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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

(SACRAMENTO DIVISION)

WILLIAM GEORGE, on behalf of himself and all other persons similarly situated, Plaintiff, vs. CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK, a public instrumentality of the State of California and ORRICK, HERRINGTON & SUTCLIFFE, LLP, an entity Defendants.	CASE No. 2:09-CV-01610-GEB-DAD FIRST AMENDED CONSOLIDATED COMPLAINT FOR VIOLATION OF SECTION 10(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND OF RULE 10(b)-5(a), (b) AND (c) PROMULGATED THEREUNDER CLASS ACTION JURY TRIAL DEMANDED

Comes now Plaintiff and alleges as follows:

The Parties

1. William George (Lead Plaintiff) is an individual person who was appointed lead plaintiff herein under the Private Securities Litigation Reform Act of 1995 by an Order filed September 15, 2009, at Docket No. 39.

2. At all times relevant herein defendant California Infrastructure and Economic Development Bank (Issuer) has been a public instrumentality of the State of California with its principal place of business in Sacramento County, California. As is further described at http://www.ibank.ca.gov/Programs/bonds.htmlIssuer, Issuer, *inter alia*, issues tax exempt revenue bonds which bonds are conduit bonds—meaning they are not backed by the full faith and credit of the State of California—and which bonds create public benefits in California communities where a sponsored project is located by enhancing the economic, social, or cultural quality of life for local residents (Section 501(c)(3) Bonds).

3. At all times relevant herein defendant Orrick Herrington & Sutcliffe, LLP (Orrick) has been an entity comprised, *inter alia*, of Members of the State Bar of California engaged in the active practice of law within and without the State of California, with its principal place of business in the City and County of San Francisco, California. As a California law firm, Orrick is subject to the California Rules of Professional Conduct.

4. Issuer, *inter alia*, employed Orrick to provide Issuer with the following services respecting certain Section 501(c)(3) Bonds comprising 07 Bonds (as that latter term is defined in ¶12):

✓ Prepare bond documents traditionally prepared by bond counsel, including but not limited to the indenture, loan agreement, tax certificate and miscellaneous certificates and documents.

- ✓ Review and propose revisions to documents, certificates and opinions prepared by counsel to other parties to the transaction.
- ✓ Assist in negotiations with other parties to the transaction (e.g., investment agreement providers and rating agencies).
- ✓ Assist in structuring the transaction, including redemption provisions, security provisions, bond and lease covenants in consultation with other finance team participants.
- ✓ Render legal opinions on the validity of the Section 501(c)(3) revenue bonds and related documents, the tax-exempt status of interest on the Section 501(c)(3) from State and Federal income taxation and such other matters as requested.
- ✓ Attend Issuer Board meetings at which the transaction is being considered.
- ✓ Provide legal advice on bond, securities law and tax issues that may arise in connection with the transaction, including the effect such legal issues could have on structuring the transaction.
- ✓ Orchestrate closings and prepare the closing transcript.
- ✓ Provide post-closing advice regarding any actions necessary to ensure that interest on the bonds will continue to be tax-exempt.
- ✓ Review state and, if necessary, federal statutes, regulations, and case law to determine legal authority for revenues pledged as security for bonds.
- ✓ Provide other legal services related to the transaction, including advice concerning real estate laws and environmental laws.
- ✓ Draft portions of the preliminary and final official statements related to Orrick's own legal opinions and render such related legal opinions.
- ✓ Provide any other related legal services as required.

5. Issuer also hired Orrick to provide Issuer with the same or similar legal services respecting certain Section 501(c)(3) Bonds comprising 99 Bonds (as that latter term is defined in ¶20) just as it did with respect to 07 Bonds.

6. When Orrick is alleged to have been acting as bond counsel with respect to 07 Bonds it will sometimes be described as Issuer's 07 Bond Counsel. When Orrick is alleged to have been acting as bond counsel with respect to 99 Bonds it will sometimes be described as Issuer's 99 Bond Counsel. When Issuer and Orrick are referred to collectively they will sometimes be described as "defendants" or as "defendants, and each of them".

Jurisdiction and Venue

7. The claims asserted in the First Claim for Relief herein arise under and pursuant to Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder.

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 United States Code sections 1331 and 1332(d).

9. Venue is proper in this District pursuant to 28 United States Code section 139l(b) in that the defendants, and each of them, transact business in this District, and many of the acts giving rise to the violations of federal securities law complained of herein occurred in this District. Also, certain of the parties, specifically including, but not limited to, Lead Plaintiff, have previously stipulated in writing to lay venue for disputes of this nature in Sacramento County, California.

10. In connection with the acts alleged herein, defendants, and each of them, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

Class Action Allegations

11. This is an action against defendants, and each of them, on account of their joint and several violations of the anti-fraud provisions of the federal securities laws, which violations are a result of (i) defendants employing devices, schemes, and artifices to defraud Proposed Class (as that term is defined in ¶12), all in violation of Rule 10b-5(a); (ii) defendants making untrue statements of material fact to Proposed Class (as that term is defined, in ¶12) through an Official Statement dated May 17, 2007 (Prospectus [Exhibit 1 hereto]) as well as omitting to state material facts necessary in order to make the statements made in Prospectus to Proposed Class, in the light of the circumstances under which the statements which were made, not misleading, all in violation of Rule 10b-5(b); and (iii) defendants' engaging in acts, practices, and a course of business which operated as a fraud or deceit upon Proposed Class (as that term is defined, in ¶12) in connection with the purchase or sale of a security, all in violation of Rule 10b-5(c).

12. Lead Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons who purchased, between June 1, 2007 and December 1, 2008, certain Section 501(c)(3) Bonds (07 Bonds) and held these bonds as the beneficial holders on December 1, 2008, which 07 Bonds were issued by Issuer, and as to which 07 Bonds, Bank of New York Mellon N.A. (07 Indenture Trustee) was the indenture trustee under that certain Indenture dated May 1, 2007, by and between Issuer, on the one hand, and 07 Indenture Trustee, on the other hand (Proposed Class).

13. Proposed Class numbers in excess of 300 persons and is therefore so numerous that joinder of all members of Proposed Class would be impracticable.

14. The identity of Proposed Class members is ascertainable from the business records of Depository Trust Company, an entity located in New York City, New York.

15. Questions of law and fact common to the members of Proposed Class exist that predominate over individual issues. Among the questions of law and fact common to Proposed Class are: (i) whether defendants' acts as alleged below were a violation of Rule 10b-5(a) and (c); (ii) whether Prospectus affirmatively misrepresented and/or omitted material facts about 07 Bonds in violation of Rule 10b-5(b); (iii) whether the members of Proposed Class should be deemed to have relied on Prospectus because Prospectus was sufficiently fraudulent that it created the market for 07 Bonds; and (iv) whether the members of the Proposed Class have sustained compensatory damages under the federal securities laws and the proper measure of such damages. These issues predominate over any questions solely affecting individual members of Proposed Class.

16. In addition to the foregoing, the damages suffered by many of the proposed members of Proposed Class are relatively small, such that the expense and burden of individual litigation makes it impossible for those proposed members of the Proposed Class to redress individually the wrongs done to them by defendants, and each of them.

17. There will be no difficulty in the management of this action as a class action.

Charging Allegations

A. Introductory Facts Respecting Prospectus.

18. On May 24, 2007, in connection with the delivery of 07 Bonds by Issuer to JP Morgan Securities Inc. (Underwriter) as described in Prospectus, Issuer received $77,612,773.55 in lawful money of the United States from Underwriter and immediately loaned that $77,612,773.55 to a California non-profit corporation named COPIA: The American Center for Wine, Food and the Arts (Borrower).

19. 07 Bonds went on sale to the public on or about June 1, 2007, with Prospectus utilized as the sole legally authorized marketing tool with respect to 07 Bonds.

20. As set forth on the face page of Prospectus as well as at, *inter alia*, on pages 19 and 20 of Prospectus (portions of which pages 19 and 20 are quoted below at ¶21), the proceeds of 07 Bonds were affirmatively represented by defendants, and each of them, as having been raised by Issuer to pay off, on or before September 7, 2007, an earlier bond issue (99 Bonds) in the aggregate principal amount of $70,000,000, $67,195,000 of which 99 Bonds were then outstanding and $64,095,000 of which 99 Bonds were not subject to payment prior to December 1, 2009.

21. Thus, Prospectus contains misleading statements (the Misleading Statements) which read, in pertinent part, and under the heading PLAN OF FINANCING as follows:

> Certain preconditions to the defeasance of [99] Bonds … are not expected to be met until September 7, 2007. In particular, the occurrence of an Act of Bankruptcy by [Borrower on or before] …

> September 7, 2007, would prevent the legal defeasance of [99] Bonds from the proceeds of 07 Bonds. Until [99] Bonds are defeased … [07] Bonds will be subordinate to [99] Bonds …. After the defeasance of [99] Bonds … it is expected that … [99] Bonds will be deemed paid and no longer outstanding …. Assuming that [07] Bonds are delivered in May 2007 and that [an] Escrow Fund is funded on such date of delivery, it is expected that the preconditions to the defeasance of [99] Bonds … will be met by September 7, 2007.

22. The word defeasance is defined as "an annulment or abrogation" in Black's Law Dictionary (Ninth Edition, 2009).

23. In the context of the Misleading Statements, what is being misrepresented to the reader by means of the language quoted at ¶21, above, is that, once September 7, 2007, arrives, and, assuming Borrower has not then already filed for bankruptcy, 99 Bonds would be paid off by means of an advance deposit of about $71 million into escrow and thereby annulled or abrogated consistent with the provision for such advance defeasance (99 Bonds Defeasance) contained in Article X of an Indenture dated July 1, 1999, by and between Issuer on the one hand, and BNY Western Trust Company, on the other hand (99 Indenture, attached as Exhibit 2 hereto) and that 07 Bonds would, following such 99 Bonds Defeasance, represent Borrowers only then outstanding bond debt.

24. In fact, however, defendants, and each of them, actually knew that any September 7, 2007, 99 Bonds Defeasance, as described in Prospectus, was not possible unless and until Issuer's 99 Bond Counsel was willing to issue "the written … opinion required by Section … 10.03(4) [of 99 Indenture] …." (See

Letter from Issuer's 07 Bond Counsel dated May 24, 2007 attached as Exhibit 3 hereto, at page 2.)

25. In addition, defendants, and each of them, also actually "knew that the opinions [to be] provided by [Issuer's Bond Counsel] as part of the 2007 Bond Transaction would not be as broad as contemplated by the language in the 1999 Indenture Agreement." (Declaration of Roger Davis etc. dated April 24, 2009, attached as Exhibit 4 hereto, at 5:7-10.)

26. In addition, defendants, and each of them, also actually knew that any opinions by Issuer's 99 Bond Counsel that were "not … as broad as contemplated by the language in the 1999 Indenture Agreement" would necessarily prevent 99 Bonds Defeasance from occurring between September 7, 2007 and December 1, 2009, and would expose 07 Bondholders to the risk of Borrower's bankruptcy and a consequent loss of real property security against Copia Campus for 07 Bonds during that much extended period.

27. Specifically, defendants, and each of them knew that Issuer's 99 Bond Counsel's expressly stated 2007 unwillingness to opine that the portion of the proceeds from the $77,612,773.55 loaned to Borrower by Issuer that were being set aside in order to work 99 Bonds Defeasance "will not constitute a voidable … transfer under the Bankruptcy Code or any similar state or federal statute …"—as required by §10.03(4) of 99 Indenture, Exhibit 2, at page 46—meant that, as a matter of law, no meaningful 99 Bonds Defeasance would occur until December 1, 2009, if then.

28. Issuer's 99 Bond Counsel's expressly stated 2007 unwillingness to opine that the portion of the proceeds from the $77,612,773.55 loaned to Borrower by Issuer that were being set aside in order to work 99 Bonds Defeasance "will not constitute a voidable … transfer under the Bankruptcy Code or any similar state or

federal statute …" as required by §10.03(4) of 99 Indenture, Exhibit 2 is evidenced both by Exhibit 4, *supra*, as well as by the draft and actual opinion letters (Exhibits 5 and 6) that were in fact given by Issuer's 99 Bond Counsel, neither of which opinions represent the appropriate and necessary opinion by Issuer's 99 Bond Counsel that the portion of the proceeds from the $77,612,773.55 loaned to Borrower by Issuer that were purportedly being set aside in order to work 99 Bond Defeasance "will not constitute a voidable … transfer under the Bankruptcy Code or any similar state or federal statute …" as required by §10.03(4) of 99 Indenture, Exhibit 2.

29. As further described below, defendants, and each of them, thus actually knew that the affirmative statements in Prospectus regarding the use to which the proceeds of 07 Bonds were to be put, to wit, for 99 Bonds Defeasance, were untrue when made and nonetheless intentionally went ahead and put them in Prospectus despite such actual knowledge of their falsity.

B. Introductory Facts Respecting 99 Bonds.

30. 99 Bonds were secured by a first deed of trust (99 Deed of Trust) on certain real property (Copia Campus). 99 Bonds were insured by ACA Financial Guaranty Corporation (Bond Insurer). Most 99 Bonds were locked in (and therefore could not be paid off) until December 1, 2009. (See 99 Indenture, Exhibit 2 at §4.01, at pages 20-21 ["The [99] Bonds are subject to redemption prior to their respective maturities, as a whole or in part [only] on any date on or after December 1, 2009 …"].)

31. The only way to pay (and thereby achieve defeasance of) 99 Bonds before December 1, 2009, was to arrange for an escrow account in which to safely hold the funds necessary to eventually pay the 99 Bonds on December 1, 2009. In such a case, 99 Indenture expressly provided that an opinion by Issuer's 99 Bond

Counsel was required to the effect that (i) the escrow deposit would not be a voidable preference and (ii) the escrow deposit would not be a fraudulent transfer under either the Bankruptcy Code or any similar state or federal statute should Borrower become bankrupt or otherwise subject to such other similar state or federal statutes. (See Exhibit 2, 99 Indenture at Article X, DEFEASANCE, §10.03(4)(A), at page 46.)

32. Borrower opened its cultural center in 2001, but it had struggled financially from the start. Each year after 2001, Borrower's operation of its cultural center lost in excess of $5 million without paying any debt service. (See Borrower's June 8, 2009 Disclosure Statement, etc., attached as Exhibit 7 hereto, at 8:24-9:2.)

33. By May of 2007, Borrower had exhausted an interest reserve for the payment of the 99 Bonds and default on the 99 Bonds was imminent. (*Ibid.* at 9:20-23.)

34. As is admitted at http://www.ibank.ca.gov/pdfs/Minutes-2-24-09.pdf, Issuer had never had a default on Section 501(c)(3) Bonds before 99 Bonds were threatened with default in June 2007.

35. The crisis of a first default for Issuer was made more acute due to Bond Insurer's having become insolvent well before June 1, 2007, due to Bond Insurer's unwise accumulation of more than $69 billion in exposure to Collateralized Debt Obligations. (See Declaration of William McGrane, attached as Exhibit 8, at Exhibit 1 at ¶7.)

36. Bond Insurer, in fact, became subject to reorganization by the Maryland Insurance Administration on December 19, 2007, the same day its public credit rating was dropped from single 'A' to 'CCC'. (*Ibid*. at Exhibit 2 at ¶8.)

37. As Issuer's primary outside legal counsel since Issuer was first created by the California State Legislature in 1994, Orrick was the beneficiary of a long standing and very profitable relationship with Issuer and it wished to accommodate the desires of Issuer to avoid having Borrower default on 99 Bonds. Orrick also had a strong pecuniary interest in obtaining substantial legal fees in connection with Issuer's issuance of 07 Bonds.

C. Introductory Facts Respecting 07 Bonds.

38. Issuer and Orrick began work on a second bond issue in late 2006 or early 2007 in order to try and avoid the impending default on 99 Bonds. The project was described specifically as one "designed to generate funds to prepay the 1999 bonds and to 'defease' the 1999 Indenture and to provide [Borrower] with some working capital." (See Davis Declaration, Exhibit 4, at ¶5.)

39. Mr. Davis is an Orrick partner who is the Chair of Orrick's Public Finance Department and was one of the Orrick attorneys who participated in Issuer's issuance of both 99 Bonds and 07 Bonds. (See Davis Declaration, Exhibit 4, at ¶1.)

40. Orrick holds itself out as one of the premier tax-exempt bond counsel in the United States; as being ranked number one in the United States based on rankings from the Securities Data Company for tax exempt bonds since before 1990; and as handling more than 300 such bond issues in an average year.

41. Due to the anti-prepayment provisions in 99 Indenture, 07 Bonds could only be structured based upon the use of an escrow account that was to be established for the purpose of holding the funds that were to be paid on 99 Bonds on December 1, 2009. (See Davis Declaration, Exhibit 4, at ¶7.)

42. 99 Deed of Trust could not be effectively reconveyed to Borrower until there was a proper and legal defeasance of 99 Bonds. Any subsequently

recorded deed of trust on Copia Campus would necessarily be subordinate to 99 Deed of Trust until and unless 99 Bonds were legally defeased. (See Borrower's June 8, 2009 Disclosure Statement, etc., Exhibit 7, at 10:8-9.)

43. 07 Bonds could never even possibly have been marketed to the public if the public had been properly informed by Issuer and Orrick that the real property security against Copia Campus (07 Deed of Trust) for 07 Bonds otherwise described in Prospectus, Exhibit 1, at pages 19 and 20, would ***not*** be a first deed of trust on Copia Campus as of September 7, 2007, but instead would necessarily remain junior to 99 Deed of Trust until 99 Bonds were paid off on December 1, 2009, if at all. (See Declaration of Stephen Roulac, attached hereto as Exhibit 9, at ¶¶5-11.)

44. This is because, *inter alia*, the obligations of Borrower secured by 99 Deed of Trust would never be equitably annulled until 99 Bonds were properly made the subject of a proper and legal defeasance. (See, e.g., 99 Indenture, Exhibit 2, at ARTICLE X, at pages 44-47; Borrower's June 8, 2009 Disclosure Statement, etc., Exhibit 7, at 16:9-14; see also Declaration of James Cumbie etc., attached hereto as Exhibit 10, at ¶11, 3:21-25.)

45. Under the circumstances present in this case, 99 Bonds could only be made the subject of a proper and legal defeasance as of September 7, 2007, if Issuer's 99 Bond Counsel delivered an opinion that (i) the escrow deposit would not be a voidable preference and (ii) the escrow deposit would not be a fraudulent transfer under either the Bankruptcy Code or any similar state or federal statute should Borrower become bankrupt or otherwise subject to such other similar state or federal statutes. (See Exhibit 2, 99 Indenture at Article X, DEFEASANCE, §10.03(4)(A), at page 46.)

46. Issuer and Orrick worked on the structure for the 07 Bonds "over a period of months." (Davis Declaration, Exhibit 4, at ¶13, at page 4:24-26.)

47. In his sworn declaration, Orrick's Mr. Davis effectively concedes that, during these months leading up to 07 Bonds issuance, Issuer, Orrick and 99 Indenture Trustee ***all*** acquired the knowledge that "the opinions provided [by Orrick as Issuer's 99 Bond Counsel] would not be as broad as contemplated by the language in the [99] Indenture … [and] nonetheless proceeded [with 07 Bond issuance] on that basis." (*Ibid.* at 5:7-10.)

D. Introductory Facts Respecting Role Official Statements Play in State and Local Public Finance.

48. An Official Statement, such as Prospectus, is the disclosure document used in public finance. It contains information material to investors in deciding whether or not to purchase public debt offerings, including Section 501(c)(3) Bonds which are not backed by the full faith and credit of any public entity.

49. An Official Statement is made available to the public on the Electronic Municipal Market Access (EMMA) system on which all Official Statements are registered so as to facilitate trading in all securities regulated by the Municipal Securities Rulemaking Board. Prospectus is available on EMMA, see http://emma.msrb.org/SecurityView/SecurityDetails.aspx?cusip=13033WD26. EMMA is, in turn, sponsored by the Municipal Securities Rulemaking Board as a public service.

50. As outlined, among other places, in *Freeman v. Lavanthol & Horwoth*, 915 F.2d 193, 199 (6th Cir. 1999), the market for public debt offerings such as 07 Bonds is not as efficient or developed as the national secondary markets for equity securities, i.e., the NYSE or NASDAQ. 07 Bonds have thus never been traded actively in an impersonal market.

51. An Official Statement remains available on EMMA for as long as such securities are unpaid and therefore still trading. (See, e.g., http://emma.msrb.org/SecurityView/SecurityDetails.aspx?cusip=13033WD26.)

E. Specific Allegations of 10b-5 Securities Fraud by Defendants.

52. Issuer's 07 Bond Counsel drafted the PLAN OF FINANCING contained in Prospectus and quoted at ¶21 despite the fact it, i.e., Orrick, was ***fully and uniquely*** knowledgeable that it, Orrick, as Issuer's 99 Bond Counsel, was not itself willing to give a necessary opinion letter and thereby accomplish legal and proper defeasance.

53. Issuer's 07 Bond Counsel was identified as Bond Counsel on the face page of Prospectus (Exhibit 1, face page); offered a proposed form of one its opinions in Appendix D to Prospectus (Exhibit 1, Appendix D), and is referred to numerous times throughout Prospectus (e.g., Exhibit 1, pages 28-30.)

54. Prospectus contained numerous other Misleading Statements as to when 99 Bonds would be defeased. On the face page it was misrepresented that the 99 Bonds Defeasance "is expected to occur no later than September 7, 2007." (See Prospectus, Exhibit 1, face page.)

55. This was repeated in the INTRODUCTORY STATEMENT. (See Prospectus, Exhibit 1, at 1.)

56. At page 2 of Prospectus there was a misleading description falsely conveying that the preconditions to defeasance of the 99 Bonds would be met according to the expected timing of such defeasance (not later than September 7, 2007). (See Prospectus, Exhibit 1, at 2.)

57. Issuer's 07 Bond Counsel, as an entity comprised, *inter alia*, of Members of the State Bar of California actively practicing law in the State of California, had an affirmative duty to Proposed Class to either (i) disclose the fact

(and its consequences)—fully and uniquely known to Issuer's 07 Bond Counsel, but not known to Proposed Class (Material Omissions)—respecting the express 2007 unwillingness of Issuer's Bond Counsel to opine that the portion of the proceeds from the $77,612,773.55 loaned to Borrower by Issuer that were being set aside in order to work 99 Bonds Defeasance "will not constitute a voidable … transfer under the Bankruptcy Code or any similar state or federal statute …" or (ii) to instead refrain from acting as Issuer's 07 Bond Counsel in connection with 07 Bonds. This is because—while the persons and entities comprising Proposed Class were never clients of Issuer's Bond Counsel—(i) Issuer's 07 Bond Counsel knew Prospectus would be continuously communicated to Proposed Class by means of EMMA for the purpose of influencing the members of Proposed Class in their ongoing conduct in buying and selling 07 Bonds; and (ii) no Member of the State Bar of California is ethically permitted to engage in intentionally tortious conduct towards non-clients without being in violation of California Business & Profession Code section 6106 [making any act of moral turpitude, dishonesty or corruption by a Member of the State Bar grounds for discipline whether or not such misconduct rises to the level of criminality and/or a criminal conviction has yet occurred]; see also *Caldwell v. State Bar*, 15 Cal.3d 762 (1975), *Wallis v. State Bar of California*, 21 Cal.2d 322 (1942); see also Declaration of Ephraim Margolin, attached as Exhibit 11, at ¶¶9-11.)

58. The Misleading Statements and Material Omissions as to the proper and legal defeasance of the 99 Bonds were false when made because the 99 Bonds could not be properly and legally defeased without the required legal opinions that (i) the escrow deposit would not be a voidable preference and (ii) the escrow deposit would not be a fraudulent transfer (iii) under the Bankruptcy Code or any

similar state or federal statute (iv) should Borrower become bankrupt or otherwise subject to other insolvency laws.

59. James Cumbie, a Member of the State Bar of Maryland and a partner in Venable LLP law firm has, since 1985, devoted his practice to public finance and is very familiar with the various agreements that document the 07 Bonds having reviewed thoroughly the transaction at issue. (See Declaration of James Cumbie, attached hereto as Exhibit 10, at ¶¶1-9, and Exhibit 1 thereto.)

60. The conclusion in Mr. Cumbie's declaration is correct and firm: "I conclude that the requirements of Section 10.03(4) of the 1999 Indenture were never met by means of a properly addressed opinion letter from Bond Counsel which covered all the points required by that section … Consequently … it is my conclusion that (1) the 1999 Bonds were never defeased (retired), and (2) the Debtor's [(Borrower's)] obligations under the 1999 Loan Agreement were never discharged." (*Ibid*. at ¶11.)

61. The conclusion that Issuer's 07 Bond Counsel made false recitals in the 07 Bond documents is confirmed by bankruptcy counsel for Borrower. Thus, Borrower's June 8, 2009 Disclosure Statement, etc., Exhibit 7, at 16:9-14 correctly recites that: "As a result of these false recitals (1) the funding of the Void Escrow Account was a breach of the express trust provisions of the 99 Indenture, (2) the 99 Bonds were never 'defeased', [and] (3) the first lien of the 99 Deed of Trust on the Copia Campus was never discharged as between Debtor and the 99 Indenture Trustee."

62. The defendants, and each of them, actually knew that the Misleading Statements were false when they made the statements and they also actually knew that the 07 Prospectus failed to disclose the material facts that they were under a

duty to disclose that further rendered the Prospectus misleading by means of the Material Omissions.

63. Thus, Mr. Davis' declaration establishes that defendants were aware at the time that the 99 bonds "had a provision that prohibited them from being prematurely called and paid prior to December 1, 2009, [thus] it was necessary to proceed with the escrow structure rather than immediately repaying the 1999 bonds from proceeds of the 2007 bonds." (See Exhibit 4, Davis Declaration, at ¶7.)

64. The same declaration describes how the "2007 bond transaction was structured so that the loan repayments [Borrower] was supposed to make under the 1999 Loan Agreement would be prepaid … [to] eliminate any further obligation of [Borrower] to [Issuer] under the 1999 Loan Agreement." (*Ibid*. at ¶8.)

65. In fact, what Issuer's 07 Bond Counsel actually knew was that the escrow deposit would only eliminate any further obligations of the Borrower to the holders of 99 Bonds prior to actual repayment on December 1, 2009 ***if*** Issuer's 07 Bond Counsel did something it was absolutely unwilling to do because they considered it too risky for themselves as a law firm, i.e., provide an appropriate legal opinion both that the escrow deposit could not be avoided as a preferential transfer ***and*** that it could not be avoided as a fraudulent transfer (a much more long term proposition than a mere preference opinion given differing limitation of action periods) if Borrower went bankrupt. Mr. Davis stated in the bankruptcy case that the Borrower conceded that the 99 Indenture Trustee was not misled because it knew that the opinions provided as part of the 07 Bond issue would not be as broad as contemplated in the 1999 Loan Agreement, i.e., he specifically declared that the "Trustee nonetheless proceeded on that basis." (See Davis Declaration, Exhibit 4, at ¶14.)

66. In other words, Issuer's 07 Bond Counsel's partner argued that because Borrower was aware of the lack of an appropriate opinion letter and because 99 Indenture Trustee, the Trustee for the 99 Bondholders, did not protest and was otherwise willing to formally reconvey 99 Deed of Trust (a legally ineffectual act), all despite the risk that the escrow deposit could be avoided, the Borrower as a debtor-in-possession in bankruptcy could not be heard to complain about what had happened on a *pari delicto* basis. In doing so, Mr. Davis perforce admitted that it was known by Issuer and Orrick at the time of the 07 Bonds that the escrow deposit could not legally and properly be used to defease the 99 Bonds any earlier than December 1, 2009, and certainly not on or around September 7, 2007.

67. The actual knowledge of the defendants at the time the Misleading Statements and Material Omissions were made is apparent by virtue of the statement in Exhibit 3, a Letter from Issuer's Bond Counsel dated May 24, 2007. The letter stated that "but for the fact that the written evidence and opinion required pursuant to Sections 10.03(3) and 10.03(4) of the Indenture (the 'Other Required Documents') have not been received by the Trustee as of the date hereof, we would be of the opinion that [] the [99] Bonds had become discharged and no longer outstanding, pursuant to the terms of the Indenture."

68. The actual knowledge of the defendants also is evidenced by both the draft and actual opinion letters (Exhibits 5 and 6) that were in fact given by Issuer's Bond Counsel, neither of which instruments represents the appropriate and necessary opinion by Issuer's Bond Counsel that the portion of the proceeds from the $77,612,773.55 loaned to Borrower by Issuer that were purportedly being set aside in order to work 99 Bond Defeasance "will not constitute a voidable …

transfer under the Bankruptcy Code or any similar state or federal statute …" as required by §10.03(4) of 99 Indenture, Exhibit 2.

69. It is inconceivable, in light of the nature of the 07 Bond transaction and the role of Issuer's 07 Bond Counsel that defendants would not have been acutely aware of the deficiencies in the opinion that was to be provided and the falsity of the Misleading Statements and the nature and extent of the Misleading Omissions. As Mr. Cumbie declared, the "failure to supply the requisite conforming opinion letter regarding Section 548 of the Bankruptcy Code (and California's Uniform Fraudulent Act)" was a "serious flaw [] in any claim by anyone that a pre-petition defeasance ever occurred here." (See Declaration of James Cumbie, Exhibit 10, at ¶14.)

70. As Mr. Cumbie also declared, such a deficiency "would, in my judgment, be recognized by any competent lawyer practicing in this [public finance] area as in fact preventing defeasment." (*Ibid.* at ¶14.)

71. After the 07 Bonds were issued on May 17, 2007, an escrow account was set up to repay the 99 Bonds on December 1, 2009.

72. On August 27, 2007, Issuer's 07 Bond Counsel issued its final opinion letter, which did not satisfy the requirements of 99 Indenture to legally and properly defease 99 Bonds. (See Letter from Bond Counsel dated August 27, 2007, Exhibit 6.)

73. The materiality of the Misleading Statements and Material Omissions were then later outlined, *inter alia*, by Borrower in the Disclosure Statement etc. it filed in the bankruptcy court on June 8, 2009. (See Disclosure Statement etc, Exhibit 7 hereto.)

74. As explained in the Disclosure Statement etc. (Exhibit 7), 99 Bonds were secured by a first deed of trust on Borrower's property and, at the outset of

the 2007 Bond Transaction, 07 Bonds were secured by only a second deed of trust on Borrower's property. However, and for lack of the necessary opinion of Issuer's Bond Counsel, there was never any pre-bankruptcy defeasance of 99 Bonds. As a result, the underlying obligation of Borrower on 99 Bonds was never extinguished, despite the fact that—as part of the 2007 Bond Transaction—there was a formal reconveyance of the first deed of trust on Borrower's property formerly securing 99 Bonds. (*Ibid.* at 16:4 - 18:17.)

75. Again as explained in the Disclosure Statement etc. (Exhibit 7), since 99 Bonds were never made the subject of 99 Bond Defeasance, they remained secured by an unrecorded equitable lien on Borrower's assets at the time Borrower filed for bankruptcy on December 1, 2008. In its capacity as a hypothetical bona fide purchaser, Borrower was thereafter empowered under 11 United States Code section 544(a) (3) to avoid that unrecorded equitable lien. More to the point, Borrower was also empowered, this time under 11 United States Code section 551, to preserve that otherwise avoided unrecorded equitable lien for the benefit of its bankruptcy estate, thus putting 07 Bonds and 99 Bonds both in the position of being entirely unsecured creditors of Borrower. (*Ibid.* at Article 4.3.2, ¶¶5-6, at 17:21 – 18:17.)

76. Consistent with the Disclosure Statement etc. (Exhibit 7), 07 Bonds were therefore significantly vulnerable to a loss of their secured status in case of Borrower's filing for bankruptcy on and after September 7, 2007. That significant vulnerability to loss of secured status in bankruptcy on and after September 7, 2007, was not disclosed anywhere in Prospectus by defendants, each of whom actually knew the true nature and extent of 07 Bonds' significant vulnerability to a loss of their secured status in case of Borrower's filing for bankruptcy on and after September 7, 2007.

F. Damage to Proposed Class.

77. The members of Proposed Class were entitled to assume that the issued 07 Bonds were marketable when issued.

78. The members of Proposed Class should be deemed to have relied on Prospectus in that Prospectus was sufficiently fraudulent that it constituted a fraud which created the market, i.e., but for the extremely fraudulent nature of Prospectus, the 07 Bonds were, in fact, entirely unmarketable, and, but for the Misleading Statements and the Misleading Omissions contained in Prospectus as alleged above, 07 Bonds never would have reached the market in the first place. Put another way, defendants intentionally introduced otherwise unmarketable securities into the market by means of fraud and deceptive devices. The fact this is so is further established by the Declaration of Stephen Roulac, attached as Exhibit 9, at ¶¶5-11.

79. As of May 17, 2007, Prospectus disclosed (i) the risk that Borrower would later become subject to bankruptcy and (ii) the risk that Bond Insurer would later become subject to an insurance reorganization. In fact, both Borrower and Bond Insurer actually were insolvent well before May 17, 2007. The fact this is so as to Borrower is further established by the Declaration of Randy Sugarman, attached as Exhibit 12 hereto, at ¶4. The fact this is so as to Bond Insurer is further established by the Declaration of William McGrane, Exhibit 8, at Exhibit 2.

80. While Bond Insurer emerged from its Maryland Insurance Administration administered insurance reorganization in August 2008 and Borrower emerged from its bankruptcy in November 2009, neither Bond Insurer nor Borrower have ever had any financial ability to make any substantial payments respecting 07 Bonds at any time relevant herein.

81. As Borrower's Plan etc. (a copy of which Plan etc. is attached as Exhibit 13 hereto) has now confirmed (i) the only source of payment for 07 Bonds (other than this litigation, which litigation is specifically allowed to continue by the Plan [see Exhibit 13 at Article XIII, Sections C and D] is Copia Campus, which was distributed to a Delaware trust for the benefit of 07 Bonds in lieu of any other distribution from Borrower's bankruptcy estate (see Plan, Exhibit 13 at Article V, Section B, pages 12-13) (ii) the 99 Bonds wound up being defeased only by virtue of a settlement incorporated into the Plan etc. (see Exhibit 13 at Article XIII, Sections C and D), which settlement (as opposed to any existing pre-petition rights by 99 Bonds) was what cleared the way for the actual payment to 99 Bondholders on or about December 1, 2009 of the remaining proceeds in the escrow account.

82. Proposed Class has been damaged in an amount in excess of this court's jurisdictional limit and according to proof at trial as a direct and immediate result of defendants' sale and Proposed Class's purchase of 07 Bonds which 07 Bonds were, at all times relevant herein, themselves patently worthless because 07 Bonds never had any intrinsic value other than their entirely speculative unsecured distribution rights from Borrower's bankruptcy estate; and no other or subsequent cause, such as Bond Insurer's December 2007 consent to be subjected to reorganization or Borrowers December 2008 filing for bankruptcy caused or otherwise contributed to Proposed Class's damages since both Bond Insurer and Borrower were actually insolvent from an economic standpoint well before June 1, 2007 when 07 Bonds first became available for purchase by Proposed Class.

83. Neither Lead Plaintiff nor any other member of the Proposed Class had notice of the above referenced violations of the federal securities laws until within one year last past from the original filing date of the Consolidated

Complaint and 07 Bonds were first issued within three years last past from the original filing date of the Consolidated Complaint in this action.

Wherefore, Lead Plaintiff prays judgment as follows.

Prayer for Relief

1. Lead Plaintiff prays for a judgment from this court determining that this action is a proper class action and that Proposed 07 Bond Class is a proper class under Federal Rule of Civil Procedure 23.

2. Lead Plaintiff prays for a judgment from this court awarding him the status of a class representative of Proposed Class under Federal Rule of Civil Procedure 23.

3. Lead Plaintiff prays for a judgment from this court awarding him and the other members of Proposed Class compensatory and punitive damages in an amount to be proven at trial, including interest thereon, in an amount in excess of this court's jurisdictional minimum.

4. Lead Plaintiff prays for a judgment from this court awarding George and the other members of Proposed Class their reasonable costs.

5. Lead Plaintiff prays for a judgment from this court granting him and the other members of Proposed Class such other and further relief as to the court may seem just.

DATED: December 24, 2009

MCGRANE GREENFIELD LLP
KERSHAW, CUTTER & RATINOFF, LLP

By /s/William McGrane
William McGrane
Attorneys for Lead Plaintiff William George