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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF SAN BERNARDINO
GRAND JURY INVESTIGATION

20 **PEOPLE OF THE STATE OF CALIFORNIA,**

21
22 Plaintiff,

23 v.

24 **PAUL BIANE, MARK KIRK, JAMES
ERWIN, JEFFREY BURUM**

25 Defendants.
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27
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**FILED - San Bernardino District
SUPERIOR COURT
SAN BERNARDINO COUNTY**

MAY - 5 2011

By - *Shirley L. Trucino*
Deputy

INDICTMENT

Case No. **FSB1102102**

Date:

Time:

Judge:

COUNT 1 (Penal Code §182(a)(1))
CONSPIRACY TO COMMIT A CRIME

I. INTRODUCTION

At all times relevant William John Postmus (Postmus) was a member of the Board of Supervisors of San Bernardino County, having first been sworn into office in 2000. Postmus was made Chairman of the Board of Supervisors on January 5, 2005, and served until taking office as Assessor of San Bernardino County in January of 2007 after his election in November of 2006. He resigned from his position as Assessor on February 6, 2009.

PAUL BIANE (BIANE) was a member of the Board of Supervisors of San Bernardino County, having been sworn into Office on December 2, 2002.

MARK KIRK (KIRK) was Chief of Staff for Supervisor Gary Ovitt, a member of the Board of Supervisors of San Bernardino County.

JAMES HOWARD ERWIN (ERWIN) was the President of the Sheriff's Employees Benefit Association (SEBA) from 1997 until February of 2005 and became Chief of Administration of SEBA beginning in April, 2005. In 2006, ERWIN was an agent for JEFF BURUM (BURUM). In January 2007, ERWIN was appointed by Postmus as Assistant Assessor of San Bernardino County, resigning in November 2007. In 2008, ERWIN joined the supervisorial campaign of Neil Derry. In September 2008, Supervisor-Elect Derry named ERWIN as his Chief of Staff. He was formally made Chief of Staff in December 2008.

BURUM was one of the two General Partners of Colonies Partners, L.P.

Daniel Richards (Richards) was one of the two General Partners of Colonies Partners, L.P.

Patrick O'Reilly (O'Reilly) was a media consultant for BURUM and Richards.

Gary Ovitt (Ovitt) was a member of the Board of Supervisors of the County of San Bernardino, having been sworn in to Office on December 7, 2004.

Matt Brown (Brown) was Chief of Staff for BIANE, a member of the Board of Supervisors of San Bernardino County.

1 Adam Aleman (Aleman) was a Special Assistant to Postmus from 2004 to 2006. From 2005
2 to 2006 he was also the Executive Director of the San Bernardino County Republican Party. In
3 early 2007, Postmus appointed Aleman to the position of Assistant Assessor. Aleman resigned as
4 Assistant Assessor on July 8, 2008.

5 Mike Richman (Richman) assisted Postmus in setting up the Conservatives for a
6 Republican Majority political action committee (PAC), which Postmus secretly controlled.

7 Dino DeFazio (DeFazio) assisted Postmus in operating the Inland Empire PAC which
8 Postmus secretly controlled.

9 Colonies Partners, L.P. (Colonies), was a limited partnership organized under the laws of the
10 State of California.

11 San Bernardino County (County) was a local government jurisdiction formed under the
12 laws of the State of California.

13 II. CHARGES

14 On or between January 1, 2005, and July 12, 2007, BLANE, KIRK, ERWIN, and BURUM
15 did unlawfully conspire together and with Postmus and another person, and persons whose
16 identity is known and unknown,

17 -to commit the crimes of Supervisor Accepting a Bribe (Penal Code Section 165),
18 Asking for/Receiving a Bribe (Penal Code Section 86), Misappropriation of Public Funds (Penal
19 Code Section 424), Obtaining a Thing of Value to Improperly Influence a Legislative Action
20 (Government Code Section 9054), Conflict of Interest (Government Code Section 1090), in
21 violation of Penal Code Section 182 (a)(1), a felony;

22 -to cheat and defraud any person of any property, by any means which are in
23 themselves criminal, or to obtain money or property by false pretenses or by false promises with
24 fraudulent intent not to perform those promises, in violation of Penal Code Section 182 (a)(4), a
25 felony;
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1 -and to commit any act injurious to the public health, the public morals, or to pervert
2 or obstruct justice, or the due administration of the laws, in violation of Penal Code Section 182
3 (a)(5), a felony.
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5 III. OBJECTS OF THE CONSPIRACY

6 The object of the conspiracy was to illegally obtain \$102,000,000 from the County, for
7 personal gain, and for certain public officials to profit from those gains by forsaking their solemn
8 duties and responsibilities to the County and the citizens they served, in violation of their oaths of
9 office and the laws of the State of California.
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11 IV. MEANS BY WHICH THE OBJECTS OF THE CONSPIRACY WERE TO BE
12 ACCOMPLISHED

13 In 1997 Colonies bought a 434-acre parcel of land in the city of Upland for \$16 million
14 from the San Antonio Water Company's liquidation trust for the purpose of residential and
15 commercial development. The parcel contained a 67-acre flood control basin over which the
16 County asserted it had easement rights. As the development project proceeded, Colonies asserted
17 they spent \$23.5 million on flood control improvements to maximize the amount of land they
18 could develop for commercial and residential sales. Colonies requested that the County cover the
19 costs it spent for flood control. The County declined to pay the entire amount that Colonies spent
20 on flood control, claiming that the 67-acre basin itself was sufficient for flood control without
21 improvements.
22

23 In March 2002 Colonies sued the County, challenging the County's easements to the basin
24 and claiming that it had been deprived of the ability to develop the 67-acre flood control basin.
25 The litigation proceeded with various rulings as to the validity and size of the easements. The
26 California Court of Appeal ruled in favor of the County in July 2005, determining that a 1933
27 easement to 30 of the acres was clear. The Court also acknowledged a 1939 easement, in favor of
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1 the County, but found there were factual issues still to be determined as to applicability and extent
2 of that easement.

3 At an unknown time after the lawsuit was filed, BURUM concocted a scheme to obtain a
4 monetary settlement of this lawsuit from the County through corrupt means. On or between
5 January 1, 2005, and November 29, 2006, BURUM corruptly influenced members of the Board
6 of Supervisors through a combination of threats, extortion, inducements, and bribery in order to
7 secure their vote in favor of a settlement.

8 ERWIN joined the conspiracy, and conveyed various threats and/or inducements from
9 BURUM to Postmus, BIANE, and KIRK. ERWIN agreed to accept money in exchange for
10 influencing the votes of Postmus and BIANE. KIRK agreed to accept money in exchange for
11 influencing the vote of Ovitt. Postmus and BIANE joined the conspiracy by agreeing to accept a
12 bribe to vote to approve the Colonies settlement.

13 On November 28, 2006, Postmus and BIANE, along with Ovitt, voted, as members of the
14 Board of Supervisors, to approve a \$102 million settlement with Colonies to be paid by the
15 County. The County Counsel and private attorneys retained by the County opposed the
16 settlement amount. Postmus and BIANE voted knowing that they had a financial interest in the
17 outcome, a bribe from BURUM.

18 After Colonies received substantial sums of money from the settlement with the County,
19 BURUM distributed from Colonies the agreed upon bribes and payments to Postmus, BIANE,
20 KIRK and ERWIN.

21 Postmus engaged the assistance of Aleman, Richman, and DeFazio to create two Political
22 Action Committees (PACs) that he secretly controlled for the express purpose of concealing the
23 receipt of the bribe of \$100,000 from Colonies. BIANE already had a PAC that he secretly
24 controlled into which he accepted a \$100,000 bribe from Colonies. KIRK created a PAC that he
25 secretly controlled, into which he accepted a bribe of \$100,000 from Colonies. ERWIN created a
26 PAC that he secretly controlled, to accept \$100,000 from Colonies for his part in committing
27 extortion and bribery. Postmus, BIANE, KIRK and ERWIN, through different means, distributed
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1 varying amounts of the monies, received from Colonies into the PACs each controlled, directly to
2 themselves.

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4 V. OVERT ACTS

5 In the County of San Bernardino, State of California, pursuant to the above conspiracy and
6 in furtherance of the objects thereof, the following overt acts were committed:

7 OVERT ACT 1

8 On or between September 8, 2005, and September 20, 2005, BURUM attended a Discovery
9 Tour and Trade Mission to China with Postmus and provided cash, meals, entertainment, and the
10 services of a karaoke hostess to Postmus.

11 OVERT ACT 2

12 After returning from China, Burum promised to take care of Postmus for the rest of his
13 political and/or business career if he would support a settlement of the Colonies lawsuit.

14 OVERT ACT 3

15 On or about September 20, 2005, upon return from the Mission, Postmus immediately went
16 to County Administrative Officer Mark Uffer and stated, "We've got to settle this Colonies thing."

17 OVERT ACT 4

18 On or between January 1, 2005, and November 28, 2006, BURUM offered to give KIRK a
19 monetary benefit if KIRK, acting as Ovitt's Chief of Staff, would deliver Ovitt's vote in obtaining
20 a settlement favorable to BURUM in the Colonies lawsuit against the County.

21 OVERT ACT 5

22 On or between January 1, 2005, and November 28, 2006, BURUM offered to give a
23 monetary benefit to ERWIN if ERWIN would assist him in obtaining a settlement amount
24 favorable to BURUM in the Colonies lawsuit against the County.

25 OVERT ACT 6

26 In 2006 County voters were presented with Measure P whose passage would raise the
27 salaries of Board of Supervisors members from \$99,000 to \$152,000. BURUM conducted a
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1 campaign against Measure P as a means to obtain influence over BIANE in order to obtain a
2 settlement in the Colonies lawsuit against the County.

3 OVERT ACT 7

4 On or between January 1, 2006, and November 28, 2006, ERWIN told Aleman that
5 BURUM hired private investigators to go through Postmus' trash to find incriminating
6 information that could be used to pressure Postmus to convince BIANE to vote in favor of a
7 settlement in the Colonies lawsuit against the County.

8 OVERT ACT 8

9 On or between January 1, 2006, and November 7, 2006, ERWIN told Aleman that ERWIN
10 created political mailers depicting Postmus' addiction to drugs to be used to influence Postmus to
11 convince BIANE to vote in favor of a settlement in the Colonies lawsuit against the County.

12 OVERT ACT 9

13 On or between January 1, 2006, and November 7, 2006, ERWIN told Aleman that if there
14 was a settlement of the lawsuit that BURUM found favorable, the mailers depicting Postmus'
15 addiction to drugs would not go out.

16 OVERT ACT 10

17 On or between January 1, 2006, and November 7, 2006, ERWIN created political mailers in
18 opposition to Measure P that asserted that BIANE had excessive indebtedness and was unable to
19 pay his bills. The mailers were to be used to influence BIANE to vote in favor of a settlement in
20 the Colonies lawsuit against County.

21 OVERT ACT 11

22 On or between January 1, 2006, and November 28, 2006, BURUM communicated to
23 BIANE that BIANE would receive a monetary benefit if BIANE voted for a settlement in the
24 Colonies lawsuit against the County, and the County entered a settlement favorable to BURUM.

25 OVERT ACT 12

26 On or between January 1, 2006, and November 1, 2006, BURUM communicated to
27 Postmus that Postmus would receive financial, political and/or business support if Postmus voted
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1 for a settlement in the Colonies lawsuit against the County, and the County entered a settlement
2 favorable to BURUM.

3 OVERT ACT 13

4 On or between October 1, 2006, and November 28, 2006, Postmus and BURUM engaged in
5 negotiations concerning the settlement amount of the Colonies lawsuit at the Doubletree Hotel in
6 Ontario with ERWIN and O'Reilly acting as intermediaries.

7 OVERT ACT 14

8 On or between October 1, 2006, and November 28, 2006, BURUM had a courier deliver
9 "hit piece" mailers opposing Measure P to the meeting at the Doubletree Hotel.

10 OVERT ACT 15

11 On or between October 1, 2006, and November 28, 2006, Postmus agreed to vote to
12 approve a settlement of the Colonies lawsuit favorable to BURUM in exchange for financial,
13 political, and/or business support to be given to Postmus.

14 OVERT ACT 16

15 On or between October 1, 2006, and November 28, 2006, BIANE agreed to vote to approve
16 a settlement of the Colonies lawsuit favorable to BURUM in exchange for monetary benefit to be
17 given to BIANE.

18 OVERT ACT 17

19 On or between December 7, 2004, and November 28, 2006, KIRK, acting as Ovitt's Chief
20 of Staff, agreed to support a settlement amount favorable to Burum in exchange for a monetary
21 benefit to be given to KIRK.

22 OVERT ACT 18

23 On November 28, 2006, six telephone calls were exchanged between BURUM and KIRK.

24 OVERT ACT 19

25 On or about November 28, 2006, Postmus voted to approve a \$102 million settlement of the
26 Colonies lawsuit without the concurrence and against the recommendations of County Counsel
27 and private attorneys retained by the County.
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1 OVERT ACT 20

2 On or about November 28, 2006, BIANE voted to approve a \$102 million settlement of the
3 Colonies lawsuit without the concurrence and against the recommendations of County Counsel
4 and private attorneys retained by the County.

5 OVERT ACT 21

6 On or about November 28, 2006, pursuant to the settlement agreement, Postmus directed
7 that the Auditor-Controller-Recorder, Larry Walker, transfer \$22 million by November 29, 2006,
8 from the San Bernardino County Flood Control District to Colonies as the initial payment toward
9 the settlement.

10 OVERT ACT 22

11 On or between January 29, 2007, and January 31, 2007, BURUM hosted ERWIN on a
12 private jet trip to New York and Washington, D.C., where he provided meals, refreshments,
13 lodging, watches, entertainment, spending money, and prostitutes as gifts for ERWIN'S
14 assistance in obtaining the Colonies settlement from the County.

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17 **POSTMUS PACs**

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19 OVERT ACT 23

20 On or between October 1, 2006, and February 14, 2007, Postmus told Aleman that he was
21 going to receive \$100,000 from BURUM for voting to approve the Colonies settlement, and
22 Postmus requested Aleman's assistance in creating a PAC that Postmus would secretly control to
23 conceal the \$100,000 he received from BURUM.

24 OVERT ACT 24

25 On or between October 1, 2006, and February 14, 2007, Postmus advised Richman that he
26 was going to be receiving a sum of money and asked Richman's assistance in creating a PAC.
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1 OVERT ACT 25

2 On or about February 14, 2007, Postmus, Aleman, and Richman agreed to the creation of
3 the Inland Empire PAC secretly controlled by Postmus but publicly listing Dino DeFazio as
4 Chairman, Mike Gallagher-Vice-Chair, Jeff Bentow-Community Outreach Director, and Mike
5 Richman as Executive Director.

6 OVERT ACT 26

7 On or about February 20, 2007, Postmus directed that Aleman create an e-mail account
8 using DeFazio's name and asked Aleman to use the e-mail account to direct the creation of the
9 Inland Empire PAC with DeFazio as the named Chairman and to further direct expenditures
10 through the e-mail account as if Aleman were DeFazio.

11 OVERT ACT 27

12 On or between June 1, 2007, to July 12, 2007, Postmus, Aleman, and Richman agreed to
13 the creation of the "Conservatives for a Republican Majority" PAC secretly controlled by
14 Postmus but naming "Mike Richman" as the sole member of the Board of Directors and
15 Executive Director.

16 OVERT ACT 28

17 On or about June 29, 2007, BURUM signed check #4615 for \$50,000 from Colonies to the
18 Inland Empire PAC secretly controlled by Postmus.

19 OVERT ACT 29

20 On or about June 29, 2007, BURUM signed check # 4616 for \$50,000 from Colonies to the
21 "Republicans for a Conservative Majority" PAC secretly controlled by Postmus.

22 OVERT ACT 30

23 On or about July 5, 2007, Postmus arranged that check #4615 for \$50,000 be deposited into
24 the Inland Empire PAC secretly controlled by Postmus.

1 OVERT ACT 31

2 On or about July 12, 2007, Postmus arranged the deposit of check #4616 for \$50,000 from
3 Colonies to "Republicans for a Conservative Majority" into the "Conservatives for a Republican
4 Majority" PAC secretly controlled by Postmus.
5

6 **BIANE PAC**

7 OVERT ACT 32

8 On or about June 15, 2007, BURUM and Richards signed check #4579 for \$100,000 from
9 Colonies to the San Bernardino County Young Republicans PAC, secretly controlled by BIANE
10 with Brown and Tim Johnson named as directors.
11

12 **KIRK PAC**

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14 OVERT ACT 33

15 In the spring of 2006, KIRK spoke to Anthony Riley about setting up the Alliance for
16 Ethical Government PAC
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18 OVERT ACT 34

19 On or about March 18, 2007, KIRK contacted a campaign accountant about establishing a
20 PAC named the Alliance for Ethical Government.
21

22 OVERT ACT 35

23 Between March 13, 2007, and March 23, 2007, KIRK and BURUM spoke on the phone for
24 more than 62 minutes.
25

26 OVERT ACT 36

27 On or about May 16, 2007, BURUM wrote check #4533 for \$100,000 from Colonies to the
28 Alliance for Ethical Government PAC, secretly controlled by KIRK.

1 OVERT ACT 37

2 On May 23, 2007, a 38-minute telephone call and on May 24, 2007, a 4-minute telephone
3 call was exchanged between BURUM and KIRK.

4 OVERT ACT 38

5 On or about May 25, 2007, KIRK directed his campaign accountant to complete the
6 establishment of the Alliance for Ethical Government PAC that he secretly controlled.

7 OVERT ACT 39

8 On or about May 29, 2007, KIRK arranged that check #4533 for \$100,000 be deposited into
9 the Alliance for Ethical Government PAC that he secretly controlled.

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11 **ERWIN PAC**

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13 OVERT ACT 40

14 On or about January 26, 2007, the Committee for Effective Government PAC was created
15 by ERWIN.

16 OVERT ACT 41

17 On or about March 20, 2007, BURUM wrote check #4417 for \$100,000 from Colonies to
18 the Committee for Effective Government PAC, to be controlled by ERWIN.

19 OVERT ACT 42

20 On or about March 28, 2007, ERWIN removed his name from the Committee for Effective
21 Government PAC and hired Betty Presley as treasurer.

22 OVERT ACT 43

23 On or about March 28, 2007, ERWIN arranged the deposit of check #4417 for \$100,000
24 into the Committee for Effective Government PAC controlled by ERWIN.

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COUNT 2 (Penal Code §165)

BRIBERY

On or between September 1, 2006, and November 29, 2006, in the above named judicial district, the crime of BRIBERY, in violation of PENAL CODE SECTION 165, a felony, was committed by BIANE, who on or between September 1, 2006, and November 29, 2006, did unlawfully, being a member of the San Bernardino County Board of Supervisors, receive, offer, and agree to receive a bribe upon an understanding that his/her official vote, opinion, judgment, and action would be influenced thereby and given in a particular manner, and upon a particular side of a question and matter upon which he/she might be required to act in his/her official capacity.

COUNT 3 (Penal Code § 68)

On or between September 1, 2006, and November 29, 2006, in the above named judicial district, the crime of BRIBERY, in violation of PENAL CODE SECTION 68, a felony, was committed by KIRK, who on or between September 1, 2006, and November 29, 2006, did unlawfully, being an executive and ministerial officer, and employee and appointee of San Bernardino County, ask, receive, and agree to receive a bribe upon any agreement and understanding that his or her vote, opinion and action upon any matter then pending and that may be brought before him or her in his or her official capacity, would be influenced thereby.

COUNT 4 (Penal Code §165)

BRIBERY

On or between September 1, 2006, and November 29, 2006, in the above named judicial district, the crime of BRIBERY, in violation of PENAL CODE SECTION 165, a felony, was committed by BURUM and ERWIN, who on or between September 1, 2006, and November 29, 2006, did aid and abet Postmus, a member of the San Bernardino County Board of Supervisors, who did unlawfully receive, offer, and agree to receive a bribe upon an understanding that the

1 supervisor's official vote, opinion, judgment, and action would be influenced thereby and given
2 in a particular manner, and upon a particular side of a question and matter upon which he/she
3 might be required to act in his/her official capacity.
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6 COUNT 5 (Penal Code §165)

7 BRIBERY

8 On or between September 1, 2006, and November 29, 2006, in the above named judicial
9 district, the crime of BRIBERY, in violation of PENAL CODE SECTION 165, a felony, was
10 committed by BURUM and ERWIN, who on or between September 1, 2006, and November 29,
11 2006, did aid and abet BIANE, a member of the San Bernardino County Board of Supervisors,
12 who did unlawfully receive, offer, and agree to receive a bribe upon an understanding that the
13 supervisor's official vote, opinion, judgment, and action would be influenced thereby and given
14 in a particular manner, and upon a particular side of a question and matter upon which he/she
15 might be required to act in his/her official capacity.

16 COUNT 6 (Penal Code §86)

17 ASKING FOR/RECEIVING A BRIBE

18 On or between September 1, 2006, and November 29, 2006, in the above named judicial
19 district, the crime of ASKING FOR/RECEIVING A BRIBE, in violation of PENAL CODE
20 SECTION 86, a felony, was committed by BIANE, who on or between September 1, 2006, and
21 November 29, 2006, being a Member of a house of the legislature and a member of the legislative
22 body of a city, county, city and county, a school district, and other special district did ask, receive,
23 and agree to receive a bribe upon an understanding that his and her official vote, opinion,
24 judgment, and action should be influenced thereby, and gave in a particular matter and upon a
25 particular side of a question and matter upon which he and she was required to act in his and her
26 official capacity, and gave and offered and promised to give an official vote in consideration that
27 another Member of the Legislature and another member of the legislative body of a city, county,
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1 city and county, school district, and other special district should give this vote on the same and
2 another question.

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4 COUNT 7 (Penal Code §86)

5 ASKING FOR/RECEIVING A BRIBE

6 On or between September 1, 2006, and November 29, 2006, in the above named judicial
7 district, the crime of ASKING FOR/RECEIVING A BRIBE, in violation of PENAL CODE
8 SECTION 86, a felony, was committed by BURUM and ERWIN, who on or between
9 September 1, 2006, and November 29, 2006, aided and abetted Postmus who, being a Member of
10 a house of the legislature and a member of the legislative body of a city, county, city and county,
11 a school district, and other special district did ask, receive, and agree to receive a bribe upon an
12 understanding that his and her official vote, opinion, judgment, and action should be influenced
13 thereby, and gave in a particular matter and upon a particular side of a question and matter upon
14 which he and she was required to act in his and her official capacity, and gave and offered and
15 promised to give an official vote in consideration that another Member of the Legislature and
16 another member of the legislative body of a city, county, city and county, school district, and
17 other special district should give this vote on the same and another question.

18
19 COUNT 8 (Penal Code §86)

20 ASKING FOR/RECEIVING A BRIBE

21 On or between September 1, 2006, and November 29, 2006, in the above named judicial
22 district, the crime of ASKING FOR/RECEIVING A BRIBE, in violation of PENAL CODE
23 SECTION 86, a felony, was committed by BURUM and ERWIN, who on or between
24 September 1, 2006, and November 29, 2006, aided and abetted BIANE who, being a Member of a
25 house of the legislature and a member of the legislative body of a city, county, city and county, a
26 school district, and other special district did ask, receive, and agree to receive a bribe upon an
27 understanding that his and her official vote, opinion, judgment, and action should be influenced
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1 thereby, and gave in a particular matter and upon a particular side of a question and matter upon
2 which he and she was required to act in his and her official capacity, and gave and offered and
3 promised to give an official vote in consideration that another Member of the Legislature and
4 another member of the legislative body of a city, county, city and county, school district, and
5 other special district should give this vote on the same and another question.

6
7 COUNT 9 (Government Code § 9054)

8 IMPROPERLY INFLUENCING A LEGISLATIVE ACTION

9 On or between September 1, 2006, and November 29, 2006, in the above named judicial
10 district, the crime of OBTAINING A THING OF VALUE TO IMPROPERLY INFLUENCE A
11 LEGISLATIVE ACTION, in violation of GOVERNMENT CODE SECTION 9054, a felony,
12 was committed by MARK KIRK, who on or between September 1, 2006 and November 29,
13 2006, did obtain money or a thing of value from another person on the pretense, claim or
14 representation that he could or would improperly influence in any matter the action of any
15 member of a legislative body, to wit, Gary Ovitt, in regard to any vote or legislative matter.

16
17 COUNT 10 (Government Code §1090)

18 CONFLICT OF INTEREST

19 On or about November 28, 2006, in the above name judicial district, the crime of
20 CONFLICT OF INTEREST, in violation of GOVERNMENT CODE SECTIONS 1090 and 1097,
21 a felony, was committed by BIANE and KIRK, who on or about November 28, 2006, did, while a
22 member of the San Bernardino County Board of Supervisors, or a San Bernardino county officer
23 or employee, knowingly and willingly become financially interested in a contract made by him in
24 his official capacity, and by a body and board of which the defendant was a member.

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COUNT 11 (Government Code §1090)

CONFLICT OF INTEREST

On or about November 28, 2006, in the above name judicial district, the crime of CONFLICT OF INTEREST, in violation of GOVERNMENT CODE SECTIONS 1090 and 1097, a felony, was committed by BURUM and ERWIN, who on or about November 28, 2006, did aid and abet Postmus, BIANE and KIRK, who, while a member of the San Bernardino County Board of Supervisors, or a San Bernardino County officer or employee, did knowingly and willingly become financially interested in a contract made by him in his official capacity, and by a body and board of which the defendant was a member.

COUNT 12 (Penal Code §424)

PUBLIC OFFICER CRIME

On or about November 28, 2006, in the above named judicial district, the crime of PUBLIC OFFICER CRIME, in violation of PENAL CODE SECTION 424, a felony, was committed by BIANE, who being an officer and a person described in Penal Code section 424 charged with the receipt, safekeeping, transfer, and distribution of public moneys, did in a manner not incidental and minimal without authority of law, appropriate the same, and a portion thereof, to personal use and the use of another and did in a manner not incidental and minimal without authority of law, appropriate the same and a portion thereof, to personal use and the use of another and loaned the same or any portion thereof and made a profit out of and used the same for any purpose not authorized by law and fraudulently altered, falsified, concealed, destroyed, and obliterated any account.

COUNT 13 (Penal Code §424)

PUBLIC OFFICER CRIME

On or about November 28, 2006, in the above named judicial district, the crime of PUBLIC OFFICER CRIME, in violation of PENAL CODE SECTION 424, a felony, was committed by

1 KIRK, BURUM, and ERWIN, who did aid and abet Postmus and BIANE, an officer and a person
2 described in Penal Code section 424 charged with the receipt, safekeeping, transfer, and
3 distribution of public moneys, who did in a manner not incidental and minimal without authority
4 of law, appropriate the same, and a portion thereof, to personal use and the use of another and did
5 in a manner not incidental and minimal without authority of law, appropriate the same and a
6 portion thereof, to personal use and the use of another and loaned the same or any portion thereof
7 and made a profit out of and used the same for any purpose not authorized by law and
8 fraudulently altered, falsified, concealed, destroyed, and obliterated any account.

9
10 COUNT 14 (Penal Code §470(a) and (d))

11 FORGERY

12 On or about September 15, 2008, in the above named judicial district, the crime of
13 FORGERY, in violation of PENAL CODE SECTIONS 470(a) and (d), a felony, was committed
14 by ERWIN, who did, with the intent to defraud, and knowingly without authority to do so, sign
15 the name of another person and of a fictitious person, to wit: Steve Hauer, and falsely make, alter,
16 forge and counterfeit, utter, publish, pass and attempt to offer to pass, as true and genuine,
17 Authorization for Payment of Invoice, knowing the same to be false, altered, forged and
18 counterfeited.

19
20 COUNT 15 (Rev. and Tax Code §19705 (a) (1))

21 FALSE OR FRAUDULENT TAX RETURN

22 On or about September 7, 2008, in the above named judicial district, the crime of FALSE
23 OR FRAUDULENT TAX RETURN, in violation of REVENUE AND TAX CODE SECTION
24 19705 (a)(1), a felony, was committed by BIANE, who did willfully make and subscribe any
25 return, statement, or other document, that contains or is verified by a written declaration that it is
26 made under penalty of perjury, and that he did not believe to be true and correct as to every
27 material matter.
28

COUNT 16 (Rev. and Tax Code §19706)

FALSE OR FRAUDULENT RETURN

On or about February 2, 2008, in the above named judicial district, the crime of FALSE OR FRAUDULENT RETURN, in violation of REVENUE AND TAX CODE SECTION 19706, a felony, was committed by KIRK, who, within the time required under the provisions of this section, willfully and with intent to evade any tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), makes, renders, signs, and verifies any false or fraudulent return or statement or supplies any false or fraudulent information.

COUNT 17 (Rev. and Tax Code §19706)

WILLFUL FAILURE TO FILE A RETURN

On or about April 15, 2009, in the above named judicial district, the crime of WILLFUL FAILURE TO FILE A RETURN, in violation of REVENUE AND TAX CODE SECTION 19706, a felony, was committed by ERWIN, who, within the time required under the provisions of this section, willfully and with intent to evade any tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), makes, renders, signs, and verifies any false or fraudulent return or statement or supplies any false or fraudulent information.

COUNT 18 (Rev. and Tax Code §19706)

FALSE OR FRAUDULENT RETURN

On or about April 8, 2008, in the above named judicial district, the crime of FALSE OR FRAUDULENT RETURN, in violation of REVENUE AND TAX CODE SECTION 19706, a felony, was committed by ERWIN, who, within the time required under the provisions of this section, willfully and with intent to evade any tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), makes, renders, signs, and verifies any false or fraudulent return or statement or supplies any false or fraudulent information.

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COUNT 19 (Penal Code §118)

PERJURY BY DECLARATION

On or about March 25, 2008, in the above named judicial district, the crime of PERJURY BY DECLARATION, in violation of PENAL CODE SECTION 118, a felony, was committed by BIANE, being a person who testified, declared, deposed and certified under penalty of perjury in a case in which such testimony, declaration, deposition and certification is permitted by law under penalty of perjury, did state as true a material matter which he knew to be false and delivered such testimony, declaration, deposition and certification with the intent it be published as true to wit: failed to disclose receipt of \$100,000 from Colonies Partners on or about June 15, 2007 on Fair Political Practice Commission Statement of Economic Interest form 700.

COUNT 20 (Penal Code §115(a))

PROCURES OR OFFERS ANY FALSE OR FORGED INSTRUMENT FOR FILING

On or about April 1, 2008, in the above named judicial district, the crime of PROCURES OR OFFERS ANY FALSE OR FORGED INSTRUMENT FOR FILING, in violation of PENAL CODE SECTION 115(a), a felony, was committed by BIANE, who did unlawfully and knowingly procure and offer a false and forged instrument to be filed, registered and recorded in a public office within the state which instrument if genuine might be filed, registered and recorded under the law of this state or the United States.

COUNT 21 (Penal Code §118)

PERJURY BY DECLARATION

On or about March 28, 2008, in the above named judicial district, the crime of PERJURY BY DECLARATION, in violation of PENAL CODE SECTION 118, a felony, was committed by KIRK, being a person who testified, declared, deposed and certified under penalty of perjury in a case in which such testimony, declaration, deposition and certification is permitted by law under penalty of perjury, did state as true a material matter which he knew to be false and delivered

1 such testimony, declaration, deposition and certification with the intent it be published as true to
2 wit: failed to disclose receipt of \$100,000 from Colonies Partners on or about May 25, 2007, on
3 Fair Political Practice Commission Statement of Economic Interest form 700.
4

5 COUNT 22 (Penal Code §115(a))

6 PROCURES OR OFFERS ANY FALSE OR FORGED INSTRUMENT FOR FILING

7 On or about March 31, 2008, in the above named judicial district, the crime of PROCURES
8 OR OFFERS ANY FALSE OR FORGED INSTRUMENT FOR FILING, in violation of PENAL
9 CODE SECTION 115(a), a felony, was committed by KIRK, who did unlawfully and knowingly
10 procure and offer a false and forged instrument to be filed, registered and recorded in a public
11 office within the state which instrument if genuine might be filed, registered and recorded under
12 the law of this state or the United States.
13

14 COUNT 23 (Penal Code §118)

15 PERJURY BY DECLARATION

16 On or about April 1, 2008, in the above named judicial district, the crime of PERJURY BY
17 DECLARATION, in violation of PENAL CODE SECTION 118, a felony, was committed by
18 ERWIN, being a person who testified, declared, deposed and certified under penalty of perjury in
19 a case in which such testimony, declaration, deposition and certification is permitted by law under
20 penalty of perjury, did state as true a material matter which he knew to be false and delivered
21 such testimony, declaration, deposition and certification with the intent it be published as true to
22 wit: failed to disclose receipt of \$100,000 from Colonies Partners on or about March 28, 2007, on
23 Fair Political Practice Commission Statement of Economic Interest form 700.
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COUNT 24 (Penal Code §115(a))

PROCURES OR OFFERS ANY FALSE OR FORGED INSTRUMENT FOR FILING

On or about April 1, 2008, in the above named judicial district, the crime of PROCURES OR OFFERS ANY FALSE OR FORGED INSTRUMENT FOR FILING, in violation of PENAL CODE SECTION 115(a), a felony, was committed by ERWIN, who did unlawfully and knowingly procure and offer a false and forged instrument to be filed, registered and recorded in a public office within the state which instrument if genuine might be filed, registered and recorded under the law of this state or the United States.

COUNT 25 (Penal Code §118)

PERJURY BY DECLARATION

On or about April 1, 2008, in the above named judicial district, the crime of PERJURY BY DECLARATION, in violation of PENAL CODE SECTION 118, a felony, was committed by ERWIN, being a person who testified, declared, deposed and certified under penalty of perjury in a case in which such testimony, declaration, deposition and certification is permitted by law under penalty of perjury, did state as true a material matter which he knew to be false and delivered such testimony, declaration, deposition and certification with the intent it be published as true to wit:

-failed to disclose receipt of Rolex watch on or about January 29, 2007, on or about April 1, 2008, on Fair Political Practice Commission Statement of Economic Interest form 700, and

- failed to disclose receipt of round trip air transportation by private jet between January 28, 2007, and January 31, 2007, on or about April 1, 2008, on Fair Political Practice Commission Statement of Economic Interest form 700, and

- failed to disclose receipt of food and beverage provided between the dates of January 28, 2007, to January 31, 2007, on or about April 1, 2008, on Fair Political Practice Commission Statement of Economic Interest form 700, and

1 - failed to disclose receipt of overnight lodging, New York City, New York, on or about
2 January 29, 2007, through January 30, 2007, on or about April 1, 2008, on Fair Political Practice
3 Commission Statement of Economic Interest form 700, and

4 - failed to disclose receipt of theatre ticket on or about January 29, 2007, on or about
5 April 1, 2008, on Fair Political Practice Commission Statement of Economic Interest form 700,
6 and

7 - failed to disclose receipt of prostitution and masseuse services on or about January 30,
8 2007, on or about April 1, 2008, on Fair Political Practice Commission Statement of Economic
9 Interest form 700, and

10 - failed to disclose receipt of overnight lodging on or about January 30, 2007, through
11 January 31, 2007, Washington, D.C., on or about April 1, 2008 on Fair Political Practice
12 Commission Statement of Economic Interest form 700, and

13 - failed to disclose receipt of \$3,500 on or about April 16, 2007, on or about April 1, 2008,
14 on Fair Political Practice Commission Statement of Economic Interest form 700, and

15 - failed to disclose receipt of \$5,000 on or about April 12, 2007, on or about April 1, 2008,
16 on Fair Political Practice Commission Statement of Economic Interest form 700.

17
18 COUNT 26 (Penal Code §118)

19 PERJURY BY DECLARATION

20 On or about February 4, 2009, in the above named judicial district, the crime of PERJURY
21 BY DECLARATION, in violation of PENAL CODE SECTION 118, a felony, was committed by
22 ERWIN, being a person who testified, declared, deposed and certified under penalty of perjury in
23 a case in which such testimony, declaration, deposition and certification is permitted by law under
24 penalty of perjury, did state as true a material matter which he knew to be false and delivered
25 such testimony, declaration, deposition and certification with the intent it be published as true to
26 wit: false declaration of income and valuation of gifts and failure to disclose receipt of \$8,500 on
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1 or between April 12, 2007, and April 16, 2007, on Fair Political Practice Commission Statement
2 of Economic Interest form 700 Amendment.

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4 COUNT 27 (Penal Code §115(a))

5 PROCURES OR OFFERS ANY FALSE OR FORGED INSTRUMENT FOR FILING

6 On or about February 12, 2009, in the above named judicial district, the crime of
7 PROCURES OR OFFERS ANY FALSE OR FORGED INSTRUMENT FOR FILING, in
8 violation of PENAL CODE SECTION 115(a), a felony, was committed by ERWIN, who did
9 unlawfully and knowingly procure and offer a false and forged instrument to be filed, registered
10 and recorded in a public office within the state which instrument if genuine might be filed,
11 registered and recorded under the law of this state or the United States.

12
13 COUNT 28 (Penal Code §118)

14 PERJURY BY DECLARATION

15 On or about February 13, 2009, in the above named judicial district, the crime of PERJURY
16 BY DECLARATION, in violation of PENAL CODE SECTION 118, a felony, was committed by
17 ERWIN, being a person who testified, declared, deposed and certified under penalty of perjury in
18 a case in which such testimony, declaration, deposition and certification is permitted by law under
19 penalty of perjury, did state as true a material matter which he knew to be false and delivered
20 such testimony, declaration, deposition and certification with the intent it be published as true to
21 wit: failed to disclose receipt of \$7,500 on or about December 3, 2008, on Fair Political Practice
22 Commission Statement of Economic Interest form 700.

23
24 COUNT 29 (Penal Code §115(a))

25 PROCURES OR OFFERS ANY FALSE OR FORGED INSTRUMENT FOR FILING

26 On or about February 17, 2009, in the above named judicial district, the crime of
27 PROCURES OR OFFERS ANY FALSE OR FORGED INSTRUMENT FOR FILING, in
28

1 violation of PENAL CODE SECTION 115(a), a felony, was committed by ERWIN, who did
2 unlawfully and knowingly procure and offer a false and forged instrument to be filed, registered
3 and recorded in a public office within the state which instrument if genuine might be filed,
4 registered and recorded under the law of this state or the United States.
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6 * * * * *

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8 **SPECIAL ALLEGATION: Penal Code Section 803(c) and**
9 **People v. Zamora (1976) 18 Cal. 3d 538**
10

11 As to Counts 1 through 29, inclusive, it is further alleged that the following facts are true:

12 1. The offense(s) were discovered on November 1, 2008;

13 2. The offense(s) were discovered by San Bernardino District Attorney Investigator Hollis
14 Randles during an interview with witness Adam Aleman. The interview was scheduled at the
15 request of Aleman's attorney, Grover Porter, who informed Deputy District Attorney Lewis Cope
16 that Aleman, an Assessor's office employee who was facing four felony charges unrelated to the
17 subject matter of this indictment, had information about corrupt activities of local political
18 officials, including Postmus, the Assessor. During that interview, Aleman told Investigator
19 Randles that Postmus had told him that several individuals, including Postmus, were paid
20 \$100,000 by BURUM for their roles in securing the Colonies settlement. Aleman disclosed the
21 fraudulent nature of some of the PACs that were set up to receive the payoffs.
22

23 3. Law enforcement officials had no actual or constructive knowledge of the offenses prior
24 to November 1, 2008.

25 4. The offenses could not have been discovered earlier with reasonable diligence because
26 the conspirators used unlawful means to conceal the flow of money from Colonies to the
27 individuals instrumental in the settlement. The payoffs were deposited into fraudulent PACs,
28 which law enforcement officials had no reason to know were under secret control. Postmus

1 secretly controlled the Inland Empire PAC, which listed Dino DeFazio, Mike Gallagher, Jeff
2 Bentow and Mike Richman as officers, and the Conservatives for a Republican Majority PAC,
3 which listed Mike Richman as the sole officer. BIANE secretly controlled the San Bernardino
4 County Young Republicans PAC which listed Brown and Tim Johnson as officers. KIRK
5 secretly controlled the Alliance for Ethical Government PAC, which listed Kathy Rough, Kitty
6 Stennett, Anthony Riley and Curt Hagman as officers. ERWIN was chairman of the Committee
7 for Effective Government PAC, but he removed his name as chairman from the PAC and his
8 connection to BURUM or Colonies, or his role in the lawsuit settlement, could not have been
9 known to law enforcement prior to November 1, 2008. BIANE, KIRK and ERWIN failed to
10 disclose the \$100,000 payments from Colonies on their Fair Political Practice Commission
11 Statement of Economic Interest forms. BIANE, KIRK, and ERWIN filed fraudulent tax returns
12 which failed to disclose the income received from BURUM. ERWIN failed to disclose the
13 receipt of money or gifts from Colonies on his Fair Political Practice Commission Statement of
14 Economic Interest form 700.

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16 * * * * *

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18 NOTICE TO DEFENDANT AND DEFENDANT'S ATTORNEY

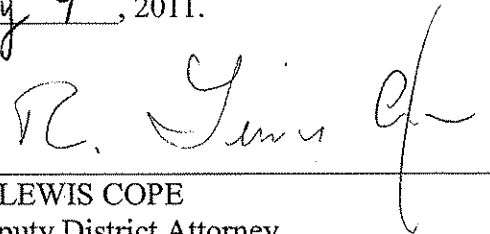
19 Pursuant to Penal Code Sections 1054.5(b), the People are hereby informally requesting that
20 defense counsel provide discovery to the People as required by Penal Code Section 1054.3.

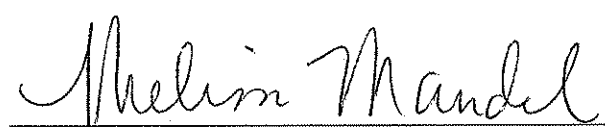
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22 NOTICE TO ATTORNEY

23 The materials accompanying this notice may include information about witnesses. If so, these
24 materials are disclosed to you pursuant to Penal Code section 1054.2 which provides: "No
25 attorney may disclose or permit to be disclosed to a defendant the address or telephone number of
26 a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section
27 1054.1 unless specifically permitted to do so by the court after a hearing and a showing of good
28 cause."

1 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND
2 CORRECT AND THAT THIS INDICTMENT CONSISTS OF 29 COUNT(S).

3 Executed at San Bernardino, California, on May 9, 2011.

4
5 
6 R. LEWIS COPE
7 Deputy District Attorney

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9 
10 MELISSA MANDEL
11 Deputy Attorney General

12 "A TRUE BILL"
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