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City Sues Former Auditor for Negligence Resulting in Theft of City Funds

LOS BANOS – The City Council of the City of Los Banos has authorized the filing of a lawsuit against its former accounting firm, Moss, Levy, Hartzheim, LLP, for breach of contract, negligence, and breach of fiduciary duty that resulted in the theft of more than \$1.7 million by a former City employee.

An extensive investigation conducted by law enforcement and forensic accountants has concluded that the thefts took place over a number of years during which Moss Levy accountants conducted the City's annual audits. The investigation concluded that the accountants had numerous opportunities to discover the thefts during the three years they handled audits and that they simply failed to do so.

"The outcome of our investigation was startling, to say the least, but the City takes this issue seriously and will pursue matters to the fullest extent of the law," said City Manager Steve Rath. "Moss, Levy, Hartzheim LLP had a fiduciary duty to the City and it was not fulfilled. This lawsuit is necessary as we continue to work toward full restitution of the stolen funds."

The City of Los Banos hired Moss, Levy, Hartzheim LLP in 2006 to perform the annual audit of the City's financial statements. The contract extended through early 2009. As part of that work, Moss Levy was obligated to assess the City's internal controls and to test the effectiveness of those controls in order to prevent errors and fraudulent actions, including illegal acts, such as theft. Under the contract, Moss Levy also was to inform the City of any deficiencies in the design or operation of its internal controls.

When the City discovered in March 2009, that an employee was engaged in the theft of cash funds paid by utility customers, the City commissioned an investigation which revealed that the theft of City funds should have been discovered by Moss Levy and reported in its annual audit reports for fiscal years ending on June 30, 2006, June 30, 2007, and June 30, 2008.

"During the time of the contract, the City relied on Moss Levy's stated skills and abilities to properly conduct the City's annual audits," Rath said. "We expected that our audits would be conducted with the same skill and care that a reasonably careful auditor would have used in similar circumstances. It's disappointing, to the say the least, and that is why the firm must be held accountable in the court of law for its actions."

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