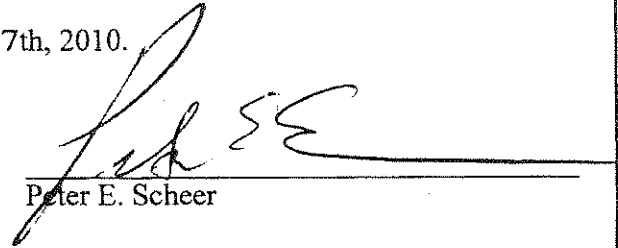
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VERIFICATION

I, Peter E. Scheer, am the executive director of the First Amendment Coalition, petitioner in this action. I have read the foregoing Petition for Writ of Mandate under the Public Records Act. The matters stated therein are true and correct, except as to matters stated on information and belief and as to them I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Rafael, California on July 7th, 2010.


Peter E. Scheer