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BY: ANGELA SEGUNDO  
DEPUTY

5 Attorneys for Plaintiffs DENNIS J. NASRAWI,  
6 MICHAEL R. O'NEAL, and RHONDA BIESEMEIR

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF STANISLAUS**

10 DENNIS J. NASRAWI, MICHAEL R. O'NEAL, )  
11 and RHONDA BIESEMEIR, )

12 Plaintiffs, )

13 v. )

14 BUCK CONSULTANTS, LLC, HAROLD LOEB, )  
and DOES 1-30, )

15 Defendants. )

CASE NO: 648617

COMPLAINT FOR  
NEGLIGENCE

17 **FIRST CAUSE OF ACTION FOR**  
18 **ACTUARIAL NEGLIGENCE**

19 (Against BUCK, LOEB and Does 1-30)

20 1. The plaintiffs in this action are former employees of the County of Stanislaus  
21 ("the County") who have acquired vested contractual rights to receive pension and related  
22 benefits from the Stanislaus County Employees Retirement Association ("StanCERA"). Each of  
23 the plaintiffs is a member of StanCERA.

24 2. StanCERA is a public employees retirement system operating under section 17 of  
25 article XVI of the California Constitution and the County Employees Retirement  
26 Law of 1937 (Gov. Code, § 31450 et seq.). StanCERA administers the retirement benefits for  
27 employees of Stanislaus County, the City of Ceres, the Superior Court of the State of California  
28 for Stanislaus County, and five special districts located in Stanislaus County. StanCERA

This case has been assigned to Judge WILLIAM Z. MANNING,  
Department 21, for all purposes including Trial.

1 administers the plaintiffs' defined benefit pension plan and provides retirement, health insurance,  
2 disability, and death benefits to plaintiffs and other members.

3         3. Defendant Buck Consultants, LLC ("Buck"), is a Delaware limited liability  
4 company. At material times, Buck did substantial business in the County, including providing  
5 actuarial services to StanCERA.

6         4. Defendant Harold Loeb ("Loeb") is an individual actuary who, based on  
7 information and belief, resides in California and was the principal actuary assigned by Buck to  
8 provide actuarial services to StanCERA.

9         5. The true names or capacities, whether individual, corporate, associate, or  
10 otherwise, of defendants Does 1 to 30, inclusive, are unknown to plaintiffs, who therefore sue  
11 said defendants by such fictitious names.

12         6. Plaintiffs are informed and believe and thereon allege that each of the defendants  
13 designated herein as a Doe is responsible in some manner for the events and happenings herein  
14 referred to, and caused injury and damages proximately thereby to plaintiffs as herein alleged.  
15 Plaintiffs will seek leave of court to amend this complaint to set forth the true names and  
16 capacities of such named defendants when their identities become known to them.

17         7. Plaintiffs are informed and believe and thereon allege that each defendant named  
18 in this action, including Doe defendants, at all relevant times, was the agent, ostensible agent,  
19 servant, employee, representative, assistant, joint venturer, and/or co-conspirator of each of the  
20 other defendants, and was at all times acting within the course and scope of his, her, or its  
21 authority as agent, ostensible agent, servant, employee, representative, joint venturer, and/or  
22 co-conspirator, and with the same authorization, consent, permission or ratification of each of the  
23 other defendants.

24         8. The plaintiffs have a vested, contractual right to an actuarially sound retirement  
25 system. (*Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1131-1137.)

26         9. As the trustee of the plaintiffs' retirement system, StanCERA owes each plaintiff  
27 the fiduciary duties set forth in section 17 of article XVI of the California Constitution.

28         10. "The assets of a public pension or retirement system are trust funds and [are] held

1 for the exclusive purposes of providing benefits to participants in the pension or retirement  
2 system and their beneficiaries and defraying reasonable expenses of administering the system.”  
3 (Cal. Const., art. XVI, § 17, subd. (a).)

4 11. “A retirement board’s duty to its participants and their beneficiaries shall take  
5 precedence over any other duty.” (Cal. Const., art. XVI, § 17, subd. (b).)

6 12. On and after January 9, 2007, StanCERA retained defendants Buck and Loeb to  
7 provide actuarial services to StanCERA, in its capacity as the trustee of the plaintiffs’ pension  
8 trust fund.

9 13. Defendants Buck and Loeb owed a duty to exercise due care in performing  
10 actuarial services for StanCERA.

11 14. On or about November 7, 2008, StanCERA learned from a subsequently retained  
12 actuary that Buck and Loeb had breached their duty of care in preparing StanCERA’s January 9,  
13 2007 actuarial valuation by using inappropriate actuarial assumptions.

14 15. The defendants’ negligence caused StanCERA to suffer harm, consisting of: (1)  
15 lost County employer contributions, (2) lost earnings on those contributions, and (3) costs paid to  
16 other actuarial firms to discover the defendants’ negligence. The plaintiffs are informed and  
17 believe that the defendants’ negligence had the effect of lowering the County’s required, annual  
18 employer contribution to StanCERA by more than \$40 million. The plaintiffs are informed and  
19 believe that the 9.22 percent employer contribution rate adopted by StanCERA, in reliance upon  
20 the actuarial valuation negligently prepared by Buck and Loeb, was insufficient to actuarially  
21 fund the benefits promised by the County.

22 16. StanCERA has a fiduciary obligation to pursue a negligence claim against Buck  
23 and Loeb to recover lost County employer contributions, earnings on those contributions, and the  
24 costs paid to other actuarial firms to discover the defendants’ negligence. Such a claim is an  
25 asset of the pension trust. However, StanCERA has failed to assert that negligence claim in  
26 breach of its fiduciary obligations to its members, including the plaintiffs.

27 17. StanCERA has not brought and will not bring a claim against Buck and Loeb  
28 because doing so would expose StanCERA’s breach of fiduciary duty and violations of

1 subdivisions (a), (b), (c), and (e) of section 17 of article XIV of the California Constitution, by  
2 permitting the pension plan to be underfunded and actuarial unsound.

3 18. Buck and Loeb have actively participated with, aided, and abetted in StanCERA's  
4 breach of fiduciary duty by concealing their negligence for almost two years.

5 19. Buck and Loeb have participated with, aided, and abetted in StanCERA's breach  
6 of fiduciary duty for their own financial gain.

7 21. Buck and Loeb have also concealed that their negligence had rendered the pension  
8 trust fund actuarially unsound and concealed their participation and assistance with StanCERA's  
9 breach of fiduciary duty.

10 22. This suit is brought by the plaintiffs in a representative capacity on behalf of  
11 StanCERA and its members, and any recovery obtained in this action will be paid to StanCERA.  
12 A representative suit is necessary because StanCERA has failed or refused to assert a negligence  
13 claim on behalf of itself or the pension trust. Plaintiffs do not seek any relief greater than or  
14 different from the relief sought for the class of StanCERA beneficiaries of which they are  
15 members.

16 23. The defendants' negligence was not discovered by the plaintiffs before April 8,  
17 2009.

18 24. Any applicable statute of limitations has been tolled by the defendants'  
19 concealment.

20 WHEREFORE, Plaintiffs pray for judgment as follows:

- 21 1. For general damages according to proof;
- 22 2. For special damages according to proof;
- 23 3. For costs of suit herein incurred;
- 24 4. For such other and further relief as the court deems just and proper.

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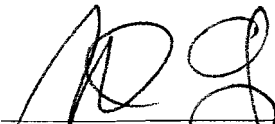
1 Dated: October 7, 2009

**LAW OFFICE OF MICHAEL A. CONGER**

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By:

  
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Michael A. Conger  
Attorney for Plaintiffs

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5 Jury trial demanded.

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