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**REPORT OF INVESTIGATION OF SALE OF
COUNTY SURPLUS REALTY LOCATED AT
SUNSET & WABASH IN THE CITY OF REDLANDS**

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Prepared for the County of San Bernardino

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Attorney-Client Confidential Communication

Reference: Public Contract No. 2000-78-A-8.

WARNING: This report constitutes a confidential attorney-client communication from the law firm of Gumport | Reitman (“G|R”) to its client the County of San Bernardino as represented by the County’s Board of Supervisors. All statements made in this report are, and must be construed as, G|R’s opinions concerning disputed facts and inferences. This report does not result from a trial and is not based on the sworn testimony of witnesses. G|R was not an eyewitness to the underlying events. The statements made in this report are not free from doubt and are subject to dispute.

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I. INTRODUCTION

This report addresses whether James W. Foster (“Foster”) violated conflict of interest laws in connection with a sale of surplus realty (“Sunset Parcel”) owned by the County of San Bernardino (“County”). This report also addresses whether Foster’s conduct violated the code of ethics (“Code of Ethics”) in Rule I of the County’s Personnel Rules. The Sunset Parcel consisted of approximately .397 acres of undeveloped, hilltop realty near the intersection of Sunset Drive and Wabash Avenue in the City of Redlands.

The opinions stated in this report are based on an investigation conducted by the law firm of Gumport | Reitman (“G|R”) at the County’s request. All exhibits cited in this report are contained in a four-volume appendix (“App.”). The Appendix is available for inspection through County Counsel.

This report is not the result of a trial on the merits. Foster and his former partner Brett J. Granlund (“Granlund”) are the only eyewitnesses to a central event, and Foster’s and Granlund’s accounts of that event directly conflict. That central event concerns whether Granlund and Foster, outside the presence of others, orally agreed in 2001 that Foster would have an ownership interest in the Sunset Parcel that Granlund purchased from the County in the names of Brett and Lonni Granlund. Throughout this report, the alleged oral agreement is termed “the Oral Agreement.”

This report concludes that, regardless of whether or not Granlund fabricated his recent allegations about the Oral Agreement, the circumstances of the sale were such that Foster violated conflict of interest laws and the County’s Code of Ethics, even if Foster acted – as is possible – in utmost good faith. This report further concludes that there are legitimate reasons to question Granlund’s credibility and that, if the Oral Agreement alleged by Granlund did exist, then Granlund and Foster both have civil liability.

All references in this report to witness interviews refer to transcripts made by a court reporter of the interviews conducted by G|R. Foster, Granlund, and many other witnesses, including County officials and employees, voluntarily submitted to interviews

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and permitted them to be attended and transcribed by a court reporter. Copies of all transcripts are available through County Counsel. GJR reserves the right to amend and supplement this report in light of additional information that may come to light.

II. BACKGROUND: THE ALLEGED ORAL AGREEMENT

In 2001, the County sold the Sunset Parcel for a total price of \$20,000. There were four buyers: Brett and Lonni Granlund and Louis and Amy Curti. The Sunset Parcel was located in the Third Supervisorial District. Foster then was Field Representative/Special Projects Coordinator for 3rd District Supervisor Dennis Hansberger.

Throughout 2001 to mid-2004, Foster and Granlund directly or indirectly owned partnership interests in a billboard company named Colorado River Indian Land Company ("CRILCO"). Foster owned his interest through Mentone Investments, Ltd. ("Mentone").

In 2002, Granlund filed for divorce from Lonni Granlund. During the divorce, they deeded their 50% interest in the Sunset Parcel to James and Linda Foster (the "Fosters") in return for approximately \$10,000. Two years later, in 2004, the Fosters sold that interest for a net profit of approximately \$36,000. Also during 2004, Foster bought out Granlund's 30% interest in CRILCO for approximately \$68,000.

By 2004, Foster was Supervisor Hansberger's Chief of Staff. During 2004-2005, Foster repeatedly objected to Granlund's efforts to solicit County contracts for clients of Granlund's employer, Platinum Advisors, LLC ("Platinum"). Those clients included AshBritt Environmental, Maranatha Corrections, and others. Granlund complained to a friend, Gary Henson, that Foster's actions hurt Granlund's finances.

In July 2005, someone anonymously left a stack of documents on the desk of County Administrative Officer Mark Uffer, who turned over those documents to the District Attorney. Those documents related to Foster's alleged ownership interest, through Granlund, in the Sunset Parcel. Within days, newspapers carried stories quoting allegations by Granlund that he purchased the Sunset Parcel on Foster's behalf.

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According to Granlund, shortly before he purchased the Sunset Parcel from the County in early 2001, he and Foster made an oral agreement (i.e., the "Oral Agreement") that gave Foster a beneficial, although unrecorded, interest in the Sunset Parcel. Foster denies Granlund's allegations. According to Foster, Granlund fabricated his allegations to retaliate against Foster for opposing Granlund's efforts to procure lucrative contracts from the County for Platinum's clients.

In July 2005, after Granlund made his allegations, the County requested G|R to investigate and report to the County concerning three matters: (1) Granlund's allegations against Foster concerning the 2001 sale of the Sunset Parcel, (2) any other sales of County surplus property to County officials and employees during the past five years, and (3) violations of conflict of interest laws and the Code of Ethics in connection with the County's recent decision to lease and purchase a jail in the City of Adelanto. This report addresses the first item. Separate reports will address the second and third items.

III. SUMMARY

Based on the investigation, a trier of fact could reasonably find that:

A. At the time of the 2001 sale by the County of the Sunset Parcel, Granlund was a 30% general partner in CRILCO, and Foster owned 50% of Mentone, a 60% general partner in CRILCO, a small billboard company that had permit and real estate tax problems. As a general partner in CRILCO, Granlund had a duty to contribute to pay a portion of any losses of CRILCO. As an owner of Mentone, Foster had a financial interest in Granlund's ability to contribute to pay any losses of CRILCO.

B. Regardless of whether the Oral Agreement existed as alleged by Granlund, Foster's ownership of Mentone, and the terms of the CRILCO partnership agreement between Granlund and Mentone, gave Foster a financial interest in Granlund's financial success. For the same reason, Foster had an indirect financial interest in the County's contract to sell the Sunset Parcel to Granlund because the sale could either enhance or harm Granlund's financial condition.

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C. Regardless of whether the Oral Agreement existed as alleged by Granlund, Foster participated in the County's decision to sell the Sunset Parcel to Granlund. Foster participated by: (1) communicating with Trudy Smith in the County's Real Estate Services Department, (2) personally marketing the property to Granlund and Larry Curti prior to the sale, and (3) helping to arrange for Bob Roberts to serve as a broker.

D. Regardless of whether the Oral Agreement existed as alleged by Granlund, and regardless of whether Foster acted in utmost good faith, Foster likely violated Government Code § 1090 and the County's Code of Ethics by reason of his financial relationship with Granlund through CRILCO at the time of the sale.

E. Although Granlund's allegations that the Oral Agreement existed may be accurate, Granlund's credibility is subject to substantial dispute because:

- (1) Granlund has a significant financial motive to disparage Foster in order to punish and deter him from raising objections to Granlund's conduct in seeking to procure County contracts for clients of Granlund's employer, Platinum;
- (2) Granlund delayed making his allegations against Foster until after he interfered with efforts by clients of Platinum to obtain County contracts;
- (3) apart from Foster, who unequivocally denies Granlund's allegations about the Oral Agreement, Granlund was the only direct witness to the alleged Oral Agreement that Granlund supposedly made with Foster in 2001;
- (4) Granlund's story that he was unaware of the impropriety of the Oral Agreement is questionable in light of Granlund's background as a former public official; and

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- (5) Granlund for many years participated in a scheme to mislead the County in order to evade its requirement that CRILCO obtain permits for billboards on County property.

F. If Granlund's allegations – which may or may not be correct – about the alleged Oral Agreement are believed, then a trier of fact would likely find that Foster and Granlund defrauded the County in connection with its sale of the Sunset Parcel and are jointly and severally liable to the County for any losses suffered by it or any profits made by Foster and Granlund. Based on the information currently known, a trier of fact could reasonably decide to believe either Foster's denials or Granlund's allegations. This situation arose because Foster, by participating in the 2001 sale of the Sunset Parcel, placed himself in a position where Granlund could credibly make his allegations about the Oral Agreement, even though such allegations may be untrue.

G. Regardless of whether Granlund is believed concerning the existence of the Oral Agreement, there will be difficulties quantifying the losses caused by Foster's violations of Government Code § 1090 and the County's Code of Ethics. Liability under § 1090, however, does not require proof of loss. Further, a violation of § 1090 in any event constitutes a violation of the Code of Ethics.

H. Regardless of whether Foster acted in good faith or caused any losses, he should pay to the County the net profits, roughly \$36,000, that he made on the resale of the Sunset Parcel. That amount consists of: (1) total sale proceeds of \$100,000 from the sale in 2004 by the Fosters and the Curtis of the Sunset Parcel and an adjoining parcel titled exclusively in the names of the Curtis, (2) minus approximately \$64,000 paid to the Curtis for their interests, and (3) minus an additional \$10,000 that the Fosters paid to buy their 50% interest in the Sunset Parcel.

IV. METHODOLOGY AND DESCRIPTION OF INVESTIGATION

On July 19, 2005, the County Board of Supervisors approved the employment of G|R to investigate and report on allegations made by Granlund against Foster concerning

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the 2001 land transaction. Shortly thereafter, G|R was also requested to investigate other transactions, which are the subject of separate reports.

In the course of its investigation, G|R inspected all the files in Foster's office, which was sealed by Supervisor Hansberger at G|R's request. The County also provided G|R with numerous files, including the files maintained by the County's Real Estate Services Department ("RES D") concerning the 2001 sale of the Sunset Parcel. Foster voluntarily produced records. With the assistance of County Administrative Officer Mark Uffer, G|R obtained documents from Granlund's employer, Platinum. Those documents included a copy of Granlund's unsigned written employment agreement with Platinum.

Beginning Tuesday, July 19, 2005, G|R conducted witness interviews, including interviews of Foster and Granlund. Persons interviewed included: (1) Supervisor Dennis Hansberger, (2) Moe Behzad, aka Mazafar Behzad, (3) [REDACTED], (4) Richard Beemer, (5) [REDACTED], (6) Larry Curti, (7) Louis Curti, (8) [REDACTED], (9) James Foster, (10) Linda Foster, (11) Brett Granlund, (12) Barbara Halsey, (13) Gary Henson, (14) Thomas Laurin, (15) Brian McCormick, (16) Gary Penrod, (17) [REDACTED], (18) Louis Schnepf, (19) David Slaughter, (20) [REDACTED], (21) Mark Uffer, and (22) [REDACTED]. Lonni Granlund declined to be interviewed but answered several questions in writing.

All interviews conducted by G|R were attended and transcribed by a court reporter. As stated, the transcripts of all interviews are available for inspection through County Counsel. G|R conducted the witness interviews under rules designed to achieve consensual, on-the-record interviews on very short notice.

G|R told each witness interviewed that the interview was voluntary; that the witness could decline to answer any question; that the witness was not under oath; that statements made on the record would be transcribed by the court reporter and would be transmitted to the Board of Supervisors; that the transcript might not remain confidential; and that G|R would not give any weight to statements not made on the record.

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G|R did not give weight to allegations and statements that witnesses did not make on the record, in the presence of a court reporter. G|R believed that, given the importance of the various matters under investigation by G|R, reliance on unrecorded statements created too great a risk of unreliability and confusion, and would preclude the Board from exercising its independent judgment concerning any inferences drawn by G|R.

One significant gap in the information sought by G|R arises from the lack of County back-up records of emails sent or received during 2001 by Foster on his County office computer. G|R consulted with County staff and an outside computer data retrieval service concerning the lack of backup records. At this time, G|R has no evidence that Foster deleted any emails for the purpose of impeding G|R's investigation.

V. FACTS

A. November 1988: The CRILCO Partnership Agreement & Name

On or about November 1, 1988, Richard and Adelle Wilcox (the "Wilcoxes") and Granlund signed a partnership agreement (the "CRILCO Agreement") with a company named Mentone Investments, Ltd. ("Mentone"). App., Ex. 3. Foster and Hal Heywood ("Heywood") signed the CRILCO Agreement on behalf of Mentone. *Id.* Mentone was a general partnership consisting of Foster and Heywood. *Id.*

The CRILCO Agreement provided that: (1) it created a general partnership among Granlund, the Wilcoxes, and Mentone; (2) the name of the partnership was Colorado River Indian Land Company (i.e., "CRILCO"); (3) CRILCO would continue until dissolved by mutual consent of the partners; (4) CRILCO's business purpose was "to purchase road frontage real property and to construct billboards thereon;" and (5) "[t]he Partnership shall not engage in any other business or activity without the prior written consent of all Partners." App. Ex. 3, p. 1.

The terms of the CRILCO Agreement created financial obligations among the parties and, indirectly, between Granlund and Foster. Section 2.02 of the CRILCO Agreement provided:

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Section 2.02 ADDITIONAL CONTRIBUTIONS TO CAPITAL. Whenever it is determined by the Partners that its capital is presently or likely to become insufficient for the conduct of its business, the Partners may call for additional contributions to capital. Each Partner shall be liable to the Partnership for his share of the aggregate contribution duly called for under this Paragraph. Each Partner's share shall be in proportion to his share of the Partnership's profits. [App., Ex. 3, pp. 1-2.]

Section 2.11 of the CRILCO Agreement provided:

Section 2.11. ALLOCATION OF PROFITS AND LOSSES. All net profits and any losses of the Partnership shall be allocated to the Partners in proportion to their initial capital contributions which is as follows:

<u>NAME</u>	<u>PERCENTAGE</u>
Mentone Investments, Ltd.	60%
Brett J. Granlund	30%
Richard E. and Adelle M. Wilcox	10% [App., Ex. 3, p. 3.]

Section 3.01 of the CRILCO Agreement provided:

Section 3.01. FIDUCIARY RELATIONSHIPS OF PARTIES TO EACH OTHER. The parties hereto are Partners to each other, and each of them owe a fiduciary duty to the Partnership and to each other. Each Partner shall act in the highest good faith toward the other. . . . [App., Ex. 3, p. 6.]

From the outset, if Granlund is believed, he knowingly participated in a scheme to mislead the County. According to Granlund, the purpose of CRILCO's name – i.e., Colorado River Indian Land Company – was to mislead the County into believing that

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CRILCO's billboards in Needles were located on Indian land and therefore did not require permits from the County. 7/20/05 Granlund Int., p. 8, l. 13 - p. 10, l. 7. Granlund stated at his interview:

A. [GRANLUND]: . . . You don't need permits to put up billboards on tribal land. The tribe had entered into a contract, I believe, with Kunz & Company, K-u-n-z, to erect several billboards along River Road. They weren't allowed. That wasn't [an] allowed use there. So we – Jim found it, and when he found the property, he asked me to go look at it and see what I thought and see if we could buy that property and put up some billboards. Of course, your first question is, "How are you going to permit them?" Next question is, "We don't really need to if it's out here in the middle of the desert. If it's surrounded by Indian land, this board's going up all over on the Indian land. If the County becomes confused as to whether or not it's tribal land or private land, they'll never ask for permits."

QUESTION: So the idea of picking the name Colorado River Indian Land Company was to create the impression that it was –

A: That it was Indian property.

Q: Which, in fact, it was not?

A: Right.

Q: When you say it was not, you're talking about the company or the land?

A: The land. The land or the company. There was no [sic] Indians involved here.

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Q: At the time were you aware of this purpose to the name of CRILCO? I'll refer to it as CRILCO, C-R-I-L-C-O, an acronym for Colorado River Indian Land Company.

A: I wasn't exactly sure that's how it was going to work out, but it wasn't long before I figured it out. [7/20/05 Granlund Int., p. 9, l. 3 - p. 10, l. 7.]

Granlund stated that he understood that the purpose of CRILCO's name was to mislead the San Bernardino County Building Department. 7/20/05 Granlund Int., p. 119, ll. 16-23. Granlund further stated at his interview:

QUESTION: When did you first find out that the billboards that CRILCO had owned at the time you became a partner and that were near Indian land and not on it, when did you first find out they were not on Indian land?

ANSWER [GRANLUND]: I found out they were not on Indian land, you know, from day one. . . . [7/20/05 Granlund Int., p. 118, ll. 14-20.]

B. Approx. Feb. 1998: Behzad Opens Escrow; Later Meets Foster

Moe Behzad, aka Mazafar Behzad, owns a company named BEK Consulting Engineers, Inc. ("BEK"). In or about February 1998, Behzad opened an escrow with Blessed Hope Foundation ("Blessed Hope"), a non-profit corporation, to purchase realty that it owned next to the Sunset Parcel. App., Exs. 8, 86.

The escrow instructions between Behzad and Blessed Hope provided that Behzad would pay \$120,000 to Blessed Hope for the realty commonly known as Wabash/I-10 Freeway, Assessor's Parcel No. 300-012-09, Redlands, California. App., Ex. 8.

Behzad stated at his interview:

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ANSWER [BEHZAD]: Okay. I took – There was a property that someone introduced to me that belonged to Blessed Hope Fellowship. It's a charity organization.

They had – I forgot – 2, 3 acres of property, approximately. Again, I don't remember acreage. They wanted to sell that property. I got interested in that.

I took that property into the escrow. I looked at the map. I looked at the property, and I noticed that the County of San Bernardino has an acreage way on the top of the hill, which if added to the property that I took into the escrow would make a nice, developable piece of property.

Without that piece from the County, I couldn't really do much. . . . [8/1/05 M/Behzad Int., p. 8, ll. 5-22.]

According to Behzad, at some point he met with Foster. Behzad stated:

. . . . I had a meeting with Mr. Foster. Mr. Foster indicated, okay, the steps that the County needs to take is this land has to be appraised. And the probate of the appraisal, the County real estate department will have an auction, and during that auction I could – if I am interested, I could purchase the property through that auction. [¶] After that discussion, I stayed in very close regular contact with the real estate department on a regular basis talking to them. [8/1/05 M/Behzad Int., p. 10, ll. 12-20.]

C. Approx. August-Dec. 1998: County Appraises the Sunset Parcel

In an interoffice memo dated August 17, 1998, Anthony Gray ("A/Gray"), Chief of the County's Transportation Design Division, requested Manuel Ahuero ("M/Ahuero"), Director of the County's Real Estate Services Division ("RESD"), to initiate a "cursory or

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limited appraisal of the surplus property (0.397 [a]cres) located within the existing right of way of Sunset Drive, located at Wabash Ave. in the Redlands area.” App., Ex. 9.

By this time, the County knew of Behzad’s interest in buying the Sunset Parcel. The County’s knowledge is reflected by the fact that Gray sent a copy of his August 17th memo to Behzad. App., Ex. 9.

According to Granlund, the Sunset Parcel was “surplus, I believe, from right-of-way. There was property that was left over from an acquisition when they straightened out curves in the road and brought the new off-ramp up the mountain, and apparently it actually lay on both sides of the road.” 7/20/05 Granlund Int., p. 14, ll. 4-9.

The RESD Real Property Agents working on the sale of the Sunset Parcel made entries in a log or “diary” maintained by RESD. App., Ex. 10. Marilee Rendulich (“M/Rendulich”), Real Property Agent of the RESD, made an entry in this diary reflecting that, on September 9, 1998, she inspected the Sunset Parcel. *Id.* M/Rendulich made this inspection for the purpose of preparing an appraisal. *Id.*, Ex. 12.

On or about December 2, 1998, County Right-of-Way Manager A. Louis Schnepf (“L/Schnepf”) approved M/Rendulich’s written appraisal report of the Sunset Parcel. App., Ex. 12. In a December 2nd interoffice memo to L/Schnepf, M/Rendulich stated:

As requested, I have prepared a limited restricted appraisal of the 17,315 square foot surplus property site located on the northwesterly corner of Sunset and Wabash.

The real estate in question is zoned RS with the City of Redland zoning ordinances. This allows single-family residential development. The subject site meets the development standards for a single-family dwelling, but its terrain limits its potential. It has steep uphill slopes at its frontage along both Sunset and Wabash creating an access problem as well as a high development cost issues associated

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with grading and concrete demands (driveway, retaining walls). If an easement from the westerly abutting property could be obtained, this would minimize some of the development issues. In its "as is" condition, the surplus property has expensive costs and risks associated with any single-family development. . . . [App., Ex. 12.]

The appraisal prepared by M/Rendulich was entitled "Limited Restricted Appraisal Report" of the Sunset Parcel. App., Ex. 12. The appraisal valued the Sunset Parcel at \$35,000, based on the assumption that the Sunset Parcel was zoned for residential use and met the development standards for a single family dwelling. *Id.*

On December 9, 1998, L/Schnepp submitted the appraisal to A/Gray, Chief of Transportation Design Division, for his approval. App., Ex. 13. By interoffice memo dated December 15, 1998, A/Gray wrote to M/Ahuero, Director of the RESD, that: "The Transportation Department approves the Appraisal Report for \$35,000 value and recommends that your Department auction the property off to highest bidder." *Id.*, Ex. 14. By interoffice memo dated December 16, 1998, L/Schnepp also submitted the appraisal and A/Gray's December 15th memo to John Yuhas ("J/Yuhas"), Real Property Manager in the RESD. *Id.*, Ex. 15. On December 16, J/Yuhas handwrote on the memo: "Sharon[,] Please handle. Lou told me Tony Gray wants to sell as soon as possible." *Id.*

According to [REDACTED], the County decided to proceed with an auction of the Sunset Parcel because Behzad refused to pay the County the appraised value of the property. [REDACTED] was told by A/Gray that Behzad wasn't willing to pay anything for parcel; instead, Behzad's position was that the County should quitclaim the parcel to him. [REDACTED]

D. February-March 1999: Letters to and from Blessed Hope

By letter dated February 16, 1999, Thomas T. Ingram, Vice President, Secretary, and Treasurer of Blessed Hope, wrote to Ken Miller ("K/Miller"), Director of

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Transportation/Flood Control Department for the County. App., Ex. 16. Ingram stated that Blessed Hope was in escrow to sell a 5.44 acre parcel for \$135,000, but “[o]ur buyer informed us that without access to the property from Sunset Dr.[,] they are not interested in the property.” *Id.* Ingram stated that the \$35,000 appraisal of the Sunset Parcel “might be high.” *Id.*, Ex. 16, p. 2. Ingram urged that the County not auction its right of way, but instead enter into an agreement with Blessed Hope. *Id.*

In March 1999, K/Miller replied to Ingram’s February 16th letter. K/Miller addressed allegations by Blessed Hope that it had certain rights of ingress and egress by reason of an October 31, 1981 letter signed by Mike Walker. K/Miller wrote: “Our County Counsel has advised us that we cannot directly sell this property to your organization. Therefore, we intend to auction off this parcel and to disclose to bidders the letter signed by Mike Walker in order to alert them of the questionable impact the letter has on the property.” App., Ex. 20.

E. March-June 1999: Board Approves Proposed Auction of Sunset Parcel

In or about February-March 1999, RESD assigned a planned auction of the Sunset Parcel to Real Property Agent II Sharon Boncuk (“S/Boncuk”) (now named Sharon Davis). S/Boncuk notified other County departments that RESD planned to request the Board of Supervisors to declare the property surplus for disposition. S/Boncuk wrote: “Please advise this office within 60 days of the date of this memo of any interest you may have in this property.” App., Ex. 18; *see also id.*, Ex. 19.

On or about May 13-18, 1999, Foster received a proposed Board agenda item declaring the Sunset Parcel surplus property and authorizing RESD to sell the property at public auction in accordance with Govt. Code §§ 25363 and 25526, with a minimum bid price of \$26,000. App., Ex. 22. At the time, Foster’s title was Field Representative for Supervisor Hansberger. There is little doubt that Foster received this May 1999 memo, because a copy of the memo bears his office stamp. *Id.*

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On June 15, 1999, all five Supervisors unanimously adopted Resolution No. 99-139, which resolved that the Sunset Parcel “be declared surplus, and that it is the intention of the County to sell said parcel pursuant to Government Code Sections 25363 and 25526, and direct Real Estate Services Department to conduct the sale in accordance with the terms set as below.” App., Ex. 25. The terms specified a minimum bid of \$26,000. *Id.*

F. June-August 1999: First Failed Auction of the Sunset Parcel

Beginning in June 1999, RESD gave notice of a planned auction sale of the Sunset Parcel set for August 26, 1999 at 825 East Third Street, Second Floor, Conference Room 200, San Bernardino, California. App., Exs. 25-28, 34. The notices included postings, newspaper ads, and letters to owners of adjacent properties. *Id.* The proposed form of offer notified bidders that Blessed Hope claimed a right to travel across the Sunset Parcel pursuant to commitments made in an October 1981 letter from the County’s Mike Walker. *Id.*, Ex. 34.

RESD’s files reflect that both Behzad and Blessed Hope received bid packages from the County for the planned August 26th auction. App., Ex. 35. On or about August 23, 1999, a Blessed Hope representative and/or Behzad spoke to the City of Redlands about the planned auction. *Id.*, Ex. 32. Blessed Hope’s and/or Behzad’s August 23rd communication with Redlands led its City Planner, John Jacquess (“J/Jacquess”), to call the County the following day.

On August 24, 1999, two days before the scheduled auction, J/Jacquess called RESD’s S/Boncuk and/or T/Smith and told either or both of them that, contrary to the County’s appraisal, the Sunset Parcel was not zoned residential; instead, the property was zoned A-1, for agricultural use. App., Ex. 32.

Also on August 24th, M/Rendulich spoke with J/Jacquess, who disclosed that he was given information the previous day by a representative of Blessed Hope. App., Exs. 32-33. J/Jacquess said that, by reason of slope of the Sunset Parcel, the required lot size for its development was 1.0 acre and that the Sunset Parcel’s size was smaller than that.

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Jacquess stated that, to develop the Sunset Lot, the owner would need a zoning variance and certificate of compliance from Redlands. J/Jacquess estimated the cost of meeting these requirements at \$1,525. He did not state how long it would take to meet those requirements, and he did not state the probability of meeting those requirements. Id.

[REDACTED]

The City – well, specifically John Jacquess from the City of Redlands notified, I believe, the agent putting it up for auction, that the zoning would be A-1. That they would never permit development on that site. And that I had been, at [a] minimum, overzealous in my assumption of an R-S zoning. But the R-S zoning came from the City Planning Department. I did not make that up. It was given to me by his staff.

[REDACTED]

[REDACTED] “speculation” at the time was that Behzad, who was a civil engineer, contacted Redlands about the zoning issue in order to prevent the public auction. [REDACTED]

The information provided by J/Jacquess about zoning and lot size rendered the Sunset Parcel less marketable and cast doubt on the December 1998 appraisal, which had appraised the Sunset Parcel at \$35,000 on the assumption that the property was zoned residential and could be developed. See App., Ex. 12.

As a result of the information provided by J/Jacquess on August 24th, the County cancelled the August 26th auction of the Sunset Parcel. See App., Ex. 33. An August 24th entry by S/Boncuk or T/Smith in the RESD diary states: “It was agreed to pull item until variance options can be explored.” Id., Ex. 41.

[REDACTED] pulled the auction agenda item “just prior to auction when I found out there was a zoning problem.” [REDACTED]

[REDACTED]

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ANSWER [REDACTED] After the item was pulled, I met with Jim Foster, I can't recall if he called me, or I called him, to let him know the item had been pulled. I don't remember how much he and I were in contact during that period when I was auctioning. I believe he called me, but I couldn't be certain.

He called me and asked for me to bring the file over and meet with him. And I was afraid because I heard that he was just – you know, sometimes just kind of abrupt. And I didn't know him then. But the meeting – it was just him and I. In the meeting[,] I just explained to him what happened, that the City had contact – or had told one of the bidders that the zoning was not residential, so I pulled the item for auction. And that was it. I didn't really think anything of it.

QUESTION: Was it unusual for Mr. Foster or the chief of staff of any supervisor to contact you directly?

A: It's not unusual for them to contact us, necessarily, but it's very unusual to meet with them without our bosses there. [¶] You know, I don't – I've never met with any other chief of staff without my boss present.

Q: And how did it come about, precisely, that you met with Mr. Foster without your boss present?

A: My boss told me to go meet with him. [REDACTED]

[REDACTED] gave these additional details of [REDACTED] meeting with Foster:

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QUESTION: And tell me, as best that you can recall, everything that was said in this meeting between you and Mr. Foster.

ANSWER [REDACTED]: We just talked about the City – you know, I informed him that the City had decided that the zoning was A-1 and not R-S. And he wanted to know who at the City told me that. And I told him this Mr. Jacquess was the gentleman, and he knew who he was. He looked over my file. And I can't recall if we talked about reauctioning it. I – I – I'm sure I must have told him that [REDACTED] was going to revalue the property based on this change in zoning, and that there was going to be a delay. But, you know, other than that, I can't really remember details. [REDACTED]

G. February-Nov. 2000: Additional Problems in Selling Sunset Parcel

On February 14, 2000, after the County cancelled the August 1999 auction, Behzad met with County representatives K/Miller and A/Gray. By interoffice memo dated February 15, 2000, A/Gray wrote to RESD Director M/Ahuero:

On February 14, 2000, Ken Miller and I met with Mo Beshad [sic], who represents property owners on the west side of Wabash Avenue north of Sunset Avenue and north of the Department's surplus property.

At this time[,] the Department requests that Real Estate Services initiate surplusizing this property as soon as possible and if there is still some zoning concerns that they be changed to what is necessary to make the parcel marketable as surplus property. [App., Ex. 37.]

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No later than March 2000, RESD's Trudy Smith ("T/Smith"), whose job title was Real Property Agent II, began work on the planned sale of the Sunset Parcel. App., Exs. 38-39. [REDACTED] reported to J/Yuhas and L/Schnepp. [REDACTED]

According to Foster, in or about 2000 he was contacted by RESD's T/Smith. Foster stated at one of his interviews: "Real Estate Services wanted to sell the property. They contacted the third district and advised us that they wanted to put it up for sale." 7/19/05 Foster Int., p. 8, ll. 2-6. Foster further stated at his interview:

QUESTION: In response to getting this information in 2000, what did you do?

ANSWER [FOSTER]: I don't recall the specifics, but an outside party apparently was asking to buy the property without going to auction, and I instructed Real Estate Services they should follow the County procedures and post it and put it up for sale with an auction. [7/19/05 Foster Int., p. 8, ll. 13-19.]

Foster stated at his interview that the "outside party" was Moe Behzad; Foster further stated that he recalled speaking to Behzad in or about 2000:

QUESTION: And tell me then, as best you recall, what your discussions were with Mr. Behzad about the Sunset and Wabash property.

ANSWER [FOSTER]: He wanted to buy the property direct for \$12,000 and he wanted to know, you know, why he couldn't do that. And I told him because county property is required to go to auction and fair market value. [7/19/05 Foster Int., p. 9, ll. 19-25.]

On or about March 8, 2000, at the request of J/Yuhas and T/Smith, M/Rendulich spoke to Jeff Shaw, Director of Community Development for Redlands. Shaw told

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M/Rendulich, among other things, that not more than 10% of the Sunset Parcel could be developed unless it was rezoned at a cost of \$10,000. App., Ex. 39. Two days later, Shaw told M/Rendulich that it was the position of City Planner J/Jacquess that the Sunset Parcel "could not be treated as a separate parcel because it is below the minimum standard for A-1 zoning. Since it cannot be a legal lot of record, it can only be given to one of the two adjoining property owners (in their opinion)." Id.

It is apparent that City Planner J/Jacquess' statements in August 1999 concerning lot size and zoning, whether or not justified, had caused the County to reduce its estimate of the Sunset Parcel's value. On March 10, 2000, T/Smith wrote in the RESD diary that, by reason of the projected \$10,000 cost of rezoning the Sunset Property, A/Gray had recommended reducing the initial auction bid price to \$12,000. App., Exs. 10, 41. While recommending a minimum bid of \$12,000, A/Gray cautioned against hurrying to take the first bid. [REDACTED]

By email dated March 13, 2000, Emi Mendez of the County wrote to M/Ahuero, M/Rendulich, T/Smith, and K/Miller that "it seems like it might be appropriate to process a re-zoning through the City . . . to obtain [re-] zoning." App., Ex. 42. The rezoning did not occur, possibly because A/Gray had stated on March 10th that he did not want the County to go through the expense of a rezoning. Id., Exs. 10, 41; [REDACTED]

On or about April 1, 2000, Behzad inquired of T/Smith and/or M/Rendulich about buying the Sunset Parcel without an auction. Notes in the RESD diary reflect that A/Gray directed T/Smith that there had to be an auction. App., Exs. 10, 41; [REDACTED]

On November 7, 2000, T/Smith sent an interoffice memo to J/Yuhas. T/Smith entitled the memo "Board Agenda to declare surplus property located in Redlands and authorize sale." App., Ex. 43. The memo recommended a minimum bid of \$12,000. Next to the heading "Remarks," T/Smith's memo stated:

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Disclosure needed at time of sale regarding the following:

1. Not a legal lot size.
2. Does not conform to residential zone without CUP.
3. City Measure "U" may restrict development for hillsides. [App., Ex. 43.]

H. Approx. January 2001: Status of CRILCO

By January 2001, Granlund had completed his service as State Assemblyman, and had accepted a political appointment as member of the Board of Prison Terms, where he served until May 2002. 7/20/05 Granlund Int., p. 41, l. 14 - p. 42, l. 13. Granlund took that job because, although he planned to become a lobbyist, "[y]ou have a one-year ban that you're prohibited from lobbying after you leave the legislature." Id., p. 42, ll. 22-25.

Granlund's service as a public official gave him experience with state conflict of interest laws. Granlund's 1999 Form 700 reflected that he knew that conflict of interest laws required public officials to report business investments and gifts. App., Ex. 17. At his interview, Granlund showed a familiarity with the gift-reporting requirements of Form 700s. 7/20/05 Granlund Int., pp. 108, l. 15 - p. 109, l. 15.

As of January 2001 and throughout mid-2004, the CRILCO partnership continued. App., Ex. 44. The partnership shares remained the same: (1) Mentone - 60%, (2) Granlund - 30%, and (3) the Wilcoxes - 10%. Id. During January-December 2001, CRILCO paid these draws: (a) Mentone - \$21,600, (b) Granlund - \$10,800, and (c) the Wilcoxes - \$3,600. Id. As of 2001, CRILCO owned 10 billboards, plus two parcels of realty located in San Bernardino. 7/19/05 Foster Int., p. 16, l. 24 - p. 17, l. 8.

Throughout 2001, Foster's title was Field Representative to 3rd District Supervisor Hansberger. See App., Ex. 73. Foster's Form 700 (i.e., Statement of Economic Interests), filed March 29, 2001, accurately disclosed that Foster had economic interests in CRILCO and Mentone. Foster's Form 700 valued his interests in CRILCO and Mentone at between \$100,000-\$1,000,000. Id.

I. [REDACTED]

[REDACTED]

J. January 2001: Board Re-Authorizes Sale of Sunset Parcel

On January 11, 2001, T/Smith sent an interoffice memo to J/Yuhas, Real Property Manager in RESD. The memo contained revised information for a Board of Supervisors agenda item declaring the Sunset Parcel surplus property and authorizing its sale. The proposed minimum bid price was now \$20,000. App., Ex. 45. In addition, the memo mentioned only two of three disclosures described in the November 7, 2000 Memo. Id. The January 11th memo stated:

Disclosure needed at time of sale regarding the following:

1. Does not conform to residential zone without CUP.
2. City Measure "U" may restrict development. [App., Ex. 45.]

An unsigned interoffice memo dated January 11, 2001 indicates that, on or about January 16, 2001, T/Smith sent to Foster a copy of the proposed Board agenda item

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concerning the Sunset Parcel. App., Ex. 47. At the time, Foster was Supervisor Hansberger's Field Representative. Id., Exs. 47-48.

On January 30, 2001, all five Supervisors unanimously approved a resolution determining that the Sunset Parcel was surplus property and authorizing RESD to conduct a public auction of that property in accordance with Government Code §§ 25526 and 25363 with a minimum bid of \$20,000. App., Ex. 49.

K. Feb.-March 2001: The 2nd Failed Auction: Foster's Role in Marketing

During early February 2001, T/Smith scheduled the public auction of the Sunset Parcel for 2:00 p.m. on February 22, 2001. App., Exs. 50-52. It appears that T/Smith both posted and published notice of the planned auction beginning on or about February 6, 2001. Id., Exs. 58-63, 65.

No bidders attended the February 22, 2001 auction. App., Ex. 64. [REDACTED]

[REDACTED] the lack of turnout resulted from misinformation given out by the City of Redlands about restrictions on developing the Sunset Parcel. [REDACTED]

[REDACTED] stated at [REDACTED] interview that, following the failed February 22nd auction, [REDACTED] complained to the City of Redlands and "[t]hey just said they would stop giving out information." [REDACTED]

According to [REDACTED] communicated with Foster about the marketing of the Sunset Parcel. [REDACTED]: "I coordinated everything with him."

[REDACTED]: "He was the Supervisors' field rep for the area of – the Redlands area where the property was located." Id., p. 28, ll. 2-4. Although [REDACTED] did not recall that Foster ever suggested an asking price for the Sunset Parcel, [REDACTED]

QUESTION: What were the things that you coordinated with him?

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ANSWER [REDACTED]: The appraised value, the reduction of the appraised value, the date of going to the board, the advertisement of how the outcomes were of the advertisement and the auctions.

Anything that pertained to the property, I had to coordinate through the Supervisors' office prior to going to the Board.

Q: Did you coordinate these items by communicating directly with Mr. Foster or by someone connected with him?

A: No, he was my contact. [REDACTED]

[REDACTED]

RESD files reflect that [REDACTED] and Foster did, in fact, communicate by email during February 22-23, 2001 concerning the failed auction. App., Ex. 65: [REDACTED]

[REDACTED] Each email stated "Wabash & Sunset Auction" in the mandatory "Subject" space. App., Ex. 65. The County was unable to find computer file copies of these emails in the County's computer system or on the hard-drive of Foster's office computer. As stated, after consulting with County staff and an outside computer consulting firm, G|R to date has found no evidence that Foster intentionally deleted any email for the purpose of impeding G|R's investigation.

The hard copy of the emails obtained from RESD's files show that, by email dated 4:36 p.m., February 22, 2001, T/Smith wrote to Foster, A/Gray, and L/Schnepp that: "We received no bids for the proposed site . . . sorry. The property will remain on the surplus list until this office is provided with direction otherwise." App., Ex. 65.

In an email dated 4:47 p.m., February 22, 2001, Foster wrote to T/Smith: "I am shocked. Put it back out with the revised bid min @ the \$12,000. If required, bring it back to the B.O.S." App., Ex. 65. [REDACTED] stated [REDACTED] that this sale price was "extremely low." [REDACTED]

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In an email dated 5:04 p.m., February 22, 2001, T/Smith wrote to Foster: "I was shocked too, a little disappointed, we had a lot of calls and sent out a lot of packages, Mo didn't even come in, but I do know the City of Redlands told a lot of my interested parties 'there was a zoning problem at one time' and who knows what else. When they called me back, I explained the agriculture zone was applied by the City, but after review they changed it to R1, the problem was resolved. Lets wait a couple of weeks to see if Mo presents an offer later, we know he wants it." App., Ex. 65. [REDACTED]

[REDACTED] Moe Behzad was interested in buying the Sunset Parcel. [REDACTED]

In an email dated 8:31 a.m., February 23, 2001, Foster wrote to T/Smith: "Can anyone still bring in an offer?" App., Ex. 65. According to [REDACTED] she replied by telling Foster: "That we do have the right to take offers as long as they're reasonable, and the department approves them and the Board approves them." [REDACTED]

It appears that, shortly after sending the February 23rd email, Foster personally made efforts to market the Sunset Parcel. Foster acknowledged that he personally showed the property in or about the first quarter of 2001, following the failed auction:

QUESTION: Tell me what your discussions were with Mr. Brett Granlund about the Sunset and Wabash property through the time that it was acquired from the County during 2001.

ANSWER [FOSTER]: Brett came to my house on a Saturday morning, and we were talking politics. And I told him I had to leave, that Bob Roberts and Larry Curti were going to look at the Sunset and Wabash property. Larry was thinking about buying it.

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So Brett and I drove over to the property. We met Larry Curti and Bob Roberts on the property. We walked the property, and Brett said, "I want to buy half of this property."

And Larry Curti said, "Fine, I will take half and you take half." That was the discussion. [7/19/05 Foster Int., p. 12, ll. 9-23.]

According to Gary Henson, who is Granlund's friend and Foster's estranged brother-in-law, it was perhaps even prior to 2001 that Foster "had mentioned to us that there's a piece of property that would be a good buy, might not look like much, but a good buy to pick up and sell it later on down the road." 8/5/04 Henson Int., p. 9, lines 12-21. Henson stated that, although he heard Foster discuss the Sunset Parcel with Granlund, Henson never heard any "direct" statement by Foster that he and Granlund would buy the parcel as partners. *Id.*, p. 10, l. 15 - p. 11, l. 13. Henson stated that it was not until 2005 that he heard from the newspapers and/or the Granlunds that Granlund and Foster purchased the Sunset Parcel as partners. *Id.*, p. 11, l. 5 - p. 12, l. 19.

Robert "Bob" Roberts ("R/Roberts") is a licensed real estate broker who works for himself and as a broker for Emerich & Company. 7/26/05 Roberts Int., p. 5, ll. 4-22; p. 7, ll. 3-10. R/Roberts had done work for CRILCO; he knew Foster, Granlund, and Larry Curti. *Id.*, p. 10, ll. 3-24. According to R/Roberts, sometime in 2001, he received a telephone call from Foster and Larry Curti:

QUESTION: Now tell me everything that you and Mr. Foster discussed in this telephone conversation.

ANSWER [R/ROBERTS]: He asked me if I had a little time to put together a deal and I said, "It's been awful slow. Sure, I have time to put together a deal." He says, "Larry Curti wants to buy this lot that the County's got for sale and I took him up and showed it to him. And I guess him and

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Granlund are going to buy this lot, so go over to Real Estate Services and get the appropriate forms, whatever you need, and find out how you can make an offer on this lot.” That’s my recollection of that conversation. [7/26/05 R/Roberts Int., p. 9, ll. 11-22.]

According to R/Roberts, Foster “pretty much said” that: “We’re just leaving that site – and Granlund and Curti and I are leaving the site and they’re wanting to do this deal so go put the deal together” 7/26/05 R/Roberts Int., p. 15, ll. 4-10. R/Roberts said he never heard Foster or Granlund state or suggest that Foster had any kind of ownership interest in the Sunset Parcel. *Id.*, p. 13, ll. 8-24. Granlund told R/Roberts that Granlund and his wife would own half the parcel and Larry Curti would own the other half. *Id.*, p. 24, ll. 6-20. R/Roberts understood that he was asked to handle the proposed purchase because, although Lonni Granlund had a broker’s license, Larry Curti preferred working with R/Roberts. *Id.*, p. 23, l. 19 - p. 24, l. 5.

After speaking with Foster and Larry Curti by telephone, R/Roberts contacted RESD’s T/Smith. She told R/Roberts that, by reason of previous failed auctions, “I could go in without an auction format and make an offer to purchase and it would be processed without having to wait for an additional auction to be scheduled or anything.” 7/26/05 R/Roberts Int., p. 21, ll. 14-25.

According to Larry Curti, he learned that the Sunset Parcel was for sale from either R/Roberts or Foster. 7/21/05 Larry Curti Int., p. 9, ll. 7-12. Larry Curti stated at his interview that he inspected the property because “[i]t was my belief that Bret[t] was interested in this property and he wanted to know if – if I thought I could build an entry road to the top of the lot.” *Id.*, 9, ll. 18-22. Larry Curti further stated: “[T]hat’s why I thought they wanted to meet me there at the lot site, but later I found out he wanted somebody to go in with him and buy it. And I said I didn’t – I’d be interested in buying it on my own, but I didn’t want to go into a partnership with anybody.” *Id.*, p. 10, ll. 3-10.

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Larry Curti went to look at the property on a Saturday, and when he arrived, Granlund and Foster were there. *Id.*, p. 10, ll. 11-24; p. 13, ll. 7-18. Foster did not state that he had any interest in buying the property; but Granlund said that he would like to buy the property “but he would like to go in with somebody on it, [and] I don’t know if it was a money issue or he just wanted a partner in it.” *Id.*, p. 13, l. 19-p. 14, l. 7. According to Larry Curti, he responded to Granlund’s proposal as follows: “I said ‘I don’t want to get involved in a partnership,[’] but I said, ‘My son might.’” *Id.*, p. 15, ll. 7-12. The same day, Larry Curti told his son, Louis Curti, that he should consider buying a one-half interest in the Sunset Parcel for \$10,000 and that Granlund would buy the other one-half interest. *Id.*, p. 18, l. 14 - p. 19, l. 4.

According to Louis Curti, he was told by his father, Larry Curti, about the opportunity to buy the Sunset Parcel on a 50-50 basis with Brett Granlund. Louis Curti stated that the purchase price for his one-half interest was \$10,000. 7/28/05 Louis Curti Int., p. 5, l. 9 - p. 9, l. 5. Louis Curti never previously did business with Granlund, but thought that buying co-ownership of the Sunset Parcel for \$10,000 would be a good investment. *Id.* Louis Curti said he had no role in selecting R/Roberts to act as a broker; Louis Curti stated that his father told him that R/Roberts was the broker on the deal. *Id.*, p. 10, l. 5 - p. 12, l. 15. Louis Curti said he never signed a broker’s agreement with R/Roberts, and, after getting title to the property, never discussed it with either Granlund or Foster. *Id.*, p. 14, l. 12 - p. 15, l. 23. During 2001, Louis Curti did not hear, nor did he believe, that Foster co-owned the property or that Granlund was acting on Foster’s behalf in connection with the property. *Id.*, p. 22, l. 12 - p. 23, l. 11.

The Alleged Oral Agreement: Granlund stated at his interview that he purchased the Sunset Parcel as Foster’s partner. 7/20/05 Granlund Int., p. 12, l. 21 - p. 18, l. 6. Granlund stated that Foster told Granlund: “Hey, I’ve got this parcel that the County owns. I think it can be bought for 15 to \$20,000. I think it’s worth a lot more than that. Are you interested?” *Id.*, p. 13, ll. 3-10. Granlund stated that he and Foster went to look

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at the Sunset Parcel, "Larry Curti showed up." *Id.*, p. 13, ll. 14-18. Foster told Granlund that Foster had also invited Larry Curti to look at the property and consider buying it. *Id.*, p. 13, ll. 14-21. According to Granlund, he and Larry Curti each agreed to buy half of it for a total price of \$20,000. *Id.*, p. 14, ll. 13-20. Granlund stated that Foster said: "I don't want to put it in my name, you know. You'll have to do it." *Id.*, p. 14, ll. 13-15.

Granlund stated that Curti did not hear what Granlund and Foster allegedly discussed about co-owning the property. *Id.*, p. 19, l. 13 - p. 20, l. 8. When asked how many times Granlund discussed with Foster that he would get half the sale proceeds, Granlund replied: "I would have to say, honestly, once." *Id.*, p. 30, ll. 4. Implausibly, Granlund stated: "My assumption was that this was a proper deal" *Id.*, p. 20, ll. 6-8. When asked to describe everything stated about the alleged Oral Agreement, Granlund stated: "Like I said, we talked that day – 'Fine. Jim, I will put up the money.' I was prepared to put up all the money and then we would sell it. Then Jim and I would split the profits." *Id.*, p. 25, ll. 1-17.

On March 12, 2001, T/Smith sent to R/Roberts a proposed standard form of purchase agreement for the Sunset Parcel. T/Smith wrote:

Enclosed is the Offer to Purchase Agreement, Change of Ownership report and fee schedule for recording. The transfer tax is \$1.10 per \$1,000 due prior to recording any deed. At the time the Board of Supervisors declared to [sic] property in question surplus to the County's need, the Board did not approve a commission fee for brokerage. If a commission fee is requested, please fill out the commission certificate and provide a net schedule of funds along with the required forms. [App., Ex. 67.]

The above-quoted document reflects that: (1) T/Smith knew that there would be a documentary transfer tax on a sale of the Sunset Parcel; and (2) T/Smith knew that the

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Board had not authorized a broker's commission on the sale and required R/Roberts to submit a request for payment of that commission. According to R/Roberts, T/Smith said "you just have to make a request." 7/26/05 R/Roberts Int., p. 33, ll. 17-22.

According to [REDACTED], the County initially opposed paying R/Roberts a broker's commission, but R/Roberts "said the only way he would bring the deal to us is if we would pay a commission, and we informed him we don't pay commissions." [REDACTED] [REDACTED] further stated that, by this time, the Transportation Department was "anxious enough to dispose of the property, [and] they said, 'All right. We'll pay the commission subject to, of course, Board approval.'" [REDACTED] L/Schnepp regarded it as unusual for the County to agree to pay a broker's commission: "[I]n my experience, we had never paid a commission to dispose of a property." [REDACTED]

On March 14, 2001, RESD received a written offer from R/Roberts to purchase the Sunset Parcel for \$20,000. App., Ex. 71. The written offer did not mention Granlund or Foster. Instead, the written offer identified the purchasers as "LOUIS A. CURTI, ET AL," and stated "TO BE DETERMINED" in response to the form offer's request for an indication of "how title is to be vested." *Id.* As stated, Louis Curti is Larry Curti's son. 7/26/05 R/Roberts Int., p. 20, ll. 14-20.

The offer was accompanied by a \$5,000 deposit, a cashier's check from Redlands Centennial Bank; the cashier's check did not identify who purchased the check. App., Ex. 72. According to [REDACTED] after [REDACTED] received the offer, Foster said words to the effect of "Let's go for it." [REDACTED]

According to Lonni Granlund, who declined to be interviewed and instead responded by email to written questions from G|R, "Brett came home one sat or sun afternoon and told me that he & Jim Foster had bought a piece of property on Sunset." Ms. Granlund's statements on this point are entitled to little if any weight, because she declined to be interviewed and her statements reflect that her knowledge is second-hand.

R/Roberts stated at his interview: “[T]here’s always been a certain hostility between Lonni and her family and the Fosters.” 7/26/05 R/Roberts Int., p. 17, ll. 1-2.

According to [REDACTED] she received a telephone call from Moe Behzad sometime between mid-March 2001 and the Board’s April 3, 2001 vote to approve the sale to Louis Curti et al. [REDACTED] Behzad “was very upset and wanted to know if there was any way he could stop the auction or the Board approval and the sale of the property.” [REDACTED] (1) Behzad claimed not to have received a mailed notice of the auction because “he informed me that he was separated from his wife at that time and she did not forward his mail” [REDACTED] (2) Behzad offered only \$14,000 for the Sunset Parcel; (3) [REDACTED] told Behzad that his bid “was way below market and I already had another buyer that was willing to pay more” [REDACTED] and (4) [REDACTED] does not recall that Behzad ever raised his offer above \$14,000 [REDACTED] Behzad disputes [REDACTED] account.

L. March 13, 2001: Board Adopts Policy re Sales of County Property

On March 13, 2001, the day before R/Roberts submitted an offer on behalf of “Louis A. Curti et al.,” the Board of Supervisors adopted Policy No. 11-11, entitled “Bidding by Certain County Administrative Officials at Sales and Auctions of Property.” App., Ex. 70. The “Policy Amplification” section stated: “County administrative officials’ is defined, for purposes of this policy, as members of the Board of Supervisors or their respective staff members,” plus many other designated positions. *Id.* The “Policy Statement” provided:

It is the policy of the Board of Supervisors that the disposal by the County of any property (real or personal) authorized by statute or County policy be conducted in a fair manner. County administrative officials are prohibited from bidding either directly or through an intermediary at auctions or other sales of property. This prohibition is in addition to

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any prohibitions or limitations contained in any other County policies. [App., Ex. 70.]

Both before and after the Board adopted this policy, a California statute contained a related prohibition. At all relevant times, Govt. Code § 1090 expressly prohibited state, county, and city officials and employees from being “purchasers at any sale or vendors at any purchase made by them in their official capacity.”

M. April-May 2001: County Sells Sunset Parcel to Granlunds & Curtis

On April 3, 2001, all five Supervisors unanimously voted to approve a Board agenda item approving a sale of the Sunset Parcel for \$20,000 to Louis Curti and permitting payment of \$1,200 of the sale price to R/Roberts as a 6% broker’s commission, resulting in net proceeds of \$18,800 to the County. App., Ex. 75. According to [REDACTED] coordinated with Foster in submitting the Board agenda item to the Board. [REDACTED].

Although [REDACTED] believed that the Sunset Parcel was worth more than \$20,000, she also believed that the \$20,000 sale price “was better that what it was if we would have gone to another auction.” [REDACTED]

The presenters of the Board agenda item were K/Miller and J/Yuhas, but [REDACTED] admittedly helped prepare the item. [REDACTED]. As stated, the March 14th written offer from R/Roberts named the buyer only as “Louis A. Curti et al” and did not state how title would be vested; the Board agenda item similarly identified the buyer only as “Louis A. Curti.” The agenda item was inaccurate, however, in that it failed to disclose to the Board, or the public, that there were multiple buyers. App., Ex. 75. According to [REDACTED], as of April 3rd [REDACTED] did not know that Granlund was one of the buyers. [REDACTED]. The item prepared by T/Smith did not mention that she had any reservations about the adequacy of the sale price. App., Ex. 75.

By letter dated April 30, 2001, T/Smith notified R/Roberts that the Board had approved the total sale price of \$20,000 and payment of a \$1,200 commission to be

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deducted from the sale price. App., Ex. 76. T/Smith requested R/Roberts to provide a separate check "not to exceed \$60.00" payable to the County Recorder to pay for the recording of the documents. Id.

Net of R/Roberts' \$1,200 commission, the balance due the County on the \$20,000 sale price was \$13,800, because the County previously received a \$5,000 deposit. On or about May 14, 2001, the County received a cashier's check for \$13,800 from Redlands Centennial Bank; the cashier's check did not identify who purchased the check. App. Exs. 77-78. On the same date, R/Roberts gave T/Smith a check for up to \$60.00 payable to the County Recorder. Id., Ex. 78.

On May 22, 2001, the County recorded a grant deed, signed by then Board Chairman Fred Aguiar, conveying the Sunset Parcel. App., Ex. 79. [REDACTED] helped to prepare that grant deed. [REDACTED] The grant deed provided that Louis and Amy Curti received a 50% undivided interest in the Sunset Parcel; the deed further provided that Brett and Lonni Granlund received the other 50% undivided interest. App., Ex. 79. According to [REDACTED] when she helped prepare the deed, she did not know who Granlund was and therefore had no concern about his being one of the buyers. [REDACTED]

The grant deed provided that the documentary transfer tax was "\$0.00." App., Ex. 79. Since it appears that T/Smith requested a \$60.00 check from R/Roberts to pay the documentary transfer tax and that R/Roberts provided that check, it further appears that someone at the County, most likely T/Smith, who admittedly helped prepare the deed, wrote in the deed that no documentary transfer tax was due. On May 22, 2001, the same day that the County deeded the Sunset Parcel, the County signed a deed of other property that expressly required payment of a \$14.30 documentary transfer tax. [REDACTED] Ex. 80.

N. Approx. April-Dec. 2001: Inquiries from Behzad & Blessed Hope

According to R/Roberts, shortly after the County conveyed the Sunset Parcel, he received a telephone call from Behzad, who complained about the sale. 7/26/05

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R/Roberts Int., p. 35, ll. 1-5. According to R/Roberts, Behzad said: (1) he had an option to buy the property immediately north of the Sunset Parcel; (2) he “kind of thought” the County was going to make a deal with him; and (3) “you’re buying property you can’t use because I have an easement through the middle of it.” *Id.*, p. 35, ll. 11-18. Behzad also claimed he didn’t receive notice of the auction, but R/Roberts replied: “If you didn’t know it was auctioned off, how did you find out?” *Id.*, p. 37, ll. 2-7. The telephone call from Behzad led R/Roberts to study the land records of easements and to approach the City of Redlands about acquiring a lot adjacent to the Sunset Parcel. *Id.*, p. 36, ll. 11-22.

According to Behzad, he never received notice of the February 2001 public auction and did not learn of the sale to the Curtis and Granlunds until after it happened. 8/1/05 M/Behzad Int., p. 11, ll. 6-25. Behzad stated at his interview that he would have bid for the property and “I was willing to pay a lot more than it was sold for.” *Id.*, p. 15, ll. 8-15.

At some point, Blessed Hope learned that Behzad no longer planned to buy its realty because he had been unable to buy the adjoining Sunset Parcel. By letter dated December 2001, Michael Riddell of Best Best & Krieger LLP, wrote to Linda Foster about the sale of the Sunset Parcel. Riddell stated in his letter:

Some time ago, the Foundation entered into escrow with Mo Behzad of BEK Engineering for the sale of the Foundation parcel to Mr. Behzad. However, in order to develop the property, Mr. Behzad needed to also acquire the narrow strip at the County auction. Mr. Behzad contacted the County’s Real Property Sales Department, requested notice of when the auction would occur, and invested a considerable amount of money in preparing a site plan for development of the property with the narrow strip included. The escrow remained inactive pending the scheduling of the County

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auction. However, we recently discovered that the auction of the property occurred without Mr. Behzad having received notice, and that the property was purchased by Jim Foster (your husband, I believe) at the auction sale. Mr. Behzad is perplexed not to have received notice of the auction, since he had specifically requested notice, and now it appears that the sale of the Foundation's parcel to Mr. Behzad cannot close without some sort of agreement with you and your husband as well. . . . [App., Ex. 82.]

By memo dated December 31, 2001, Riddell notified Dan Judy and Tom Ingram of Blessed Hope that Foster "advised me that he did not purchase the strip of land at the County auction." App., Ex. 85.

O. Jan. - Feb. 2002: Curtis Buy Adjoining Parcel from Redlands

According to Larry Curti, sometime after his son and Granlund bought the Sunset Parcel, neighbors told Louis Curti that the parcel was not buildable because it did not have an easement for a driveway. 7/21/05 Larry Curti Int., p. 21, ll. 25.

During approximately December 2001-February 2002, in order to solve the access problem and enhance the value of the Sunset Parcel, R/Roberts advised and assisted the Curtis in buying an adjoining strip of realty owned by the City of Redlands. App., Exs. 84, 87, and 89. Redlands deeded that adjoining parcel – sometimes referred to as "Lot 35" – to Louis and Amy Curti on or about February 13, 2002. *Id.*, Ex. 89. The purchase price was approximately \$6,750. 7/26/05 R/Roberts Int., p. 32, ll. 20-21; *see* 7/21/05 Larry Curti Int., p. 24, l. 22 - p. 25, l. 1 (\$6,500).

According to R/Roberts, the acquisition by the Curtis of Lot 35 from Redlands was important to the development of the Sunset Parcel because "I thought it was absolutely essential to acquire an access route." 7/26/05 R/Roberts Int., p. 30, l. 5 - p. 31, l. 5.

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Only Louis and Amy Curti, not the Granlunds, got title to that adjoining parcel. App., Ex. 89. According to R./Roberts, "I really didn't want to put Granlund's name on it at that particular time because of the makeup of the Redlands City Council, I didn't think I'd get very far no matter how much business sense it made. It was shortly after – we were still dealing with things like special legislation to take the doughnut hole away." 7/26/05 R./Roberts Int., p. 28, l. 21 - p. 29, l. 11. R./Roberts explained: "As an assemblyman [Granlund] had introduced the two bills that removed the doughnut hole from the City of Redlands." *Id.*, p. 29, ll. 12-16.

Granlund confirmed at his interview that his name was kept out of the acquisition of Lot 35 from the City of Redlands by reason of Granlund's unpopularity with the City. Explaining R./Roberts' role in dealing with Redlands, Granlund stated: "He could walk in there and not get shot." 7/20/05 Granlund Int., p. 29, ll. 10-11.

P. April-May 2002: Foster Files Form 700; Granlund Files for Divorce; Granlunds Deed Sunset Parcel to the Fosters

On April 1, 2002, Foster filed his Statement of Economic Interests/Form 700 for January-December 2001. App., Ex. 92. Once again, Foster's Form 700 disclosed that he owned partnership interests in CRILCO and Mentone. *Id.* Foster's Form 700 did not state that he owned any interest in the Sunset Parcel. *Id.* If Granlund's allegations about the Oral Agreement are true, then Foster's Form 700 was inaccurate.

On April 4, 2002, in San Bernardino Superior Court Case No. SBFSS 64751, Granlund filed a petition to dissolve his marriage to Lonni Granlund. App., Exs. 93-94.

On May 24, 2002, Brett and Lonni Granlund signed before a notary public a grant deed transferring their 50% interest in the Sunset Parcel to James and Linda Foster. App., Ex. 98. The deed was not recorded until June 19, 2002. *Id.* According to Granlund, the Fosters paid the Granlunds \$10,000 for their 50% interest in the Sunset Parcel. 7/20/05 Granlund Int., p. 34, l. 13 - p. 35, l. 9. This was the same amount that the Granlunds paid in 2001 to purchase that 50% interest from the County. *Id.*

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According to Granlund, he believed at the time of the sale that the \$10,000 purchase price paid by the Fosters was substantially less than the fair market value of the 50% interest that the Granlunds deeded to the Fosters in return. 7/20/05 Granlund Int., p. 112, ll. 17 - p. 113, l. 6. After making that assertion, Granlund denied that the allegedly underpriced transfer of the land constituted an unlawful gift. Id.

According to Lonni Granlund, who, as stated, declined to be interviewed, the Granlunds conveyed the Sunset Parcel to the Fosters because Lonni Granlund did not want to take the Sunset Parcel subject to Foster's partnership interest. Ms. Granlund stated in an email to G|R: "Brett told me I could have his interest in the land and would be a partner for my share of profit with Jim Foster[.] I said no way. I did not want to be a partner with Foster[.]" In contrast, according to R/Roberts, in a conversation he had with Larry Curti and Foster, "Foster announced that Granlund had told him that he was getting ready to go through a divorce and that he was going to assign this property to his wife and Mr. Curti was extremely displeased with that." 7/26/05 R/Roberts Int., p. 26, ll. 6-22. R/Roberts stated that Larry Curti disliked Lonni Granlund, who has "an arrogance thing." Id., p. 26, l. 23 - p. 27, l. 4.

Q. June 2002: Platinum Hires Granlund

In or about June 2002, Platinum, a lobbying and political consulting firm, hired Granlund, who had resigned in May 2002 from his appointment as member of the Board of Prison Terms. App., Ex. 100; 7/20/05 Granlund Int., p. 42, ll. 11-13. Platinum has confirmed that an unsigned document dated June 3, 2002 sets forth the terms of Platinum's employment of Granlund. The employment agreement stated that Granlund's compensation included an annual salary of \$120,000, plus benefits, a discretionary bonus, and reimbursement of expenses. App., Ex. 100.

R. July '02 - Sept. '03: County Sues CRILCO, Foster & Granlund

On July 25, 2002, in San Bernardino Superior Court, Donald Williamson, in his capacity as County Assessor, filed a lawsuit against CRILCO, Foster, Granlund, and

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others to compel production of records to permit assessment of billboards located in the County. App., Ex. 103. The lawsuit was settled in December 2003. *Id.*, Exs. 117, 121, and 123-26.

Granlund stated at his interview:

[Foster] got in a fight with the County tax assessor, with Don Williamson – got us sued with Don Williamson. I think everybody in the County is familiar with that. For nonpayment of taxes, he got enforcement problems started. Those boards were illegal from day one. That’s why the name CRILCO was to confuse the County, to cause them to believe it was an Indian project. [7/20/05 Granlund Int., p. 116, ll. 19-25.]

Granlund further stated at his interview:

QUESTION: Is it your view that the taxes were, in fact, owed?

ANSWER [GRANLUND]: Yes.

Q: By CRILCO?

A: Yes.

Q: And that’s because for more than a decade CRILCO hadn’t paid taxes on five billboards near Indian land, but not really on Indian land; is that right?

A: Yes, for at least ten years. [7/20/05 Granlund Int., p. 118, ll. 3-11.]

S. Dec. ‘02-Jan. ‘03: Maranatha Hires Platinum; County Hires Platinum

By written agreement dated December 4, 2002, Maranatha Corrections, Inc. (“Maranatha”) hired Platinum to provide consulting services. The written agreement

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specifically provided that Platinum would not provide lobbying services to Maranatha. App., Ex. 105. Maranatha's principal was Terry Moreland. Id.

On December 17, 2002, the Board of Supervisors voted 4-0 to approve lobbying contracts with Platinum and Neilsen, Merksamer, Parrinello, Mueller & Naylor. App., Ex. 106. Supervisor Hansberger abstained from voting on those contracts. Id.

Granlund stated at his interview that he believed Foster caused the County to divide its lobbying work between two firms, so that Platinum's lobbying contract "really didn't have the value that it should have because it was divided between two firms, and Jim told me they split the contract with Nielson Merksomer [sic]." 7/20/05 Granlund Int., p. 55, ll. 12-25.

T. [REDACTED]

U. **May-July 2004: Foster Buys Out Granlund's Interest in CRILCO and the Fosters Sell the Sunset Parcel at a Profit**

In a written agreement dated May 2004, following the death of Hal Haywood, who had been a 50% owner of Mentone, Foster agreed to buy out Granlund's general partnership interest in CRILCO for approximately \$68,700. App., Ex. 133; 7/19/05 Foster Int., p. 18, l. 1 - p. 19, l. 11. CRILCO records reflect that the buy-out occurred sometime between June 3-August 9, 2004. App., Ex. 134. Foster stated that the buy-out occurred in approximately June 2004. 7/19/05 Foster Int., p. 18, l. 1 - p. 19, l. 11. According to Granlund, by the time of this buy-out, five of CRILCO's billboards had been taken down or were in the process of being taken down as a result of disputes with the County Assessor. 7/20/05 Granlund Int., p. 117, ll. 3-14.

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By deed recorded June 23, 2004, the Fosters and Louis and Amy Curti conveyed the Sunset Parcel – and adjoining property, Lot 35, owned by the Curtis – to George Saunders and Donald Paulson. App., Ex. 141. The sale price was approximately \$100,000. R/Roberts Int., p. 39, ll. 16-21; 7/28/05 Louis Curti Int., p. 16, l. 8 - p. 18, l. 8; 7/21/05 Larry Curti Int., p. 29, ll. 11-24. That price reflected the value both of the Sunset Parcel (owned by the Fosters and the Curtis) and the adjoining strip of realty that the Curtis acquired from Redlands in 2002. See App., Ex. 141. Because the initial purchase price for the Sunset Parcel was \$20,000, the maximum profit on the resale of the entire parcel was approximately \$80,000, but that profit figure omits the amount, approximately \$6,750, that the Curtis paid to acquire Lot 35 from Redlands, plus any other costs incurred by the Curtis. According to Louis Curti, from the \$100,000 sale proceeds, he and his wife receive half “plus the additional I put in for the easement” from Redlands. 7/28/05 Louis Curti Int., p. 27, l. 16 - p. 28, l. 18. Accordingly, it appears that the Fosters netted roughly \$36,000 in profits from the 2004 sale.

V. App. June 2004 - July 2005: Foster Opposes Granlund’s Efforts to Procure Contracts for Platinum’s Clients; Granlund Fights Back

During 2004-2005, multiple clients of Granlund’s employer, Platinum, either sought or obtained multi-million dollar contracts from the County. One of those contracts, involving the County’s decision to lease and then purchase for \$28 million a jail facility from Maranatha Corrections, is the subject of a separate report. For purposes of this report, which addresses Foster’s involvement with the Sunset Parcel, it is sufficient to note these facts:

(1) Beginning in mid-2004, Foster opposed, questioned, and/or criticized efforts by clients of Platinum to procure contracts or grants from the County. Platinum’s clients included AshBritt Environmental, Maranatha Corrections, and California Charter Academy. See, e.g., 7/20/05 Granlund Int., p. 49, l. 12 - p. 52, l. 13. For example, Granlund stated that, in or about April-May 2004, Platinum had to withdraw from

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representing AshBritt by reason of Foster's opposition. *Id.*, p. 51, l. 8 - p. 53, l. 4; p. 94, ll. 4-22. Granlund also stated that Foster tried to intervene or interfere with the County's buying a jail from Maranatha. *Id.*, p. 56, l. 24 - p. 57, l. 2; *id.*, p. 65, ll. 13-21.

(2) In July 2004, after Foster opposed, questioned, or criticized awarding County contracts or grants to certain Platinum clients, Granlund met with Supervisor Hansberger, Foster, and others; the meeting took place in Supervisor Hansberger's Redlands office rented by him for campaign activities; the subjects discussed at that meeting included Foster's job performance.

(3) Beginning in 2004, Foster's questions about and opposition to awards of County contracts to certain Platinum clients had caused – or made the Granlunds believe that Foster had caused – financial losses to Granlund. According to Gary Henson, a friend of the Granlunds, Henson was told during late 2004 by Lonni Granlund that Foster had been interfering with Granlund's business. 8/5/05 Henson Int., p. 14, ll. 2-25. Henson stated that Granlund complained to Henson in 2005 that Foster and Supervisor Hansberger had hurt Granlund financially in his job with Platinum. *Id.*, p. 15, ll. 21-25. Henson was told by Granlund that Foster "was doing everything and anything they could do to pull business away from his firm that had anything to do with San Bernardino County and it was costing him a lot personally financially that really had nothing to do with anything other than him working for the firm." *Id.*, p. 13, l. 12 - p. 14, l. 1.

(4) On or about July 5, 2005, someone anonymously left a packet of documents on CAO Mark Uffer's desk. The documents purportedly indicated that Foster may have violated conflict of interest laws in connection with the Sunset Parcel. The packet related to matters about which Granlund was especially knowledgeable.

(5) On or about Friday, July 15, 2005, the Sun newspaper allegedly was told by Foster that he had released a 2004 internal memo by County Counsel to Supervisor Biane concerning whether the Board of Supervisors could fire a Supervisor's chief of staff. App., Ex. 178.

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(6) At an interview conducted by G|R on July 19, 2005, Foster unequivocally denied that he ever co-owned the Sunset Parcel with Granlund; Foster further stated that, prior to mid-2005, Granlund never previously alleged that such a co-ownership interest existed. 7/19/05 Foster Int., p. 19, l. 15 - p. 20, l. 12.

VI. FOSTER LIKELY VIOLATED GOVERNMENT CODE § 1090

A. Elements of Cause of Action under Govt. Code § 1090

Section 1090 of California's Government Code contains stringent conflict of interest provisions, which are designed to prevent even the possibility of disloyal conduct, even when there is no evidence of actual wrongdoing. Govt. Code § 1090 provides:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. . . .

Govt. Code § 1090 is violated when (1) any county, district, and city "officer[] or employee[]" (2) is "financially interested" (3) in "any contract" (4) "made" by that official or employee (5) in his or her "official capacity." Remedies for violations of Govt. Code § 1090 include restitution.

Section 1090 "is founded on the ancient and self-evident principle that no man can faithfully serve two masters, a principle which has always been an essential attribute of every rational system of positive law." People v. Watson (1971) 15 Cal.App.3d 28, 38; see People v. Darby (1952) 114 Cal.App.2d 412, 425 see Thomson v. Call (1985) 38 Cal.3d 633 ("Thomson"); section 1090's terms "cannot be given a narrow and technical interpretation that would limit their scope and defeat the legislative purpose." People v. Honig (1996) 48 Cal.App.4th 289, 315 ("Honig").

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In Thomson, the California Supreme Court, quoting U.S. Supreme Court precedent construing an analogous federal conflict-of-interest statute, explained why § 1090 applies even to well-meaning public servants:

The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, the statute is more concerned with what might have happened in a given situation than with what actually happened. It attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation.

Thomson, 38 Cal.3d at 648 (quotations and citations omitted).

B. First Element – Public Employee or Official

A violation of Govt. Code § 1090 requires proof that the allegedly prohibited misconduct was committed by a county, district, or city official or employee within the meaning of § 1090. This element is satisfied because Foster was at all relevant times an employee of the County. Specifically, at the time of the 2001 sale, Foster was Field Representative to Supervisor Hansberger.

C. Second Element -- Financially Interested

Under Govt. Code § 1090, a public official or employee is “financially interested” whenever the official has a direct or indirect pecuniary interest in the contract. Honig, 48 Cal.App.4th at 316; Terry v. Bender, *supra*, 143 Cal.App.2d at 207-08.

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This required element of Govt. Code § 1090 is met because, regardless of whether Granlund's allegations about the "Oral Agreement" are true (and they may or may not be), Foster's 50% ownership of Mentone, which was Granlund's general partner in CRILCO, gave Foster a prohibited financial interest.

Under the terms of the CRILCO partnership agreement, Granlund had an obligation to contribute to pay his 30% share of any losses of CRILCO. Foster therefore had at least some interest, albeit indirect, in assuring that Granlund had sufficient finances to fund any partnership losses.

The definition of the terms "financially interested" is extremely broad. The Honig case approved this jury instruction:

The phrase 'financially interested' as used in Government Code section 1090 means any financial interest which might interfere with a state officer's unqualified devotion to his public duty. The interest may be direct or indirect and includes any monetary or proprietary benefits, or gain of any sort, or the contingent possibility of monetary or proprietary benefits. The interest is direct when the state officer, in his official capacity, does business with himself in his private capacity. The interest is indirect when the state officer makes a contract in his official capacity with an individual or entity, which individual or entity, by reason of the state officer's relationship to the individual or entity at the time the contract is entered into, is in a position to render actual or potential pecuniary benefits directly or indirectly to the state officer based on the contract the individual or entity has received.

[48 Cal.App.4th at 322-23 (quotations and citations omitted).]

Honig further held:

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In a similar vein, the term “financially interested” in section 1090 cannot be interpreted in a restricted and technical manner. The law does not require that a public officer acquire a transferable interest in the forbidden contract before he may be amenable to the inhibition of the statute, nor does it require that the officer share directly in the profits to be realized from a contract in order to have a prohibited financial interest in it. [Citations omitted.] . . . The fact that the officer’s interest might be small or indirect is immaterial so long as it is such as deprives the [state] of his overriding fidelity to it and places him in the compromising situation where, in the exercise of his official judgment or discretion, he may be influenced by personal considerations rather than public good. [Citations and quotations omitted.] And, [w]e must disregard the technical relationship of the parties and look behind the veil which enshrouds their activities in order to discern the vital facts. [Citations and quotations omitted.]

* * * *

Moreover, prohibited financial interests are not limited to express agreements for benefit and need not be proved by direct evidence. Rather, forbidden interests extend to expectations of benefit by express or implied agreement and may be inferred from the circumstances. [48 Cal.App.4th at 315 (citations omitted; brackets in original text).]

“The types of financial interests prohibited by section 1090 are many and varied.” Honig, 48 Cal.App.4th at 315. For example, a public official is financially interested in a contract when: (1) the official has a debtor-creditor or ownership relationship with a party

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to the contract (see Moody v. Shuffleton (1928) 203 Cal. 100, 104-05; (2) the official has an ownership interest in a company that will make commissions from contracts made by the public entity (Fraser-Yamor Agency, Inc. v. County of Del Norte (1977) 68 Cal.App.3d 201, 205; (3) a party to the contract is, through a nominee, a tenant of the official (People v. Darby, *supra*, 114 Cal.App.2d at 754-55); (4) a party to the contract has an implied agreement to rent equipment from a partnership in which the official has an interest (People v. Deysher (1935) 2 Cal.2d 141, 146-50 (1935)); or (5) the official is an employee of a party to the contract (Stockton Plumbing & Supply Co. v. Wheeler (1924) 68 Cal.App. 592, 601-02; Hobbs, Wall & Co. v. Moran (1930) 109 Cal.App. 316, 317-18; and (5) the official conspires to receive a bribe in return for influencing the public entity to make the contract. See, e.g., People v. Deysher, *supra*, 2 Cal.2d 141; People v. Vallegra (1977) 67 Cal.App.3d 847; Terry v. Bender, *supra* 143 Cal.App.2d at 207-08.

Govt. Code § 1091 provides a narrowly circumscribed exception for a financial interest that is only a “remote interest” provided that “the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.” Govt. Code § 1091(a). Foster never made any such disclosure of his financial interest in the sale of the Sunset Parcel to Granlund. Foster therefore is ineligible for the defense provided by this statutory exemption from liability.

Govt. Code § 1091.5 provides additional narrowly circumscribed circumstances when a public official is deemed not to be interested in a contract. Foster’s financial relationship with Granlund does not fit within any of the exceptions set forth in § 1091.5.

Foster may seek to argue that, even though he does not qualify for the statutory exemptions of Govt. Code §§ 1091 and 1091.5, his financial relationship with Granlund was nevertheless too remote to qualify as a prohibited financial interest within the scope

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of Govt. Code § 1090. Specifically, Foster might seek to argue that CRILCO was in such excellent financial condition that it was inconceivable that Granlund would ever have to fund partnership losses as required by the CRILCO partnership agreement. This argument will have difficulty; it disregards Granlund's allegations that, in an apparently successful effort to use a misleading name to circumvent County permitting requirements, CRILCO for many years operated billboards without required permits. This apparent violation of permitting requirements arguably posed some risk of financial problems for CRILCO's billboard operations. Indeed, during 2002, the County Assessor filed a lawsuit to require assessment information from Foster, Granlund, CRILCO, Mentone, and others. App., Ex. 103.

D. Third Element – Any Contract

By its terms, § 1090 applies to "any contract." This element is satisfied because the County's agreement to sell the Sunset Parcel was plainly a purchase and sale contract that required the County to sell the Sunset Parcel in return for a \$20,000 sale price payable by the buyers.

The term "contract" in Govt. Code § 1090 is construed broadly. For example, Honig, 48 Cal.App.4th 289, ruled that "contract" includes a public grant:

[T]he Legislature defined "grant" in Civil Code section 1053 as a transfer in writing. . . . Pursuant to Civil Code section 1040 the Legislature included "grants" within the broader subject of "contracts" and subjected them to the same rules of law. Accordingly, where a state official makes a contract in which he has a financial interest we see no basis upon which he can escape responsibility under sections 1090 and 1097 by claiming that the transfer was actually a "grant."

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Honig, 48 Cal.App.4th at 350. See also 81 Ops. Cal. Atty. Gen. 134, 1998 WL 125378 (1998), citing City of Imperial Beach v. Bailey (1980) 103 Cal.App.3d 191 and Millbrae Assoc. for Residential Survival v. City of Millbrae (1968) 262 Cal.App. 2d 222, 236-37.

E. Fourth Element – That the Contract Was Made

Although section 1090 refers to a contract “made” by the officer or employee, the word “made” is not used in the statute in its narrower and technical contract sense but is used in the broad sense to encompass such embodiments in the making of a contract as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications and solicitation of bids.

Millbrae Assoc. for Residential Survival v. City of Millbrae (1968) 262 Cal.App. 2d 222, 237 (affirming conviction of public official for violating Govt. Code § 1090).

This element of Govt. Code § 1090 is met because Foster participated, at a minimum, in preliminary discussions, planning, negotiations, and solicitation of bids. Prior to the sale, Foster personally showed the property to Larry Curti and Granlund and told them that the property was for sale. Foster also arranged for a broker by calling R/Roberts with Larry Curti. During the marketing of the property, Foster communicated with T/Smith about the parcel and whether it should be put out to auction. As Field Representative in the Third District, Foster would likely involve himself in a sale of County surplus property located in that district.

F. Fifth Element – Official Capacity

Any participation by the public official or employee within the course and scope of official business satisfies the “official capacity” requirement. Campagna v. City of Sanger (1996) 42 Cal.App.4th 533 (city attorney negotiated contract in official capacity under § 1090 because negotiating the contract “was unquestionably within the course and scope of his official business as city attorney”).

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Foster's conduct likely satisfies the "participation" element because it is implausible that Foster communicated with T/Smith or showed the Sunset Parcel while acting in a purely personal capacity. As stated, Foster was Field Representative to 3rd District Supervisor Hansberger throughout 2001. The Sunset Parcel was located in the Third District, and County surplus property in that district would be a matter of concern to Foster in his official role as Field Representative.

"[T]he test is whether the officer or employee *participated in* the making of the contract in his official capacity." People v. Gnass (2002) 101 Cal.App.4th 1271, 1292-93 (italics in original) (quoting Millbrae Assn. etc. v. City of Millbrae, supra, 262 Cal.App.2d at 236-37).

A public official's duty of undivided loyalty precludes the official from changing hats in an effort to avoid acting in an official capacity. People v. Gnass, supra, 101 Cal.App.4th at 1291 ("Just as Campagna could not 'change hats' from city attorney to private attorney in his negotiations with the San Francisco firm, Gnass could not switch from representing the interests of the Waterford PFA in relation to the Marks-Roos PFAs to representing his own private interest in becoming disclosure counsel for them"); Stigall v. City of Taft (1962) 58 Cal.2d 565, 569 (§ 1090 applied to contract even though the official resigned before the city voted to approve the contract).

G. Remedy – Restitution

The remedy for a violation of Govt. Code § 1090 is restitution. At a minimum, provided that Foster violated § 1090, Foster must make restitution of what he received from the County's sale of the Sunset Parcel. Further, if the Oral Agreement did exist and Granlund acted as Foster's partner, then Granlund shares liability with Foster.

"It is settled law that where a contract is made in violation of section 1090, the public entity is entitled to recover any compensation that it has paid under the contract without restoring any of the benefits it has received." Finnegan v. Schrader (2001) 91 Cal.App.4th 572, 583 (public official was required to disgorge all compensation paid to

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him by public entity); Miller v. City of Martinez (1938) 28 Cal.App.2d 364, 370 (city had right to recover entire purchase price paid for goods from contractor who employed city official); Thomson, 38 Cal.3d at 647 (“Moreover, the city or agency is entitled to recover any consideration which it has paid, without restoring the benefits received under the contract”).

Restitution is not limited to the public official’s unlawful financial interest. All the proceeds of a contract made in violation of § 1090 may be recovered, at least from contracting parties who knew of the violation. In Miller v. City of Martinez, *supra*, 28 Cal.App.2d 364, the public official (Severns) was a council member of a city (Martinez). Severns was a shareholder and manager of Shell Oil, which sold product to Martinez. A taxpayer filed an action to recover all payments made by Martinez to Shell Oil, not merely contract proceeds traced to Severns. The trial court sustained demurrers to the complaint. The Court of Appeal reversed, holding that: (1) the facts alleged in the complaint reflected that Severns was financially interested in Shell Oil’s sales to Martinez; and (2) the complaint stated a valid cause of action to recover all payments made to Shell Oil by Martinez. Miller, 28 Cal.App.2d at 370-71.

In Thomson, the California Supreme Court affirmed a judgment that required a city official (Call) to make restitution to the city (Albany) of the full \$258,000, plus interest, that Call received in return for conveying his property to Albany through a third party (IGC/Cebert). In addition to requiring Call to make restitution of all sale proceeds received by him, the judgment permitted Albany to keep the land without offset for its reasonable value. In affirming, the Supreme Court ruled:

The trial court’s solution – allowing the city to retain the land and, at the same time, recover the \$258,000 plus interest from the Calls – finds ample support in California case law. Clearly, no recovery could be had for goods delivered or services rendered to the city or public agency

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pursuant to a contract violative of section 1090 or similar contract-of-interest statutes.

Moreover, the city or agency is entitled to recover any consideration which it has paid, without restoring the benefits received under the contract. Confronting this issue directly, the court in [County of Shasta v. Moody, 90 Cal.App. 519 (1928)] rejected the appellant's contention that the county was estopped from maintaining an action against him without first restoring or offering to restore to him the benefits it received from him under the contract. . . . [38 Cal.3d at 646-47 (citations and footnote omitted).]

Under § 1090, the public entity is entitled to restitution of proceeds that flow indirectly from the public entity to the recipient. See Thomson, 38 Cal.3d at 646 fn. 18.

Govt. Code § 1092.5 provides narrowly circumscribed protection for the interests of good faith purchasers for value and good faith encumbrancers for value. A knowing participant in a violation of Govt. Code § 1090 is not entitled to this protection. See Govt. Code § 1092.5.

Controversy surrounds the applicable statute of limitations for recovery for a violation of Govt. Code § 1090. See Marin Healthcare District v. Sutter Health (2002) 103 Cal.App.4th 861 (15-year delay in filing lawsuit under § 1090 barred claim; court discussed application of one to four year statutes of limitations). In Foster's case, however, Foster's fiduciary responsibility as a County employee and his failure to disclose his § 1090 violation will provide the County a substantial basis for arguing that any limitations period was tolled by Foster's arguable concealment of the violation through 2001-2005. Under even a one-year limitations period, a § 1090 claim would not likely be time-barred.

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H. Spurious Defenses – Waiver, Estoppel, Lack of Fraud or Loss

In Thomson, the Supreme Court held that the public entity's right to restitution does not require proof of fraud, dishonesty, loss, or damage. "[T]he violation of section 1090 cannot turn on the question of whether actual fraud or dishonesty was involved." Thomson, 38 Cal.3d at 648. "In short, if the interest of the public officer is shown, the contract cannot be sustained by showing that it is fair, just and equitable as to the public entity." Id., at 649. See also People v. Gnass, supra, 101 Cal.App.4th at 1287-88 ("In view of the purposes of our conflict-of-interest statutes, it is well established that their scope is not limited to instances of actual fraud, dishonesty, unfairness or loss to the governmental entity") (quoting Honig, 48 Cal.App.4th at 314-15). "[T]he full disclosure of an interest by an officer is also immaterial, as disclosure does not guarantee absence of influence." Thomson, 38 Cal.3d at 649-50 (footnote omitted).

Estoppel is not a valid defense. See Salada Beach Public Utility District v. Anderson (1942) 50 Cal.App.2d 306, 310; Shasta County v. Moody (1928) 90 Cal.App. 519, held:

Appellant strenuously contends that the court is estopped from maintaining this action without first restoring, or offering to restore, to him the benefits received from the job work, printing, advertising, etc. There is no merit in this contention. The contracts being void under the express provisions of the statute, and also being against public policy, there is no ground for any equitable considerations, presumptions, or estoppels. [90 Cal.App. at 523.]

Waiver is not a valid defense. Terry v. Bender (1956) 143 Cal.App.2d 198, at 214 (rejecting demurrer based on waiver defense to causes of action for violation of conflict-of-interest laws, fraud, and breach fiduciary duty, because "Laws of this nature are for the protection of the public by promoting honesty in governmental affairs").

VII. FOSTER LIKELY VIOLATED THE COUNTY'S CODE OF ETHICS, REGARDLESS OF WHETHER HE ACTED IN GOOD FAITH

If Foster violated the stringent provisions of Govt. Code § 1090, then he also violated the County's Code of Ethics, contained in Rule I of the County's Personnel Rules. Moreover, because the Code of Ethics is broader than § 1090, Foster likely violated the Code of Ethics even if he did not violate § 1090.

Rule I of the County's Personnel Rules is entitled "Code of Ethics and Commitment to County Public Services." Sections 1 and 8 of the Code provide:

Section 1 - Purpose

This code establishes the standards of conduct required of all public officials and employees for the proper operation of the County government and has the force of law. These standards are intended to strengthen public service and to maintain and promote faith and confidence of the people in their government.

* * * *

Section 8 - Conflict of Interest

No official or employee shall engage in any business or transaction or shall have a financial or other personal interest or association which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial includes an interest arising from blood or marriage relationships or close business, personal, or political association. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active County employment providing such acts do not constitute a conflict of interest as defined herein. An employee is also subject to provisions of the California Government Code Sections 1090, 1126, 87100, and any other applicable

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provisions of the Government Code and any conflict of interest Code applicable to County employment.

Section 1 of the Code of Ethics makes it apply to all County officials and employees. The Code therefore applies to Foster, who at all times during 2001 was Field Representative for Supervisor Hansberger. Section 8 incorporates Govt. Code § 1090, so that a violation of it also constitutes a violation of Section 8. Because Foster likely violated Govt. Code § 1090, he also likely violated Section 8 of the Code of Ethics.

Further, Section 8 of the Code of Ethics is broader than Govt. Code § 1090. In contrast to § 1090, which prohibits only financial conflicts of interest, Section 8 of the Code of Ethics also prohibits conflicts of interest that result from a "personal interest or association." Foster likely violated Section 8 by marketing the Sunset Parcel exclusively to his friends and business associates, Granlund and Curti.

Depending on whether Foster understood that the internal County Counsel memo or memos he released to the media were confidential, Foster may also have violated Section 6 of the County Code of Ethics. Section 6 provides:

Section 6 - Confidential Information

As appropriate, every appointing authority shall make known to subordinates which information is regarded as confidential. No official shall neither [sic] disclose such confidential information except as authorized or required by law or office nor otherwise use such information for personal gain or benefit. All personnel records shall be confidential except when disclosure is required by law.

On this issue, G|R has nothing to add to the advice previously provided in detailed memos by County Counsel to the Board of Supervisors. See App., Exs. 179, 181, 183.

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VIII. IF THE ORAL AGREEMENT EXISTED, THEN FOSTER AND GRANLUND LIKELY HAVE ADDITIONAL CIVIL LIABILITY

If the Oral Agreement existed, then the 2001 Board agenda item and the underlying written purchase agreement included materially misleading half-truths that misdescribed and hid from the County that Granlund was purchasing the Sunset Parcel as a partner for or agent of Foster. Such conduct would likely constitute a breach of fiduciary duty and fraud by Foster. Granlund's likely knowing participation in that misconduct would subject him to co-liability for conspiracy or aiding and abetting.

Foster was a fiduciary of the County.

A public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated, *virtue officii*, to discharge their responsibilities with integrity and fidelity.

Terry v. Bender, *supra* 143 Cal.App.2d at 206.

"The duties of public office demand the absolute loyalty and undivided, uncompromised allegiance of the individual that holds the office." Honig, 48 Cal.App.4th at 314.

Public officials are fiduciaries for the same reason that other agents are fiduciaries:

Fidelity in an agent is what is aimed at, and, as a means of securing it the law will not permit him to place himself in a position in which he may be tempted by his own private interests to disregard those of his principal. This doctrine is generally applicable to private agents and trustees, but to public officers it applies with greater force, and sound policy requires that there be no relaxation of its stringency in any case that comes within its reason

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Clark v. City of Hermosa Beach (1996) 48 Cal.App.4th 1152, 1171(emphasis added; quoting Noble v. City of Palo Alto (1928) 89 Cal.App.47, 51; see Schaefer v. Berinstein (1956) 140 Cal.App.2d 278, 289 (officers of municipal corporation “are agents of the corporate body and may not use their official position for their own benefit, or for the benefit of anyone except the municipality itself”).

Disloyal or dishonest conduct by an agent constitutes a breach of fiduciary duty. “An agent is charged in full measure with the duty of honesty and loyalty toward his principal, not only in form but in substance.” Kinert v. Wright (1947) 81 Cal.App.2d 919, at 925. Affirming in part a judgment against a dishonest agent, Kinert ruled:

The relations of principal and agent, like those of beneficiary and trustee, are fiduciary in character. An agent may not do anything which a trustee is forbidden to do, and may not act in his own name unless it is the usual course of business so to do. If a trustee acquires any interest adverse to that of his beneficiary in the subject of the trust he must immediately inform the latter thereof and a failure so to do is a fraud against the beneficiary. . . . [81 Cal.App.2d at 925 (citations omitted).]

A public official must avoid conflicts of interest and to refrain from using public office for personal profit. As stated in Terry v. Bender, supra, 143 Cal.App.2d 198:

Since the officers of a governmental body are trustees of the public weal, they may not exploit or prostitute their official position for their private benefits. When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in

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them, and the public is injured by being deprived of their loyal and honest services. [143 Cal.App.2d at 206.]

In light of the stringent fiduciary duties imposed on agents and public officials, Foster would likely have breached those duties if, while purportedly acting on the County's behalf, he deceived the Board into selling the Sunset Parcel without disclosing that he held a secret interest in it.

G|R cautions that the existence of the Oral Agreement is very much in dispute and depends on Granlund's credibility. Foster has flatly denied Granlund's allegations that there was an Oral Agreement, and Granlund has a financial motive to malign Foster. Granlund's financial motive is to remove Foster as an impediment to Granlund's procuring County business for clients of Granlund's employer, Platinum. Granlund's delay in publicizing his allegations raise questions about their accuracy. Granlund's story about the Oral Agreement hinges on a single conversation that was witnessed only by Granlund and Foster.

If there was an Oral Agreement, and Granlund knowingly participated in Foster's conduct, then Granlund likely shares Foster's liability for that misconduct. When an agent colludes with third parties to obtain secret profits, the principal may recover restitution of all secret profits from the agent and the colluders. See St. James Armenian Church of Los Angeles v. Kurkjian (1975) 47 Cal.App.3d 547, 552 ("A person, though himself not a fiduciary, is liable for the breach of fiduciary duty if he colludes with a disloyal fiduciary") (citing Gray v. Sutherland (1954) 124 Cal.App.2d 280, 290 (citing Restatement of Restitution, § 138(2) (stating: "A third person who has colluded with a fiduciary in committing a breach of duty, and who obtained a benefit therefrom, is under a duty of restitution to the beneficiary"); Certified Grocers of Calif. Ltd. v. San Gabriel Valley Bank (1984) 150 Cal.App.3d 281, 289 ("Further, a person not himself a fiduciary may be liable for breach of fiduciary duty as a result of colluding with a disloyal fiduciary"); J.C. Peacock, Inc. v. Hasko (1961) 196 Cal.App.2d 363, 370-71 ("If through

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fraud and conspiracy other defendants assisted defendant Thacher in violating his obligation to his principal by making a secret profit and by retaining the proceeds therefrom, they as well as the fiduciary are equally liable for all the consequences of the conspiracy, regardless of the extent of their participation or the share of the secret profits obtained by them”) (quotations and citation omitted); Anderson v. Thacher (1946) 76 Cal.App.2d 50, 71 (“[W]here, after the violation of a fiduciary obligation, an amount is found to be due from the agent, judgment for the same amount may also be rendered against those proven to have fraudulently aided in the attempt of the fiduciary to obtain secret profits, although they themselves are not fiduciaries, and even though they receive no share of the profits”); Chicago Park District v. Kenroy, *supra*, 78 Ill.2d 555, 402 N.E.2d 181 (public entity was entitled to recover all ill-gotten gains of persons who colluded with public official); Continental Management Inc. v. United States (Ct. Cl. 1975) 527 F.2d 613, 616 (“It is well established, as plaintiffs seem to concede, that a third party’s inducement of or knowing participation in a breach of duty by an agent is a wrong against the principal which may subject the third party to liability”); Seminole Nation v. United States, *supra*, 316 U.S. 286, 296 (“It is a well established principle of equity that a third party who pays money to a fiduciary for the benefit of the beneficiary, with knowledge that the fiduciary intends to misappropriate the money or otherwise be false to his trust, is a participant in the breach of trust and liable therefor to the beneficiary”). In this case, total net profits of the Fosters in connection with the Sunset Parcel were approximately \$36,000.

Granlund’s contention that he was unaware of the March 2001 County policy concerning real estate sales does not establish Granlund’s good faith. Granlund was an experienced former public official, who was well aware of conflict of interest laws. Govt. Code § 1090 was at all relevant times in existence, as was the Political Reform Act. It is at least questionable that Granlund truly believed that he could legitimately make an
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agreement with Foster to acquire an interest for his benefit while Foster simultaneously used his public office to involve himself in the processing of that sale.

IX. CONCLUSION

Only Foster and Granlund will ever know with absolute certainty whether the Oral Agreement exists. California's stringent conflict-of-interest statute, Govt. Code § 1090, and the parallel provisions of the County's Code of Ethics make it unnecessary to speculate about whether the Oral Agreement exists.

However well-meaning Foster's intentions were in marketing the property to Granlund, the situation was "fraught with temptation" of the kind prohibited by § 1090. See Thomson, 38 Cal.3d at 648 ("[T]he statute is more concerned with what might have happened in a given situation than with what actually happened. It attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation").

In conclusion, the information described in this report and contained in the Appendix and transcripts of witness interviews provides reasonable cause to find that:

- (1) Foster violated the conflict-of-interest provisions of Govt. Code § 1090 and Section 8 of Rule I of the County's Code of Ethics even if, as may be the case, Foster acted in utmost good faith;
- (2) Granlund's allegations about the existence of the Oral Agreement may or may not be accurate, because Granlund delayed in making those allegations until after Foster had interfered with Granlund's efforts to procure lucrative County contracts for clients of Granlund's employer, Platinum;
- (3) by participating in the 2001 sale while having a prohibited financial interest, Foster placed himself in a position where, even if he acted in utmost good faith, Granlund could years later credibly allege the existence of the Oral Agreement, even if that agreement does not in fact exist; and

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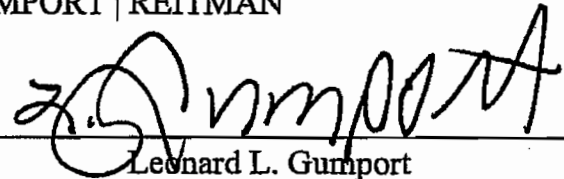
- (4) if, as may or may not be the case, the Oral Agreement existed as alleged by Granlund, then Foster breached his fiduciary duties and defrauded the County and Granlund knowingly conspired in and/or aided and abetted that deceitful conduct, resulting in ill-gotten gains of approximately \$36,000 to Foster, for which both he and his self-proclaimed partner Granlund are liable to the County.

DATED: August 25, 2005

Respectfully submitted,

GUMPORT | REITMAN

By: _____



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