

CLERK OF SUPERIOR COURT
CENTRAL DIVISION
2004 MAY 26 PM 1:24
SAN DIEGO COUNTY, CA

1 MICHAEL A. CONGER, ESQUIRE (State Bar No. 147882)
2 LAW OFFICES OF MICHAEL A. CONGER
3 16236 San Dieguito Road, Suite 4-14
4 Mailing: P.O. Box 9374
5 Rancho Santa Fe, California 92067
6 Telephone: (858) 759-0200
7 Facsimile: (858) 759-1906

8 Attorneys for Plaintiff DAVID W. WOOD,
9 individually, and on behalf of all others similarly
10 situated

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN DIEGO

13 DAVID W. WOOD, individually, and on behalf of)
14 all others similarly situated) CASE NO:
15 Plaintiff,) *610 830558*
16 v.) CLASS ACTION
17 HANSON, BRIDGETT, MARCUS, VLAHOS &) COMPLAINT FOR ATTORNEY
18 RUDY, LLP, ROBERT BLUM, CONSTANCE M.) MALPRACTICE
19 HIATT, and DOES 1-50,)
20 Defendants.)

21 THIS IS A CLASS ACTION LAWSUIT.

22 1. This is a Class Action lawsuit brought by the plaintiff DAVID W. WOOD, a 31-
23 year employee of the City of San Diego and member of the San Diego City Employees
24 Retirement System ("SDCERS") The plaintiff brings this suit on his own behalf and for all
25 those others similarly situated. The definition of the class is set forth in paragraph 25 of this
26 complaint.

27 2. This class action is brought pursuant to section 382 of the California Code of
28 Civil Procedure. The monetary damages sought by the plaintiff, both individually and on behalf
of the class, exceed the minimum jurisdictional limits of the Superior Court.

3. Venue is proper in San Diego because defendants HANSON, BRIDGETT,
MARCUS, VLAHOS & RUDY, LLP ("HANSON, BRIDGETT"), ROBERT BLUM

1 ("BLUM"), and CONSTANCE M. HIATT ("HIATT") performed the legal services at issue in
2 the City of San Diego, California. Thus, at all times alleged in this Complaint the malpractice by
3 each defendant was committed in San Diego.

4 4. Defendant HANSON, BRIDGETT is a law firm doing business in San Diego,
5 California and other parts of California.

6 5. At all relevant times, defendant BLUM was a partner in the firm of HANSON,
7 BRIDGETT, and was personally responsible for the legal services at issue.

8 6. At all relevant times, defendant HIATT was a partner in the firm of HANSON,
9 BRIDGETT, and was personally responsible for the legal services at issue.

10 7. The true names or capacities, whether individual, corporate, associate, or
11 otherwise, of defendants DOES 1 to 50, inclusive, are unknown to plaintiff, who therefore sues
12 said defendants by such fictitious names.

13 8. Plaintiff is informed and believes and thereon alleges that each of the defendants
14 designated herein as a DOE is responsible in some manner for the events and happenings herein
15 referred to, and caused injury and damages proximately thereby to plaintiff as herein alleged.
16 Plaintiff will seek leave of court to amend this complaint to set forth the true names and
17 capacities of such named defendants when their identities become known to him.

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

25 FACTUAL ALLEGATIONS

26 The plaintiff alleges:

27 10. Plaintiff David W. Wood is a beneficiary of a trust fund administered by the
28 board of administration of SDCERS. (See San Diego City Charter, art. IX, § 145; San Diego

1 Municipal Code § 24.0100, et seq.)

2 11. During 2002, the defendants provided legal services on behalf of the SDCERS'
3 board of administration regarding the administration of the trust fund.

4 12. Any applicable statute of limitations has been tolled by three successive
5 "Standstill Agreements" signed by the defendants and WOOD. (See Exhibits 1-3.) Based on
6 information and belief, the defendants and SDCERS have also entered into similar tolling
7 agreements.

8 13. Any applicable statute of limitations has also been tolled because the defendants
9 have continued to provide legal services to SDCERS.

10 14. The defendants provided legal services in the nature of advising the SDCERS'
11 board of administration to enter into a contribution agreement purporting to govern the City of
12 San Diego's employer contribution to the trust fund administered by SDCERS.

13 15. That advice induced SDCERS' board of administration to breach its fiduciary
14 duty to members of the class by entering into a contribution agreement on or about December 4,
15 2002, which, among other things, (a) violated the City Charter, (b) led to dangerous
16 underfunding of the trust fund, rendering it actuarially unsound and potentially insolvent, (c)
17 violated the Political Reform Act, and (d) violated Government Code section 1090.

18 16. The defendants actively participated with, aided, and abetted in SDCERS' breach
19 of trust.

20 17. The defendants participated with, aided, and abetted in SDCERS's breach of trust
21 for defendants' own financial gain.

22 18. The defendants also concealed their participation and assistance with SDCERS'
23 breach of trust.

24 19. SDCERS has been unwilling to prosecute this action to recover assets belonging
25 to the trust.

26 20. This action is brought in the public interest because the public, including citizens
27 of and visitors to the City of San Diego, benefits from a solvent pension fund which (a) keeps
28 promises to loyal public servants and therefore promotes public service, (b) reduces the specter

1 of insolvency of the pension fund administered by SDCERS' board of administration, and (c)
2 reduces the chances of bankruptcy by the City of San Diego and/or SDCERS.

3 21. WOOD does not seek any relief greater than or different from the relief sought for
4 the class of which he is a member.

5 22. This action, if successful, would confer a significant pecuniary benefit – in excess
6 of \$100 million – to the public trust fund administered by SDCERS, and therefore the general
7 public and the more than 16,000 members of SDCERS.

8 23. Private enforcement is necessary because SDCERS has refused to act to prosecute
9 this claim and has continued to employ defendants. This private enforcement has placed a
10 disproportionate financial burden on WOOD in relation to his stake in this matter.

11

12

CLASS ACTION ALLEGATIONS

13 24. This action is brought under California Code of Civil Procedure section 382.

14 25. The plaintiff class consists of all persons who are active, deferred, or retired
15 members of SDCERS as a result of employment with the City of San Diego.

16 26. This action is brought and is maintained properly as a class action under Code of
17 Civil Procedure section 382 because:

18 (a) The questions and issues of law and fact raised herein are of a
19 common and general interest affecting the class;

20 (b) The plaintiff class is estimated to contain in excess of 16,000
21 individuals and it is impractical to bring all members of the class
22 individually before the court;

23 (c) The questions of law or fact common to the class are substantially
24 similar and predominate over those questions that affect individual
25 members. These common questions include:

26 (i) What is the nature and extent of the duties that were owed
27 by the defendants to SDCERS?

28 (ii) Did various conduct of the defendants breach their duties to

1 SDCERS?

2 (iii) Were the acts of the defendants below the legal standard of
3 care?

4 (iv) What is the proper method of calculating damages caused
5 by defendants' negligence?

6 (v) Is the plaintiff class entitled to prejudgment interest and
7 attorneys' fees?

8 (vi) What are the proper in limine rulings and evidentiary
9 rulings?

10 (d) The claims of the representative plaintiff is typical of those of the
11 class;

12 (e) The representative plaintiff will fairly and adequately protect the
13 interests of the class, has no interests which conflict with the class,
14 and have retained attorneys experienced in the prosecution of class
15 and multi-plaintiff litigation to represent the class herein;

16 (f) The prosecution of separate actions by individual members of the
17 class will create a risk of: (1) inconsistent or varying adjudications
18 with respect to individual members of the class which would
19 establish incompatible standards of conduct for defendants; or (2)
20 adjudications with respect some individual members which would,
21 as a practical matter, be dispositive of the interest of the other
22 members not parties to the adjudications; or (3) adjudications
23 which would substantially impair or impede the ability of
24 individual members to protect their interests;

25 (g) A plaintiff class action is superior to other available methods for
26 the fair and efficient adjudication of the claims presented in this
27 complaint, and will prevent the undue financial, administrative and
28 procedural burdens on the parties and on this Court which

1 individual litigations would impose.

2 27. Proof of a common or single practice or factual pattern, of which the named
3 plaintiffs' experiences are representative, will establish the right of each of the members of the
4 plaintiff class to recover on the causes of actions herein alleged.

5 28. All of the plaintiffs were subject to a systematic course and pattern of practice and
6 were thereby treated by the defendants in a similar manner, as is specifically alleged elsewhere
7 in this complaint.

8 29. The plaintiff class is entitled in common to a specific fund with respect to the
9 monies paid by or on the behalf of the plaintiff class to the defendants for services in connection
10 with the legal representation of plaintiff class. The plaintiff class is entitled in common to
11 damages for which the defendants are liable. This action is brought for the benefit of the entire
12 class and will result in the creation of a common fund. The representative plaintiff will expend
13 efforts and expense to prevail in this action from which other plaintiffs and members of
14 SDCERS will derive benefits. This action will result in the conferral of substantial benefits, of
15 both a pecuniary and a nonpecuniary nature.

16

17 **CAUSE OF ACTION**
18 **FOR ATTORNEY MALPRACTICE**

19 30. Wood restates the previous paragraphs of this complaint as if fully set forth here.

20 31. As attorneys for SDCERS' board of administration, the defendants owed
21 SDCERS a duty to use reasonable care and to discharge their obligations competently.

22 32. The defendants breached their duties to the SDCERS' board of administration in
23 several respects, including but not limited to:

- 24 (a) failing to properly advise the board of administration regarding the
25 proposed 2002 contribution agreement;
- 26 (b) failing to recognize or conduct any analysis of the San
27 Diego City Charter, particularly section 143 of article IX;
- 28 (c) failing to recognize or provide any analysis of the City of San

1 Diego's past violations of San Diego Municipal Code section
2 24.0801, which had occurred from 1996 through 2002, under the
3 then-existing 1996 contribution agreement;

4 (d) altering their legal opinion as written on June 12, 2002 , which
5 advised against the 2002 contribution agreement, to their legal
6 opinion of November 18, 2002, opinion, advising in favor of the
7 2002 contribution agreement;

8 (e) attempting to conceal the June 12, 2002 opinion after it became
9 apparent that the November 18, 2002 opinion was negligent;

10 (f) concealing additional communications and evidence from
11 beneficiaries of the trust which reveal other aspects of malpractice;

12 (g) failing to discover the impact of various provisions of the 2002
13 contribution agreement which rendered the SDCERS' trust fund
14 actuarially unsound and potentially insolvent;

15 (h) failing to recognize and advise the board of administration that
16 entering into the 2002 contribution agreement violated the Political
17 Reform Act; and

18 (i) failing to recognize and advise the board of administration
19 that, because the conferral of additional pension benefits
20 was contingent on the 2002 contribution agreement, that
21 agreement violated Government Code section 1090 and
22 constituted a breach of trust and a constructive fraud.

23 33. The conduct of the defendants as described above caused the SDCERS' trust fund
24 and plaintiff to sustain damages, including but not limited to: (a) lost contributions from the City
25 of San Diego which would have been paid to the trust fund under either (i) the 1996 contribution
26 agreement, (ii) the City Charter, or (iii) San Diego Municipal Code section 24.0801; (b) earnings
27 from those contributions; and (c) attorney fees, costs, and other expenses incurred by SDCERS
28 in attempting to defend the 2002 contribution agreement.

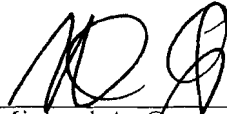
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, plaintiffs and others similarly situated pray for judgment as follows:

- 1. For general damages according to proof;
- 2. For special damages according to proof;
- 3. For cost of suit herein incurred;
- 4. For reasonable attorney fees under the common fund doctrine or Code of Civil Procedure section 1021.5; and
- 5. For such other and further relief as the court deems just and proper.

Dated: May 25, 2004

LAW OFFICES OF MICHAEL A. CONGER

By: 

Michael A. Conger
Attorney for Plaintiff, both individually and on
behalf of those similarly situated

Jury trial demanded.

STANDSTILL AGREEMENT

1. Parties

This Standstill Agreement is entered into by:

- (a) James F. Gleason and David W. Wood, on behalf of themselves as individuals and the class of similarly-situated plaintiffs alleged in a pending class action entitled *Gleason, et al. v. San Diego City Employees' Retirement System, et al.*, San Diego County Superior Court Case No. GIC 803779 ("plaintiffs");
- (b) Robert Blum;
- (c) Connie Hiatt; and
- (d) the law firm of Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP.

2. Recitals

- (a) Robert Blum, Connie Hiatt, and the law firm of Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP (collectively referred to as the "defendants") provided legal services to the Board of Administration ("Board") of the San Diego City Employees' Retirement System in connection with an Agreement Regarding Employer Contributions between the City of San Diego and the San Diego City Employees' Retirement System (the "2002 Contract").
- (b) The Board is composed of 13 individual trustees who owe fiduciary duties to the plaintiffs.
- (c) The plaintiffs believe that they may have a claim against the defendants.
- (d) The parties wish to have adequate time to carefully consider the plaintiffs' potential claim against the defendants and, in order to afford such time while preserving the rights of the parties, they wish to enter into an agreement tolling all applicable statutes of limitation.

3. Restraint from Prosecution

In light of the need to fully investigate the plaintiffs' potential claim and the costs associated with resolving the claim through litigation, if necessary, the parties agree that no legal action or proceeding on the potential claim shall be filed prior to December 1, 2003 without 30 days' prior written notice to all other parties.

4. Tolling of All Applicable Statutes of Limitation

The parties agree that all statutes of limitation applicable to the plaintiffs' potential claim against the defendants shall be tolled as of the date of this agreement. This tolling shall end on November 30, 2003, unless extended by the parties.

5. Entire Agreement

This agreement constitutes the final expression and the complete and exclusive statement of the terms of the agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this agreement will be binding on the parties or relied upon by the parties, and no evidence of such prior agreement, statement, or promise shall be admissible, for any purpose, in any arbitral or judicial proceeding. This agreement may be modified only in writing.

6. Counterparts

This agreement may be executed in counterparts.

DATED: 6/18/03



Robert Blum

DATED: 6/18/03

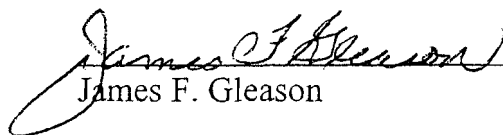

Connie Hiatt

HANSON, BRIDGETT, MARCUS,
VLAHOS & RUDY, LLP

DATED: 6/18/03

By: 
Title: RISK MANAGEMENT PARTNER

DATED: 6-18-03


James F. Gleason

DATED: _____

David W. Wood

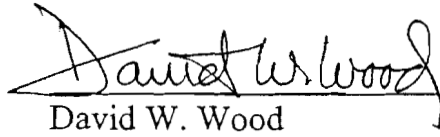
DATED: _____

Michael A. Conger, Attorney for
James F. Gleason and David W. Wood

DATED: _____

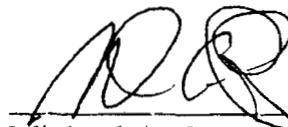
James F. Gleason

DATED: June 17, 2003



David W. Wood

DATED: June 23, 2003

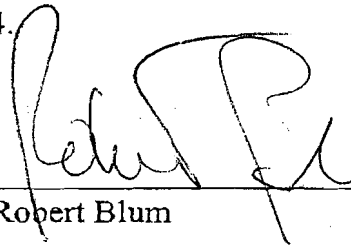


Michael A. Conger, Attorney for
James F. Gleason and David W. Wood


EXTENSION OF STANDSTILL AGREEMENT

The parties to the attached Standstill Agreement hereby agree that it is extended for a period of 90 days or until February 28, 2004.

DATED: 11/24/03

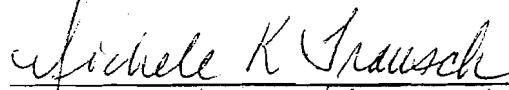

Robert Blum

DATED: 11/24/03


Connie Hiatt

HANSON, BRIDGETT, MARCUS,
VLAHOS & RUDY, LLP

DATED: 11/24/03

By: 
Title: RISK MANAGEMENT PARTNER

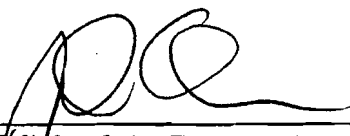
DATED: _____

James F. Gleason

DATED: _____

David W. Wood

DATED: 12/3/03


Michael A. Conger, Attorney for
James F. Gleason and David W. Wood

EXTENSION OF STANDSTILL AGREEMENT

The parties to the attached Standstill Agreement hereby agree that it is extended for a period of 90 days or until February 28, 2004.

DATED: _____

Robert Blum

DATED: _____

Connie Hiatt

HANSON, BRIDGETT, MARCUS,
VLAHOS & RUDY, LLP

DATED: _____

By: _____
Title: _____

DATED: December 6, 2003

James F. Gleason
James F. Gleason

DATED: _____

David W. Wood

DATED: _____

Michael A. Conger, Attorney for
James F. Gleason and David W. Wood

EXTENSION OF STANDSTILL AGREEMENT

The parties to the attached Standstill Agreement hereby agree that it is extended for a period of 90 days or until February 28, 2004.

DATED: _____

Robert Blum

DATED: _____

Connie Hiatt

HANSON, BRIDGETT, MARCUS,
VLAHOS & RUDY, LLP

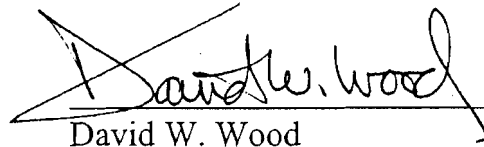
DATED: _____

By: _____
Title: _____

DATED: _____

James F. Gleason

DATED: Dec. 8, 2003



David W. Wood

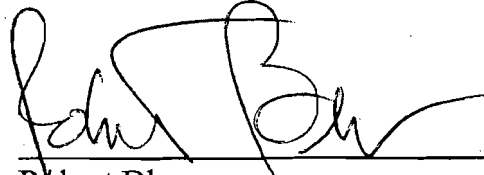
DATED: _____

Michael A. Conger, Attorney for
James F. Gleason and David W. Wood

SECOND EXTENSION OF STANDSTILL AGREEMENT

The parties to the attached Standstill Agreement (previously extended to February 28, 2004) hereby agree that it is extended for a period of an additional 90 days, or until May 31, 2004.

DATED: 2/23/04

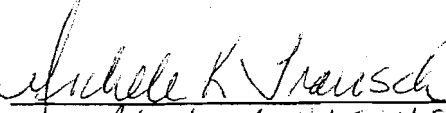

Robert Blum

DATED: 2/23/04


Connie Hiatt

HANSON, BRIDGETT, MARCUS,
VLAHOS & RUDY, LLP

DATED: 2/23/04

By: 
Title: RISK MANAGEMENT PARTNER

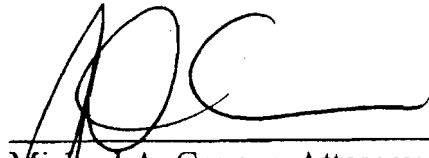
DATED: _____

James F. Gleason

DATED: _____

David W. Wood

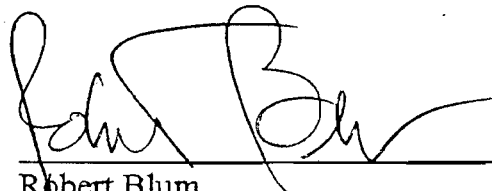
DATED: 3/25/04


Michael A. Conger, Attorney for
James F. Gleason and David W. Wood


SECOND EXTENSION OF STANDSTILL AGREEMENT

The parties to the attached Standstill Agreement (previously extended to February 28, 2004) hereby agree that it is extended for a period of an additional 90 days, or until May 31, 2004.

DATED: 2/23/04

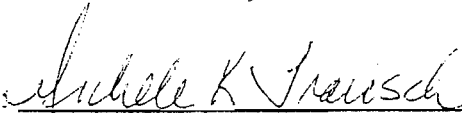

Robert Blum

DATED: 2/23/04

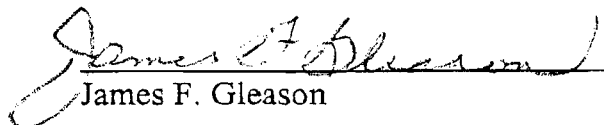

Connie Hiatt

HANSON, BRIDGETT, MARCUS,
VLAHOS & RUDY, LLP

DATED: 2/23/04

By 
Title: RISK MANAGEMENT
PARTNER

DATED: 3/5/04


James F. Gleason

DATED: _____

David W. Wood

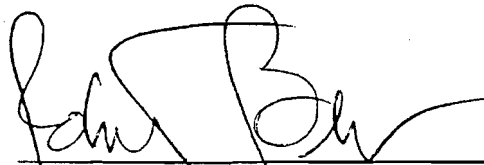
DATED: _____

Michael A. Conger, Attorney for
James F. Gleason and David W. Wood

SECOND EXTENSION OF STANDSTILL AGREEMENT

The parties to the attached Standstill Agreement (previously extended to February 28, 2004) hereby agree that it is extended for a period of an additional 90 days, or until May 31, 2004.

DATED: 2/23/04

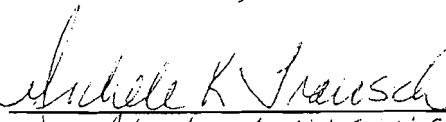

Robert Blum

DATED: 2/23/04


Connie Hiatt

HANSON, BRIDGETT, MARCUS,
VLAHOS & RUDY, LLP

DATED: 2/23/04

By: 
Title: RISK MANAGEMENT PARTNER

DATED: _____

James F. Gleason

DATED: 3/5/04


David W. Wood

DATED: _____

Michael A. Conger, Attorney for
James F. Gleason and David W. Wood