

August 6, 2007

RECEIVED

AUG 13 2007

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

VIA MESSENGER

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Patricia Galvan

Re: *The No Say No Pay Act*

Dear Ms. Galvan:

Pursuant to Elections Code section 9002, we request that the Attorney General prepare a title and summary of a measure entitled "The No Say No Pay Act." The text of the measure, a check for \$200.00, the address at which we are registered to vote and the signed statement certifying that we will not willfully allow initiative signatures to be used for purposes other than qualification of the measure are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

James C. Harrison
Margaret R. Prinzing
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,

\ James C. Harrison

Margaret R. Prinzing

JCH:NL
Enclosures
(00038803)

THE NO SAY NO PAY ACT

SECTION ONE. FINDINGS AND DECLARATIONS.

The People of the State of California find and declare the following:

(a) During the last 20 years, the compensation of corporate executives has skyrocketed while real wages and other benefits like pensions and health insurance plans for other employees have decreased.

(b) California consumers want to ensure that they are giving their business to ethical corporations. They need to know that the businesses operating in California are paying their employees equitably in the face of skyrocketing executive compensation.

(c) California shareholders want to ensure not only that corporations in which they hold stock are maximizing their profits, but that they are fairly compensating their workers.

(d) Current California law requires publicly traded California corporations and out-of-state corporations that conduct business in California to report the compensation the corporations paid to members of their board of directors and five most highly compensated executive officers. Unfortunately, this information is not sufficient for California employees, shareholders and consumers to make decisions regarding these corporations.

(e) Corporate boards, often appointed by the very executives they are supposed to oversee, approve outrageous compensation deals for those very same executives, while shareholders often have little voice in decisions regarding executive compensation.

SECTION TWO. PURPOSE AND INTENT.

In enacting this Act, it is the purpose and intent of the People of the State of California to:

(a) Allow California employees, consumers and shareholders public access to information regarding publicly traded California and out-of-state corporations' executive compensation, total pay structure, and provision of health insurance and pension plans.

(b) Require publicly traded California and out-of-state corporations to annually report executive compensation, total pay structure, and provision of health insurance and pension plans in a Statement of Information provided to the Secretary of State and included in an online database, their Annual Reports to Shareholders, and on their corporate websites.

(c) Give shareholders of California corporations the right to approve the compensation of boards of directors and executive officers.

SECTION THREE. Section 319 is hereby added to the Corporations Code to read:

Section 319. (a) A corporation shall not initiate, revise, or enter an agreement regarding any compensation for any member of the board of directors and the ten most highly compensated executive officers of the corporation who are not members of the board of directors, unless that director or executive officer's compensation is approved by a majority of the shareholders entitled to act thereon.

(b) For the purposes of subdivision (a):

(1) "Executive officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(2) "Compensation" means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(3) "Approval by a majority of the shareholders entitled to act" means either (1) written consent of a majority of the outstanding shares without counting as outstanding or as consenting any shares owned by any officer or director whose compensation is subject to this approval, (2) the affirmative vote of a majority of the shares present and voting at a duly held meeting at which a quorum is otherwise present, without counting for purposes of the vote as either present or voting any shares owned by any officer or director whose compensation is subject to the approval, or (3) the unanimous vote or written consent of the shareholders. In the case of a corporation which has more than one class or series of shares outstanding, the "shareholders entitled to act" within the meaning of this section includes only holders of those classes or series entitled under the articles to vote on all matters before the shareholders or to vote on the subject matter of this section, and includes a requirement for separate class or series voting, or for more or less than one vote per share, only to the extent required by the articles.

SECTION FOUR. Section 316 of the Corporations Code is hereby amended to read:

(a) Subject to the provisions of Section 309, directors of a corporation who approve any of the following corporate actions shall be jointly and severally liable to the corporation for the benefit of all of the creditors or shareholders entitled to institute an action under subdivision (c):

(1) The making of any distribution to its shareholders to the extent that it is contrary to the provisions of Sections 500 to 503, inclusive.

(2) The distribution of assets to shareholders after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given

to creditors under Chapters 18 (commencing with Section 1800), 19 (commencing with Section 1900) and 20 (commencing with Section 2000).

(3) The making of any loan or guaranty contrary to Section 315.

(4) The making of any compensation agreement or award of any compensation contrary to Section 319.

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in subdivision (a) is taken and who abstains from voting shall be considered to have approved the action.

(c) Suit may be brought in the name of the corporation to enforce the liability (1) under paragraph (1) of subdivision (a) against any or all directors liable by the persons entitled to sue under subdivision (b) of Section 506, (2) under paragraph (2), ~~or (3)~~ or (4) of subdivision (a) against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of any of the corporate actions specified in paragraph (2), ~~or (3)~~ or (4) of subdivision (a) and who have not consented to the corporate action, whether or not they have reduced their claims to judgment, or (3) under paragraph (3) or (4) of subdivision (a) against any or all directors liable by any one or more holders of shares outstanding at the time of any corporate action specified in paragraph (3) of subdivision (a) who have not consented to the corporate action, without regard to the provisions of Section 800.

(d) The damages recoverable from a director under ~~this section paragraphs (1) through (3) of subdivision (a)~~ shall be the amount of the illegal distribution (or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution) plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property or loss suffered by the corporation as a result of the illegal loan or guaranty, as the case may be, but not exceeding the liabilities of the corporation owed to nonconsenting creditors at the time of the violation and the injury suffered by nonconsenting shareholders, as the case may be. The damages recoverable from a director under paragraph (4) of subdivision (a) shall be the amount of the illegal compensation.

(e) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(f) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation:

(1) With respect to paragraph (1) of subdivision (a), against shareholders who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against shareholders who received the distribution of assets.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty. Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

(4) With respect to paragraph (4) of subdivision (a), against the person who received the compensation. Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

SECTION FIVE. Section 1502.1 of the Corporations Code is hereby amended to read:

Section 1502.1. (a) In addition to the statement required pursuant to Section 1502, every publicly traded corporation shall file annually, within 150 days after the end of its fiscal year, a statement, on a form prescribed by the Secretary of State, that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the corporation's annual financial statements.

(2) A description of other services, if any, performed for the corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The compensation for the most recent fiscal year of the corporation paid to each member of the board of directors and paid to each of the ~~five-ten~~ most highly compensated executive officers of the corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the ~~five~~ ten most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included.

(5) A description of any loan, including the amount and terms of the loan, made to any member of the board of directors by the corporation during the corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly-situated borrower.

(6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the corporation, its executive officers, or members of the board of directors of the corporation during the 10 years preceding the date of the statement.

(7) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the 10 years preceding the date of the statement, if the conviction has not been overturned or expunged.

(8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

(9) The number of employees located in the United States working over 35 hours a week, as well as the percentage of total employees, whose compensation is \$0-\$20,000; \$20,001-\$40,000; \$40,001-\$60,000; \$60,001-\$80,000; \$80,001-\$100,000; \$100,001-\$500,000 and over \$500,001, and the ratio between the highest paid employee and the lowest paid employee.

(10) The number of employees located outside the United States working over 35 hours a week, as well as the percentage of total employees, whose compensation is \$0-\$20,000; \$20,001-\$40,000; \$40,001-\$60,000; \$60,001-\$80,000; \$80,001-\$100,000; \$100,001-\$500,000 and over \$500,001, and the ratio between the highest paid employee and the lowest paid employee.

(11) The percentage of employees working over 35 hours a week in the United States who are offered health insurance by the corporation.

(12) The percentage of employees working over 35 hours a week in the United States who are offered a pension, profit-sharing, 401k or equivalent retirement plan by the corporation.

(b) For purposes of this section, the following definitions apply:

(1) "Publicly traded corporation" means a corporation, as defined in Section 162, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the National or Small-Cap Markets of the NASDAQ Stock Market, on the OTC-Bulletin Board, or on the electronic service operated by Pink Sheets, LLC.

(2) "Executive officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) "Compensation" as used in this section paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(4) "Loan" as used in paragraph (5) of subdivision (a) excludes an advance for expenses permitted under subdivision (d) of Section 315, the corporation's payment of life insurance premiums permitted under subdivision (e) of Section 315, and an advance of expenses permitted under Section 317.

(c) This statement shall be available and open to the public for inspection. The Secretary of State, not later than December 31, 2004, shall provide access to all information contained in this statement by means of an online database.

(d) The information contained in this statement shall be provided in the corporation's Annual Report required by Section 1501.

(e) The information contained in this statement shall be provided as a webpage on the website of any corporation which maintains a website with a link prominently displayed on the corporation's homepage entitled "Corporate Pay Disclosure."

~~(d)~~(f) A corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

SECTION SIX. Section 2117.1 of the Corporations Code is hereby amended to read:

2117.1. (a) In addition to the statement required pursuant to Section 2117, every publicly traded foreign corporation shall file annually, within 150 days after the end of its fiscal year, on a form prescribed by the Secretary of State, a statement that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the publicly traded foreign corporation's annual financial statements.

(2) A description of other services, if any, performed for the publicly traded foreign corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the foreign corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The compensation for the most recent fiscal year of the publicly traded foreign corporation paid to each member of the board of directors and paid to each of the ~~five~~ ten most highly compensated executive officers of the foreign corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the ~~five~~ ten most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included.

(5) A description of any loan, including the amount and terms of the loans, made to any member of the board of directors by the publicly traded foreign corporation during the foreign corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly situated borrower.

(6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the foreign corporation, its executive officers, or members of the board of directors of the foreign corporation during the 10 years preceding the date of the statement.

(7) A statement indicating whether any member of the board of directors or executive officer of the publicly traded foreign corporation was convicted of fraud during the 10 years preceding the date of the statement, which conviction has not been overturned or expunged.

(8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

(9) The number of employees located in the United States working over 35 hours a week, as well as the percentage of total employees, whose compensation for the most recent fiscal year of the publicly traded foreign corporation is \$0-\$20,000; \$20,001-\$40,000; \$40,001-\$60,000; \$60,001-\$80,000; \$80,001-\$100,000; \$100,001-\$500,000 and over \$500,001, and the ratio between the highest paid employee and the lowest paid employee.

(10) The number of employees located outside the United States working over 35 hours a week, as well as the percentage of total employees, whose compensation for the most recent fiscal year of the publicly traded foreign corporation is \$0-\$20,000; \$20,001-\$40,000; \$40,001-\$60,000; \$60,001-\$80,000; \$80,001-\$100,000; \$100,001-\$500,000 and over \$500,001, and the ratio between the highest paid employee and the lowest paid employee.

(11) The percentage of employees working over 35 hours a week in the United States who are offered health insurance by the foreign corporation.

(12) The percentage of employees working over 35 hours a week in the United States who are offered a pension or 401k or equivalent plan by the foreign corporation.

(b) For purposes of this section, the following definitions apply:

(1) "Publicly traded foreign corporation" means a foreign corporation, as defined in Section 171, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the National or Small-Cap Markets of the NASDAQ Stock Market, on the OTC-Bulletin Board, or on the electronic service operated by Pink Sheets, LLC.

(2) "Executive officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) "Compensation" as used in this section paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(4) "Loan" as used in paragraph (5) of subdivision (a) excludes an advance for expenses, the foreign corporation's payment of life insurance premiums, and an advance of litigation expenses, in each instance as permitted according to the applicable law of the state or place of incorporation or organization of the foreign corporation.

(c) This statement shall be available and open to the public for inspection. The Secretary of State, not later than December 31, 2004, shall provide access to all information contained in this statement by means of an online database.

(d) The information contained in this statement shall be provided in the foreign corporation's Annual Report required by Section 1501.

(e) The information contained in this statement shall be provided as a webpage on the website of any foreign corporation which maintains a website with a link prominently displayed on the foreign corporation's homepage entitled "Corporate Pay Disclosure."

~~(d)~~(f) A foreign corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

SECTION SEVEN. SEVERABILITY.

If any provision of this act, or part of this act, is for any reason held to be invalid, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SECTION EIGHT. CONFLICTING INITIATIVES.

In the event that this measure and another initiative measure or measures concerning executive compensation shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.