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State of California
DEPARTMENT OF JUSTICE



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March 24, 2010

Board of Supervisors
County of San Bernardino
385 N. Arrowhead Avenue, 5th Floor
San Bernardino, CA 92415-0110

RE: Colonies Settlement---Waiver of the Attorney-Client Privilege

Dear Members of the Board of Supervisors:

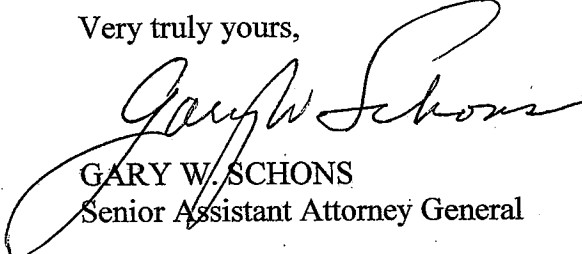
First, on behalf of the District Attorney and Attorney General, I want to express our appreciation for the Board's expeditious and conscientious consideration of our March 12 request for waiver of the County's attorney-client and mediation privileges in connection with the Colonies litigation.

In its public release concerning this matter, the County noted that our request for a waiver of the mediation privilege required that both the County and Colonies waive that privilege. By letter of March 18 (attached), Colonies has stated that it specifically objects to disclosure of communications and documents and other materials generated in connection with the mediation. Despite its numerous public statements defending the \$102 million settlement of the litigation by citing to the mediator's purported approval of that settlement, it is evident that Colonies has little interest in all of the facts coming to light. We pause to note here that California Evidence Code section 1119 limits the admissibility of mediation related evidence only to "non-criminal" proceedings. Thus, application of this privilege to a criminal investigation and prosecution is questionable. Nevertheless, rather than allowing this aspect of the matter to delay us at this juncture, we are setting aside our request for consideration of a waiver of the mediation privilege. If Colonies is interested in discussing this matter, it knows how to contact the County's attorneys and the prosecutors. Otherwise, this is a matter that can be taken up in court.

We do however welcome the County's offer to have County Counsel meet and confer with the Attorney General and District Attorney in a good faith attempt to reach an agreement with respect to a waiver of the attorney-client privilege. We would like to begin this process immediately and intend to contact County Counsel and suggest that we meet next Monday, March 29 to begin this process.

Again, the Board's cooperation and leadership in this matter is appreciated and we look forward to having fruitful discussions with County Counsel to the end that interests of the public and justice are served.

Very truly yours,



GARY W. SCHONS
Senior Assistant Attorney General

For EDMUND G. BROWN JR.
Attorney General

GWS: clh
cc: Ruth Stringer, County Counsel