

Congress of the United States
House of Representatives
Washington, DC 20515-0533

August 24, 2017

Marcie Frost
Chief Executive Officer
California Public Employees' Retirement System
Lincoln Plaza North
400 Q Street, Room 4340
Sacramento, CA 95811

Dear Ms. Frost:

Thank you for your leadership at the California Public Employees' Retirement System (CalPERS). Your service has built on the legacy of strengthening ethics, transparency and internal controls at CalPERS to meet its fiduciary duties to invest and manage the system for the benefit of California's public servants. Those fiduciary duties include the obligation to invest with "the care, skill, prudence, and diligence" of a prudent person.¹ They also require you to comply with the laws of California and the laws of the United States.

In light of recent reports about CalPERS investment in CIM Fund III, which owns Trump SoHo, I am writing to urge you to divest from the fund unless CIM Fund III liquidates the Trump SoHo and terminates its arrangement to pay millions in marketing and management fees to the Trump Organization. The current structure of CIM Fund III's relationship with the Trump Organization, essentially creating a conduit from state pension funds to the President, violates the Domestic Emoluments Clause of the U.S. Constitution and must be ended.

In April, Reuters reported that CalPERS is one of eleven state and local pension funds that is invested in CIM Fund III, a real estate fund that owns the Trump SoHo luxury hotel and condominium development. CalPERS is by far the largest public pension invested in the fund, with an initial commitment estimated at \$700 million—well over twice as much as the next largest funds. CalPERS is reportedly required to pay quarterly management and performance fees to CIM Fund III, with the most recent payments due in April and June 2017. According to CalPERS's response to a public records request from Free Speech For People, CalPERS has paid \$1.7 million in fees to the General Partner of CIM Fund III between January 1, 2017 and March 31, 2017.

Through a contractual arrangement, CIM Fund III pays Trump International Hotels Management LLC millions of dollars to manage and market the property. The terms of the agreement between CIM Fund III and the Trump Organization also require the fund to cover overhead and operating costs for any unsold units in the luxury hotel/condominium. In 2015,

¹ Cal. Gov't Code § 20151(c).

CIM Fund III paid \$3.16 million directly to President Trump's company under the terms of the agreement. The fees being paid to the Trump Organization by CIM Fund III are derived, at least in part, from the performance and management fees that CalPERS is required to pay to CIM Fund III.

Though not all relevant facts are publicly available, based on what is known, CalPERS makes ongoing payments to CIM Fund III, which in turn makes direct payments to President Trump's company. Although this arrangement was presumably legal before Mr. Trump took office, CalPERS's continued payments to CIM Fund III after the inauguration create serious legal and ethical issues for the pension fund.

The chain of payments from CalPERS to CIM Fund III to the Trump Organization presents a clear violation of the Domestic Emoluments Clause of the United States Constitution which provides: "The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them." This provision clearly prohibits any state from providing additional sources of income to the President. Furthermore, it likely also violates CalPERS's own legal and ethical obligations as a fiduciary. If you believe that there is relevant information not currently in the public domain, I urge you to release it and explain why you do not believe that these payments are in violation of your obligations under the law.

At no time in the history of the United States has a President entered office with such a tangled web of assets, businesses, licensing and marketing agreements and such a clear plan to enrich himself through his office. Ethics experts from both sides of the aisle and the Director of the Office of Government Ethics warned Mr. Trump that he must resolve the conflicts presented by the vast Trump Organization. Instead, Mr. Trump chose to establish a revocable trust to hold assets for his "exclusive benefit." Furthermore, under the terms of the trust, President Trump may access the funds paid to any of the Trump Organizations at any time.

I was therefore, very disappointed to learn of your recent response to Free Speech For People and the Courage Campaign. Rather than taking action consistent with your fiduciary duties, you indicate that you do not plan to take any actions to end the transfer of pension funds from CIM Fund III to the Trump Organization. Though you claim that you take these concerns seriously, you seem to plan to do nothing more than "monitor and analyze" the situation.

Public funds should not be invested in a scheme that illegally enriches the President. CalPERS has a duty to obey the laws of the land, including the U.S. Constitution, and it has a fiduciary duty to conduct due diligence to avoid unethical and illegal investments. CalPERS has been aware of the relationship between CIM Fund III and the Trump Organization far longer than the public. The time for analysis was prior to the inauguration of the President and prior to the violation of the U.S. Constitution.

In addition, in the last week, it has become clear that the development of the Trump SoHo and sales of its units are under review by Special Counsel Robert Mueller as a potential vehicle for money laundering as part of the investigation into ties between Russia and Mr. Trump.

Suspicious about the use of the Trump SoHo development for money laundering pre-date CIM Fund III's acquisition of the property, which raises a separate set of questions about how CalPERS conducts due diligence when it chooses to invest as a limited partner in investment funds like CIM Fund III.

Given the clear legal and ethical issues presented by its investment, CalPERS should act now to demand that CIM Fund III liquidate Trump SoHo and end its arrangement with the Trump Organization, or failing that, CalPERS should divest from CIM Fund III.

Sincerely,

A handwritten signature in blue ink that reads "Ted W. Lieu". The signature is written in a cursive style with a large initial "T" and a long, sweeping underline.

Ted W. Lieu
Member of Congress