

Executive Team

Dominic D. Brown, CPA, CFE
Chief Executive Officer

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
Chief Legal Officer

Matthew Henry, CFE
Chief Operations Officer



Board of Retirement

Tyler Whitezell, Chair
Phil Franey, Vice-Chair
David Couch
Juan Gonzalez
Joseph D. Hughes
Jordan Kaufman
Rick Kratt
John Sanders
Dustin Contreras, Alternate
Chase Nunneley, Alternate
Robb Seibly, Alternate
3rd Member (Vacant)

October 26, 2023

Members, Board of Retirement
Employee Bargaining Units
Requesting News Media
Other Interested Parties

Subject: Meeting of the Kern County Employees' Retirement Association
Board of Retirement

Ladies and Gentlemen:

A meeting of the Kern County Employees' Retirement Association Board of Retirement will be held on Wednesday, November 1, 2023 at 8:30 a.m. in the KCERA Boardroom, 11125 River Run Boulevard, Bakersfield, California, 93311.

How to Participate: Listen to or View the Board Meeting

To listen to the live audio of the Board meeting, please dial one of the following numbers (*landline recommended for best audio*) and enter ID# 898 2594 8737:

- (669) 900-9128; U.S. Toll-free: (888) 788-0099 or (877) 853-5247

To access live audio and video of the Board meeting, please use the following:

- <https://us02web.zoom.us/j/89825948737?pwd=QnVLb1dVbk5qR1VCVEhRQXJyNctOdz09>
- Passcode: 404853

Items of business will be limited to the matters shown on the attached agenda. If you have any questions or require additional service, please contact KCERA at (661) 381-7700 or send an email to administration@kcera.org.

Sincerely,

Dominic D. Brown
Chief Executive Officer

Attachments

AGENDA:

All agenda item supporting documentation is available for public review on KCERA's website at www.kcera.org following the posting of the agenda. Any supporting documentation that relates to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location.

**AMERICANS WITH DISABILITIES ACT
(Government Code §54953.2)**

Disabled individuals who need special assistance to listen to and/or participate in the meeting of the Board of Retirement may request assistance by calling (661) 381-7700 or sending an email to administration@kcera.org. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting materials and access available in alternative formats. Requests for assistance should be made at least two (2) days in advance of a meeting whenever possible.

CALL TO ORDER

ROLL CALL (IN PERSON)

SALUTE TO FLAG

MOMENT OF SILENCE

AB 2449 REMOTE APPEARANCE(S)

Items 1 and/or 2 withdrawn from agenda if no trustees will have a need to appear via teleconference:

The first two items on the agenda are reserved for trustees who have a need to appear via teleconference due to a "just cause" need or an "emergency circumstance." Trustees who have notified this Board before agenda-posting will be called upon and will provide a general description of their need to attend via teleconference as allowed by law. Trustees who were not able to notify the Board in advance of posting and have a need to attend via teleconference will state their notification or request when called upon to do so. All trustees appearing via teleconference will need to disclose any adult person(s) present in the room of their remote location and their relationship to such person(s). Trustees appearing remotely are reminded to keep their cameras on throughout the meeting.

1. JUST CAUSE CIRCUMSTANCE(S):

a) The following Trustee(s) have notified the Board of a "Just Cause" to attend this meeting via teleconference. (See Government Code § 54953).

- NONE

- b) Call for Trustee(s) who wish to notify the Board of a “Just Cause” to attend this meeting via teleconference. (See Government Code § 54953).
2. EMERGENCY CIRCUMSTANCE(S):
- a) The following Trustee(s) have requested the Board approve their attendance of this meeting via teleconference due to an “Emergency Circumstance.” (See Government Code § 54953).
- NONE
- b) Call for Trustee(s) requesting the Board approve their attendance of this meeting via teleconference due to an “Emergency Circumstance”. (See Government Code § 54953).

TAKE ACTION ON REQUEST(S) FOR REMOTE APPEARANCE

CONSENT MATTERS

All items listed with an asterisk (*) are considered to be routine and non-controversial by staff and will be approved by one motion if no member of the Board or public wishes to comment or ask questions. If comment or discussion is desired by anyone, the item will be removed from the consent agenda and will be considered in the listed sequence with an opportunity for any member of the public to address the Board concerning the item before action is taken. Staff recommendations are shown in caps after each item.

- *3. Application for service-connected disability pension benefits for Jacob Yohn, Sheriff (Safety) – ADOPT RECOMMENDATION OF SDAG TO GRANT SERVICE-CONNECTED DISABILITY PENSION
- *4. [Summary of proceedings of the following meetings:](#)
- October 11, 2023 Board of Retirement
 - October 18, 2023 Investment Committee

RECEIVE AND FILE

- *5. [Report from the KCERA office on members retired from service for the month of October 2023 – RATIFY](#)
- *6. [Report from the KCERA office on deceased retirees for the month of October 2023 – RECEIVE AND FILE](#)
- *7. [Report of current disability retirement applications and appeals of KCERA Board decisions for the period ending October 31, 2023 – RECEIVE AND FILE](#)

- *8. [KCERA asset allocation, cash flow position, investment fees cash flow, and operating expense budget status reports for the month of September 2023 – RECEIVE AND FILE](#)
- *9. [The KCERA Class Action Proceeds Report from July 1 through September 30, 2023 for the Northern Trust Company – RECEIVE AND FILE](#)
- *10. [Public Pension Standards Award for Funding and Administration 2023 received from the Public Pension Coordinating Council \(PPCC\) – RECEIVE AND FILE](#)
- *11. [Service provider evaluation period initiated pursuant to Evaluation Period Policy – RATIFY](#)

PUBLIC COMMENTS

- 12. The public is provided the opportunity to comment on agenda items at the time those agenda items are discussed by the Board. This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification and, through the Chair, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Speakers are limited to two minutes. Please state your name for the record prior to making a presentation.

INVESTMENT MATTERS

- 13. [Discussion and appropriate action on private market fund recommendation](#) presented by Keirsten Lawton, Managing Director, Cambridge Associates¹, Senior Investment Officer Geoff Nolan, and the Investment Committee – APPROVE UP TO \$40MM COMMITMENT TO ITE RAIL FUND L.P.; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN, SUBJECT TO LEGAL ADVICE AND REVIEW
- 14. [Discussion and appropriate action on termination recommendation for AB](#) Emerging Markets Strategic Core Equity presented by Scott Whalen, CFA, Chief Investment Officer Daryn Miller, CFA, Senior Investment Analyst Jack Bowman, Investment Analyst II Rafael Jimenez, and the Investment Committee – TERMINATE AB EMERGING MARKET STRATEGIC CORE EQUITY FUND
- 15. [Trustee education regarding the Life Cycle of an Investment presented by Chief](#) Executive Officer Dominic Brown, Chief Investment Officer Daryn Miller, CFA, and the Investment Team, Chief Legal Officer Jennifer Zahry and the Legal Team, and Chief Financial Officer Angela Kruger and the Accounting and Reporting Team – RECEIVE EDUCATIONAL TRAINING (45 MINUTES TRUSTEE EDUCATION CREDIT)

¹ Written materials and investment recommendations from the consultants, fund managers and KCERA investment staff relating to alternative investments are exempt from public disclosure pursuant to California Government Code § 7928.710, § 7922.000, and §54957.5.

16. [Trustee education regarding Fiduciary Training Update presented by Governance Consultants Julie Becker and Benita Falls Harper, Aon – RECEIVE EDUCATIONAL TRAINING \(45 MINUTES TRUSTEE EDUCATION CREDIT\)](#)
17. [Presentation on referral regarding Delegation of Investment Duties presented by Chief Executive Officer Dominic Brown and Governance Consultants Julie Becker, Benita Falls Harper, and David Forman, Aon – REFER MATTER TO INVESTMENT COMMITTEE FOR FURTHER DEVELOPMENT AND OPTIONS FOR IMPLEMENTATION; TAKE OTHER ACTION, AS APPROPRIATE](#)

ADMINISTRATIVE MATTERS

18. [Discussion and appropriate action regarding a special Board of Retirement election to fill the vacancy of the Third Member \(General\) seat due to the resignation of Trustee Jeanine Adams – PROVIDE DIRECTION TO STAFF; TAKE OTHER ACTION, AS APPROPRIATE](#)
19. [SACRS Fall Conference Business Meeting Packet 2023 for SACRS business meeting on November 10, 2023 in Rancho Mirage, California – RECEIVE AND FILE](#)
20. [Presentation on SACRS Legislative Proposals for 2024 concerning Use of Prepaid Cards and Payment to Accounts Included in Living Trust, Post-Retirement Employment, and Removal of “Return Receipt Requested” requirement, presented by Chief Legal Officer Jennifer Zahry – APPROVE SACRS LEGISLATIVE PROPOSALS; DIRECT VOTING DELEGATE TO CAST VOTES ACCORDINGLY](#)
21. [Trustee education regarding an Alameda Administrative Appeals Orientation presented by Chief Legal Officer Jennifer Zahry – HEAR PRESENTATION; RECEIVE EDUCATIONAL TRAINING \(10 MINUTES TRUSTEE EDUCATION CREDIT\)](#)

STAFF REPORTS

22. [Report from Chief Executive Officer](#)
23. [Report from Chief Investment Officer](#)
24. [Report from Chief Legal Officer](#)

COMMITTEE REPORTS

25. Report from Committee Chairs:
- a. Administrative Committee: Gonzalez
 - b. Finance Committee: Contreras
 - c. Investment Committee: Kratt

CALL FOR PUBLIC COMMENT ON EXECUTIVE SESSION ITEM(S)

EXECUTIVE SESSION

Item 3 is withdrawn from Executive Session if approved on the consent agenda:

3. PUBLIC EMPLOYMENT (pursuant to Government Code §54957) Application for service-connected disability pension benefits:

Jacob Yohn

Sheriff

Safety

RETURN TO PUBLIC SESSION

ROLL CALL TO CONFIRM QUORUM

REPORT OF EXECUTIVE SESSION ACTIONS, IF APPLICABLE

REFERRALS TO STAFF, ANNOUNCEMENTS OR REPORTS

26. On their own initiative, Board members may make a brief announcement, refer matters to staff, subject to KCERA's rules and procedures, or make a brief report on their own activities.

NEW BUSINESS

27. Consider, discuss, and take possible action to agendize one or more items for future meetings of the Board of Retirement – CONSIDER, DISCUSS, AND TAKE ACTION ON WHETHER TO AGENDIZE PROPOSED ITEMS, IF ANY, FOR A FUTURE MEETING

RECESS UNTIL 1:30 P.M. – All remaining agenda items to be heard at this time

ROLL CALL TO CONFIRM QUORUM

ADMINISTRATIVE MATTERS (Continued)

28. [Administrative Appeal of Tracy Wolfe regarding Objection to Pay Code](#)
Designation pursuant to *Alameda* Implementation – HEAR STATEMENTS;
RECEIVE ADMINISTRATIVE RECORD; CONSULT WITH BOARD COUNSEL
(EXECUTIVE SESSION); AND TAKE ACTION ON MEMBER REQUEST (PUBLIC
SESSION)

EXECUTIVE SESSION

CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION

Paragraph (2) of subdivision (d) of Section 54956.9). Administrative Appeal
submitted by Tracy Wolfe

RETURN TO PUBLIC SESSION

TAKE ACTION ON MEMBER'S OBJECTION TO KCERA'S DECISION TO
EXCLUDE AVAILABILITY PAY FROM HER COMPENSATION EARNABLE
CALCULATION AND TO COLLECT THE OVERPAYMENT OF BENEFITS FROM
AUGUST 2020 THROUGH NOVEMBER 2020

29. Adjournment

**KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (KCERA)
BOARD OF RETIREMENT**

11125 River Run Boulevard, Bakersfield, California

SUMMARY OF PROCEEDINGS

**Board of Retirement Meeting
October 11, 2023**

8:31 A.M.

Board Members: Adams, Contreras (Alternate), Couch, Vice-Chair Franey, Gonzalez, Hughes, Kaufman, Kratt, Nunneley (Alternate), Sanders, Seibly (Alternate), Chair Whitezell

ROLL CALL

Present: Adams, Contreras, Couch, Franey, Gonzalez, Kratt, Nunneley, Seibly, Whitezell

Absent: Hughes, Kaufman, Sanders

SALUTE TO FLAG – TRUSTEE ADAMS

MOMENT OF SILENCE

NOTE: The vote is displayed in bold below each item. For example, Couch-Kaufman denotes Trustee David Couch made the motion and Trustee Jordan Kaufman seconded the motion.

AB 2449 REMOTE APPEARANCE(S)

Items 1 and 2 withdrawn from agenda. No trustees appeared via teleconference.

CONSENT MATTERS

All consent matter items listed below with an asterisk () were considered to be routine and non-controversial by staff and approved by one motion, unless otherwise noted.*

- *3. Application for service-connected disability pension benefits for Judy Garcia, Hospital Authority (General) – **ADOPTED RECOMMENDATION OF SDAG TO GRANT SERVICE-CONNECTED DISABILITY PENSION**

Nunneley-Adams – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

*4. Summary of proceedings of the following meetings:

- August 25, 2023 Administrative Committee
- September 5, 2023 Investment Committee
- September 13, 2023 Board of Retirement

RECEIVED AND FILED

Nunneley-Adams – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

*5. Report from the KCERA office on members retired from service for the month of September 2023 – RATIFIED

Nunneley-Adams – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

*6. Report from the KCERA office on deceased retirees for the month of September 2023 – RECEIVED AND FILED

Nunneley-Adams – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

*7. Report of current disability retirement applications and appeals of KCERA Board decisions for the period ending September 30, 2023 – RECEIVED AND FILED

Nunneley-Adams – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

*8. KCERA asset allocation, cash flow position, investment fees cash flow, and operating expense budget status reports for the month of August 2023 – RECEIVED AND FILED

Nunneley-Adams – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

*9. 2024 Board of Retirement Meeting Schedule – RECEIVED AND FILED; APPROVED

Nunneley-Adams – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

*10. Report on Special Pay Codes classified by the Chief Executive Officer – RECEIVED AND FILED

Nunneley-Adams – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

- *11. Invitation from State Association of County Retirement Systems (SACRS) to trustees and staff to attend the SACRS Fall Conference, November 7-10, 2023, in Rancho Mirage, California – APPROVED ATTENDANCE OF TRUSTEES DAVID COUCH, PHIL FRANEY, JUAN GONZALEZ, JOSEPH D. HUGHES, JORDAN KAUFMAN, RICK KRATT AND CHASE NUNNELEY

Nunneley-Adams – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

- *12. Correction of typo relating to Policy Benchmark in the Investment Policy Statement – RECEIVED AND FILED

Nunneley-Adams – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

PUBLIC COMMENTS

13. The public is provided the opportunity to comment on agenda items at the time those agenda items are discussed by the Board. This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification and, through the Chair, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Speakers are limited to two minutes. Please state your name for the record prior to making a presentation – NONE

INVESTMENT MATTERS

14. Update on Annual Private Markets Plan reflecting 8% Private Credit target – presented by Keirsten Lawton, Managing Director, Kelly Jensen, Senior Investment Director, Cambridge Associates, and Chief Investment Officer Daryn Miller, CFA – KELLY JENSEN AND KEIRSTEN LAWTON, CAMBRIDGE ASSOCIATES, HEARD; SCOTT WHALEN, CFA, VERUS, HEARD; DARYN MILLER, CFA, HEARD

HEARD PRESENTATION

ADMINISTRATIVE MATTERS

15. Follow-up discussion and appropriate action on Strategic Planning presented by Chief Executive Officer Dominic Brown and Governance Consultants Julie Becker and Benita Falls Harper, Aon – BENITA FALLS HARPER, AON, HEARD; CHAIR TYLER WHITEZELL HEARD; VICE-CHAIR PHIL FRANNEY HEARD; TRUSTEE RICK KRATT HEARD; CHIEF EXECUTIVE OFFICER DOMINIC BROWN HEARD

ADOPTED UPDATED STRATEGIC PLAN

Kratt-Franey – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

16. Discussion and appropriate action on KCERA's voting delegation for the State Association of County Retirement Systems (SACRS) Fall 2023 Conference, presented by Chief Executive Officer Dominic Brown – VICE-CHAIR PHIL FRANNEY HEARD; TRUSTEES DAVID COUCH AND RICK KRATT HEARD; CHIEF EXECUTIVE OFFICER DOMINIC BROWN HEARD

APPOINTED TRUSTEE JORDAN KAUFMAN AS THE VOTING DELEGATE AND TRUSTEE RICK KRATT AS ALTERNATE VOTING DELEGATE

Franey-Adams – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

17. Appointment of Nominating Committee by Chair (two members) and the Board (two members) to propose a slate of officers to the Board of Retirement for the 2024 calendar year – CHAIR TYLER WHITEZELL HEARD; VICE-CHAIR PHIL FRANNEY HEARD; TRUSTEES DAVID COUCH AND RICK KRATT HEARD; CHIEF EXECUTIVE OFFICER DOMINIC BROWN HEARD; CHIEF LEGAL OFFICER JENNIFER ZAHRY HEARD

CHAIR TYLER WHITEZELL APPOINTED TRUSTEES DAVID COUCH AND JUAN GONZALEZ TO NOMINATING COMMITTEE; TRUSTEE RICK KRATT APPOINTED TRUSTEE PHIL FRANNEY AND DUSTIN CONTRERAS TO NOMINATING COMMITTEE; CHAIR TYLER WHITEZELL DESIGNATED PHIL FRANNEY AS THE NOMINATING COMMITTEE CHAIR; APPROVED

Kratt-Franey – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

STAFF REPORTS

18. Report from Chief Executive Officer

CHIEF EXECUTIVE OFFICER DOMINIC BROWN REPORTED THE FOLLOWING:

- OFFICE UPDATE
- STAFFING UPDATE
- MEMBER OUTREACH
- DISABILITY UPDATE
- SOLAR UPDATE
- OPERATIONS ACTIVITY
- UPCOMING MEETINGS AND EVENTS

CHAIR TYLER WHITEZELL HEARD; VICE-CHAIR PHIL FRANEY HEARD;
TRUSTEE RICK KRATT HEARD

19. Report from Chief Investment Officer

CHIEF INVESTMENT OFFICER DARYN MILLER, CFA, REPORTED THE FOLLOWING:

- REBALANCING – SEPTEMBER ACTIVITY
- POSITIONING – ACTUAL VS. POLICY TARGET
- KEY INITIATIVES
- INVESTMENT COMMITTEE MEETINGS

VICE-CHAIR PHIL FRANEY HEARD; TRUSTEE DAVID COUCH HEARD;
CHIEF EXECUTIVE OFFICER DOMINIC BROWN HEARD; CHIEF
INVESTMENT OFFICER DARYN MILLER HEARD

20. Report from Chief Legal Officer:

CHIEF LEGAL OFFICER JENNIFER ZAHRY REPORTED THE FOLLOWING:

- CASE UPDATES
- LEGISLATIVE UPDATES
- OCTOBER CALENDAR

COMMITTEE REPORTS

21. Report from Committee Chairs:
- a. Administrative Committee: GONZALEZ – NONE
 - b. Finance Committee: CONTRERAS – NONE
 - c. Investment Committee: KRATT – MEETING TO BE SCHEDULED

CALL FOR PUBLIC COMMENT ON EXECUTIVE SESSION ITEM(S) – NONE

EXECUTIVE SESSION

22. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
- Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (1 potential case).
23. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
- Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (1 potential case).
24. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (pursuant to GOVERNMENT CODE §54957) – Title: Chief Executive Officer

TRUSTEE COUCH LEFT AT 11:05 A.M.

RETURN TO PUBLIC SESSION

BOARD OF RETIREMENT RECONVENED AT 11:08 A.M.

ROLL CALL

To establish quorum present upon resuming public session

Present: Adams, Contreras, Franey, Gonzalez, Kratt, Nunneley, Seibly, Whitezell

Absent: Couch, Hughes, Kaufman, Sanders

REPORT OF EXECUTIVE SESSION ACTIONS, IF APPLICABLE

ITEM 22 – DIRECTED STAFF NOT TO INITIATE LITIGATION

Franey-Kratt – 7 Ayes

Trustee Chase Nunneley voted in place of Trustee Jordan Kaufman

ITEM 23 – NO REPORTABLE ACTION

ITEM 24 – NO REPORTABLE ACTION

TRUSTEE COUCH RETURNED AT 11:09 A.M.

REFERRALS TO STAFF, ANNOUNCEMENTS OR REPORTS

25. On their own initiative, Board members may make a brief announcement, refer matters to staff (subject to KCERA's rules and procedures), or make a brief report on their own activities – CHAIR TYLER WHITEZELL HEARD; TRUSTEE JEANINE ADAMS HEARD

NEW BUSINESS

26. Consider, discuss, and take possible action to agendize one or more items for future meetings of the Board of Retirement – NONE
27. ADJOURNED – 11:11 A.M.

Secretary, Board of Retirement

Chair, Board of Retirement

**KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (KCERA)
BOARD OF RETIREMENT**

11125 River Run Boulevard, Bakersfield, California

SUMMARY OF PROCEEDINGS

**Investment Committee
October 18, 2023**

1:01 p.m.

Committee Members: Couch, Kaufman, Chair Kratt, Nunneley (Alternate), Whitezell

ROLL CALL

Present: Couch, Kaufman, Kratt, Nunneley

Absent: Whitezell

NOTE: The vote is displayed in bold below each item. For example, Couch-Kaufman denotes Trustee David Couch made the motion and Trustee Jordan Kaufman seconded the motion.

AB 2449 REMOTE APPEARANCE(S)

Items 1 and 2 withdrawn from agenda. No trustees appeared via teleconference.

3. Discussion and appropriate action on private market fund recommendation presented by Keirsten Lawton, Managing Director, Cambridge Associates¹, and Senior Investment Officer Geoff Nolan – KEIRSTEN LAWTON, CAMBRIDGE ASSOCIATES, HEARD; CHAIR RICK KRATT HEARD; SENIOR INVESTMENT OFFICER GEOFF NOLAN HEARD

RECOMMENDED THE BOARD OF RETIREMENT APPROVE UP TO \$40MM COMMITMENT TO ITE RAIL FUND L.P.; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN, SUBJECT TO LEGAL ADVICE AND REVIEW

Kaufman-Couch – 4 Ayes

Trustee Chase Nunneley voted in place of Trustee Tyler Whitezell

1 Written materials and investment recommendations from the consultants, fund managers and KCERA investment staff relating to alternative investments are exempt from public disclosure pursuant to California Government Code § 7928.710, § 7922.000, and §54957.5.

4. Discussion and appropriate action on termination recommendation for AB Emerging Markets Strategic Core Equity presented by Scott Whalen, CFA, Chief Investment Officer Daryn Miller, CFA, Senior Investment Analyst Jack Bowman, and Investment Analyst II Rafael Jimenez – SCOTT WHALEN, CFA, VERUS, HEARD; CHAIR RICK KRATT HEARD; TRUSTEE JORDAN KAUFMAN HEARD; CHIEF INVESTMENT OFFICER DARYN MILLER, CFA, HEARD; SENIOR INVESTMENT ANALYST JACK BOWMAN HEARD; INVESTMENT ANALYST II RAFAEL JIMENEZ HEARD

RECOMMENDED THE BOARD OF RETIREMENT TERMINATE AB EMERGING MARKET STRATEGIC CORE EQUITY FUND

Couch-Kaufman – 4 Ayes

Trustee Chase Nunneley voted in place of Trustee Tyler Whitezell

PUBLIC COMMENTS

5. The public is provided the opportunity to comment on agenda items at the time those agenda items are discussed by the Committee. This portion of the meeting is reserved for persons to address the Committee on any matter not on this agenda but under the jurisdiction of the Committee. Committee members may respond briefly to statements made or questions posed. They may ask a question for clarification and, through the Chair, make a referral to staff for factual information or request staff to report back to the Committee at a later meeting. Speakers are limited to two minutes. Please state your name for the record prior to making a presentation – NONE

REFERRALS TO STAFF, ANNOUNCEMENTS OR REPORTS

6. On their own initiative, Committee members may make a brief announcement refer matters to staff, subject to KCERA's rules and procedures, or make a brief report on their own activities – NONE
7. ADJOURNED – 1:27 P.M.

Secretary, Board of Retirement

Chair, Investment Committee



**Kern County Employees' Retirement Association
New Retirees- October 1, 2023 to October 31, 2023**

Employer Name: County Of Kern

| Member Last Name | Member First Name | Retirement Date | Membership Tier | Department Name |
|-------------------------|--------------------------|------------------------|------------------------|----------------------------------|
| Appleton | Heathe | 09/09/2023 | Safety Tier I | 2340S - Probation-Safety |
| Bates | Rebecca | 09/23/2023 | Safety Tier I | 2340S - Probation-Safety |
| Brown | Tamara | 09/21/2023 | General Tier II PEPRA | 4120 - Behavioral Health & Reco |
| Camargo | Eric | 08/26/2023 | General Tier I | 1610 - General Services Division |
| Coleman | Pamela | 08/23/2023 | General Tier I | 4120 - Behavioral Health & Reco |
| Duffield | Melanie | 09/09/2023 | General Tier I | 5120 - Depart Of Human Services |
| Flores | Maria | 09/16/2023 | General Tier I | 5120 - Depart Of Human Services |
| Hall | Robin | 09/09/2023 | General Tier I | 1130 - Assessor |
| Hiestand | Lisa | 08/31/2023 | Safety Tier I | 2340S - Probation-Safety |
| Highfill | Eric | 09/09/2023 | Safety Tier I | 2340S - Probation-Safety |
| Ing | Arleana | 09/13/2023 | General Tier I | 5940 - Community & Econ Dev Dept |
| James | Jared | 09/08/2023 | Safety Tier I | 2340S - Probation-Safety |
| Norris | Arthur | 09/07/2023 | General Tier I | 2180 - District Attorney |
| Pellerin | Joseph | 07/26/2023 | General Tier II | 8950 - Garage |
| Petrovich | Isley | 09/05/2023 | General Tier I | 5120 - Depart Of Human Services |
| Phillips | Trina | 09/09/2023 | General Tier I | 5120 - Depart Of Human Services |



**Kern County Employees' Retirement Association
New Retirees- October 1, 2023 to October 31, 2023**

| Member Last Name | Member First Name | Retirement Date | Membership Tier | Department Name |
|-------------------------|--------------------------|------------------------|------------------------|---------------------------------|
| Robles | Jesus | 08/01/2023 | General Tier I | 8997 - Kern Medical Center |
| Rodriguez | Eva | 09/13/2023 | General Tier I | 5120 - Depart Of Human Services |
| Rubio | Sharon | 08/26/2023 | General Tier II | 2180 - District Attorney |
| Ruiz | Jeff | 08/26/2023 | Safety Tier I | 2340S - Probation-Safety |
| Shakir | Pamela | 09/04/2023 | General Tier II | 5120 - Depart Of Human Services |
| Turrubiates | Araceli | 09/02/2023 | General Tier I | 5120 - Depart Of Human Services |
| Underhill | Michael | 06/22/2023 | Safety Tier I | 2210S - Sheriff |
| Williams | Lucille | 09/01/2023 | General Tier I | 4300B - Calif Children Svcs Adm |
| Williams | Tammy | 08/26/2023 | General Tier I | 5120 - Depart Of Human Services |
| Young | Lisa | 08/26/2023 | Safety Tier I | 2340S - Probation-Safety |

Employer Name: Inyokern Community Services District

| Member Last Name | Member First Name | Retirement Date | Membership Tier | Department Name |
|-------------------------|--------------------------|------------------------|------------------------|------------------------------------|
| Bebee | Brian | 09/10/2023 | General Tier I | 0994 - Inyokern Community Services |



Kern County Employees' Retirement Association
Decedents- **October 1, 2023 to October 31, 2023**

Pre-Retirement Deaths

| Last Name | First Name | Membership Type | Employer Name |
|-----------------|------------|-----------------|-------------------|
| Mcknight | Sunday | General | County Of Kern |
| Vasquez-Camacho | Eva | General | KC Superior Court |

Post-Retirement Deaths

| Last Name | First Name | Membership Type | Employer Name |
|------------|------------|-----------------|--------------------|
| Anderson | Linda | General | County Of Kern |
| Anderson | Robert | General | County Of Kern |
| Barron | Valerie | General | County Of Kern |
| Buckley | Marvin | General | County Of Kern |
| Cornelison | Sharon | General | County Of Kern |
| Dodd | Helen | General | County Of Kern |
| Forbes | Jack | General | County Of Kern |
| Green | Vicki | General | County Of Kern |
| Hall | James | General | County Of Kern |
| Hernandez | Robert | General | County Of Kern |
| Hess | Ethel | General | County Of Kern |
| Hunter | Olin | Safety | County Of Kern |
| Lassetter | Annie | General | County Of Kern |
| Lopez | Frank | General | County Of Kern |
| Melton | Cynthia | General | West Side Cemetery |
| Orange | Tahlia | Safety | County Of Kern |
| Ortiz | Jess | Safety | County Of Kern |
| Petty | Leon | Safety | County Of Kern |
| Rocha | Robert | Safety | County Of Kern |
| Shearer | Barbara | General | County Of Kern |
| Stanier | Kathy | General | County Of Kern |
| Tracy | Harriet | General | County Of Kern |
| Wallach | Donald | General | County Of Kern |
| Williams | Virginia | General | County Of Kern |

**KCERA
STATUS OF DISABILITY RETIREMENT APPLICATIONS
AS OF OCTOBER 31, 2023**

| NAME | PLAN SPONSOR/ DEPARTMENT | DATE FILED | DATE OF LAST CONTACT |
|-------------------------|---------------------------------------|-------------------|-----------------------------|
| De La Rosa, Alfred | SHERIFF | 9/18/2023 | 10/12/2023 |
| Rickels, Adam | SHERIFF | 8/11/2023 | 10/11/2023 |
| NAME | PLAN SPONSOR/ DEPARTMENT | DATE FILED | MMRO ASSIGNED |
| Stephan, Daren | PUBLIC WORKS | 7/7/2023 | 9/15/2023 |
| Norris, David | SHERIFF | 5/26/2023 | 8/11/2023 |
| Meeks, Sandra | BEHAVIORAL HEALTH & RECOVERY SERVICES | 5/1/2023 | 7/18/2023 |
| Fulmer, Evon | DEPARTMENT OF HUMAN SERVICES | 4/28/2023 | 7/18/2023 |
| Muniz, Linda | BEHAVIORAL HEALTH & RECOVERY SERVICES | 4/6/2023 | 6/26/2023 |
| Romero, Anthony | FIRE | 3/10/2023 | 6/19/2023 |
| Gonzalez-Lopez, Rebecca | DEPARTMENT OF HUMAN SERVICES | 3/9/2023 | 6/19/2023 |
| Guivas Smith, Loida | AGING AND ADULT SERVICES | 3/8/2023 | 6/19/2023 |
| Allen, Paul | SHERIFF | 2/22/2023 | 4/25/2023 |
| Miarta, Richard | SHERIFF | 2/10/2023 | 4/25/2023 |
| Harbour, Leslie | SHERIFF | 2/9/2023 | 4/25/2023 |
| Ramirez, Edward | SHERIFF | 2/7/2023 | 4/25/2023 |
| Lock, Ranna | SHERIFF | 2/1/2023 | 4/25/2023 |
| Inman Ferguson, Jill | KERN COUNTY SUPERIOR COURT | 1/24/2023 | 4/10/2023 |
| Monahan, Laura | KERN COUNTY WATER AGENCY | 1/3/2023 | 4/6/2023 |
| Kimbrell, Tamara | SHERIFF | 11/29/2022 | 3/23/2023 |
| Dunlap, James | SHERIFF | 11/1/2022 | 2/8/2023 |
| Perez, Manuelita | PROBATION | 10/27/2022 | 1/17/2023 |
| Schmidt, Mark | FIRE | 10/26/2022 | 3/23/2023 |
| Yanez, Alfred | SHERIFF | 10/3/2022 | 2/10/2022 |
| Morrison, James | SHERIFF | 9/14/2022 | 12/19/2022 |
| Gregory, Dolores | SHERIFF | 8/16/2022 | 12/19/2022 |
| Smith, Clifton | FIRE | 8/15/2022 | 12/19/2022 |
| Cockrell, June | DEPARTMENT OF HUMAN SERVICES | 8/11/2022 | 10/18/2022 |
| Gaetzman, Travis | SHERIFF | 8/10/2022 | 11/22/2022 |
| Hartley-Anders, Kim | KERN COUNTY SUPERIOR COURT | 8/9/2022 | 11/22/2022 |
| Hudson, Richard | SHERIFF | 8/8/2022 | 11/22/2022 |
| Carrillo, Aaron | SHERIFF | 7/15/2022 | 9/30/2022 |
| Rice, Jerry | FIRE | 7/7/2022 | 11/22/2022 |
| Roden, Jim | SHERIFF | 6/22/2022 | 9/30/2022 |
| Rodriguez, Mark | FIRE | 6/21/2022 | 9/1/2022 |
| Fecke, Daniel | KERN COUNTY HOSPITAL AUTHORITY | 6/15/2022 | 9/30/2022 |
| Pena, Armando | PROBATION | 5/27/2022 | 9/19/2022 |

**KCERA
STATUS OF DISABILITY RETIREMENT APPLICATIONS
AS OF OCTOBER 31, 2023**

| NAME | PLAN SPONSOR/ DEPARTMENT | DATE FILED | MMRO ASSIGNED |
|-----------------------------|---|-------------------|----------------------|
| Hill, Sheldon | SHERIFF | 5/27/2022 | 8/19/2022 |
| Gomez, Armando | INFORMATION TECHNOLOGY SERVICES | 4/29/2022 | 10/14/2022 |
| Cano, Emma | BEHAVIORAL HEALTH AND RECOVERY SERVICES | 3/17/2022 | 8/19/2022 |
| Yohn, Jacob | SHERIFF | 11/30/2021 | 7/21/2022 |
| Fussel, Kathy | KERN COUNTY HOSPITAL AUTHORITY | 11/3/2021 | 2/24/2022 |
| Guandique, Sandra | RISK MANAGEMENT | 10/15/2021 | 3/14/2022 |
| Kauffman, Stephen | DISTRICT ATTORNEY | 8/16/2021 | 4/25/2022 |
| Brannan, Derek | SHERIFF | 7/14/2021 | 11/22/2021 |
| Leon, Theresa | DEPARTMENT OF HUMAN SERVICES | 7/7/2021 | 10/18/2021 |
| Patton, Eric | SHERIFF | 6/30/2021 | 11/22/2021 |
| Candelaria, Valerie | DEPARTMENT OF HUMAN SERVICES | 6/23/2021 | 9/15/2021 |
| Introini, Jessica | SHERIFF | 6/18/2021 | 11/22/2021 |
| Williams, Theron | GENERAL SERVICES | 5/12/2021 | 9/15/2021 |
| Smith, Thomas Jr. | SHERIFF | 3/16/2021 | 11/8/2021 |
| Sanders-Stubblefield, Misty | AGING AND ADULT SERVICES | 2/25/2021 | 8/20/2021 |
| McAdoo, John | SHERIFF | 2/24/2021 | 8/20/2021 |
| Bankston, Josh | SHERIFF | 2/9/2021 | 8/19/2021 |
| Cushman, Harris | SHERIFF | 12/22/2020 | 8/19/2021 |
| Burchfield, James | PUBLIC WORKS | 11/17/2020 | 7/16/2021 |
| Fleeman, Justin | SHERIFF | 9/17/2020 | 2/8/2021 |

**KCERA
STATUS OF DISABILITY RETIREMENT APPLICATIONS
AS OF OCTOBER 31, 2023**

| COMPLETED IN 2023 | | | |
|--------------------------|--------------------------------|--------------|-----------------------|
| NAME | DEPARTMENT | FILED | DATE COMPLETED |
| Carvel, Scott | DISTRICT ATTORNEY | 1/27/2017 | 8/9/2023 |
| Rodriquez, Ted | SHERIFF | 6/22/2017 | 4/12/2023 |
| Coletti, John | SHERIFF | 01/30/18 | 3/8/2023 |
| Hulsey, Jonathan | PROBATION | 4/18/2018 | 6/14/2023 |
| Champlin, Timothy | PROBATION | 4/25/2018 | 8/9/2023 |
| Terry, Leann | SHERIFF | 10/17/2019 | 5/3/2023 |
| Brown, Michael | SHERIFF | 4/14/2020 | 4/12/2023 |
| Diffenbaugh, Anthony | FIRE | 6/9/2020 | 8/9/2023 |
| Tisinger, Douglas | KERN COUNTY WATER AGENCY | 10/5/2020 | 4/12/2023 |
| Carrillo, Mabelle | ANIMAL CONTROL | 11/18/2020 | 6/14/2023 |
| Bravo, Enrique | SHERIFF | 3/1/2021 | 8/9/2023 |
| Brandon, Bradly | SHERIFF | 3/4/2021 | 8/9/2023 |
| Garcia, Judy | KERN COUNTY HOSPITAL AUTHORITY | 3/29/2021 | 10/11/2023 |
| Gardner, Stephen | FIRE | 7/19/2021 | 4/12/2023 |
| Barnes, Mark | SHERIFF | 12/3/2021 | 5/3/2023 |

**KCERA
DISABILITY RETIREMENT APPLICATION APPEALS PENDING
AS OF OCTOBER 31, 2023**

| ADMINISTRATIVE HEARING | DEPARTMENT | DATE FILED | SDAG RECOMMENDATION | APPEAL RECEIVED | HEARING OFFICER ASSIGNED | STATUS |
|---------------------------|---|------------|---------------------|-----------------|--------------------------|----------------------|
| Baker, Breanne | DEPARTMENT OF HUMAN SERVICES | 4/2/2020 | SDAG to deny SCD | 9/14/2023 | 10/3/2023 | With Hearing Officer |
| Martinez de Moore, Brenda | BEHAVIORAL HEALTH AND RECOVERY SERVICES | 12/10/2018 | SDAG to deny SCD | 9/15/2023 | 10/3/2023 | With Hearing Officer |

| WRIT OF MANDATE | DEPARTMENT | DATE FILED | BOARD DECISION | PETITION FOR WRIT FILED | STATUS |
|-----------------|------------|------------|----------------|-------------------------|--------|
|-----------------|------------|------------|----------------|-------------------------|--------|

| COURT OF APPEAL | DEPARTMENT | DATE FILED | BOARD DECISION | PETITION FOR WRIT FILED | JUDGMENT ON WRIT | NOTICE OF APPEAL RECEIVED | STATUS |
|-----------------|------------|------------|----------------|-------------------------|------------------|---------------------------|--------|
|-----------------|------------|------------|----------------|-------------------------|------------------|---------------------------|--------|

| HEARINGS COMPLETED IN 2023 | | | |
|----------------------------|------------|------------|----------------|
| NAME | DEPARTMENT | DATE FILED | DATE COMPLETED |
| Morgan, Gloria | SHERIFF | 03/26/15 | 02/24/23 |
| Ashley, Mark | SHERIFF | 09/03/15 | 03/10/23 |

KCERA
CASH FLOW POSITION
SEPTEMBER, 2023
TREASURER'S POOLED CASH

| | | | |
|--------------------------------|--------------|-----------|----------------------------|
| Beginning Cash Balance: | | \$ | 5,367,632 |
| Employer Contributions | 27,070,464 | | |
| Employee Contributions | 4,459,054 | | |
| Service Purchases | 272,682 | | |
| Miscellaneous | | | |
| Total Receipts: | | | 31,802,200 |
| Operating Expenses | (436,922) | | |
| Investment Expenses | (557,991) | | |
| Transfers-out | (34,500,000) | | |
| Total Disbursements: | | | <u>(35,494,913)</u> |
| Ending Cash Balance: | | \$ | <u>1,674,919</u> |

NORTHERN TRUST

| | | | |
|--|--------------|-----------|----------------------------|
| Beginning Cash Balance: | | \$ | 146,901,220 |
| Private Markets - Distributions | 4,736,430 | | |
| Commingled Funds - Distributions | 403,929 | | |
| Hedge Funds - Distributions | | | |
| Redemption Western Asset Mgmt | | | |
| Redemption Harvest | 15,000,000 | | |
| Redemption PIMCO | 5,000,000 | | |
| Redemption Wellington | 20,000,000 | | |
| Redemption AllianceBernstein | | | |
| Redemption Stone Harbor | | | |
| Redemption | | | |
| Residual Funds Mellon Agg Bond | | | |
| Dividend and Interest Income | 5,026,184 | | |
| Class Action Proceeds | 105 | | |
| Interest | 747,282 | | |
| Securities Lending Earnings (NET) | | | |
| Total Receipts: | | | 50,913,930 |
| Capital Calls Covenant | (2,100,000) | | |
| Capital Calls Landmark | (653,565) | | |
| Capital Calls Warren Equity | (4,792,814) | | |
| Capital Calls Fortress | (1,153,303) | | |
| Capital Calls Long Wharf | (594,648) | | |
| Capital Calls Peak Rock | (975,233) | | |
| Contribution BlackRock Short Duration | (50,000,000) | | |
| Other Expenses | (13,397) | | |
| Transfers-out | (1,000,000) | | |
| Total Disbursements: | | | <u>(61,282,960)</u> |
| Ending Cash Balance: | | \$ | <u>136,532,190</u> |

**KCERA
CASH FLOW POSITION
SEPTEMBER, 2023**

WELLS FARGO BANK

| | | |
|-------------------------------|--------------|----------------------------|
| Beginning Cash Balance | | \$ 1,772,775 |
| Transfer In Northern Trust | 1,000,000 | |
| Transfer In TPC - County | 34,500,000 | |
| ACH Returns / Deletes | 37,250 | |
| Total Receipts: | | 35,537,250 |
| ACH Benefit Payments | (31,257,581) | |
| Wires | (11,426) | |
| Total Checks Paid | (314,150) | |
| Taxes Withholding Deposits | (4,507,335) | |
| Bank Services | (590) | |
| Total Disbursements: | | (36,091,083) |
| WFB ending Balance | | <u>\$ 1,218,942</u> |

**KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
INVESTMENT FEES CASH FLOW REPORT
FOR THE MONTH ENDED SEPTEMBER, 2023**

| Description | July | August | September | Total |
|--|-----------------|---------------------|-------------------|---------------------|
| Investment Base Fees: | | | | |
| Domestic Equity: | | | | |
| AllianceBernstein | | | | 0.00 |
| Henderson Geneva Capital | | 95,077.00 | | 95,077.00 |
| Mellon Capital | | | | 0.00 |
| International Equity: | | | | |
| BlackRock | | | 90,670.26 | 90,670.26 |
| Fixed Income: | | | | |
| Mellon Capital (Ag Bond) | | | | 0.00 |
| Pacific Investment Management Company | | 275,622.93 | | 275,622.93 |
| Western Asset Management | | | | 0.00 |
| Commodities: | | | | |
| Wellington Trust Company | | 312,457.14 | | 312,457.14 |
| Real Estate: | | | | |
| ASB Capital Management | | 319,553.46 | | 319,553.46 |
| Midstream Energy: | | | | |
| Harvest Midstream | | | | 0.00 |
| Overlay | | | | |
| Parametric | | 74,523.00 | | 74,523.00 |
| Subtotal | 0.00 | 1,077,233.53 | 90,670.26 | 1,167,903.79 |
| Investment Professional Fees: | | | | |
| Consulting: | | | | |
| Abel Noser | | | 7,875.00 | 7,875.00 |
| Albourne America LLC | | 33,333.33 | 33,333.33 | 66,666.66 |
| Cambridge Associates | | | 187,500.00 | 187,500.00 |
| Glass, Lewis & Co. | 7,950.00 | | | 7,950.00 |
| Two Sigma | | 11,250.00 | | 11,250.00 |
| Verus | | 34,166.67 | 34,166.67 | 68,333.34 |
| Consulting - Other Expenses | | | | 0.00 |
| Custodial: | | | | |
| The Northern Trust Co. | | | | 0.00 |
| Legal: | | | | |
| Foley & Lardner LLP | | | | 0.00 |
| Hanson Bridgett LLP | | | | 0.00 |
| Nossaman LLP | | 8,983.50 | 82,779.00 | 91,762.50 |
| Due Diligence / Investment-Related Travel: | | | | |
| Subtotal | 7,950.00 | 87,733.50 | 345,654.00 | 441,337.50 |
| Total Investment Fees | 7,950.00 | 1,164,967.03 | 436,324.26 | 1,609,241.29 |

KCERA
Operating Expense Budget Status Report
For the Month Ended Sept 30, 2023

| Expense Type | Budget FY 2023/24 | Expenses | Over (Under) |
|---------------------------------------|----------------------|---------------------|-----------------------|
| Staffing | | | |
| Salaries | 4,215,888.00 | 732,098.93 | (3,483,789.07) |
| Benefits | 2,655,190.00 | 405,429.82 | (2,249,760.18) |
| Staffing Total | 6,871,078.00 | 1,137,528.75 | (5,733,549.25) |
| Staff Development | | | |
| Education & Professional Development | 120,000.00 | 8,751.25 | (111,248.75) |
| Staff Appreciation | 4,000.00 | 237.13 | (3,762.87) |
| Staff Development Total | 124,000.00 | 8,988.38 | (115,011.62) |
| Professional Fees | | | |
| Actuarial fees | 100,000.00 | - | (100,000.00) |
| Audit fees | 98,275.00 | - | (98,275.00) |
| Consultant fees | 115,000.00 | - | (115,000.00) |
| Legal fees | 70,000.00 | 337.50 | (69,662.50) |
| Professional Fees Total | 383,275.00 | 337.50 | (382,937.50) |
| Office Expenses | | | |
| Building expenses | 124,000.00 | 16,837.60 | (107,162.40) |
| Communications | 84,062.00 | 9,741.14 | (74,320.86) |
| Equipment lease | 12,000.00 | 2,875.75 | (9,124.25) |
| Equipment maintenance | 10,100.00 | 6,898.66 | (3,201.34) |
| Memberships | 20,000.00 | 4,970.00 | (15,030.00) |
| Office supplies & misc. admin. | 80,000.00 | \$9,028.09 | (70,971.91) |
| Payroll & accounts payable fees | 25,000.00 | - | (25,000.00) |
| Other Services - Kern County | 40,000.00 | 28,676.00 | (11,324.00) |
| Postage | 20,000.00 | 602.10 | (19,397.90) |
| Subscriptions | 15,000.00 | 2,418.87 | (12,581.13) |
| Utilities | 30,000.00 | 11,979.61 | (18,020.39) |
| Office Expense Total | 460,162.00 | 94,027.82 | (366,134.18) |
| Insurance | 173,384.00 | \$156,584.27 | (16,799.73) |
| Member Services | | | |
| Disability - administration MMRO | 200,000.00 | 16,675.00 | (183,325.00) |
| Member communications | - | - | - |
| Member Services Total | 200,000.00 | 16,675.00 | (183,325.00) |
| Systems | | | |
| Audit – security & vulnerability scan | 15,000.00 | 9,670.00 | (5,330.00) |
| Business continuity expenses | 16,050.00 | 9,176.92 | (6,873.08) |
| Hardware | 37,420.00 | 7,649.21 | (29,770.79) |
| Licensing & support | 140,780.00 | 113,275.72 | (27,504.28) |
| Software | 217,600.00 | 66,151.80 | (151,448.20) |
| Website design & hosting | 13,200.00 | 2,200.00 | (11,000.00) |
| Systems Total | 440,050.00 | 208,123.65 | (231,926.35) |
| Board of Retirement | | | |
| Board compensation | 12,000.00 | 900.00 | (11,100.00) |
| Board conferences & training | 50,000.00 | 3,304.63 | (46,695.37) |
| Board elections | - | - | - |
| Board meetings | 8,500.00 | 625.17 | (7,874.83) |
| Board of Retirement Total | 70,500.00 | 4,829.80 | (65,670.20) |
| Depreciation / Amortization | 42,651.00 | 12,115.20 | (30,535.80) |
| Total Operating Expenses | 8,765,100.00 | 1,639,210.37 | (7,125,889.63) |

◆ Class Action Activity Detail by Event Name

| Class Action Name | Event Status | Event Status As Of | Class Start Class End | Filing Deadline | Objection/ Exclusion Deadline | Claims Admin Name | Web Address | |
|--|--------------|--------------------|--|---------------------------|-------------------------------|-------------------------------|--|-------------------------|
| ALEXION PHARMACEUTICALS, INC. (D. CONN.) | NOTIFIED | 13 Oct 23 | 29 Jan 14 23 Aug 17 | 15 Dec 23 | 29 Nov 23 29 Nov 23 | KCC Class Action Services LLC | www.alexionsecuritiessettlement.com | |
| | | | Claim Status as of Date/ Claim Status | Account Paid | Account Paid Name | Amount Currency | Distribution/ Type | Date Distributed |
| | | | 2671873 | ZZKNCTY-T. ROWE PRICE -SL | 13 Oct 23 TO BE FILED | | | |
| SEAWORLD ENTERTAINMENT INC.- SEC FAIR FD | FILED | 05 Oct 23 | 19 Dec 13 10 Nov 14 | 19 Oct 23 | | JND Legal Administration | www.seaworldfairfund.com | |
| | | | Claim Status as of Date/ Claim Status | Account Paid | Account Paid Name | Amount Currency | Distribution/ Type | Date Distributed |
| | | | 2671874 | ZZKNCTY-PANAGORA -SL | 05 Oct 23 FILED | | | |
| | | | 2671877 | ZZKNCTY-COLUMBIA MGMT.-SL | 05 Oct 23 FILED | | | |
| THE KRAFT HEINZ COMPANY (N.D. ILL.) | FILED | 03 Oct 23 | 05 Nov 15 05 Nov 19 | 10 Oct 23 | 22 Aug 23 22 Aug 23 | JND Legal | www.kraftheinzsecuritieslitigation.com | |
| | | | Claim Status as of Date/ Claim Status | Account Paid | Account Paid Name | Amount Currency | Distribution/ Type | Date Distributed |
| | | | 2671873 | ZZKNCTY-T. ROWE PRICE -SL | 03 Oct 23 FILED | | | |

◆ Class Action Activity Detail by Event Name

| Class Action Name | Event Status | Event Status As Of | Class Start Class End | Filing Deadline | Objection/ Exclusion Deadline | Claims Admin Name | Web Address |
|---------------------------|--------------------|--------------------|-----------------------|-----------------|-------------------------------|-------------------|-------------------------------------|
| UNDER ARMOUR, INC. (2017) | NOTIFIED | 03 Oct 23 | 16 Sep 15 | | | Gilardi | underarmoursecuritieslitigation.com |
| | INFORMATIONAL ONLY | | 01 Nov 19 | | 27 Nov 23 | | |

| Account Notified/Filed | Account Notified/Filed Name | Claim Status as of Date/ Claim Status | Account Paid | Account Paid Name | Amount Currency | Distribution/ Type | Date Distributed |
|------------------------|-----------------------------|---------------------------------------|--------------|-------------------|-----------------|--------------------|------------------|
| 2671873 | ZZKNCTY-T. ROWE PRICE -SL | 03 Oct 23 INFORMATIONAL ONLY | | | | | |

Although this report has been prepared using information believed to be reliable, it may contain information provided by third parties or derived from third party information, and/or information that may have been obtained from, categorized or otherwise reported based upon client direction. The Northern Trust Company does not guarantee the accuracy, timeliness or completeness of any such information. The information included in this report is intended to assist clients with their financial reporting needs, but you must consult with your accountants, auditors and/or legal counsel to ensure your accounting and financial reporting complies with applicable laws, regulations and accounting guidance. The Northern Trust Company and its affiliates shall have no responsibility for the consequences of investment decisions made in reliance on information contained in this report.

My Report Library

Class Action Proceeds by Account

Page 1 of 1

| Account Paid | Account Paid Name | Class Action Name | Gross Amount Paid | Net Amount Paid | Service Charge | Processing Charge | Currency | Date Distributed |
|------------------|----------------------------|-----------------------------------|-------------------|------------------|------------------|-------------------|-------------|------------------|
| 2608468 | KNCTY-CASH ACCOUNT | HARBORVIEW MORTGAGE LOAN | 923.02 | 923.02 | 0.00 | 0.00 | USD | 04 Aug 23 |
| 2608468 | KNCTY-CASH ACCOUNT | VALUECLICK, INC. | 56.02 | 56.02 | 0.00 | 0.00 | USD | 16 Aug 23 |
| Sub Total | 2608468 | and Currency | USD | 979.04 | 979.04 | 0.00 | 0.00 | |
| 2664130 | *KNCTY-ALLIANCEBERNSTEIN-S | GRANITE CONSTRUCTION INC (N.D.) | 406.92 | 406.92 | 0.00 | 0.00 | USD | 11 Jul 23 |
| Sub Total | 2664130 | and Currency | USD | 406.92 | 406.92 | 0.00 | 0.00 | |
| 2667336 | KNCTY-GENEVA | HEALTHCARE SERVICES GROUP, | 4,631.24 | 4,631.24 | 0.00 | 0.00 | USD | 25 Aug 23 |
| Sub Total | 2667336 | and Currency | USD | 4,631.24 | 4,631.24 | 0.00 | 0.00 | |
| KNC06 | KNCTY-WESTERN ASSET MGMT | HARBORVIEW MORTGAGE LOAN | 155.51 | 155.51 | 0.00 | 0.00 | USD | 04 Aug 23 |
| Sub Total | KNC06 | and Currency | USD | 155.51 | 155.51 | 0.00 | 0.00 | |
| KNC08 | KNCTY-WESTERN ASSET MGMT | VALEANT PHARMACEUTICALS INTL | 15,154.79 | 15,154.79 | 0.00 | 0.00 | USD | 20 Jul 23 |
| Sub Total | KNC08 | and Currency | USD | 15,154.79 | 15,154.79 | 0.00 | 0.00 | |
| KNC13 | KNCTY-SGA | NIELSEN HOLDINGS PLC * (S.D.N.Y.) | 5,360.50 | 5,360.50 | 0.00 | 0.00 | USD | 06 Jul 23 |
| Sub Total | KNC13 | and Currency | USD | 5,360.50 | 5,360.50 | 0.00 | 0.00 | |

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Public Pension Coordinating Council

***Public Pension Standards Award
For Funding and Administration
2023***

Presented to

Kern County Employees' Retirement Association

In recognition of meeting professional standards for
plan funding and administration as
set forth in the Public Pension Standards.

Presented by the Public Pension Coordinating Council, a confederation of

National Association of State Retirement Administrators (NASRA)
National Conference on Public Employee Retirement Systems (NCPERS)
National Council on Teacher Retirement (NCTR)

A handwritten signature in black ink that reads "Alan H. Winkle". The signature is written in a cursive style.

Alan H. Winkle
Program Administrator



KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

Memorandum from the
Office of the Chief Executive Officer
Dominic D. Brown

Date: November 1, 2023
To: Trustees, Board of Retirement
From: Dominic D. Brown, Chief Executive Officer *Dominic D. Brown*
Subject: **Initiation of Service Provider Evaluation Period**

The Board of Retirement's Evaluation Period Policy was established to help ensure that decisions involving the selection, retention, or termination of KCERA service providers are consistent with fiduciary standards of conduct, and that service providers being considered by KCERA are treated fairly.

An "evaluation period" may be initiated by the Chief Executive Officer ("CEO") in the following situations:

- a) when a request for proposals (RFP) has been issued by KCERA or a short list of candidate firms has been identified for consideration by KCERA, or
- b) the Board otherwise deems it to be in the best interest of KCERA and its members and beneficiaries to do so.

The CEO has exercised his discretion and initiated the evaluation period for the following providers:

- 1) ITE Rail Fund L.P.

Trustees are required to comply with the evaluation period restrictions upon receipt of this notification. (See Board Communications Policy).

During evaluation periods, trustees shall not communicate with the specified service providers, except during board meetings, committee meetings, or KCERA-authorized due diligence visits; nor shall they accept meals, travel, hotel, or other types of gifts from the specified service providers. Notwithstanding the above, Trustees who need to communicate with such service providers for reasons unrelated to KCERA business agree to disclose such need to the Board beforehand. If circumstances do not permit timely disclosure to the Board, the trustee shall provide disclosure of the intended communication to the CEO and to the Chair or Vice-Chair.

Service providers that breach this policy may be terminated by KCERA or disqualified from consideration in a search process. Board members who breach this policy may be sanctioned in accordance with the KCERA Code of Conduct.

Initiation of Service Provider Evaluation Period

November 1, 2023

Page 2

(See Evaluation Period Policy).

Pursuant to the aforementioned policies, staff recommends your Board ratify the evaluation period instituted by Chief Executive Officer Dominic Brown and delivered to the Board on October 25, 2023.

ALTERNATIVE INVESTMENTS RECORDS

EXEMPT FROM PUBLIC DISCLOSURE

(CA Gov. Code §7928.710)

(CA Gov. Code §7922.000)

(CA Gov. Code §54957.5)

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Date: November 1, 2023

To: Trustees, Board of Retirement

From: Daryn Miller, CFA, Chief Investment Officer
Jack Bowman, Senior Investment Analyst
Rafael A. Jimenez, Investment Analyst II

Subject: **Emerging Markets Manager Termination**

RECOMMENDATION

Staff recommends the termination of the Alliance Bernstein Emerging Markets Strategic Core (“Strategy”) mandate. Staff has arrived at this recommendation through thorough analysis and diligence of the Strategy’s relative performance, expected drivers of excess return, and ability to produce investment results that are repeatable, understandable, and consistent with expectations.

BACKGROUND

Alliance Bernstein Emerging Markets Strategic Core: The Alliance Bernstein Emerging Markets Strategic Core Strategy forms a part of the Plan’s Emerging Market Equity allocation within the broader Global Equity portfolio. As of the end of Q3 2023, the market value of the Strategy was valued at \$53.1M. The Strategy represents 24.5% of the Plan’s allocation to Emerging Markets Equity, 3.2% of the Plan’s allocation to Global Equity, and 1.0% of the total Plan assets as of the end of Q3 2023.

The Strategy’s performance was assessed from inception of KCERA’s investment (December 2016) in addition to a longer time period dating back to inception of the Strategy (July 2012) in order to better analyze performance over different market cycles and environments. The Strategy is benchmarked to the MSCI Emerging Markets Index (Net Dividend).

Investment Philosophy & Process: The Strategy is structured to earn a premium above the benchmark over a market cycle through the combination of downside protection and capturing most of the upside in rising markets. This is explicitly expressed through the Strategy’s 90% upside-market capture ratio / 70% downside-market capture ratio objective. In principle, achieving this asymmetric return profile should produce attractive relative returns as capturing less of the market’s downside permits investment returns to compound to a higher rate of return.

The portfolio management team seeks to accomplish its investment philosophy through investing in high-quality, stable companies at the right price; the team commonly refers to these attributes as “Quality”, “Stability”, and “Price” (“QSP”). Quality aims to capitalize on the empirical evidence that companies with quality metrics, such as high profitability, have shown that profitability can be maintained for longer than mean reversion would suggest. Stability can be translated to the *low volatility premium* or the belief that less crowded, lower beta stocks will outperform the Capital Asset Pricing Model based on their betas. Price is comparable to value and allows the team to invest in companies with a higher margin of safety.

Performance: The Strategy has delivered an annualized net-of-fee return of 3.63% from KCERA's investment inception through the end of Q3 2023, resulting in -0.34% excess return relative to the MSCI EM Index over the same period. The Strategy has delivered an annualized net-of-fee return of 4.18% from Strategy inception through the end of Q3 2023 or 1.57% of excess return over the benchmark.

The Strategy has successfully added value in periods where the team was able to achieve its stated 90% upside capture / 70% downside capture ratio, unfortunately this has not been the case on a consistent basis. Staff has calculated the Strategy's capture ratios on an annual basis based on monthly returns of the composite (gross-of-fees for comparability) and the index. Staff has determined that on an annual basis, the Strategy was able to concurrently realize its target capture ratio of 1.286 (i.e., 90% upside / 70% downside) in three calendar years since Strategy inception; two of the years were prior to KCERA's investment. It should be noted that the Strategy has been effective at providing downside protection and has captured less than 70% of the broader market's downside in four calendar years since Strategy inception. However, the downside protection alone has not been enough to compensate for the overall underperformance of the Strategy. Since KCERA's investment inception, the Strategy has achieved an 85% upside capture ratio and an 80% downside capture ratio.

Staff has also examined the explanatory power of QSP through the factor's coefficient of determination (R^2) since Strategy inception in July 2012. In order to derive R^2 , staff examined the correlation of the Strategy's excess return with the performance of the QSP factors. QSP factors were modeled through the returns of the *MSCI Emerging Markets Factor Mix "A"* Index, an equal weighted combination of the MSCI Quality, Minimum Volatility, and Value Weighted indices. Staff determined that although in certain years, the explanatory power of QSP to the Strategy's excess return was significant, the magnitude of R^2 is not consistent between different time periods. The explanatory power of the factors since inception is approximately 29%. The result of staff's analysis is that over 70% of the Strategy's relative performance can be attributed to either, 1. idiosyncratic stock selection or 2. other factors.

REINVESTMENT

Staff believes that the inefficiencies inherent in Emerging Markets Equity make the asset class attractive for active management. Staff will undertake a search to replace the Strategy with another active investment manager. The manager has not yet been determined. In the interim, cash from the recommended termination will be invested in the passive *Mellon Emerging Markets Stock Index Fund*.

CONCLUSION

The decision to terminate an existing investment manager is never easy. It is usually the case that the decision is not formulaic but includes both art and science. Staff has determined that while the team at Alliance Bernstein has developed and articulated a clear investment philosophy, the team has not been able to capitalize on their proposition in a consistent manner resulting in the Strategy's underperformance. Furthermore, the inconsistency leads to investment results that are both less repeatable and understandable for the investor. Consequently, Staff has determined that termination is appropriate.

Memorandum

To: Board of Retirement, Kern County Employees' Retirement Association
CC: Daryn Miller, CFA, Chief Investment Officer
From: Scott J. Whalen, CFA, CAIA, Executive Managing Director and Senior Consultant
Date: November 1st, 2023
RE: AB Emerging Markets Strategic Core Equity

Executive Summary

KCERA Investment Staff recently conducted a review of the AB Emerging Markets Strategic Core Equity fund ("the fund"). This review follows an extended period of lower-than-expected performance and was conducted to ensure KCERA's Emerging Market Equity allocation fulfills its role in the overall investment portfolio. Following a thorough evaluation Staff is recommending termination at this time, based on concerns the strategy will not meet performance expectations going forward. Staff is further recommending that upon termination the assets held in the strategy be moved to the Mellon Emerging Markets Stocks Index Fund as a passive holding place until a suitable replacement can be found.

Verus supports Staff's recommendation.

Strategy

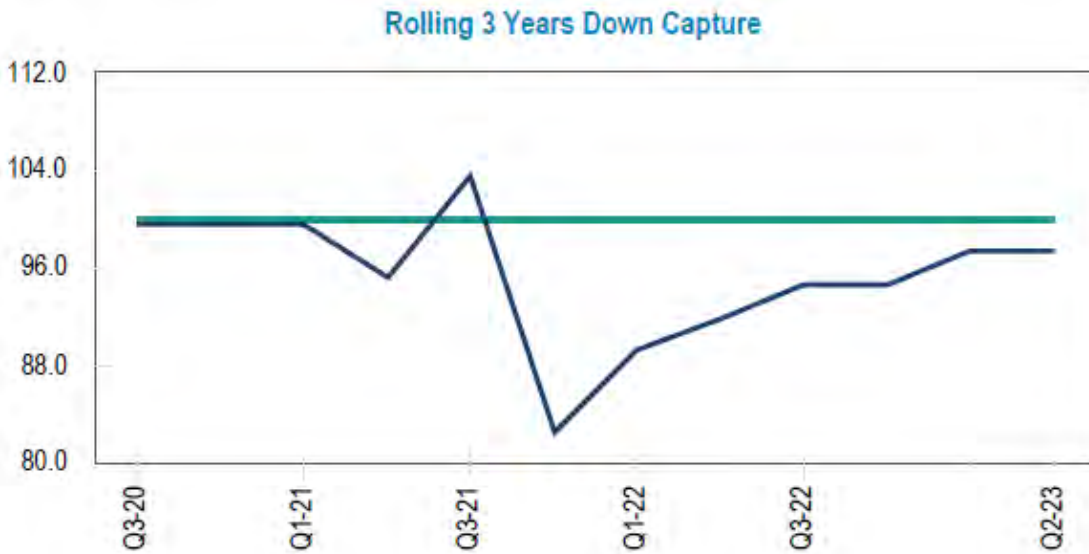
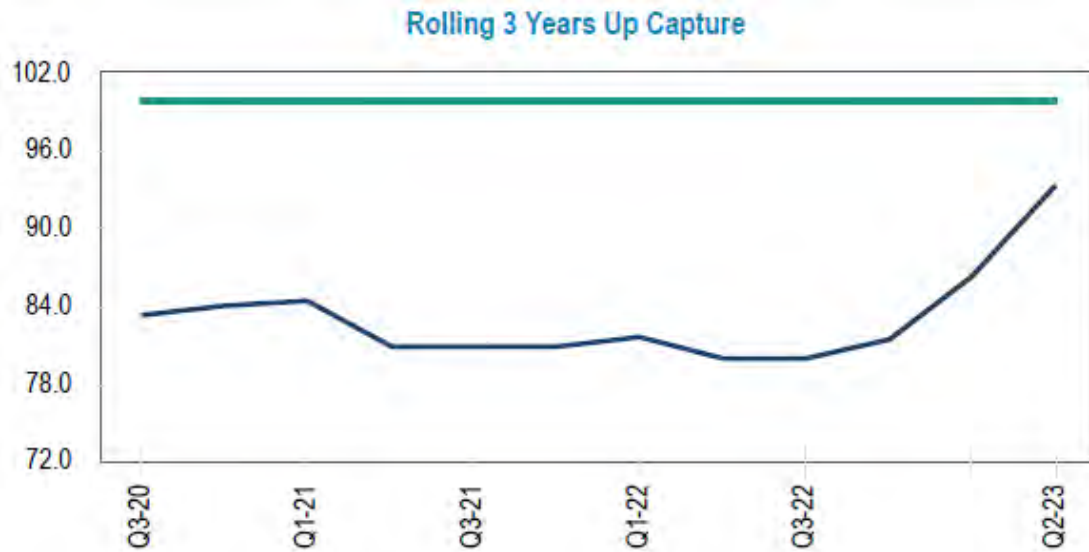
The Emerging Markets Strategy Core Equity fund is built to capitalize on a series of pricing anomalies AB has identified and refers to as quality, stability, and price ("QSP"). Quality aims to capitalize on the empirical evidence that companies with favorable quality metrics (e.g., high profitability) can maintain those metrics longer than the market expects. Stability essentially refers to the "low volatility premium". Because many investors are drawn to stocks with abnormally high returns, they overestimate the chance of future success of these stocks and are also overconfident in their ability to identify future winners. This leads the fund to focus on less followed, lower-beta stocks, which tend to outperform relative to market expectations. Finally, Price is essentially AB's version of value, and they argue price discipline allows the fund to avoid crowded trades and invest in companies with a higher margin of safety.

AB seeks to capture these QSP attributes through their use of quant models and proprietary bottom-up, fundamental research. They believe the fundamental research captures idiosyncratic drivers, which add valuable context to the quantitative QSP profile and supports the decision-making process.

Performance

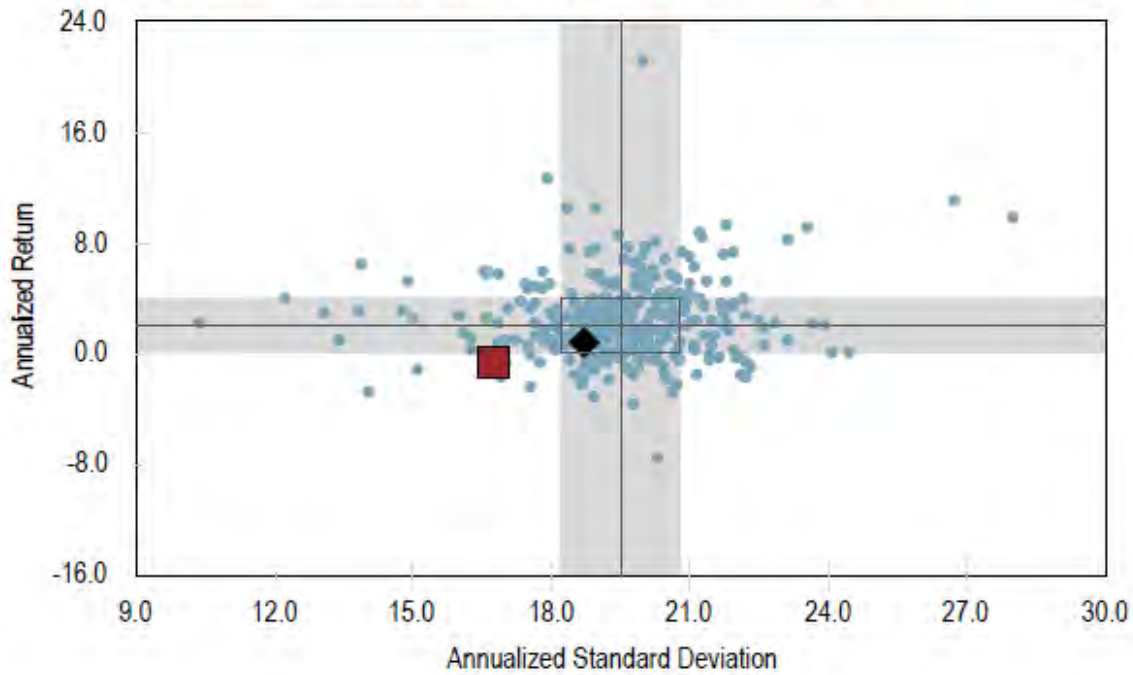
KCERA initiated its position in the fund in 2016. The original thought behind the investment was that AB offered lower volatility and downside protection in an historically high-volatility asset class. A key component of AB's investment philosophy is that downside protection will provide a larger base from which to recover during up markets, leading to higher long-term returns. AB targets a downside capture ratio of 70%, which means that on average, the fund will only fall 70% as far as the benchmark as markets sell off. Conversely, AB targets a 90% upside capture

ratio, meaning the fund will return 90% of the benchmark return when markets are rising. Since inception, AB has not met these objectives, capturing more of the downside and less of the upside than anticipated. And while the fund has shown considerably less volatility than the benchmark and the median peer in a representative peer universe, the fund has also underperformed the benchmark and median peer over most time periods. Recent upside/downside capture and longer-term relative performance is shown in the following charts.



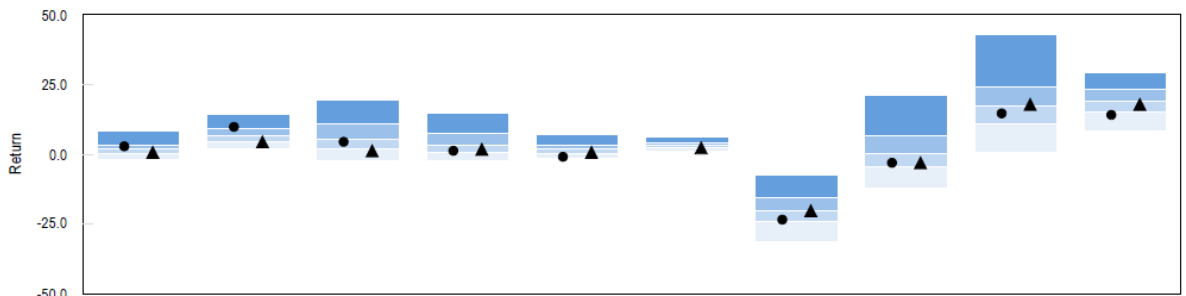
— AB Emerging Markets Strategic Core Equity
— MSCI Emerging Markets (Net)

5 Years Annualized Return vs. Annualized Standard Deviation



| | Return | Standard Deviation |
|---|--------|--------------------|
| ■ AB Emerging Markets Strategic Core Equity | -0.61 | 16.73 |
| ◆ MSCI Emerging Markets (Net) | 0.93 | 18.70 |
| — Median | 2.19 | 19.50 |

AB Emerging Markets Strategic Core Equity vs. eV Emg Mkts Equity



| | 3 Mo | YTD | 1 Yr | 3 Yrs | 5 Yrs | 10 Yrs | 2022 | 2021 | 2020 | 2019 |
|---|-----------|------------|-----------|-----------|------------|-----------|-------------|------------|------------|------------|
| ● AB Emerging Markets Strategic Core Equity | 3.48 (32) | 10.30 (21) | 5.01 (58) | 1.60 (73) | -0.61 (93) | - | -23.23 (73) | -2.90 (70) | 15.23 (64) | 14.75 (81) |
| ▲ MSCI Emerging Markets (Net) | 0.90 (72) | 4.89 (77) | 1.75 (79) | 2.32 (65) | 0.93 (71) | 2.95 (69) | -20.09 (51) | -2.54 (68) | 18.31 (47) | 18.42 (57) |
| 5th Percentile | 8.61 | 14.71 | 19.63 | 15.15 | 7.48 | 6.48 | -6.79 | 21.39 | 43.39 | 29.73 |
| 1st Quartile | 3.92 | 9.59 | 11.31 | 8.29 | 3.81 | 4.50 | -15.22 | 7.06 | 24.57 | 23.50 |
| Median | 2.16 | 7.08 | 6.11 | 3.93 | 2.19 | 3.58 | -20.03 | 0.58 | 17.72 | 19.24 |
| 3rd Quartile | 0.71 | 5.01 | 2.22 | 1.23 | 0.74 | 2.76 | -23.87 | -4.35 | 11.53 | 15.83 |
| 95th Percentile | -1.58 | 2.09 | -2.42 | -2.11 | -1.31 | 1.48 | -31.04 | -11.90 | 1.01 | 8.46 |

Verus Position

We believe patience with managers is an important contributor to the long-term success of an investment strategy, and extended periods of underperformance occur with even the best managers. That said, AB's underperformance appears to be attributable to an inability to consistently execute on a key element of their investment philosophy, i.e., upside and downside capture targets, which has led to long-term underperformance relative to both their benchmark and a representative peer group. As such, we concur with Staff's recommendation to terminate at this time.

Past performance is no guarantee of future results. This document is provided for informational purposes only and is directed to institutional clients and eligible institutional counterparties only and is not intended for retail investors. Nothing herein constitutes investment, legal, accounting or tax investment vehicle or any trading strategy. This document may include or imply estimates, outlooks, projections and other "forward-looking statements." No assurance can be given that future results described or implied by any forward-looking information will be achieved. Investing entails risks, including possible loss of principal. Verus – also known as Verus Advisory™.

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Board Education:
Life Cycle of an Investment

Presented by:
KCERA Leadership

KCERA Board of Retirement

Investment Process Education

This presentation is intended to provide the Trustees of the Board an educational session highlighting the KCERA investment process and provide an overview of the coordinated effort across KCERA's different teams.



Investment Process Education

1. Investment Process

Overview of the investment process spanning idea generation to recommendation, approval and funding.

2. Legal Process

Overview of the Legal Department's involvement in the process of legal underwriting and contracting with an investment manager.

3. Accounting & Reporting Process

Overview of the Accounting & Reporting Department's involvement in the process of account setup and funding.

4. Ongoing Investment-related Activities

Overview of continuing investment diligence and ongoing collaboration between departments for existing investments.

INVESTMENTS

Presented by the KCERA Investment Team

Daryn Miller, CFA, CIO

Geoff Nolan, Senior Investment Officer

Jack Bowman, Senior Investment Analyst

Rafael Jimenez, Investment Analyst II

Investment Process

Research & Internal Diligence

How does the investment team generate ideas? What steps are taken to underwrite an opportunity? What internal discussion takes place before a recommendation is formed?

Consultant Involvement

What role do Investment Consultants serve in the investment process?



Investment Committee & Board of Retirement Recommendation

How does an investment opportunity move through the necessary approval process?

Contracting & Account Origination

What steps are taken to establish a relationship with an investment manager? How does Staff work with Legal and Accounting?

Idea Generation

- Ideas for potential investment opportunities are generated through:
 - 3rd party data and research
 - Current and prospective investment manager data and research
 - Investment consultants
 - News
 - Phone calls, webcasts and in person and virtual meetings (quarterly & ad hoc)

Initial Research

- Validating market, opportunity and strategy
 - Review research
 - Calls with consultants and investment managers
 - Gauge potential risk and return
 - Consider portfolio fit

- Draft preliminary Internal Investment Committee meeting diligence report

Round 1

➤ Internal Investment Committee – Round 1

The Internal Investment Committee consists of the 4 investment team members

- Present preliminary memo, which includes investment thesis and research
- Discuss portfolio placement
- Identify areas that require additional research
- Determine the most suitable process to understand and underwrite the investment
- Discuss consultant research and involvement
- Discuss timing considerations

Internal Due Diligence, Research, and Analysis

- Deep dive investment due diligence
 - Collect, review, and analyze investment manager materials (data, models, research, reports...)
 - Collect data from third party sources
 - If needed pursue RFP process
 - Identify peer strategies
 - Hold multiple conversations with investment manager
 - Identify third parties to discuss, evaluate and test investment thesis
 - Review consultant due diligence materials if available; hold conversations with investment consultant
 - Develop internal models and to test and analyze investment
 - For some strategies load data into Risk Analytic System for analysis

Consultant Involvement

- Investment Consultants conduct independent due diligence of prospective investments through their respective iterative process.
 - Traditional Investments – Verus Investments
 - Hedge Fund & Alpha Pool Investments – Albourne Partners
 - Private Market Investments – Cambridge Associates
- Consultants arrive at assessment of investment suitability determined through:
 - Additional 3rd party research and investment databases
 - Independent conversations and communication with investment managers including key decision-makers
 - Operational diligence considerations
- Investment Staff and Consultants discuss observations and any areas of concern or further diligence.
- If all due diligence pans out, a draft a full diligence report and bring recommendation to the Internal Investment Committee.

Round 2 and/or Final

➤ Internal Investment Committee – Round 2 and/or Final

The Internal Investment Committee consists of the 4 investment team members; each member has a vote on all investments

- Present complete in-depth examination of investment
- Questions and discussions regarding investment
- Discuss risk and rewards
- Evaluate sizing
- Identify funding source
 - For terminations identify destination for redeeming capital
 - Discuss potential benefits a transition manager could bring to process
- Assess other strategies competing for same capital
- **Arrive at final determination for portfolio inclusion or determine if additional due diligence is needed**

Investment Committee & Board of Retirement Recommendation

- Once Staff and consultant reach an investment conclusion, a recommendation memorandum is drafted for the Investment Committee and Board. The memorandum can be prepared by Staff, or the consultant, or both. The memorandum covers:
 - Investment opportunity & thesis
 - Allocation within the portfolio
 - Firm & strategy background
 - Vehicle & terms
 - Risks & considerations

- Recommendation is provided to members of Investment Committee.

- Upon Investment Committee approval, recommendation is provided to Board of Retirement for final approval.

Contracting & Account Origination

- Following Board of Retirement approval, Investment Staff works with Legal and Investment Manager to begin contracting process.
- Investment Staff works with Accounting & Finance to begin account origination process.
 - Investment Staff complete a New Account Setup form and sends to Accounting
- Investment Staff creates a new Checklist for New Investments, to ensure all required steps are followed
 - Setting up appropriate internal electronic folder structure
 - Updating internal database and monitoring tools for new (or terminating) investment
 - Completing a Trade Authorization Form
 - Notification of third parties (consultants, securities lending, overlay, trade cost analysis, etc.)

LEGAL

Presented by the KCERA Legal Team

Jennifer Zahry, CLO

Maggie Peralta-Lee, Senior Paralegal

Irma Chavez, Senior Legal Secretary

Legal Involvement

- Evaluate Investment Type –
 - External Counsel vs. In-House
 - Availability of Counsel
 - Conflicts check
 - Fee quote

- Document review and Negotiation
 - Document Types – Private Placement Memorandum (PPM), Limited Partnership Agreement (LPA), Subscription Documents/Questionnaires
 - Investment Counsel Deliverables – Client Memo, Side Letter Draft
 - Internal and External Review and Direction to Investment Counsel
 - Negotiation Process
 - Supplemental Material – Exhibits, Templates, Insurance, Placement Agent forms, Manager Policies
 - Letters to Managers re Trustee and Staff information
 - Closing Letter

Legal Involvement

- Subscription Agreement and Investor Questionnaire
 - Lengthy – 70-90 pages each
 - Terms and wording varies depending on Fund Administrator
 - Eligibility to invest, Accredited Investor status, Qualified Investor, Qualified Purchaser, Beneficial Ownership, Institutional Investor, Benefit Plan Status, Anti-Money Laundering, CEA, CFTC, NFA Registration, CRS, FATCA, FINRA

- Subscription Agreement – supplemental documents/evidence of authority
 - Wire instructions
 - Account information
 - W-9
 - Authorized Signature & Contact List
 - Plan formation documents
 - IRS Determination Letter

Legal Involvement

- Prepare and submit subscription documents for review
- Review, Update and Prepare Side Letter Exhibits
- Coordinate Execution of Closing Documents
 - Notary, as needed
- Secure Delivery
- Tracking of Closing Documents

ACCOUNTING & REPORTING

Presented by KCERA Accounting and Reporting Team

Angela Kruger, CFO

Maritza Rodriguez, DCFO

Rachael Martinez, Senior Accountant

Cory Pruett, Senior Accountant

Accounting & Reporting Involvement

- Northern Trust Account Setup
 - Complete new account setup forms for Separate Managed Accounts (SMA) and submit to Northern Trust (NT) for processing.
 - Complete new account setup for Commingled Funds through Northern Trust (NT) portal.
- Wire Instructions
 - Provide wire instructions to the Legal Team as needed for investment subscriptions documents.
 - Provide wire instructions confirmation to investment managers.
- Contribution & Redemptions
 - Process investments contributions and capital calls through NT portal.
 - Process investments redemptions and distributions through NT portal.



ONGOING ACTIVITY

Presented by KCERA Leadership

Ongoing Activity – Investments

- Investment Managers are monitored continuously.
 - Staff conducts quarterly review meetings to understand performance, attribution and drivers of performance or underperformance.
 - Quarterly reviews present Staff the opportunity to discuss concerns, positioning, outlook, and any changes to the investment team, process, assets under management, and flows.
 - Consultants provide a review of the strategies under their coverage on a regular basis.

- Investment Staff regularly monitors asset class and sub-asset class exposure; portfolio rebalancing is performed as needed and/or with a view towards tactical or risk management positioning.

- Investment Policy Statement (IPS) Compliance:
 - Account statements
 - Performance measures and commentary
 - Manager positioning, exposure and risk reports
 - Audited Annual Financial Statements
 - Annual Form ADV
 - Manager reconciliation

Ongoing Activity – Legal

➤ Legal Team

- Non-Disclosure Agreements (NDAs)
- Most Favored Nations (MFN) elections
- Fund extension consent forms
- Additional Subscriptions
- Redemptions
- Regulatory compliance documents
 - Common Reporting Standards (CRS) Self-Certification forms
 - Financial Industry Regulatory Authority (FINRA) Rule 5130/ 5131 Questionnaires
 - SEC Rule 506 Regulation D Questionnaires
 - Foreign Account Tax Compliance Act (FATCA) Compliance forms
- Custodian letters
- Letters of Authorization
- Contact Update forms
- Authorized Signatory and Contacts Lists
- Preparing and tracking of any other documents requiring authorized signatures
- Proof of insurance tracking and filing
- Additional fund documents (Amended & Restated LPAs, Supplements to PPMs, Form ADV brochures, etc.)
- External counsel billing

Ongoing Activity – Accounting and Reporting

- Monthly Investment Reconciliations
 - Review, reconcile and journalize all investment activities.
 - Correct errors with NT
 - Capital Calls/Contributions
 - Redemptions/distributions
 - Income/Gain/losses
- Management fees
 - Process invoices received for management fees.
 - Journalized management fees paid indirectly from investment funds
- Process month end and/or year end cash transactions related to rebalancing

Ongoing Activity – Accounting and Reporting

➤ Year End Activities

- Verify all monthly/quarterly investment statements and annual financial reports are on file.
 - When monthly/quarterly investment statements or financial reports are missing, Accounting contacts the manager to request the missing documents.

➤ Indirect Management Fees

- Review all the fund statements for indirect management fees deducted from the account balance and journalize the fees.
 - When investment managers do not send an invoice or indicate the management fee(s) in the statement, Accounting contacts the manager to request a breakdown of the fees for the current fiscal year. Once received, Accounting journalizes the fees.

➤ Cost to Market Reconciliation – 12/31 and 6/30

- Twice a year the cost of the asset is brought up to market value by journalizing the gains/losses for each asset.

Ongoing Activity – Accounting and Reporting

➤ Annual Audit

- Prepare a full listing of Plan assets detailing individual managers by asset type.
- Provide a listing of investment managers and contact information, as well as a listing of all alternative investments, real estate and commingled funds held at June 30.
- Prepare investment manager confirmation as required by the auditors.
- Provide manager statements and annual financials as required.

➤ ACFR Preparation

- Prepare a comprehensive list of all investment manager fees, direct and indirect, by investment type.
- Prepare a listing of all investment related services/consultants and associated expenses.
- Government Accounting Standard Board (GASB) requirements:
 - Comprehensive listing of all investments measured at fair value. All investments are categorized within the fair value hierarchy, which has three levels based on valuation input.
 - Credit quality and investment maturity by investment type
 - Foreign currency exposure
 - Securities Lending transactions
 - Derivative investment summary
 - Largest stock and bond direct holdings



Kern County Employees' Retirement Association— Fiduciary Training Update

Julie Becker, Partner

Benita Falls Harper, Associate
Partner

November 1, 2023



1

Fiduciary Concepts



Who is a Fiduciary?

Property is entrusted to a “trustee” on behalf of a beneficiary who receives money from the trust.

There are two ways in which one is a fiduciary under the law:

- 1** The “designation” approach where the law or plan documents specifically designate a person as a fiduciary, or
- 2** The “functional” approach, where a person is deemed to be a fiduciary by virtue of their discretionary authority and control over plan assets, e.g., investment managers and investment consultants, certain staff.

Who is a Fiduciary?

- A person's fiduciary duty is limited to the scope of responsibility delegated to them.
- A fiduciary may not avoid fiduciary status through documentation stating they are not a fiduciary.
- Usually those performing ministerial tasks are not fiduciaries.
- Typically, accountants, attorneys, actuaries and record keepers are not considered to be fiduciaries.

You don't have to be identified as a fiduciary or accept fiduciary status to be a fiduciary.

2

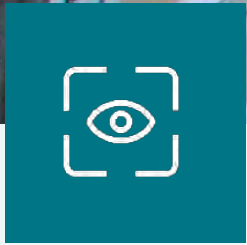
Key Fiduciary Standards



Key Fiduciary Standards

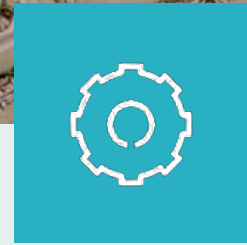
| | | | | | |
|--------------------------------|---|---|--|---|---------------------------------------|
| Key Fiduciary Standards | Loyalty | Prudence | Diversification | Follow Plan Document | Prohibited Transactions |
| | Loyalty requires an unwavering commitment to act solely in the best interests of the beneficiaries for the exclusive purpose of providing them with benefits, also known as the “exclusive benefit rule.” | Prudence means having the required expertise, and if you do not have expertise, seeking it out. It is also how you make decisions and document the process. | Diversify to minimize risk unless it is not prudent. | Following plan documents is abiding by the applicable laws, regulations, policies and guidelines. | Refrain from prohibited transactions. |

Overview of Fiduciary Standards



Exclusive Benefit Rule

- Act solely in the interest of the participants
- Reasonable fees and expenses



Prudent Expert Standard

- Care, skill and diligence
- Prevailing facts and circumstance
- Focus on prudent process



Diversification

- Diversify to minimize risk unless imprudent to do so



Follow Plan Documents

- To the extent consistent with applicable law



Prohibited Transactions

- No self-dealing
- No acting against plan interests
- Limited exceptions

Duty of Loyalty

ERISA Exclusive Benefit Rule:

A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —

For the exclusive purpose of:

- Providing benefits to participants and their beneficiaries
- Defraying reasonable expenses of administering the plan

ERISA § 404(a)(1)

Duty of Loyalty in Practice



Avoid conflicts; if you cannot, then disclose and recuse



When making decisions, fiduciaries may not balance interests

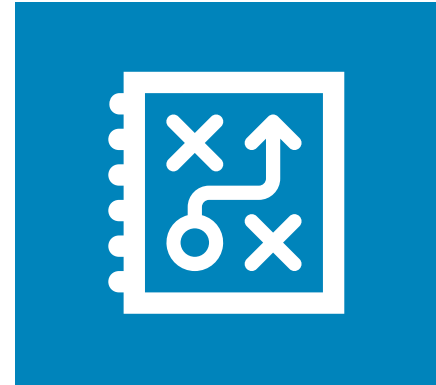


When acting as a fiduciary, you may not put others' interests ahead of the System's interests



The duty of loyalty has not evolved — courts strictly interpret

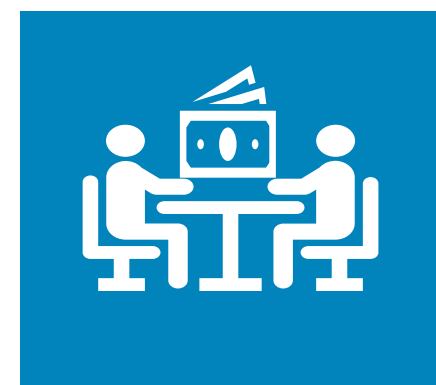
Examples of Areas Where Duty of Loyalty Comes into Play



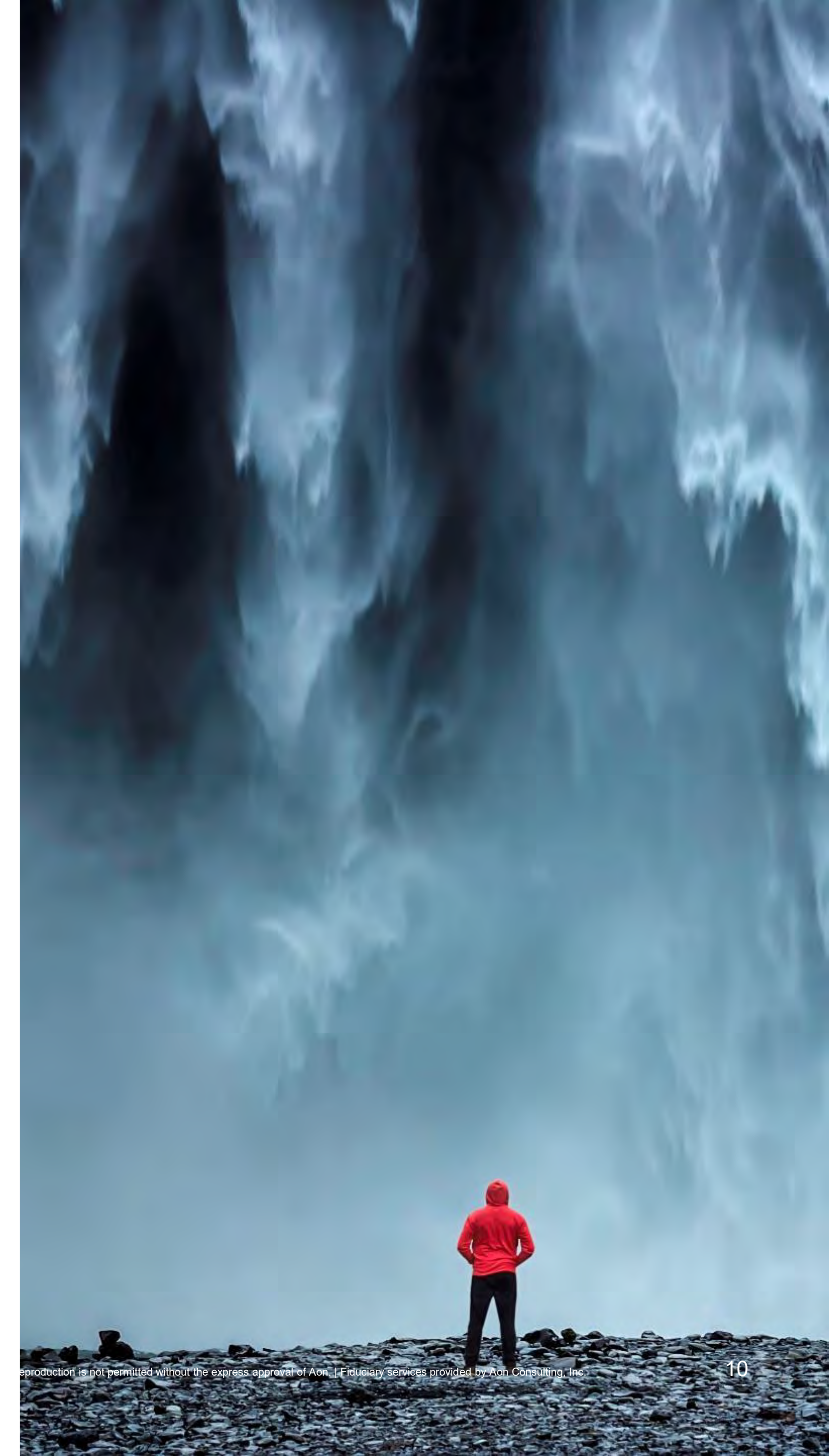
Conflicts of Interest



Acting in your self-interest



Kickbacks from investment managers



Duty of Prudence

Fiduciaries are judged by the prudence of their process.

“The test of prudence is one of conduct, and not a test of the result of performance of the investment. The focus of the inquiry is how the fiduciary acted in his selection of the investment, and not whether his investment succeeded or failed.”

Donovan v. Cunningham, 716 F.2d 1455, 1467 (5th Cir.1983)

Duty of Prudence

- A good process is more important than a good outcome and is the best defense to potential liability.
 - **Written documentation is critical** to demonstrate that you acted prudently. Hard to prove your conduct or process if it is not documented.
- The law requires prudence, not perfection.
- Contemplates comparison to peers.
- It is judged on an objective standard — prudent fiduciary behaves as other similarly situated fiduciaries would behave.

Examples of Areas Where Duty of Prudence Usually Comes into Play



1

**Setting the
Asset Allocation**



2

**Documentation
of Processes**



3

**Retaining Expert
Assistance**



4

**Reviewing
Performance**



5

Managing Risk



6

**Delegation of
Authority**

Standards of Prudence Evolve

Prudence standards evolve over time.

- Fiduciaries need to stay current.
- Due diligence practices of the past may not be enough.
- Investments with the potential for high returns are often higher risk and require more due diligence.

Decisions should be made using contemporary standards of prudent experts

- More specialized advice from independent consultants/ service providers may be needed.
- More written opinions rather than verbal “off the cuff” comments may be helpful.

Duty of Prudence in Practice

Collect and understand information before making a decision.

- Consult with knowledgeable, independent outside external and/or internal experts (other staff).
- Review information on what others are doing, i.e., your peers.
- Decisions should be consistent with information and policy.
- Decisions should be made using contemporary standards of prudent experts — remember the duty of prudence evolves over time.

Document steps taken in the deliberative decision-making process (evidence of prudent process).



Duty of Prudence — Delegation

A trustee has a duty personally to perform the responsibilities of trustee except as a prudent person might delegate those responsibilities to others. In deciding whether, to whom and in what manner to delegate fiduciary authority in the administration of a trust, and thereafter in supervising agents, the trustee is under a duty to the beneficiaries to exercise fiduciary discretion and to act as a prudent person would act in similar circumstances. Restatement of Trusts 3rd

- Delegation is allowed and even encouraged by the Prudent Investor Act and ERISA.
- Failure to delegate may be a fiduciary breach.

Duty of Prudence — Delegation

- To be prudent, when delegating the following generally applies:
 - Duty of prudence in selecting qualified professionals;
 - Duty to specify the scope of the delegation;
 - Duty to monitor the professionals to ensure the delegation is carried out in a manner consistent with the delegation, and the delegation continues to be prudent.
- Board members may delegate but they cannot abdicate their fiduciary responsibility.

Duty to Follow Plan Documents

- A fiduciary shall discharge his or her duties with respect to the plan in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of the law. ERISA § 404(a)(1)(D)
 - **Plan document can include** multiple documents (By-laws, Investment Policy Statement, policies adopted by the Board)
- Fiduciaries cannot be arbitrary and capricious in their application of applicable law(s) or plan.
- Familiarity with plan documents is essential.

Duty to Monitor

U.S. Supreme court opinion held fiduciaries have a continuing duty — separate and apart from the duty to exercise prudence in selecting investments at the outset — to monitor and remove imprudent investment options. *Tibble v. Edison International*, 135 S.Ct. 1823 (2015), *Hughes v. Northwestern Univ.*, 595 U.S. __ (2022).

Trust but verify.



The board's role is to establish policies and procedures that staff can implement to protect the fund and ensure the highest level of services from external advisors.

Adequate reporting is necessary for prudent monitoring.

Duty to Diversify

Diversification is key to minimize the risk of a large losses unless under the circumstances it is clearly prudent not to do so.

The duty to diversify emanates from the duty of prudence.

Modern Portfolio Theory typically applies —

- > Consider each investment within the context of the entire portfolio

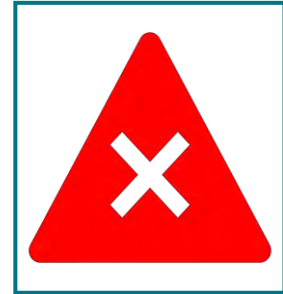
Create an “optimal” portfolio given the board’s risk/return preferences

3

Fiduciary Pitfalls



Prohibited Transactions



Prohibited Transactions = Conflicts of Interest



Conflicts of interest can arise if personal financial gain impairs objective decision-making

Prohibited Transactions

- Conflicts of interest can arise if personal financial gain impairs objective decision-making.
- ERISA bars fiduciaries from engaging in certain transactions, e.g., conducting business with the plan and/or conducting business with the employer, employees, stakeholders, plan fiduciaries, service providers, and statutorily defined owners, officers, and relatives of parties-in-interest.

Prohibited Transactions

- “Prohibited transactions” include:
 - A sale, exchange, or lease of any property between the plan and party-in-interest;
 - Lending money or other extension of credit between the plan and party-in-interest;
 - Furnishing goods, services, or facilities between the plan and party-in-interest.
- “Self-dealing” means:
 - Using the plan’s assets in one’s own interest;
 - Acting on both sides of a transaction involving the plan;
 - Receiving anything of value for one’s personal account from any party doing business with the plan related to that business.

Ways to Mitigate Fiduciary Liability

A thorough orientation and continuing education on fiduciary responsibility

A good understanding of common scenarios where fiduciary duties come into play

A thorough decision-making process with clear documentation of actions and rationale

Obtain expert advice from the staff, legal counsel, and others when needed

Prudent delegation and diligent oversight —understand what authority has been delegated and what authority has been retained

Good governance policies including clear accountability and a commitment to ongoing oversight activities

Utilize Good Governance



Examples of Fiduciary Pitfalls

| | | | |
|---|---|--|---|
| Failing to operate the System prudently and for the exclusive benefit of participants | Failure to document decisions | Failure to periodically review policies | Failure to engage in ongoing education |
| Failure to engage in succession planning | Inconsistent actions | Failure to identify problems and act when needed | Failure to follow the plan documents (unless inconsistent with law) |
| Overreaction to recent information | Failure to have a strategic plan and/or follow it | Failure to properly select and monitor service providers | Operating in a vacuum, not knowing what the industry and your peers are doing |

Independence

- It is important for a pension fund to be independent.
- Independence is often measured by evidence of a pension fund's:
 - Procurement authority
 - Budgetary authority
 - Personnel authority — hire, evaluate, compensate, and terminate staff
- If non-fiduciaries are able to exert control over pension fund fiduciaries, the duties of loyalty and prudence could be compromised.

Independence

- The duty of loyalty demands independence from:
 - The appointing body
 - The plan sponsor
 - Taxpayers
 - The public
 - Sub-groups of the participants

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Suite 700
Chicago, IL 60601

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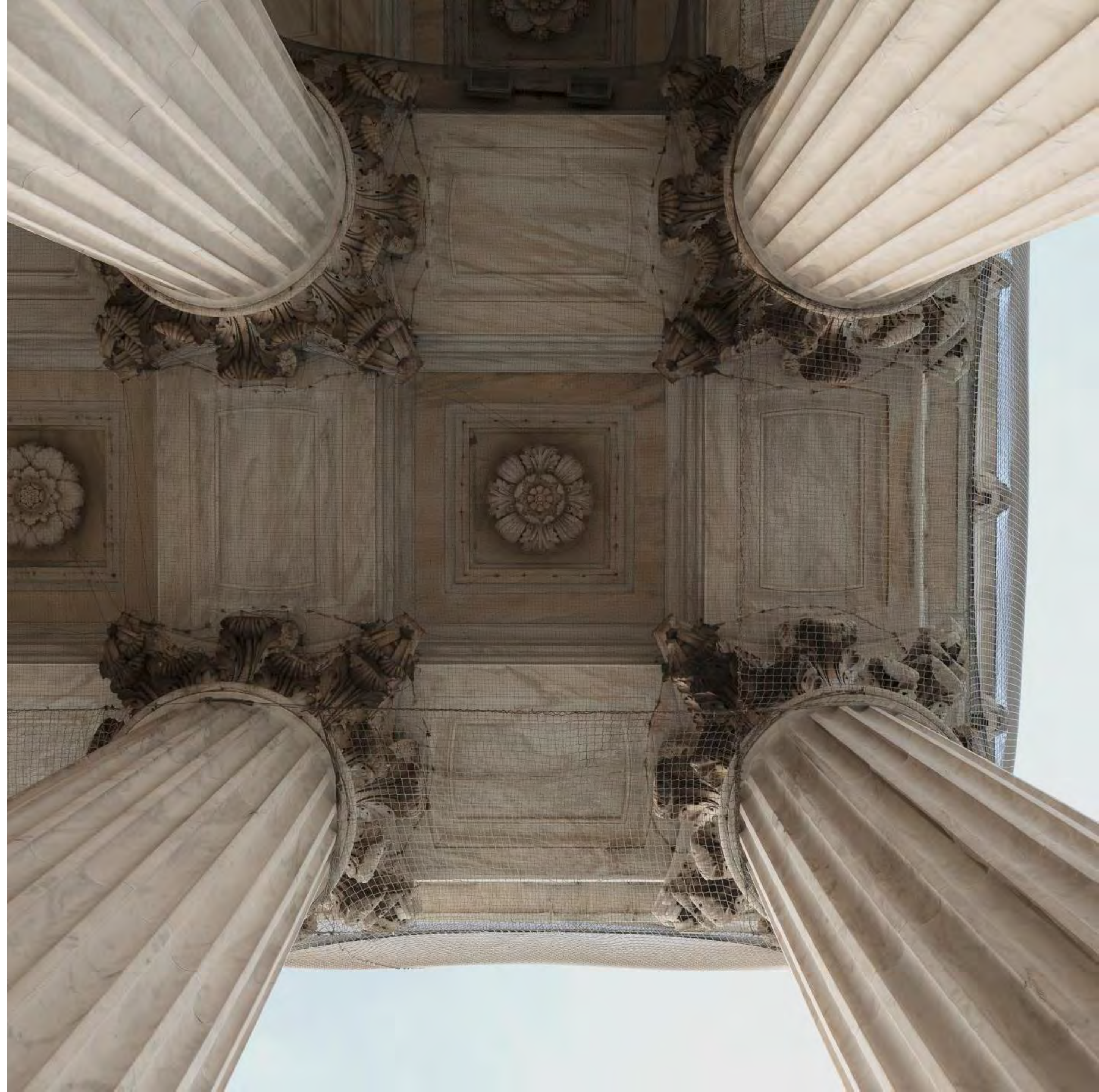
Kern County Employees' Retirement Association

Governance – Delegation Discussion

Julie Becker, Partner

Benita Falls Harper, Associate Partner

November 1, 2023



Executive Summary

This presentation aims to facilitate a discussion regarding policy making at the Investment Committee and Board levels. The Board and Investment Committee set policy around various components to form oversight of the KCERA portfolio, including responsibilities for manager selection and termination.

Topics for discussion today include:



Overview of
delegation and
best practices



Roles and
Responsibilities



Considerations
for KCERA



Public Fund Peer
Examples



Next steps

1

Delegation Overview and Best Practices



Delegation Defined

- Delegation means assigning specific responsibilities to others, comes in a variety of different forms and must be tailored to specific circumstances.
- Delegation is allowed and even encouraged by the Prudent Investor Act and ERISA.
- Delegation is a **fiduciary decision**. If you do not have the expertise, then failure to obtain expert advice and/or delegate may be a fiduciary breach.
- **To be prudent** when delegating, the following generally applies:
 - Duty of prudence in selecting qualified professionals, including Staff & Consultants.
 - Duty to specify the scope of the delegation, including clearly defined process, roles and parameters.
- Board members may delegate; but they **cannot abdicate their fiduciary responsibility**.
 - **Duty to monitor** to ensure the delegation is carried out in a manner consistent with the delegation, and the delegation continues to be prudent.

Necessary Elements for Responsible Delegation

To be prudent, when monitoring:

- 1** Clear and Available Procedure Documentation
 - Process documentation must be clear and available
 - Roles and Responsibilities must be well-defined
 - Board “sign-off” on process is important
- 2** Sufficient Resources
 - Internal and external resources must be appropriate and understood by Board
 - Important to have process for reviewing resources
 - Comfort and confidence in resources are key
- 3** Appropriate and Clear Parameters
 - Asset classes or liquidity basis
 - % of portfolio or \$ thresholds
 - New managers or existing
- 4** Board / IC Monitoring Standards and Expectations
 - Defined reporting needed to fulfill oversight duties
 - Review delegation remains appropriate
 - Use/oversight of Board appointed consultant

Delegation Benefits and Considerations

- **Everything falls back to process:** agreed upon and clearly documented processes and procedures can allow for prudent delegation.
- Prudent delegation can enhance efficiency and effectiveness of the Board.

| Benefits | Risks | Risk Mitigating Factors |
|--|--|---|
| <ul style="list-style-type: none"> • Allows investment decisions to be made more efficiently and expeditiously | <ul style="list-style-type: none"> • Reduced participation for delegating body (Board or Investment Committee) | <ul style="list-style-type: none"> • Setting appropriate parameters and procedures • Regular reviews of delegation |
| <ul style="list-style-type: none"> • Allows greater flexibility for those who have the greatest expertise to complete their duties | <ul style="list-style-type: none"> • If not carefully monitored, fiduciaries can become complacent in oversight and monitoring over time | <ul style="list-style-type: none"> • Regularly scheduled monitoring and review standards • Document monitoring standards in IPS (with focus on: before, during and after) |
| <ul style="list-style-type: none"> • Affords the delegating body (Board) more time to focus on items of higher importance such as asset allocation and policy decisions | <ul style="list-style-type: none"> • Additional monitoring, reporting, and policy language is critical to a successful delegation model – all of which require resources and time | <ul style="list-style-type: none"> • Concurrence from all parties on path forward • Communicating and acknowledging next steps and expectations |
| <ul style="list-style-type: none"> • May enhance fiduciary oversight and risk management, if implemented correctly <ul style="list-style-type: none"> - Those delegated activities will be held to certain processes and standards including reporting requirements that need to be met | <ul style="list-style-type: none"> • Transparency may be more limited under a delegated model | <ul style="list-style-type: none"> • Well-defined processes and reporting requirements |

Sample Range of Delegated Responsibilities

The duty of prudence allows and *expects* the Board to delegate

✓ Indicates KCERA's Board delegates this responsibility to Staff or Advisors

Usually, non-delegated duties

- Approval of Investment policy statement
- Permissible asset classes that can be used
- Asset allocation decisions and risk tolerance
- Operating Budget
- Selection of investment consultants and custodian bank
- Internal versus external management

Sometimes delegated/ sometimes not

- Active versus passive management
- Number of managers in each class
- Specific mandates/ allocations to each manager
- Selection of transition manager and when to use one
- Selection of private market funds (private equity, infrastructure, private credit, real estate, certain opportunistic, hedge funds)
- Selection and termination of publicly traded investment managers

Frequently delegated duties

- Rebalancing activities ✓
- Criteria for manager searches ✓
- Meeting with managers/ due diligence visits ✓
- Requesting and reviewing proposals and responses ✓
- Ongoing manager monitoring ✓
- Transitions, liquidity, and documentation of transactions ✓

2

Roles and Responsibilities



Prudent Delegation - Roles and Responsibilities of Board and Staff



KCERA Board

- Responsible for setting and reviewing policies and guidelines which direct staff in their work
- Delegate policy implementation to KCERA staff, external managers, consultants and other service providers
- Oversee and monitor the program as fiduciaries
- Revise and redirect the program as necessary



KCERA Staff

- Execute day-to-day operations of KCERA in accordance with Board policies
- Implement strategic goals and plans set by the Board, including consultation with external advisors
- Allocate resources, personnel, time and budget
- Provide regular reports and updates to Board and Committees

KCERA Current Policy Language Allows for Prudent Delegation

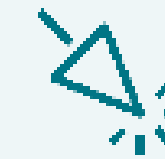
California Government Code 31594 allows for prudent delegation:

- o “...the Board may, in its discretion, invest, or **delegate the authority to invest**, the assets of KCERA through the purchase, holding, or sale of any form or type of investment, financial instrument, or financial transaction **when prudent in the informed opinion of the Board.**”

The IPS includes the following policy language regarding delegation:

- o “An effective governance framework includes **delegation of decision-making authority** to the most capable resources”

The IPS includes a process with defined responsibilities for manager due diligence, selection, monitoring and termination.



Key Takeaway:

Prudent delegation to qualified experts is a fiduciary duty

Manager Selection Process Overview – Current Process

Private Markets

1. Initiation and Evaluation: Guided by the pacing plan and forward calendar, the CIO will coordinate with the investment consultant regarding due diligence. A written due diligence report is produced.



2. Investment Committee Approval: Recommendation memo is presented to the IC. IC will determine whether to approve the investment and to recommend the investment to the Board. Timing considerations may require investment is recommended directly to the Board.



3. Final Approval: The Investment Committee's recommendation is presented to the Board for final approval.

Public Markets

1. Initiation and Evaluation: CIO coordinates with the Investment Consultant regarding due diligence. A written due diligence report is produced.



2. Investment Committee Approval: Recommendation memo is presented to the IC. IC will determine whether to approve the investment and to recommend the investment to the Board. Timing considerations may require investment is recommended directly to the Board.



4. Final Approval: The Investment Committee's recommendation is presented to the Board for final approval.

3

Considerations for KCERA



Key Considerations for Board When Implementing Delegation

| Key Considerations | ✓ |
|---|---|
| Robust process in place for manager selection | |
| • Process and procedures well-defined | |
| • Clearly defined roles and responsibilities | |
| • Clearly defined investment criteria for investment decisions | |
| • Defined approval process and how final decisions are made | |
| Sufficient resources available to the delegated team | |
| • Sufficient internal resources | |
| • Sufficient external resources | |
| Clearly defined thresholds for delegation of manager selection | |
| • Nominal dollar amounts or percentage of the portfolio | |
| • Appropriate per asset class | |
| • Liquidity characteristics of investment | |
| • Consideration of tracking error limits for public markets | |
| Ongoing reporting requirements | |
| • Established frequency of CIO/Staff updates/reporting | |
| • Level of detail needed | |
| • Types of reports required | |
| • Established review process and accountability | |



Key Takeaway:

Delegation works best when roles and responsibilities, reporting requirements, thresholds, and expectations are clearly defined at the onset. The delegation policy should be reviewed regularly to ensure it continues to be prudent.

Sample Monitoring Options at the Board Level



Reporting

1. Quarterly manager update reports
 - Manager Additions
 - Terminations
 - Rebalancing
2. Quarterly performance reports
 - Total fund
 - Sub-portfolios/Asset Classes
 - Managers



Presentations

1. Outcome of executed decisions related to investment managers at next regularly scheduled Board meeting
2. Periodic Asset Class Reviews
 - Annual Strategic Plan
 - Portfolio Construction
 - Performance Review
3. Updates on asset classes to serve as check on progress towards annual plan

4

Public Fund Peer Examples



Public Pension Fund Peer Research Results

About half of similarly sized peers have delegated at least some manager selection to staff

- One has full delegation
- Five have limited delegation (based either on thresholds and/or asset class constraints)
- Five have no delegation

| Public Pension Funds | Level of Delegation (None, Limited, Full) | Delegation of Selection of Public Market Funds | Delegation of Selection of Private Market Funds | Delegation Thresholds | Fund Size |
|----------------------|---|--|---|-----------------------|-----------|
| Fund A | None | No | No | No | \$5 B |
| Fund B | None | No | No | No | \$6 B |
| Fund C | Limited | No | Yes | Yes (\$) | \$6 B |
| Fund D | Full | Yes | Yes | No | \$6 B |
| Fund E | Limited | Yes | Yes | Yes (\$) | \$6 B |
| Fund F | None | No | No | No | \$7 B |
| Fund G | Limited | Yes | Yes | Yes (%) | \$8 B |
| Fund H | Limited | Yes | Yes | Yes (%) | \$8 B |
| Fund I | None | No | No | No | \$9 B |
| Fund J | None | No | No | No | \$9 B |
| Fund K | Limited | Yes | Yes | Yes (%) | \$9 B |



Key Takeaway:
There is no one-size-fits-all solution.

Peer Public Fund Delegation Analysis

- Overall, delegation practices vary and depend heavily on fund size and available internal resources
- Larger funds delegate more frequently than smaller funds – larger funds also tend to have larger investment teams

Key Takeaways:

- **There is no one-size-fits-all solution**
- The level of delegation largely depends on the comfort level with the delegating body and the processes and resources in place that support the delegated responsibilities
- Aon recommends selecting a model that works best for all constituents involved, and importantly, ensuring transparency and buy-in on processes and procedures. We believe an approach with clearly defined processes and parameters, and robust reporting requirements, can lead to a very successful delegation model

5

Next Steps

AON



What Happens Next?

Delegation is a significant decision.

Appropriate next steps for KCERA include:

1. Ensure Trustees are conversant with prudent delegation.
2. Discuss potential additional, if any, delegated activities to be considered by the Board.
3. Assign responsibility for details, including appropriate parameters, to the Investment Committee. The Investment Committee would work with Staff and the appropriate KCERA consultants.
4. Create policy and process documents for Board review.

6

Appendix



Peer Public Pension Funds Models – Manager Selection

The following table outlines examples of public pension funds of similar size to KCERA that delegate manager selection to staff with a brief description of their approval process and associated reporting

| Peer Plan | Threshold | Internal Staff / Committee Monitoring & Approval Process | Full Committee / Board Reporting |
|-----------------|--|--|---|
| Fund A \$8 B | Board approves if investments exceed the below percentage of total plan assets: <ul style="list-style-type: none"> • 5% in total between meetings • 2% for public markets • 1% for publicly traded real estate • 0.75% for private markets | <ul style="list-style-type: none"> • CIO has final authority subject to oversight of CEO • Internal Investment Committee recommends new investments to CIO for approval | <ul style="list-style-type: none"> • Board must be informed of investment no later than 3 days after closing of investment • Notification must include exec summary of investment and access to documents relied upon by staff • Investment reviewed at next regularly scheduled meeting |
| Fund B \$6 B | Board approves when investment exceeds: <ul style="list-style-type: none"> • \$150 million | <ul style="list-style-type: none"> • CIO has the final authority to select and terminate • Staff and Consultant conduct due diligence | <ul style="list-style-type: none"> • Board is informed at the next regularly scheduled meeting |
| Fund C \$6 B | None | <ul style="list-style-type: none"> • ED has the final authority to select and terminate • All decisions must be approved unanimously by a Staff Investment Committee • Staff and Consultant conduct due diligence | <ul style="list-style-type: none"> • Board is informed at the next regularly scheduled meeting |

Peer Public Pension Funds Models – Manager Selection

The following table outlines examples of public pension funds that delegate manager selection to staff with a brief description of their approval process and associated reporting

| Peer Plan | Threshold | Internal Staff / Committee Monitoring & Approval Process | Full Committee / Board Reporting |
|--------------------|---|--|--|
| Fund A >\$300 B | Board approves if investments exceed: <ul style="list-style-type: none"> • 2% of PE NAV for new PE; 4% follow on • 3% RE NAV • \$500 mil for Infrastructure | <ul style="list-style-type: none"> • Manager selection fully delegated to Staff. Consultant/advisor concurrence utilized. Consultants utilized for sourcing as needed at Staff level. Board retains its own Consultants for oversight and monitoring. • Asset class policies contain detailed guidance on delegation. | <ul style="list-style-type: none"> • Report on delegation provided annually to Board • Semi-Annual Reporting on manager ratings in public and private markets |
| Fund B \$157 B | Board approves when investment exceeds: <ul style="list-style-type: none"> - 0.5% of plan assets (approx. \$1B) for initial investments - 1% of all plan assets for follow-on investments | <ul style="list-style-type: none"> • Internal Investment Committee (IIC) meetings composed of CIO, CRO, & Investment Division SMDs to review & approve managers threshold • Board members & the IC Chair may sit in on these meetings • IIC may delegate investment discretion to asset class investment committees | <ul style="list-style-type: none"> • No reporting on manager selection/ termination • Prudence letter required for recommendations above threshold • The Board has access to full due diligence & other details through an online confidential reporting link |
| Fund C \$150 B | None | <ul style="list-style-type: none"> • Staff prepares due diligence memo • Executive Director (ED)/ CIO has ultimate approval | <ul style="list-style-type: none"> • 5–10-minute updates on asset classes at each quarterly Board meeting • No reporting on manager selection/ termination • Annual deep dive |

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KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

Memorandum from the
Office of the Chief Executive Officer
Dominic D. Brown

Date: November 1, 2023
To: Trustees, Board of Retirement
From: Dominic D. Brown, Chief Executive Officer *Dominic D. Brown*
Subject: **Special Election to Fill Vacancy – Third Member (General) Seat**

Trustee Jeanine Adams announced her resignation from the Third Member (General) seat on the KCERA Board of Retirement, effective October 18, 2023. The term for this seat expires December 31, 2025.

The KCERA Elections Procedure Policy requires your Board to call a special election within 30 days of the vacancy of an elected board member when at least 365 days remain in the term. (See attached Elections Procedure Policy, page 7, #13).

The Seventh Alternate Member (Safety) fills the vacancy in the third member seat until a successor trustee is elected and sworn in. (See Cal. Gov. Code §31520.1(b); Board Operations Policy, page 4, #20 (attached)).

Therefore, it is recommended your Board direct staff to call a special election to fill this vacancy and work with the Kern County Elections Division on implementation.



ELECTION PROCEDURES POLICY

The Board of Retirement delegates responsibility for conducting Board of Retirement elections in a manner set forth in these Election Procedures for Elected Positions on KCERA's Board of Retirement to the Board of Supervisors through its Chief Registrar of Voters.

APPLICABILITY

1. These procedures shall govern the election of the second, third, seventh, eighth and seventh and eighth alternate members to the Kern County Employees' Retirement Association ("KCERA") Board of Retirement.

ELECTION DATE; COSTS; TIME REQUIREMENTS

2. Elections shall be held on the third Tuesday in September to fill the positions for terms expiring December 31 of that year. Elections shall be conducted by the Auditor-Controller-County Clerk (hereafter "elections official"). All costs associated with any election for membership on the KCERA's Board of Retirement shall be paid by the KCERA. If any day on which action is required pursuant to these procedures falls on a weekend or holiday, the election official's next scheduled work day shall be the day on which such action must occur.

NOTICE OF ELECTION; ELIGIBILITY OF CANDIDATES

3. No later than the 76th day prior to the election date, written notice as to the election and candidacy filing procedures shall be given as follows:
 - a. For all members, notices shall be mailed to the last known address of such member on file with the KCERA.
 - b. For member organizations, notices shall be furnished to any organization of active or retired members.

The notice shall include a statement to the member that additional information regarding the election, including election results, will be posted on the KCERA website. The notice shall be mailed utilizing postal address correction notification services. Upon receipt, address correction information shall be provided to the KCERA to allow for updates prior to ballot mailing.

Any active general member who is not employed in the office of the KCERA,¹ or any deferred general member of the KCERA, is eligible to run for the position of second or third member of the Board. To be eligible to run as a safety member, the member must be among the group defined in Government Code sections 31470.2 or 31470.4. The alternate safety member shall be that candidate for the seventh member from the group under sections 31470.2 or 31470.4, which is not represented by the seventh member who received the highest number of votes of all candidates in that group.

Candidates for the eighth member and alternate eighth member on the Board of Retirement shall be retired members of the KCERA. The alternate eighth member of the Board shall be elected separately by the retired members of the KCERA in the same manner and at the same time as the eighth member is elected.

These eligibility standards shall be deemed to be amended to comply with current provisions of the County Employees' Retirement Law of 1937 or other applicable law relating to eligibility requirements for members of the Board of Retirement, or as determined by a court of competent jurisdiction.

**NOMINATION OF CANDIDATES; FILING PERIOD;
STATEMENT OF CANDIDATES**

4. At least 53 but not more than 69 days prior to the election date, the elections official shall receive nominations of candidates. The number of eligible members required to sign a nomination paper for the respective office is not less than 15, nor more than 20. Only those members qualified to vote in the election for the office may sign a nomination paper. No member may sign more than one nomination paper for the same office, and in the event a member does so, the member's signature shall count only on the first nomination paper filed which contains that member's signature. Any member eligible to vote at the election may circulate a nomination paper for the candidate for whom the member is eligible to vote, substantially in the following form:

We, the undersigned members of the Kern County Employees' Retirement Association hereby nominate _____ for the office of the _____ member on the Kern County Employees' Retirement Association Board of Retirement.

Name of Circulator

Circle one: Active General Member, Active Safety Member, Deferred General Member, Retiree

Circulator's Employing Department or Entity

¹ Kern County Employees' Retirement Association v. Bellino (2005) 126 Cal.App.4th 781

Affidavit of Circulator

I, _____, solemnly swear (or affirm) that the signatures on this nomination paper were obtained between _____, 20____, and _____, 20____; that I circulated the petition and I saw the signatures on this section of the nomination papers being written; and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be. I declare under penalty of perjury that the foregoing is true and correct.

Signature of Circulator

The circulator's affidavit may either be notarized or signed in the presence of authorized staff of the elections official. Within 10 days after the close of the nomination period, the elections official shall verify that the individuals listed on the nomination papers are eligible to sign the candidate's nomination form based on a report of eligible members provided by KCERA. Any nominee whose nomination papers do not contain an adequate number of verified members shall be so notified by the elections official, and his or her name shall not be placed on the ballot.

Each nomination petition shall include a declaration of the nominee, substantially in the following form:

I, _____, am the above-named nominee for the office of the _____ member of the Kern County Employees' Retirement Association Board of Retirement. I am a (General, Safety, General Deferred or Retired) member of the Kern County Employees' Retirement Association and if elected I will qualify and serve to the best of my ability. I request my name be placed on the official ballot for election to the Board of Retirement for the election to be held on the _____ day of November, _____. I desire my name and designation to appear on the ballot as follows: (Name and designation).

I declare under penalty of perjury that the foregoing is true and correct. Executed this _____ day of _____, 20____.

Signature of Nominee

The nominee's declaration may either be notarized or signed in the presence of authorized staff of the elections official.

The ballot shall not contain the name of any candidate unless duly nominated as provided herein. No later than 53 days prior to the election, a candidate may also submit a candidate's statement which shall be mailed with the ballot to each member. The statement, which shall not exceed 200 words, shall include the

name and occupation, including identification of the candidate's employing department or special district, and a brief description of the candidate's education and qualifications expressed by the candidate. The statement may not make reference to any other candidate's qualifications, character, or activities, and the candidate shall declare under penalty of perjury that the contents of his or her candidate statement are true and correct. The elections official shall not cause to be printed or circulated any statement which is not so limited and declared under penalty of perjury.

No later than 40 days prior to the election, the elections official shall publish a list of all candidates who are eligible to be voted for at the election. The list of candidates shall be posted at the Elections Office and at the office of the Kern County Employees' Retirement Association.

EXTENSION OF FILING PERIOD IF INCUMBENT FAILS TO FILE

5. Notwithstanding any other provision of these regulations, if nomination papers and a declaration of candidacy for an incumbent trustee is not filed by 5 p.m. on the 53rd day prior to the election, any person (other than the person who was the incumbent on the 53rd day) shall have until 5 p.m. on the 46th day before the election to file nomination papers and a declaration of candidacy as provided in paragraph 4 above. This paragraph 5 is not applicable where there is no incumbent to be elected or the incumbent is not eligible for re-election to the trustee position in which he or she holds at the time the filing period closes.

WITHDRAWAL

6. A candidate may withdraw his or her declaration of candidacy no later than 53 days prior to the election date, or in the event Paragraph 5 above is applicable, 46 days prior to the election date.

WRITE-IN CANDIDATES

7. A member may declare his or her candidacy as a write-in candidate no later than 14 days, nor earlier than 46 days, prior to the date of the election by filing nomination papers as provided in Rules 4 herein and a declaration of candidacy substantially in the following form, and signed under penalty of perjury:

I, _____, am the above-named nominee for the office of the _____ member of Kern County Employees' Retirement Association Board of Retirement. I am a (General, Safety, or Retired) member of the Kern County Employees' Retirement Association and if elected I will qualify and serve to the best of my ability. I do hereby declare myself as a write-in candidate for election to the Board of Retirement of the Kern County Employees' Retirement Association as its _____ Member. If elected I will qualify and serve to the best of my ability.

ELECTION RESULT IF NO MORE THAN ONE CANDIDATE

- 8.
- a. No later than 46 days prior to the election, if only one member has filed nomination papers and a declaration of candidacy pursuant to paragraph 4 or 5 above, no election shall be held and the elections official shall prepare an appointment in lieu of election declaring such member elected to the office for which he or she was nominated. If the Seventh is appointed in lieu of election, an election may be held for the Seventh Alternate member if an eligible candidate timely files as a Write-in Candidate.
 - b. Election of Seventh Alternate Member. The elections official shall inform KCERA of any appointment in lieu of election for the Seventh Member. Once informed, KCERA shall direct a notice regarding the Write-in Candidate process to County Departments employing eligible Seventh Alternate Member candidates, eligible member candidates, and member groups representing the Seventh Alternate Member candidates.
 - c. If no eligible candidate for the Seventh Alternate position files as a Write-in Candidate, the Board of Retirement may elect not to fill the alternate member seat, or may elect to receive applications for appointment. Applications for appointment to an alternate member seat shall be placed on a Regular Board of Retirement Meeting Agenda.

BALLOTS; STATEMENT BY BOARD OF RETIREMENT; VOTING DEADLINE

9. No later than 15 days prior to the election, ballots shall be prepared by the elections official and shall be mailed to each member eligible to vote. Ballots shall be mailed in forwardable envelopes utilizing postal address correction notification services. Upon receipt, address correction information shall be provided to the KCERA.

Members eligible to vote for the second and third members of the Board of Retirement are all active and deferred members of the KCERA. Only retired members are eligible to vote for the eighth member of the Board. All members designated as safety members are eligible to vote for the seventh member.

The names of all candidates who have timely filed the required nomination papers and declaration of intent to serve shall be printed on the ballot. At the option of the candidate, the title of the public service position he or she holds or from which he or she is retired may be printed immediately after or below his or her name on the ballot. In lieu of the public service position designation, a candidate may have the name of his or her appointing authority's department or division printed on the ballot. A candidate for the same seat which he or she presently holds may also have the word "Incumbent" printed immediately after or below his or her name on the ballot. Any title or designation provided to the elections official to print on the

ballot, as indicated above, shall be declared by the candidate to be true and correct under penalty of perjury.

The order in which the candidates appear on the ballot shall be determined by a random drawing conducted by the elections official. Voting instructions shall be included with the ballots mailed to the members. The ballot will be void and shall not be counted if the member fails to comply with voting instructions. Instead of voting for a candidate listed on the ballot, a member may cast a vote for a write-in candidate who has timely filed a valid nomination petition and declaration of candidacy by writing in the name of that member in the space provided.

In addition to the ballot, the voting instructions, and the Candidate's Statements (if any), each member shall receive a statement from the KCERA Board of Retirement substantially in the following form:

The Board of Retirement consists of nine members and two alternates, _____ of whom will be selected as a result of this election. The Board manages investments of the retirement fund, which has assets of approximately \$_____. In addition, the Board makes decisions on applications for disability retirement and on many other matters vital to its members. We urge you to take the time to learn about the candidates and to vote.

In order to be processed and counted, voted ballots must be received by the Elections Division of the Auditor-Controller-County Clerk's Office no later than 5 p.m. on the day of the election.

CAMPAIGN

10. No member may use County time or resources to campaign for a member seeking election to the Board of Retirement, including dissemination of campaign information via the County's electronic communications system; provided, however, that department heads shall permit each candidate, upon request, to post reasonable campaign material on the department bulletin board. Posted items shall be no larger than 8 ½" by 11 ½". Department heads may reasonably refuse to post any offensive or defamatory material. Nothing herein shall be deemed to make any campaign material or statement or the authors thereof free or exempt from any civil or criminal action or penalty because of any false, slanderous or libelous statements offered for distribution or posting.

TALLY OF VOTES; TIE VOTE

11. The elections official shall verify the names on all returned envelopes against the members' mailing list or roster and ready ballots for counting. Staff from the Elections Office shall serve as the canvassing board. The canvassing board shall meet at 8:00 a.m. in the Elections Office on the third day of the election, no later than the 1st Thursday following the election, for the counting of ballots and

determination of any questionable ballots. Any person may observe the tally of votes.

The candidate for the second, third, seventh, eighth and eighth alternate member offices who receives the highest number of votes cast for such office shall be elected to such office for the term next succeeding. In the event of a tie vote, the procedures set forth in Elections Code section 15651(a) shall be used to determine the election results. The elections results shall be filed with the Board of Retirement, and the Chief Executive Officer of the KCERA shall file a certificate of the election results with the Board of Supervisors.

POSTING CERTIFICATE OF ELECTION RESULTS; ELECTION CONTEST; RETENTION OF BALLOTS

12. A certificate of election results shall be posted on the KCERA's Web page and on the door at the entrance to the KCERA's office for one week commencing with the day following the day election results are certified by the elections official.

Any member of the KCERA desiring to contest the results of any election shall file a written statement of contest not later than the 30th day following the date of the election. The grounds for contest shall be those specified in California Elections Code section 16100-16101. The procedures for contests of general elections contained in the California Elections Code shall control except that the contestant and the candidate-elect whose election is being contested shall file all statements, affidavits and other papers with the Board of Retirement. The Board of Retirement shall take such action upon any election contest as it shall deem just and proper. The provisions of Code of Civil Procedure section 1094.6 (relating to limitations on time to commence proceedings in mandate) are applicable to petitions for writs of mandate filed to review final decisions of the Board on the election contest.

All envelopes containing voted ballots and all voted ballots (whether or not counted) shall be retained for 30 days in the offices of the elections official or until such further time as is required to settle any contest concerning the election.

SPECIAL ELECTIONS

13. A special election shall be called by the Board of Retirement within 30 days of the occurrence of the vacancy if a vacancy occurs for any reason during the term of office of an elected board member, other than alternate members, unless the term of office will end less than 365 days from the occurrence of the vacancy; provided, however, that if the term of office will end less than 365 days from the occurrence of the vacancy, the Board may call a special election to fill such vacancy of the Board, in its discretion, determines that such action is in the best interests of the KCERA. The Board of Retirement may call a special election to fill a vacancy occurring in the office of any alternate member if the Board, in its discretion, determines that such action is in the best interests of the KCERA.

RETIREMENT BOARD DISCRETION

14. The purpose of these election procedures is to ensure an orderly, fair and impartial process for the conduct of elections of trustees to the Board of Retirement. In the event there is any ambiguity or uncertainty regarding the application of these procedures to a particular election issue, or there is no procedure specifically addressing the election issue, the Board of Retirement shall decide the issue upon application by any person, or on its own motion. In exercising its administrative discretion under these procedures, the Board shall be mindful of the purpose of these procedures and may be guided by general principles of California elections or other applicable law.



POLICY REVIEW AND HISTORY

- 1) This policy shall be reviewed at least every five (5) years.
- 2) This policy was:
 - a) Adopted by the Board on August 8, 2018.
 - b) Amended on April 12, 2023.

West's Annotated California Codes
Government Code (Refs & Annos)
Title 3. Government of Counties (Refs & Annos)
Division 4. Employees (Refs & Annos)
Part 3. Retirement Systems (Refs & Annos)
Chapter 3. County Employees Retirement Law of 1937 (Refs & Annos)
Article 3. Retirement Board (Refs & Annos)

West's Ann.Cal.Gov.Code § 31520.1

§ 31520.1. Membership in certain counties; qualifications; term; alternate seventh member

Effective: January 1, 2012

[Currentness](#)

(a) In any county subject to Articles 6.8 (commencing with [Section 31639](#)) and 7.5 (commencing with [Section 31662.2](#)), the board of retirement shall consist of nine members and one alternate, one of whom shall be the county treasurer. The second and third members of the board shall be members of the association, other than safety members, elected by those members within 30 days after the retirement system becomes operative in a manner determined by the board of supervisors. The fourth, fifth, sixth, and ninth members shall be qualified electors of the county who are not connected with the county government in any capacity, except one may be a supervisor, and shall be appointed by the board of supervisors. A supervisor appointed as a member of the retirement board may not serve beyond his or her term of office as supervisor. The seventh member shall be a safety member of the association elected by the safety members. The eighth member shall be a retired member elected by the retired members of the association in a manner to be determined by the board of supervisors. The alternate member shall be that candidate, if any, for the seventh member from the group under [Section 31470.2](#) or [31470.4](#), or any other eligible safety member in a county if there is no eligible candidate from the groups under [Sections 31470.2](#) and [31470.4](#), which is not represented by a board member who received the highest number of votes of all candidates in that group, and shall be referred to as the alternate seventh member. If there is no eligible candidate there may not be an alternate seventh member. The first person chosen as the second and fourth members shall serve for a term of two years beginning with the date the system becomes operative, the third and fifth members shall serve for a term of three years beginning with that date, and the sixth, seventh and alternate seventh members shall serve for a term of two years beginning on the date on which a retirement system established by this chapter becomes operative. The eighth and ninth members shall take office as soon as practicable for an initial term to expire concurrent with the expiration of the longest remaining term of an elected member. Thereafter, the

terms of office of the elected, appointed, and alternate seventh members are three years, except as provided in [Section 31523](#).

(b) The alternate seventh member provided for by this section shall vote as a member of the board only if the second, third, seventh, or eighth member is absent from a board meeting for any cause, or if there is a vacancy with respect to the second, third, seventh, or eighth member, the alternate seventh member shall fill the vacancy until a successor qualifies. The alternate seventh member shall sit on the board in place of the seventh member if a member of the same service is before the board for determination of his or her retirement.

(c) The alternate seventh member shall be entitled to both of the following:

(1) The alternate seventh member shall have the same rights, privileges, responsibilities, and access to closed sessions as the second, third, seventh, and eighth member.

(2) The alternate seventh member may hold positions on committees of the board independent of the second, third, seventh, or eighth member and may participate in the deliberations of the board or any of its committees to which the alternate seventh member has been appointed whether or not the second, third, seventh, or eighth member is present.

Credits

(Added by Stats.1951, c. 1098, p. 2845, § 13.4. Amended by Stats.1953, c. 251, p. 1386, § 1; Stats.1957, c. 2370, p. 4105, § 1; Stats.1961, c. 732, p. 1974, § 1; Stats.1963, c. 645, p. 1636, § 1.5; Stats.1967, c. 240, p. 1373, § 1; Stats.1972, c. 1099, p. 2095, § 1; Stats.1973, c. 69, p. 114, § 1, eff. May 30, 1973; Stats.1977, c. 357, p. 1328, § 1; [Stats.2003, c. 62 \(S.B.600\), § 152](#); [Stats.2003, c. 852 \(A.B.1587\), § 2](#); [Stats.2007, c. 327 \(A.B.1124\), § 1](#); [Stats.2011, c. 124 \(S.B.203\), § 1](#).)

West's Ann. Cal. Gov. Code § 31520.1, CA GOVT § 31520.1

Current with Ch. 1 of 2023-24 1st Ex.Sess, and urgency legislation through Ch. 888 of 2023 Reg.Sess. Some statute sections may be more current, see credits for details.

BOARD OPERATIONS POLICY

PURPOSE

- 1) This Board Operations Policy contains various provisions regarding how the Board will administer its own activities. The policy includes but is not limited to relevant provisions of State law and Article I of the Regulations (formerly called By-laws). Provisions drawn from the Regulations and State law are so noted.

POLICY GUIDELINES

Election of Members of the Board of Retirement

- 2) The Board of Retirement delegates responsibility for conducting Board of Retirement elections in a manner set forth in the *Election Procedures for Elected Positions on KCERA's Board of Retirement* to the Board of Supervisors through its Chief Registrar of Voters. Appendix B contains a copy of the Election Procedures, which have been approved by the Board of Retirement. Appendix B is included for reference purposes only and does not form part of the Board Operations Policy.

Committee Structure

- 3) The standing committees of the Board shall be as follows:
 - a) Administrative Committee
 - b) Finance Committee
 - c) Investment Committee
 - d) Nominating Committee
- 4) In consultation with the Chief Executive Officer, the Board may approve the establishment of ad hoc committees, and the Board shall appoint the chair and members of such committees.
- 5) The Board supports the use of committees to enhance the efficiency and effectiveness of Board decision-making. Accordingly, the Board may assign or delegate to any committee the task of reviewing policies and decisions and providing recommendations to the Board for its consideration. Notwithstanding any such direction or delegation, the Board reserves the option to adopt any decision or policy

without considering committee analysis and recommendations if the Board determines that it is prudent and appropriate to do so under the circumstances.

Rules of Order

- 6) The conduct of Board and committee meetings shall be determined in accordance with:
 - a) This Board Operations Policy, including the Simplified Rules of Order set out in Appendix A;
 - b) The Regulations; and
 - c) Open meeting laws and other applicable laws.
- 7) Any question regarding the conduct of a meeting that is not addressed in paragraph 6 above, shall be determined by the Board Chair or applicable committee chair. In making such determination, the Board Chair or applicable committee chair may consult with Counsel. Any such determinations shall apply only to the meeting in question; the Board however may subsequently refer the question to the Administration Committee, which may recommend changes to the Board Operations Policy or Regulations to address the question for future meetings. Any resulting changes to the Board Operations Policy or Regulations shall not nullify the original determination by the Chair or committee chair. A Board member may, however, seek reconsideration of any decision that resulted from the original determination of the Chair or committee chair, consistent with the rules for reconsideration contained in Appendix A.
- 8) The Chair shall be entitled to vote, if applicable, on all questions and shall not be required to relinquish the chair in order to participate in discussions. (Regulations: Article I.B.3)
- 9) The order of business shall be at the discretion of the Chief Executive Officer in the absence of instructions from the Board. (Regulations: Article I.B.4)
- 10) The order of business shall normally be as follows:
 - a) Roll Call
 - b) Flag salute and moment of silence
 - c) Consent Agenda Items for Board Action (routine and non-controversial)
 - d) Public Comments
 - e) Non-consent Agenda Items for Board Action
 - f) Report from Chief Executive Officer
 - g) Report from Chief Investment Officer

- h) Report from the Chief Legal Officer
- i) Reports from Committee Chairs
- j) Board Member Announcements or Reports
- k) Executive session
- l) Adjournment

Officers

- 11) The Board shall annually elect a Board Chair and a Board Vice-Chair, each to serve for a term of one year.
- 12) Any trustee may be elected to the position of Board Chair or Board Vice-Chair for up to two consecutive terms, before vacating the position for at least one year.
- 13) The Chief Executive Officer shall serve as Secretary to the Board.

Nomination and Election of Board Officers

- 14) Annually at the regular meeting in October, a Nominating Committee shall be formed, consisting of two (2) members designated by the Chair of the Board and two (2) members designated by the full Board. The Chair of the Board shall appoint the Chair of the Nominating Committee. The Nominating Committee shall select one member of the Board as its nominee for Board Chair and one member as its nominee for Board Vice-Chair to hold office during the ensuing year. The Nominating Committee shall present its slate of nominees to the full Board at its regular meeting in December. At the time of election of officers in December, the Board Chair shall call for other nominations, which may be made by any member of the Board.
- 15) Annually, at the end of the regular meeting in December, the Board shall elect one of its members as Board Chair, and one of its members as Board Vice-Chair, each to hold office for a term of one year. Should a vacancy occur in the Chair position, the Vice-Chair will be the successor. Should a vacancy occur in the Vice-Chair position, the Board shall select a successor for the balance of the unexpired term at its next regular meeting.
- 16) Should the Chair or Vice-Chair be unavailable to chair a meeting, then the most recent past Chair who is available and serving on the Board shall assume the role of the Chair for the meeting in question.

Quorum

- 17) Five members of the Board shall constitute a quorum. No official act of the Board shall be valid unless five of the members concur therein. (Regulations: Article I.A.5)

18)With the exception of the Nominating Committee, standing committees shall be composed of four regular members and one committee alternate member. The composition of the Nominating Committee shall be as specified in paragraph 14 herein.

19)Three members of a standing committee shall constitute a quorum. The committee chair may designate an additional temporary member for purposes of constituting a quorum.

Alternates

20)An alternate shall be elected by the safety members and may vote in place of the 7th member when a member of the same service as the alternate is before the Board. The alternate shall vote as a member of the Board only in the event the second, third, seventh, or eighth member is absent from a board meeting for any cause, or if there is a vacancy with respect to the second, third, seventh, or eighth member, the alternate shall fill such vacancy until a successor qualifies (§31520.1).

21)An alternate shall also be elected by the retired members in the same manner and at the same time as the 8th member is elected. The term of office of the alternate retired member shall run concurrently with the term of office of the 8th member. The alternate retired member shall vote as a member of the Board only in the event the 8th member is absent from a board meeting for any cause. If there is a vacancy with respect to the 8th member, the alternate retired member shall fill that vacancy until a successor qualifies (§31520.5). Consistent with §31520.6, notwithstanding any provision to the contrary in §31520.5, if the eighth member is present, the alternate retired member may also vote as a member of the board in the event both the second and third, or both the second and seventh, or both the third and seventh members are absent for any cause.

22)Except as provided in paragraphs 20 and 21 above, alternates shall not vote as members of the Board, nor shall they have the ability to make a motion or second a motion, as the Board deems such actions to be integral to the voting process.

23)Except as otherwise provided in paragraphs 20 through 22, the above alternates shall have the same rights, privileges, responsibilities, and access to closed sessions as the 7th and 8th members respectively.

Communications and Public Comment

24)Every agenda for a regular board or committee meeting shall provide the public an opportunity to address the Board or committee at each meeting during posted public

comment sessions, on any item under the jurisdiction of the body. At the discretion of the presiding officer, the duration of any address may be limited to two (2) minutes. With respect to any item that is already on the agenda, the public will be given the opportunity to comment before or during the Board's or committee's hearing of the item. When a member of the public raises an issue not yet before the Board or committee, the item may be discussed, but no action may be taken at that meeting, except as provided below:

- a) The Board may request that Management or other advisors provide the Board factual information;
- b) The Board may request Management to report back to the Board at a subsequent meeting concerning any matter;
- c) The Board may take action to direct Management to place a matter of business on a future agenda.

25) Communications and requests to the Board shall be made in writing, and the substance of such requests and the action of the Board thereon shall be noted in the minutes. (Regulations: Article I.B.6)

26) Trustees may attend any standing committee meeting as observers, but only committee members may deliberate and vote on matters before the committee. (Government Code Section 54952.2(c)(6))

Agenda

27) The Secretary to the Board shall prepare, distribute, and post a written agenda for all regular meetings of the Board and standing committees. The agenda and related materials for board meetings will generally be distributed to trustees at least five (5) calendar days in advance of the board meeting except for non-agenda items, as permitted by the Brown Act. Said materials shall also be made available for public viewing prior to board and standing committee meetings in accordance with the Brown Act. Members of the public wishing to obtain copies of the materials may do so, and may be charged an appropriate fee, as determined by the Board, to recover any costs incurred by KCERA.

28) Committee meeting agendas will be posted seventy-two (72) hours prior to committee meetings, except under circumstances permitted by the Brown Act, and materials for committee meetings generally will be distributed no later than the day before the meeting. (Government Code Section 54954.2)

29) Items may be placed on the board agenda by any of the following means:

- a) By action of the Board at a previous meeting;

- b) By the Chair; or
- c) By the Chief Executive Officer.

Minutes

30) The Secretary shall cause to be recorded in the minutes the time and place of each meeting of the Board, the names of members present, all official acts of the Board and votes given by members of the Board. The Secretary shall cause the minutes to be written and presented for approval at the next monthly meeting of the Board. The minutes, or a true copy thereof, approved by the Board and signed by the Secretary and the Chair, shall form part of the permanent records of the Board.

31) Minutes of committee meetings shall be similarly prepared and placed in the Board's public record at the next month's regular board meeting.

32) Board members who vote against a motion are encouraged, but not required, to provide their reasons for doing so; such reasons may be included in the minutes.

Committee Operations

33) At the first regular meeting following the election of officers, the Chair shall appoint committee members, a committee chair, and a committee alternate to each standing committee, with the exception of the Nominating Committee (See paragraph 14 for policy regarding the Nominating Committee). Factors to be considered in determining committee appointments include:

- a) Trustees' areas of expertise and experience;
- b) Trustees' varying interests; and
- c) The need to rotate trustees between committees to ensure their exposure to KCERA's various functions.

34) The function of committee alternates is to attend committee meetings when necessary to satisfy quorum requirements.

35) If the committee chair is unavailable to attend a meeting, then the committee chair may designate another committee member to serve as committee chair in his or her absence, failing which the remaining committee members may appoint a committee chair from among themselves.

36) In the event of a vacancy in a committee chair position, the Chair shall appoint a replacement.

- 37) The Chief Executive Officer shall ensure board committees receive adequate support from staff and shall assign a staff contact to each committee.
- 38) The Board shall approve a charter for each standing committee. Unless authorized by the Board, Committees shall not undertake committee work or analysis, nor direct Management, staff, or advisors to undertake any work, that falls outside the scope of the committee's charter.
- 39) To take effect, all actions of a committee must be approved by the Board at a scheduled board meeting, unless the committee's charter authorizes such independent action by the committee or the Board has otherwise granted such authority to the committee.

Schedule of Meetings

- 40) Regular meetings of the Board shall be held on the second Wednesday of each month at 8:30 a.m. The Administrative, Finance, and Investment Committees of the Board shall meet on a scheduled basis or ad hoc basis, as determined by the Chief Executive Officer, Chairman of the Board, the relevant committee, or Chairman of the relevant committee. Such meetings will be held in the KCERA Board Room, located at 11125 River Run Boulevard, Bakersfield, California unless an alternate location is authorized under Sections 54953 or 54954 of the Brown Act. If a scheduled meeting of the full Board needs to be moved for any reason, the Chief Executive Officer in coordination with the Chair, shall set a new date for the Board meeting. Any scheduled Board meeting may, in consultation with the Chief Executive Officer, be canceled by the Board Chair or, if the Board Chair is unavailable, the Vice-Chair. Any scheduled committee meeting may be canceled by the committee chair in consultation with the Chief Executive Officer. If the committee chair is unavailable, the Chief Executive Officer will consult with the committee member who is both available and has the longest tenure on the Board to discuss canceling the meeting.
- 41) Special meetings may only be called as provided in California Government Code Section 54956 (Regulations: Article I.B.2). At its first meeting each year, standing committees shall establish a forward yearly schedule of meetings and agendas, and provide such schedules to the full Board for review.

Policy Development

- 42) Both the Board and the Chief Executive Officer shall be responsible for identifying issues requiring a board policy or decision, and for initiating the development of board policy. Committees wishing to develop a new policy or position for the Board's consideration shall obtain Board approval prior to initiating any work or directing staff or advisors to initiate any work. The Chief Executive Officer shall be responsible for

ensuring all necessary research and analysis is performed to support the Board's decision-making and policy-setting responsibilities. The Chief Executive Officer shall further ensure that staff provides the Board and its committees with recommendations and supporting information in connection with all material decisions before the Board or its committees. Where appropriate, such information should include the strengths and weaknesses of viable alternatives that were considered.

- 43) Board policies and decisions shall generally be limited to issues of a high level or strategic nature. The Chief Executive Officer is authorized to approve staff-level procedures to support the proper implementation of board policies, and to guide the day-to-day operations of KCERA.
- 44) The Board shall abide by all board policies, unless under the circumstances it would be imprudent to do so. Material deviations from policy shall be noted in the minutes of the meeting along with the reasons for doing so; and, if appropriate, the Board shall direct the Chief Executive Officer to review the policy in question. Minor deviations in procedures are not required to be noted in the minutes; examples include, but are not limited, to:
 - a) Minor deviations in the timing of reports; and
 - b) Presenting reports directly to the Board rather than to a committee when, in consultation with the chair of the committee, it is agreed that there would be no benefit to having the committee consider the matter before it is presented to the Board.
- 45) All policies of the Board shall be reviewed with a frequency to be specified in each policy, though more frequent reviews may be initiated by the Board or the Chief Executive Officer if deemed necessary.
- 46) Board policies shall be maintained in up-to-date form within the offices of KCERA and shall be accessible to trustees and staff.

Compensation and Expense Reimbursement of Members of the Board

- 47) Pursuant to §31521 of the Act, the fourth, fifth, sixth, eighth, ninth, and the alternate eighth member shall receive compensation at the rate of one hundred dollars (\$100) for each Board or Board-authorized committee meeting, for not more than five meetings per month. In addition, all member of the Board shall receive reimbursement for actual and necessary expenses in accordance with rules and regulations adopted by the County of Kern for reimbursement of expenses incurred by County employees set forth in the Kern County Administrative Procedures Manual and the Trustee Travel

Policy. Board members and alternate trustees eligible for the \$100-per-meeting compensation may decline that compensation at any time.



48) This policy shall be reviewed at least every five years.

49) This policy was:

- a) Adopted by the Board on September 27, 2000.
- b) Amended on November 19, 2002; June 23, 2004; August 26, 2009; December 12, 2012; April 13, 2016; March 11, 2020; February 10, 2021; August 11, 2021; and April 13, 2022.

APPENDIX A

SIMPLIFIED RULES OF ORDER

- 1) In conducting Board and committee meetings, the primary goals of the Board are to ensure that:
 - a) decisions are made prudently, efficiently, and without confusion;
 - b) all Board members have appropriate opportunities to be heard;
 - c) members of the public have opportunities to address the Board, consistent with open meeting laws; and
 - d) all applicable laws are followed.
- 2) Board actions shall be carried out using motions. Examples of common motions include:
 - a) Motion to approve [insert item presented for approval].
 - b) Motion to approve/adopt based on Staff's recommendation.
 - c) Motion to refer matter to Staff/Committee for [insert direction from Board].
 - d) Motion to return matter to the Board on [insert date/month certain].
- 3) The general process for arriving at a Board or committee decision shall be as follows:
 - a) Staff and/or advisors shall provide background information and/or recommendations regarding the matter in question.
 - b) The chair shall then ask for discussion from the Board/committee.
 - c) The chair shall moderate any discussion to ensure open but orderly deliberations among Board members.
 - d) When discussion has ended, the chair shall request a motion and a second on the matter; if there is no second, the motion dies.
 - e) The chair shall take public comment at any time prior to moving to a vote.
 - f) Voting shall occur by one of the following methods:
 - i) By electronic means, though such votes may not be anonymous;
 - ii) By Roll Call – Each member answers “yes” or “no” as his or her name is called.
- 4) *Consent agenda.* Items placed on a consent agenda may be approved together without discussion or individual motions. A Board member may, however, request that one or more items be removed from the consent agenda for discussion and individual action, and such request may not be denied.
- 5) *Reconsidering a motion.* A board member may move that a motion to reconsider a board/committee action be placed on a future meeting agenda, but only if said board

member voted on the prevailing side when the matter was first considered. If said board member did not vote on the prevailing side, he or she may briefly state reasons for wishing that such a motion be made by a qualified Board member, and no other discussion may ensue unless a motion is made and seconded. The motion may be seconded by any board member.

Notwithstanding the above, a request for reconsideration made within 90 days of when the matter was first considered may only be approved if information not previously considered is available.

- 6) *Tie votes.* Motions that result in a tie vote are considered to have failed. In the event of a tie vote, any member of the Board/committee may move to have the matter decided once again at the same meeting. If a tie vote occurs a second time, the motion dies, or the Board may continue the matter to a future meeting(s) or take other appropriate action.
- 7) Any question regarding the conduct of a meeting that is not addressed by the Board Operations Policy, the Regulations, or Open meeting laws or other applicable laws, shall be determined by the Board Chair or applicable committee chair. In making such determination, the Board Chair or applicable committee chair may consult with Counsel. Any such determinations shall apply only to the meeting in question; the Board however may subsequently refer the question to the Administration Committee, which may recommend changes to the Board Operations Policy or Regulations to address the question for future meetings. Any resulting changes to the Board Operations Policy or Regulations shall not nullify the original determination by the Chair or committee chair. A Board member may, however, seek reconsideration of any decision that resulted from the original determination of the Chair or committee chair, consistent with the rules for reconsideration contained in paragraph 5 above.

Other Expectations

- 8) The following meeting practices are desirable but not required:
 - a) Board members seeking to gain the attention of the chair should use the electronic meeting system or say, “Mr. Chair” or “Madame Chair”.
 - b) Board members should refrain from addressing the Board or committee until recognized by the chair.
 - c) Motions should be stated in the affirmative; i.e., “I move that we ...” rather than, “I move that we do not....”

APPENDIX B





SACRS
Fall Conference
Annual Business Meeting 2023

Friday, November 10, 2023
10:15 am – 11:30 am

Omni Rancho Las Palmas Resort & Spa
Rancho Mirage, CA
Las Palmas Ballroom



Vision, Mission, Core Values

The members and staff of the State Association of County Retirement Systems (SACRS) share a common purpose, mission and core values.

Statement of Purpose

The specific and primary purposes of SACRS are to provide forums for disseminating knowledge of and developing expertise in the operation of 20 county retirement systems existing under the County Employees Retirement Law of 1937 (CERL) sets forth in California Government Code section 31450 et. seq., and to foster and take an active role in the legislative process as it affects county retirement systems.

Mission Statement

The mission of this organization shall be to serve the 1937 Act Retirement Systems by exchanging information, providing education and analyzing legislation.

Core Values

Teamwork

Integrity

Education

Service and Support



SACRS Business Meeting Agenda
Friday, November 10, 2023
10:15 AM – 11:30 AM
Omni Rancho Las Palmas Resort & Spa
Rancho Mirage, CA
Las Palmas Ballroom

SACRS Parliamentarian – David Lantzer, San Bernardino CERA
Sergeant at Arms – Brian Williams, Sonoma CERA

1. SACRS System Roll Call

Zandra Cholmondeley, Santa Barbara CERS, SACRS Secretary

2. Secretary's Report - Receive and File

Zandra Cholmondeley, Santa Barbara CERS, SACRS Secretary

- A. Spring 2023 SACRS Business Meeting Minutes

3. Treasurer's Report - Receive and File

Jordan Kaufman, Kern CERA, SACRS Treasurer

- A. July – August 2023 Financials

4. SACRS President Report - No Action

David MacDonald, Contra Costa CERA, SACRS President

- A. SACRS President Update. Verbal report, no printed materials for this item.

5. SACRS Legislative Committee Update – Action Item

Eric Stern, Sacramento CERS and Dave Nelsen, Alameda CERA – SACRS Legislative Committee
Co-Chairs

- A. 2023 Legislative Report – **No Action**
- B. 2024 Legislative Proposals – **Action Item**

6. SACRS Nomination Committee – No Action

Vivian Gray, Los Angeles CERA, SACRS Nomination Committee Chair

- A. SACRS Election Notice 2024-2025

7. SACRS Audit Report – No Action

Steve Delaney, Orange CERS, SACRS Audit Committee Chair

- A. Audit Committee report. Verbal report, no printed materials for this item.



8. SACRS Education Committee Report – No Action

JJ Popowich, Los Angeles CERA, SACRS Education Committee Chair

- A. SACRS Annual Fall Conference 2023 report. Verbal update, no printed materials for this item.

9. SACRS Program Committee Report – No Action

Adele Tagaloa, Orange CERS, SACRS Program Committee Chair

- A. Program Committee report. Verbal update, no printed materials for this item.

10. SACRS Affiliate Committee Report – No Action

Joanne Svensgaard, SACRS Affiliate Committee Chair

- A. Affiliate Committee report. Verbal update, no printed materials for this item.

11. SACRS Bylaws Committee Report – No Action

Barbara Hannah, San Bernardino CERA, SACRS Bylaws Committee Chair

- A. Bylaws Committee report. Verbal update, no printed materials for this item.

12. SACRS Fall Conference Breakout Reports – No Action

A representative from each breakout will give a verbal report on their meetings. No printed materials for this item.

- A. Administrators
- B. Counsel
- C. Disability/ Operations & Benefits Combo
- D. Internal Auditors
- E. Investment Officers
- F. Safety Trustees
- G. General Trustees

13. Adjournment

Next scheduled SACRS Business Meeting will be held Friday, May 10, 2023, at the Hilton Santa Barbara Beachfront Resort, Santa Barbara, CA.



1. Roll Call

Zandra Cholmondeley, Santa Barbara CERS, SACRS Secretary

Roll Call of the 20 SACRS Retirement Systems

Please state your system name, your name and if you are the voting delegate or alternate delegate.



1. SACRS System Roll Call

Zandra Cholmondeley, Santa Barbara CERS, SACRS
Secretary

| System | Delegate Name | Alternate Delegate Name | Absent |
|----------------|----------------------|--------------------------------|---------------|
| Alameda | | | |
| Contra Costa | | | |
| Fresno | | | |
| Imperial | | | |
| Kern | | | |
| Los Angeles | | | |
| Marin | | | |
| Mendocino | | | |
| Merced | | | |
| Orange | | | |
| Sacramento | | | |
| San Bernardino | | | |
| San Diego | | | |
| San Joaquin | | | |
| San Mateo | | | |
| Santa Barbara | | | |
| Sonoma | | | |
| Stanislaus | | | |
| Tulare | | | |
| Ventura | | | |
| Total | | | |



2. Secretary's Report - Receive and File

Zandra Cholmondeley, Santa Barbara CERS, SACRS Secretary

- A. Spring 2023 SACRS Business Meeting Minutes



SACRS Business Meeting Minutes

Friday, May 12,
2023
10:15 am – 11:30
am Paradise Point Resort & Spa
San Diego, CA
Sunset I-III Ballroom

SACRS Parliamentarian – David Lantzer, San Bernardino
CERA
Sergeant at Arms – Brian Williams, Sonoma CERA

1. SACRS System Roll Call

Adele Tagaloa, Orange CERS, SACRS Secretary

Systems Present: Alameda, Contra Costa, Fresno, Imperial, Kern, Los Angeles, Marin
Orange, Sacramento, San Bernardino, San Diego, San Joaquin, San Mateo, Santa
Barbara

Sonoma, Stanislaus, Tulare, Ventura

Systems Absent: Mendocino, Merced

2. Secretary's Report - Receive and File – Action Item

Adele Tagaloa, Orange CERS, SACRS Secretary

A. November 2022 SACRS Business Meeting Minutes

Motion: A motion to approve the November 2022 SACRS Business Meeting Minutes
was made by San Diego.

2nd: Fresno

Yes: Alameda, Contra Costa, Fresno, Imperial, Kern, Los Angeles, Marin
Orange, Sacramento, San Bernardino, San Diego, San Joaquin, San Mateo, Santa
Barbara

Sonoma, Stanislaus, Tulare, Ventura

No: 0

Absent: Mendocino, Merced

Motion passes 18-0-2

3. Treasurer's Report - Receive and File – Action Item

Jordan Kaufman, Kern CERA, SACRS Treasurer

A. July 2022 – February 2023 Financials

Discussion: Jordan Kaufman presented the July 2022- February 2023 financials. He
noted that the Balance sheet was not included in the packet but was emailed to
membership. The delegation discussed the finances, and status of reserves.

No motion was made, the President asked to receive and file. All presents said
Yes/Aye to approve.



4. SACRS President Report - No Action

Vivian Gray, Los Angeles CERA, SACRS President

A. SACRS President Update

Discussion: Vivian thanked the members of the Board for their time and dedication served, she appreciated all the kind sentiment she received during the week while she's been President. Was an honor to serve SACRS and encouraged the membership to get involved and let her know if they are interested in serving on a committee.

5. SACRS Legislative Committee Update – No Action

Eric Stern, Sacramento CERS and Dave Nelsen, Alameda CERA – SACRS Legislative Committee Co-Chairs

A. 2023 Legislative Report

Discussion: Eric Stern gave an overview of the written report in the packet. He also gave a brief update on legislative suggestions for the 2024 legislative calendar. See packet for full review of bills watched and status in committees.

6. SACRS Nomination Committee - 2023-2024 SACRS Board of Directors Elections –

Action

Dan McAllister, San Diego CERA, SACRS Nomination Committee Chair

A. SACRS Board of Directors Elections 2023-2024

Discussion: Dan McAllister discussed the process of the elections, noting that there would be a vacancy on the Board after the vote took place. The withdrawal of a candidate after the deadline to submit a nomination has passed. The Bylaws do not have a provision for nominations after the deadline, nor do they offer nominations from the floor. Therefore, the Board will be appointing a qualified candidate to the position of “General member” at their first meeting in June. Harry Hatch noted that Vere Williams retirement from the San Bernardino CERA Board was unfortunate and wished Vere well and thanked him for his service on the SBCERA Board and SACRS Board. Several Trustees submitted their name for consideration for the vacant position. The Nomination Committee reviewed all options, and unanimously recommended to the SACRS Board of Directors that Brian Williams, Sonoma CERA, would be the best candidate to fill the position. Marin CERA submitted a letter of recommendation that the SACRS Board consider appointing a Trustee from Northern California for a balanced representation of the North/Central/South make-up of the Board.



Motion: A motion to approve the recommended 2023-2024 SACRS Board of Directors slate was made by San Diego.

- President: David MacDonald, Contra Costa CERA
- Vice President: Adele Tagaloa, Orange CERS
- Treasurer: Jordan Kaufman, Kern CERA
- Secretary: Zandra Cholmondeley, Santa Barbara CERS
- General Member: David Gilmore, San Diego CERA
- General Member: Vacant

2nd: San Bernardino

Yes: Alameda, Contra Costa, Fresno, Imperial, Kern, Los Angeles, Marin Orange, Sacramento, San Bernardino, San Diego, San Joaquin, San Mateo, Santa Barbara

Sonoma, Stanislaus, Tulare, Ventura

No: 0

Absent: Mendocino, Merced

Motion passes 18-0-2

7. SACRS Audit Report – Action

Steve Delaney, Orange CERS, SACRS Audit Committee Chair

A. SACRS 2021-2022 Annual Audit

Discussion: Steve Delaney presented the SACRS 2021-2022 Annual Audit performed by outside auditors James Marta & Co. The financial received a clean audit and no negative findings. Steve thanked the committee members for their time and participation reviewing drafts and meetings with the auditors.

Motion: A motion to approve the SACRS 2021-2022 Audit was made by Sacramento.

2nd: Contra Costa

Yes: Alameda, Contra Costa, Fresno, Imperial, Kern, Los Angeles, Marin Orange, Sacramento, San Bernardino, San Diego, San Joaquin, San Mateo, Santa Barbara

Sonoma, Stanislaus, Tulare, Ventura

No: 0

Absent: Mendocino, Merced

Motion passes 18-0-2

8. SACRS Education Committee Report – No Action

JJ Popowich, Los Angeles CERA, SACRS Education Committee Chair

A. SACRS Annual Spring 2023 Conference Evaluations/Feedback

No report.

9. SACRS Program Committee Report – No Action

David MacDonald, Contra Costa CERA, SACRS Program Committee Chair

A. SACRS Annual Spring 2023 Conference Report

Discussion: David MacDonald thanked everyone for attending the conference, he also showed his appreciation to the program committee members for their hard work and dedication. The agenda was well received, and the committee has started planning the Fall Conference.



10. SACRS Affiliate Committee Report – No Action

Joanne Svendsgaard, Millennium, SACRS Affiliate Committee Chair

A. Affiliate Committee Update

Discussion: Joanne Svendsgaard gave a verbal update on the Affiliate Committee breakout. The session was well attended, and they received many comments of appreciation for the topic.

The committee is working on the election process for the committee to coincide with the SACRS Board of Directors elections. More information will follow later in the year.

11. SACRS Bylaws Committee Report – No Action

Barbara Hannah, San Bernardino CERA, SACRS Bylaws Committee Chair

A. Bylaws Committee Update

No report

12. SACRS Spring Conference Breakout Reports – No Action

A representative from each breakout will give a report on their breakouts from Wednesday, May 10th.

- A. Administrator Breakout – Eric Stern, Sacramento CERS will moderate the Fall breakout.
- B. Affiliate Breakout – See committee report.
- C. Attorney Breakout – Aaron Zaheen, Tulare CERA, will moderates the Fall breakout.
- D. Disability/Operations & Benefits Combo Breakout – no report.
- E. Internal Auditors Breakout - no report
- F. Investment Officer Breakout – no report
- G. Safety Trustee Breakout – Good meeting, participation by several of the Systems. Discussion of volunteers to help monitor reception and meet with the hotels prior to conferences.
- H. General Trustee Breakout – Great attendance, the session was well received. The presenter was data driven and had attendees waiting in line after the session was over to ask more questions. Many comments to have him return for a general session. Adele Tagaloa will moderate the Fall breakout.

13. Adjournment

Next scheduled SACRS Business Meeting will be held Friday, November 10, 2023, at the Omni Rancho Las Palmas Resort & Spa in Rancho Mirage, CA.

Meeting Adjourned at 10:59 am



3. Treasurer's Report - Receive and File

Jordan Kaufman, Kern CERA, SACRS Treasurer

A. July – August 2023 Financials

STATE ASSOCIATION OF COUNTY RETIREMENT SYSTEMS

Balance Sheet

As of ~~August 31, 2023~~
August 31, 2023

ASSETS

Current Assets

Checking/Savings

| | |
|---------------------------------------|------------|
| 1000 · First Foundation Bank-Checking | 207,777.31 |
| 1001 · BofA Interest Checking 4389 | 46,674.72 |
| 1002 · First Foundation Bank ICS Acct | 57,615.05 |

Total Checking/Savings 312,067.08

Other Current Assets

| | |
|----------------------------------|------------|
| 1100 · CalTrust - Medium Term | 604,348.65 |
| 1107 · CalTrust Liquidity Fund | 8,635.95 |
| 1110 · CAMP-SACRS Liquidity Fund | 508,885.95 |

Total Other Current Assets 1,121,870.55

Total Current Assets 1,433,937.63

TOTAL ASSETS 1,433,937.63

LIABILITIES & EQUITY

Liabilities

Current Liabilities

Credit Cards

2201 · First Foundation Master Card -371.83

Total Credit Cards -371.83

Total Current Liabilities -371.83

Total Liabilities -371.83

Equity

32000 · Retained Earnings 1,266,654.18

Net Income 167,655.28

Total Equity 1,434,309.46

TOTAL LIABILITIES & EQUITY 1,433,937.63

STATE ASSOCIATION OF COUNTY RETIREMENT SYSTEMS
Profit & Loss Budget vs. Actual
July through August 2023

| Ordinary Income/Expense | Jul - Aug 23 | Budget | \$ Over Budget | % of Budget |
|--|-------------------|-------------------|--------------------|---------------|
| Income | | | | |
| 4100 · Membership Dues | | | | |
| 4101 · Affiliates | 201,000.00 | 322,500.00 | -121,500.00 | 62.33% |
| 4102 · Non Profit - Organizations | 1,200.00 | 3,000.00 | -1,800.00 | 40.0% |
| 4103 · Non Profit - Systems | 5,400.00 | 6,500.00 | -1,100.00 | 83.08% |
| 4104 · Systems - Medium | 48,000.00 | 52,000.00 | -4,000.00 | 92.31% |
| 4105 · Systems - Large | 30,000.00 | 42,000.00 | -12,000.00 | 71.43% |
| Total 4100 · Membership Dues | 285,600.00 | 426,000.00 | -140,400.00 | 67.04% |
| 4200 · Webinar Symposium Registration | | | | |
| 4201 · Affiliates - Early | 0.00 | 0.00 | 0.00 | 0.0% |
| 4202 · Affiliates - Regular | 0.00 | 1,250.00 | -1,250.00 | 0.0% |
| 4203 · Affiliates - Late/Onsite | 0.00 | 0.00 | 0.00 | 0.0% |
| 4204 · Non Profit | 0.00 | 0.00 | 0.00 | 0.0% |
| 4205 · Systems | 0.00 | 1,250.00 | -1,250.00 | 0.0% |
| 4206 · Non-Members | 0.00 | 2,000.00 | -2,000.00 | 0.0% |
| Total 4200 · Webinar Symposium Registration | 0.00 | 4,500.00 | -4,500.00 | 0.0% |
| 4250 · Product Income | | | | |
| 4251 · CERL | 0.00 | 200.00 | -200.00 | 0.0% |
| 4252 · Roster | 0.00 | 0.00 | 0.00 | 0.0% |
| 4253 · Website Advertising | 0.00 | 0.00 | 0.00 | 0.0% |
| 4254 · Website Job Board | 100.00 | 0.00 | 100.00 | 100.0% |
| 4255 · Magazine Advertising | 0.00 | 0.00 | 0.00 | 0.0% |
| 4256 · On Demand Education | 0.00 | 0.00 | 0.00 | 0.0% |
| 4257 · Trustee Handbooks | 0.00 | 0.00 | 0.00 | 0.0% |
| 4269 · Product Shipping | 0.00 | 0.00 | 0.00 | 0.0% |
| Total 4250 · Product Income | 100.00 | 200.00 | -100.00 | 50.0% |
| 4270 · UC Berkeley Program | | | | |
| 4271 · Registrations | 22,500.00 | 80,000.00 | -57,500.00 | 28.13% |
| 4272 · Sponsorships | 25,000.00 | 40,000.00 | -15,000.00 | 62.5% |
| 4273 · Spouse | 0.00 | 1,000.00 | -1,000.00 | 0.0% |
| 4270 · UC Berkeley Program - Other | 0.00 | | | |
| Total 4270 · UC Berkeley Program | 47,500.00 | 121,000.00 | -73,500.00 | 39.26% |
| 4300 · Fall Conference Registration | | | | |
| 4301 · Affiliates - Early | 0.00 | 0.00 | 0.00 | 0.0% |
| 4302 · Affiliates - Regular | 77,292.00 | 271,200.00 | -193,908.00 | 28.5% |
| 4303 · Affiliates - Late/Onsite | 0.00 | 84,480.00 | -84,480.00 | 0.0% |
| 4304 · Non Profit | 150.00 | 1,500.00 | -1,350.00 | 10.0% |
| 4305 · Systems | 6,480.00 | 20,000.00 | -13,520.00 | 32.4% |
| 4306 · Non-Members | 70,488.00 | 224,280.00 | -153,792.00 | 31.43% |
| 4307 · Fun Run | 330.00 | 500.00 | -170.00 | 66.0% |
| 4308 · Yoga | 195.00 | 100.00 | 95.00 | 195.0% |
| 4309 · Spouse | 800.00 | 5,000.00 | -4,200.00 | 16.0% |
| Total 4300 · Fall Conference Registration | 155,735.00 | 607,060.00 | -451,325.00 | 25.65% |

STATE ASSOCIATION OF COUNTY RETIREMENT SYSTEMS
Profit & Loss Budget vs. Actual
July through August 2023

| | Jul - Aug 23 | Budget | \$ Over Budget | % of Budget |
|--|-------------------|---------------------|----------------------|---------------|
| 4350 · Spring Conference Registration | | | | |
| 4351 · Affiliates - Early | 1,020.00 | 0.00 | 1,020.00 | 100.0% |
| 4352 · Affiliates - Regular | 4,520.00 | 271,200.00 | -266,680.00 | 1.67% |
| 4353 · Affiliates - Late/Onsite | 1,280.00 | 84,480.00 | -83,200.00 | 1.52% |
| 4354 · Non Profit | 240.00 | 1,500.00 | -1,260.00 | 16.0% |
| 4355 · Systems | 1,680.00 | 20,000.00 | -18,320.00 | 8.4% |
| 4356 · Non-Members | 8,010.00 | 224,280.00 | -216,270.00 | 3.57% |
| 4357 · Fun Run | 180.00 | 500.00 | -320.00 | 36.0% |
| 4358 · Yoga | 45.00 | 100.00 | -55.00 | 45.0% |
| 4359 · Spouse | 0.00 | 5,000.00 | -5,000.00 | 0.0% |
| Total 4350 · Spring Conference Registration | 16,975.00 | 607,060.00 | -590,085.00 | 2.8% |
| 4900 · Interest Earned | 9,262.98 | 0.00 | 9,262.98 | 100.0% |
| Total Income | 515,172.98 | 1,765,820.00 | -1,250,647.02 | 29.18% |
| Gross Profit | 515,172.98 | 1,765,820.00 | -1,250,647.02 | 29.18% |
| Expense | | | | |
| 5000 · Administrative Fee | 37,500.00 | 225,000.00 | -187,500.00 | 16.67% |
| 5001 · Administrative Services | 0.00 | 500.00 | -500.00 | 0.0% |
| 5002 · Awards | -902.56 | 500.00 | -1,402.56 | -180.51% |
| 5003 · Bank Charges/Credit Card Fees | 4,689.58 | 36,000.00 | -31,310.42 | 13.03% |
| 5010 · Berkeley & Symposium | | | | |
| 5011 · Audio/Visual | 0.00 | 8,204.00 | -8,204.00 | 0.0% |
| 5012 · Delivery & Shipping | 112.55 | 0.00 | 112.55 | 100.0% |
| 5013 · Hotel | 0.00 | 0.00 | 0.00 | 0.0% |
| 5014 · Food & Beverage | 0.00 | 12,500.00 | -12,500.00 | 0.0% |
| 5015 · Materials/Printing/Design | 1,934.16 | 1,000.00 | 934.16 | 193.42% |
| 5016 · Travel | 0.00 | 1,000.00 | -1,000.00 | 0.0% |
| 5017 · UC Berkeley | 240,000.00 | 240,000.00 | 0.00 | 100.0% |
| Total 5010 · Berkeley & Symposium | 242,046.71 | 262,704.00 | -20,657.29 | 92.14% |
| 5020 · Webinar Symposium | | | | |
| 5021 · Webinar Speaker | 0.00 | 0.00 | 0.00 | 0.0% |
| 5022 · Webinar Technology | 0.00 | 25,000.00 | -25,000.00 | 0.0% |
| 5023 · Webinar Misc | 0.00 | 0.00 | 0.00 | 0.0% |
| Total 5020 · Webinar Symposium | 0.00 | 25,000.00 | -25,000.00 | 0.0% |
| 5030 · CERL | | | | |
| 5031 · Materials/Printing/Design | 0.00 | 16,500.00 | -16,500.00 | 0.0% |
| 5032 · Shipping | 0.00 | 1,300.00 | -1,300.00 | 0.0% |
| Total 5030 · CERL | 0.00 | 17,800.00 | -17,800.00 | 0.0% |
| 5039 · Charitable Contributions | 0.00 | 0.00 | 0.00 | 0.0% |
| 5040 · Commissions & Fees | 25.00 | 15,000.00 | -14,975.00 | 0.17% |
| 5041 · Consulting | 4,582.00 | 21,192.00 | -16,610.00 | 21.62% |
| 5042 · Dues & Subscriptions | 0.00 | 3,700.00 | -3,700.00 | 0.0% |
| 5050 · Fall Conference | | | | |
| 5051 · Audio/Visual | 0.00 | 103,000.00 | -103,000.00 | 0.0% |
| 5052 · Delivery & Shipping | 0.00 | 2,500.00 | -2,500.00 | 0.0% |

STATE ASSOCIATION OF COUNTY RETIREMENT SYSTEMS
Profit & Loss Budget vs. Actual
July through August 2023

| | Jul - Aug 23 | Budget | \$ Over Budget | % of Budget |
|--|------------------|-------------------|--------------------|--------------|
| 5053 · Entertainment | 0.00 | 6,500.00 | -6,500.00 | 0.0% |
| 5054 · Hotel | | | | |
| 5054.1 · Wednesday Night Event | 0.00 | 82,500.00 | -82,500.00 | 0.0% |
| 5054.2 · Conference | 0.00 | 35,000.00 | -35,000.00 | 0.0% |
| 5054.3 · Food & Beverage | 0.00 | 275,000.00 | -275,000.00 | 0.0% |
| Total 5054 · Hotel | 0.00 | 392,500.00 | -392,500.00 | 0.0% |
| 5055 · Program Material | 0.00 | 25,000.00 | -25,000.00 | 0.0% |
| 5056 · Speakers | 0.00 | 50,000.00 | -50,000.00 | 0.0% |
| 5057 · Supplies | 0.00 | 500.00 | -500.00 | 0.0% |
| 5058 · Travel | 0.00 | 15,000.00 | -15,000.00 | 0.0% |
| Total 5050 · Fall Conference | 0.00 | 595,000.00 | -595,000.00 | 0.0% |
| 5070 · Insurance | 35.00 | 5,000.00 | -4,965.00 | 0.7% |
| 5071 · Legal & Professional Fees | 0.00 | 25,000.00 | -25,000.00 | 0.0% |
| 5072 · Legislative Advocacy | 10,468.00 | 62,808.00 | -52,340.00 | 16.67% |
| 5080 · Magazine | | | | |
| 5081 · Delivery & Shipping | 0.00 | 600.00 | -600.00 | 0.0% |
| 5082 · Design/Printing/Etc. | 0.00 | 15,000.00 | -15,000.00 | 0.0% |
| 5083 · Magazine - Other | 0.00 | 8,000.00 | -8,000.00 | 0.0% |
| 5080 · Magazine - Other | 0.00 | 0.00 | 0.00 | 0.0% |
| Total 5080 · Magazine | 0.00 | 23,600.00 | -23,600.00 | 0.0% |
| 6000 · Board & Committees | | | | |
| 6001 · Board of Directors | | | | |
| 6001.1 · Food & Beverage | 25,654.92 | 25,000.00 | 654.92 | 102.62% |
| 6001.2 · Printing/Supplies | 885.23 | 0.00 | 885.23 | 100.0% |
| 6001.3 · Travel - BOD Meetings | 2,451.35 | 10,000.00 | -7,548.65 | 24.51% |
| 6001.4 · Travel - Miscellaneous BOD | 0.00 | 10,000.00 | -10,000.00 | 0.0% |
| 6001.5 · Board Of Directors - Other | 0.00 | 10,000.00 | -10,000.00 | 0.0% |
| 6001 · Board of Directors - Other | 5,000.00 | | | |
| Total 6001 · Board of Directors | 33,991.50 | 55,000.00 | -21,008.50 | 61.8% |
| 6002 · Legislative Committee Meetings | 0.00 | 0.00 | 0.00 | 0.0% |
| 6003 · Program Committee Meetings | 0.00 | 0.00 | 0.00 | 0.0% |
| 6004 · Nominating Committee Meetings | 0.00 | 0.00 | 0.00 | 0.0% |
| 6005 · Audit Committee Meetings | 0.00 | 0.00 | 0.00 | 0.0% |
| 6006 · Education Committee Meetings | 0.00 | 0.00 | 0.00 | 0.0% |
| 6007 · ByLaws Committee Meetings | 0.00 | 0.00 | 0.00 | 0.0% |
| Total 6000 · Board & Committees | 33,991.50 | 55,000.00 | -21,008.50 | 61.8% |
| 6010 · Office Expenses / Supplies | 641.24 | 2,500.00 | -1,858.76 | 25.65% |
| 6011 · Postage & Delivery | 604.37 | 8,500.00 | -7,895.63 | 7.11% |
| 6020 · Spring Conference | | | | |
| 6021 · Audio/Visual | 0.00 | 103,000.00 | -103,000.00 | 0.0% |
| 6022 · Delivery & Shipping | 0.00 | 2,500.00 | -2,500.00 | 0.0% |
| 6023 · Entertainment | 0.00 | 6,500.00 | -6,500.00 | 0.0% |
| 6024 · Hotel | | | | |
| 6024.1 · Wednesday Night Event | 0.00 | 82,500.00 | -82,500.00 | 0.0% |

STATE ASSOCIATION OF COUNTY RETIREMENT SYSTEMS
Profit & Loss Budget vs. Actual
 July through August 2023

| | Jul - Aug 23 | Budget | \$ Over Budget | % of Budget |
|---------------------------------------|---------------------|---------------------|-----------------------|--------------------|
| 6024.2 · Conference | 1,835.86 | 0.00 | 1,835.86 | 100.0% |
| 6024.3 · Food & Beverage | 0.00 | 275,000.00 | -275,000.00 | 0.0% |
| Total 6024 · Hotel | 1,835.86 | 357,500.00 | -355,664.14 | 0.51% |
| 6025 · Program Material | -808.07 | 25,000.00 | -25,808.07 | -3.23% |
| 6026 · Speakers | 0.00 | 50,000.00 | -50,000.00 | 0.0% |
| 6027 · Supplies | 0.00 | 1,000.00 | -1,000.00 | 0.0% |
| 6028 · Travel | 0.00 | 15,000.00 | -15,000.00 | 0.0% |
| Total 6020 · Spring Conference | 1,027.79 | 560,500.00 | -559,472.21 | 0.18% |
| 6050 · Strategic Facilitator | 0.00 | 0.00 | 0.00 | 0.0% |
| 6051 · Taxes & Licenses | 0.00 | 600.00 | -600.00 | 0.0% |
| 6053 · Technology/AMS/Website | 12,809.07 | 42,000.00 | -29,190.93 | 30.5% |
| 6054 · Travel | 0.00 | 2,000.00 | -2,000.00 | 0.0% |
| Total Expense | 347,517.70 | 1,989,904.00 | -1,642,386.30 | 17.46% |
| Net Ordinary Income | 167,655.28 | -224,084.00 | 391,739.28 | -74.82% |
| Net Income | 167,655.28 | -224,084.00 | 391,739.28 | -74.82% |

STATE ASSOCIATION OF COUNTY RETIREMENT SYSTEMS

Profit & Loss by Class

July through August 2023

August GENERAL Future TOTAL

Ordinary Income/Expense

Income

4100 · Membership Dues

| | | | | |
|-----------------------------------|------|------------|------|------------|
| 4101 · Affiliates | 0.00 | 201,000.00 | 0.00 | 201,000.00 |
| 4102 · Non Profit - Organizations | 0.00 | 1,200.00 | 0.00 | 1,200.00 |
| 4103 · Non Profit - Systems | 0.00 | 5,400.00 | 0.00 | 5,400.00 |
| 4104 · Systems - Medium | 0.00 | 48,000.00 | 0.00 | 48,000.00 |
| 4105 · Systems - Large | 0.00 | 30,000.00 | 0.00 | 30,000.00 |

| | | | | |
|-------------------------------------|-------------|-------------------|-------------|-------------------|
| Total 4100 · Membership Dues | 0.00 | 285,600.00 | 0.00 | 285,600.00 |
|-------------------------------------|-------------|-------------------|-------------|-------------------|

4250 · Product Income

| | | | | |
|--------------------------|------|--------|------|--------|
| 4254 · Website Job Board | 0.00 | 100.00 | 0.00 | 100.00 |
|--------------------------|------|--------|------|--------|

| | | | | |
|------------------------------------|-------------|---------------|-------------|---------------|
| Total 4250 · Product Income | 0.00 | 100.00 | 0.00 | 100.00 |
|------------------------------------|-------------|---------------|-------------|---------------|

4270 · UC Berkeley Program

| | | | | |
|------------------------------------|------|-----------|------|-----------|
| 4271 · Registrations | 0.00 | 22,500.00 | 0.00 | 22,500.00 |
| 4272 · Sponsorships | 0.00 | 25,000.00 | 0.00 | 25,000.00 |
| 4270 · UC Berkeley Program - Other | 0.00 | 0.00 | 0.00 | 0.00 |

| | | | | |
|---|-------------|------------------|-------------|------------------|
| Total 4270 · UC Berkeley Program | 0.00 | 47,500.00 | 0.00 | 47,500.00 |
|---|-------------|------------------|-------------|------------------|

4300 · Fall Conference Registration

| | | | | |
|-----------------------------|------|-----------|------|-----------|
| 4302 · Affiliates - Regular | 0.00 | 77,292.00 | 0.00 | 77,292.00 |
| 4304 · Non Profit | 0.00 | 150.00 | 0.00 | 150.00 |
| 4305 · Systems | 0.00 | 6,480.00 | 0.00 | 6,480.00 |
| 4306 · Non-Members | 0.00 | 70,488.00 | 0.00 | 70,488.00 |
| 4307 · Fun Run | 0.00 | 330.00 | 0.00 | 330.00 |
| 4308 · Yoga | 0.00 | 195.00 | 0.00 | 195.00 |
| 4309 · Spouse | 0.00 | 800.00 | 0.00 | 800.00 |

| | | | | |
|--|-------------|-------------------|-------------|-------------------|
| Total 4300 · Fall Conference Registration | 0.00 | 155,735.00 | 0.00 | 155,735.00 |
|--|-------------|-------------------|-------------|-------------------|

4350 · Spring Conference Registration

| | | | | |
|---------------------------------|----------|------|------|----------|
| 4351 · Affiliates - Early | 1,020.00 | 0.00 | 0.00 | 1,020.00 |
| 4352 · Affiliates - Regular | 4,520.00 | 0.00 | 0.00 | 4,520.00 |
| 4353 · Affiliates - Late/Onsite | 1,280.00 | 0.00 | 0.00 | 1,280.00 |
| 4354 · Non Profit | 240.00 | 0.00 | 0.00 | 240.00 |
| 4355 · Systems | 1,680.00 | 0.00 | 0.00 | 1,680.00 |
| 4356 · Non-Members | 8,010.00 | 0.00 | 0.00 | 8,010.00 |
| 4357 · Fun Run | 180.00 | 0.00 | 0.00 | 180.00 |
| 4358 · Yoga | 45.00 | 0.00 | 0.00 | 45.00 |

| | | | | |
|--|------------------|-------------|-------------|------------------|
| Total 4350 · Spring Conference Registration | 16,975.00 | 0.00 | 0.00 | 16,975.00 |
|--|------------------|-------------|-------------|------------------|

4900 · Interest Earned

| | | | |
|------|----------|------|----------|
| 0.00 | 9,262.98 | 0.00 | 9,262.98 |
|------|----------|------|----------|

Total Income

| | | | |
|-----------|------------|------|------------|
| 16,975.00 | 498,197.98 | 0.00 | 515,172.98 |
|-----------|------------|------|------------|

Gross Profit

| | | | |
|-----------|------------|------|------------|
| 16,975.00 | 498,197.98 | 0.00 | 515,172.98 |
|-----------|------------|------|------------|

Expense

| | | | | |
|--------------------------------------|------|-----------|------|-----------|
| 5000 · Administrative Fee | 0.00 | 37,500.00 | 0.00 | 37,500.00 |
| 5002 · Awards | 0.00 | -902.56 | 0.00 | -902.56 |
| 5003 · Bank Charges/Credit Card Fees | 0.00 | 4,689.58 | 0.00 | 4,689.58 |
| 5010 · Berkeley & Symposium | | | | |
| 5012 · Delivery & Shipping | 0.00 | 112.55 | 0.00 | 112.55 |

STATE ASSOCIATION OF COUNTY RETIREMENT SYSTEMS

Profit & Loss by Class

July through August 2023

| | Fig | GENERAL | Future | TOTAL |
|--|------------------|-------------------|-------------|-------------------|
| 5015 · Materials/Printing/Design | 0.00 | 1,934.16 | 0.00 | 1,934.16 |
| 5017 · UC Berkeley | 0.00 | 240,000.00 | 0.00 | 240,000.00 |
| Total 5010 · Berkeley & Symposium | 0.00 | 242,046.71 | 0.00 | 242,046.71 |
| 5040 · Commissions & Fees | 0.00 | 25.00 | 0.00 | 25.00 |
| 5041 · Consulting | 0.00 | 4,582.00 | 0.00 | 4,582.00 |
| 5070 · Insurance | 0.00 | 35.00 | 0.00 | 35.00 |
| 5072 · Legislative Advocacy | 0.00 | 10,468.00 | 0.00 | 10,468.00 |
| 6000 · Board & Committees | | | | |
| 6001 · Board of Directors | | | | |
| 6001.1 · Food & Beverage | 0.00 | 25,654.92 | 0.00 | 25,654.92 |
| 6001.2 · Printing/Supplies | 0.00 | 885.23 | 0.00 | 885.23 |
| 6001.3 · Travel - BOD Meetings | 0.00 | 2,451.35 | 0.00 | 2,451.35 |
| 6001 · Board of Directors - Other | 0.00 | 5,000.00 | 0.00 | 5,000.00 |
| Total 6001 · Board of Directors | 0.00 | 33,991.50 | 0.00 | 33,991.50 |
| Total 6000 · Board & Committees | 0.00 | 33,991.50 | 0.00 | 33,991.50 |
| 6010 · Office Expenses / Supplies | 0.00 | 641.24 | 0.00 | 641.24 |
| 6011 · Postage & Delivery | 0.00 | 604.37 | 0.00 | 604.37 |
| 6020 · Spring Conference | | | | |
| 6024 · Hotel | | | | |
| 6024.2 · Conference | 0.00 | 1,835.86 | 0.00 | 1,835.86 |
| Total 6024 · Hotel | 0.00 | 1,835.86 | 0.00 | 1,835.86 |
| 6025 · Program Material | 0.00 | -808.07 | 0.00 | -808.07 |
| Total 6020 · Spring Conference | 0.00 | 1,027.79 | 0.00 | 1,027.79 |
| 6053 · Technology/AMS/Website | 0.00 | 12,809.07 | 0.00 | 12,809.07 |
| 6054 · Travel | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Expense | 0.00 | 347,517.70 | 0.00 | 347,517.70 |
| Net Ordinary Income | 16,975.00 | 150,680.28 | 0.00 | 167,655.28 |
| Net Income | 16,975.00 | 150,680.28 | 0.00 | 167,655.28 |



4. SACRS President Report - No Action

David MacDonald, Contra Costa CERA, SACRS President

- A. SACRS President Update. Verbal report, no printed materials for this item.



5. SACRS Legislative Committee Update – Action

Eric Stern, Sacramento CERS and Dave Nelsen, Alameda CERA – SACRS Legislative Committee Co-Chairs

- A. 2023 Legislative Report – No Action
- B. 2024 Legislative Proposals – Action Item



October 5, 2023

TO: State Association of County Retirement Systems

FROM: Edelstein Gilbert Robson & Smith, LLC

RE: **Legislative Update – October 2023**

The California Legislature closed out its work for the 2023 legislative session on the evening of September 14th, sending approximately 900 bills to the Governor for consideration. The Governor has until October 14th to act on those measures.

While there were several areas of public policymaking that captured the Legislature's attention this year, labor and employment policy primarily dominated the legislative landscape. This was driven by ongoing strikes affecting the entertainment and Southern California lodging industries. Additionally, threatened strikes by healthcare workers, state and local public employee unions, UPS, pending statewide ballot measures, and a referendum to overturn a recently enacted restaurant wage law, the media deemed summer 2023 to be California's "[Hot Labor Summer](#)".

The Democrat dominated and labor-friendly Legislature responded with dozens of legislative proposals aimed at assisting its most important constituency: organized labor. With overwhelming 3/4 supermajorities in each house of the Legislature, labor-backed, Democrat-authored labor bills are almost certain to pass. Among the many labor-backed bills that the Governor has acted on are:

[SB 799 \(Portantino\) Unemployment Insurance for Striking Workers -- VETOED](#)

This bill would have made striking workers who have been on strike for more than two weeks eligible for unemployment insurance benefits.

[SB 616 \(Gonzalez\) – Paid Sick Leave -- SIGNED](#)

This bill would extend the annual amount of paid sick leave required to be given to an employee from three days to five days.

The Governor has not yet acted on [AB 1](#) which would allow legislative employees to join a union and collectively bargain for their wages and working conditions.

Legislation of Interest

SB 885 (Committee on Labor, Public Employment and Retirement). This is the annual committee omnibus bill that contains various cleanup provisions for CalSTRS, CalPERS and CERL systems. The amendments to the CERL make non-substantive, technical changes as well as conform provisions on Required Minimum Distributions to federal law under the SECURE ACT 2.0 by referencing the federal law instead of a specific age.



The Governor signed this bill into law.

AB 1020 (Grayson) – CERL Disability Presumptions. This bill would establish several new disability retirement presumptions for various injuries and illnesses in the CERL, similar to provisions that exist in the Labor Code. The bill is sponsored by the California Professional Firefighters. The author and sponsor agreed to technical clarifications proposed by SACRS that were amended into the bill in June. CSAC remains opposed to the bill.

The bill is on the Governor’s desk.

AB 1637 (Irwin) - Local Government Websites and Email Addresses. Would, no later than January 1, 2029, require a local agency, as defined, that maintains an internet website for use by the public to ensure that the internet website utilizes a “.gov” top-level domain or a “.ca.gov” second-level domain and would require a local agency that maintains an internet website that is noncompliant with that requirement to redirect that internet website to a domain name that does utilize a “.gov” or “.ca.gov” domain. This bill, no later than January 1, 2029, would also require a local agency that maintains public email addresses to ensure that each email address provided to its employees utilizes a “.gov” domain name or a “.ca.gov” domain name. By adding to the duties of local officials, the bill would impose a state-mandated local program.

The bill is on the Governor’s desk.

AB 557 (Hart) - Brown Act Emergency Teleconferencing Sunset Extension. This bill would remove the sunset in current law to allow teleconferencing during certain emergencies as well as increase the time period when the Board must renew the findings of an emergency or need for social distancing from 30 days to 45 days.

The bill is on the Governor’s desk.

SB 537 (Becker) - Teleconference Flexibilities. This bill would allow expanded teleconference flexibilities for multijurisdictional, cross county legislative bodies if certain requirements are met, along with adding to the list of circumstances where a member is permitted to participate remotely. The bill has been narrowed considerably as it advanced through various policy committees in each house.

The bill was held on the Assembly Floor and may be considered when the Legislature returns in January.

2024 Legislative Preview

The legislative committee is currently working on proposals for consideration at the fall conference.



September 15, 2023

RE: SACRS Legislative Proposals 2024

Dear SACRS Board of Directors,

The SACRS Legislative Committee has developed a legislative package for consideration in the upcoming 2024 legislative session. These proposals reflect the input of SACRS member systems and are intended to provide technical and administrative clarity to various sections of the County Employees Retirement Law of 1937 (CERL or '37 Act).

Proposed amendments to the CERL include the following:

- Clarification that a retiree's pension payment can be deposited in a trust account controlled by that member. This is not intended to change the statutory intent that an ongoing pension payment must be made to a natural person; however, the amendment provides uniformity to an issue that has been interpreted differently across the '37 Act systems. SACRS' tax counsel from the Hanson Bridgett law firm has reviewed the language for appropriateness and compliance with federal and California law.
- Authority for a Board of Retirement to make payments to retirees through a prepaid account (like a debit card). This amendment is intended to accommodate retirees who may not have a traditional checking or savings account, leaving the only option to receive regular pension payments through paper check by mail or in-person. The COVID-19 pandemic and past natural disasters have shown that the use of paper checks can be adversely affected in delivering promised benefits. This amendment only authorizes the system to utilize prepaid accounts as a payment method; it does not mandate it.
- Removal of requirement for a certified mail "return receipt" when sending notices to terminated members or beneficiaries that they have contributions or unclaimed benefits remaining with the system. Though IRS regulations require registered or certified mail for locating members and beneficiaries, the "return receipt" language found in the CERL is not an IRS requirement and reflects an outdated practice. Certified mail now allows the sender to electronically track the letter at significant cost savings.



- Direction for retirement systems to take certain actions when retired members exceed the 960-hour post-retirement employment limit. The proposed amendments would require the system to offset the member's retirement allowance by the equivalent excess hours paid above 960 hours to ensure that the retired member is not receiving a pension and a salary outside of the prescribed limit. These amendments do not preclude retirement system from also reinstating the member into active service as the system deems necessary.

We thank the Legislative Committee for reviewing these proposals and engaging in a collaborative, deliberative process to achieve consensus on issues. Though seemingly technical, these amendments represent process improvements that will provide administrative efficiencies to retirement systems and members.

Respectfully,

/s/

David Nelsen and Eric Stern
Co-Chairs, Legislative Committee

ATTACHMENT

- SACRS Draft Language – 2024 CERL Amendments

Government Code Section 31452.6 (Amend)

31452.6. (a) The board shall comply with and give effect to a revocable written authorization signed by a retired member or beneficiary of a retired member entitled to a retirement allowance or benefit under this chapter or the California Public Employees' Pension Reform Act of 2013, authorizing the treasurer or other entity authorized by the board to deliver the monthly warrant, check, or electronic fund transfer, for the retirement allowance or benefit to any specified bank, savings and loan institution, ~~or~~ credit union, or prepaid account to be credited to the account of the retired member or survivor of a deceased retired member. That delivery is full discharge of the liability of the board to pay a monthly retirement allowance or benefit to the retired member or survivor of a deceased retired member.

(b) Any payments directly deposited by electronic fund transfer following the date of death of a person who was entitled to receive a retirement allowance or benefit under this chapter or the California Public Employees' Pension Reform Act of 2013 shall be refunded to the retirement system.

(c) In order to obtain information from a financial institution following the death of a retired member or the beneficiary of a retired member, as provided in subdivision (o) of Section 7480, the board may certify in writing to the financial institution that the retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or the beneficiary of a retired member.

(d)(1) For purposes of this section, "the account of the retired member or survivor of a deceased retired member," may include an account held in a living trust or an income only trust (Miller Trust) that is controlled by the retired member or survivor of a deceased retired member or is established for the retired member's (or survivor of a deceased retired member's) benefit in order to qualify for State Medicaid or comparable assistance.

(d)(2) For purposes of this section, the term "prepaid account" shall have the same meaning as defined in, and meet the applicable requirements of, Section 1339.1 of the Unemployment Insurance Code.

Government Code Section 31590 (Amend)

(a) All warrants, checks, and electronic fund transfers drawn on the retirement fund shall be signed or authorized by at least two board officers or employees, designated by the board or by the treasurer if designated by the board. If the treasurer is designated by the board, the board shall also designate the auditor to sign or authorize warrants, checks, and electronic fund transfers. The authorization may be by blanket authorization of all warrants, checks, or electronic fund transfers appearing on a list or register, or may be by a standing order to draw warrants, checks, or electronic fund transfers, which shall be good until revoked. If the treasurer and auditor are designated by the board, a warrant, check, or electronic fund transfer is not valid until it is signed or authorized, numbered, and recorded by the county auditor, except as provided in subdivision (c).

(b)(1) Any person entitled to the receipt of benefits may authorize the payment of the

benefits to be directly deposited by electronic fund transfer into the person's account at the financial institution of the person's choice under a program for direct deposit by electronic transfer established by the board or treasurer if authorized by the board. The direct deposit shall discharge the system's obligation in respect to that payment.

(2) Such person may also authorize the payment of their benefits to be deposited into a prepaid account under a program established by the board or treasurer if authorized by the board. The payment of the benefit into the prepaid account shall discharge the system's obligation in respect to that payment. For purposes of this paragraph, the term "prepaid account" shall have the same meaning as defined in, and meet the applicable requirements of, Section 1339.1 of the Unemployment Insurance Code.

(c) The board may, or, if authorized by the board, the treasurer shall, authorize a trust company or trust department of any state or national bank authorized to conduct the business of a trust company in this state or the Federal Reserve Bank of San Francisco or any branch thereof within this state, to process and issue payments by check or electronic fund transfer.

Government Code Section 31628 (Amend)

If the service of a member is discontinued other than by death or retirement, upon proper application submitted to the retirement board, he or she shall be paid all of his or her accumulated contributions, in accordance with this chapter, minus a withdrawal charge, if a withdrawal charge has been provided for by the regulations of the board. The board may order payment in whole or in part withheld for a period not to exceed six months after date of separation. If a member does not file the proper application, the board shall send to the member, not more than 90 days after termination of service, at his or her last known address, a registered or certified letter, ~~return receipt requested~~, stating that he or she has money to his or her credit on the books of the retirement system and that if he or she does not claim the money within 10 years after date of notice, in the case of persons first employed before January 1, 1976, or within five years in the case of persons first employed on and after January 1, 1976, the money will be deposited in and become a part of the current pension reserve fund.

Government Code Section 31680.2 (Amend)

(a) Any person who has retired may be employed in a position requiring special skills or knowledge, as determined by the county or district employing them, for a period of time not to exceed 90 working days or 720 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend their retirement allowance, and no deductions shall be made from their salary as contributions to this system.

(b) (1) This section shall not apply to any retired person who is otherwise eligible for employment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day

of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

(3) Beginning January 1, 2013, if any provision of this section conflicts with the California Public Employees' Pension Reform Act of 2013, the provisions of that act shall prevail, except that the limit on postretirement employment provided in subdivision (a) to the greater of 90 working days or 720 hours shall remain effective.

(c) Notwithstanding subdivision (a), the retired person's retirement allowance shall be considered an overpayment to the extent it is payable during any period in which the retired person is employed and paid for that employment in excess of 90 working days or 720 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors. Such overpayment shall be subject to collection by the retirement system. This paragraph does not preclude the retirement system from taking additional action as it deems necessary to reinstate the person as a member of the system or terminate or suspend their retirement allowance.

Government Code Section 31680.3 (Amend)

(a) Notwithstanding Section 31680.2, any member who has been covered under the provisions of Section 31751 and has retired may be reemployed in a position requiring special skills or knowledge, as determined by the county or district employing the member, for a period of time not to exceed 120 working days or 960 hours, whichever is greater, in any one fiscal year and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend the person's retirement allowance, and no deductions shall be made from the person's salary as contributions to this system.

(b) (1) This section shall not apply to any retired member who is otherwise eligible for reemployment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

(c) Beginning January 1, 2013, if any provision of this section conflicts with the California Public Employees' Pension Reform Act of 2013, the provisions of that act shall prevail.

(d) Notwithstanding subdivision (a), the retired member's retirement allowance shall be considered an overpayment to the extent it is payable during any period in which the retired member is employed and paid for that employment in excess of 120 working days or 960 hours, whichever is greater, in any one fiscal year. Such overpayment shall be subject to collection by the retirement system. This subdivision does not preclude the retirement system from taking additional action as it deems necessary to reinstate the person as a member of the system or terminate or suspend their retirement allowance.

Government Code Section 31680.6 (Amend)

(a) Notwithstanding Section 31680.2, any county subject to Section 31680.2 may, upon adoption of a resolution by a majority vote by the board of supervisors, extend the period of time provided for in Section 31680.2 for which a person who has retired may be employed in a position requiring special skills or knowledge, as determined by the county or district employing him or her, not to exceed 120 working days or 960 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend his or her retirement allowance, and no deductions shall be made from his or her salary as contributions to this system.

(b) (1) This section shall not apply to any retired person who is otherwise eligible for employment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

(c) Beginning January 1, 2013, if any provision of this section conflicts with the California Public Employees' Pension Reform Act of 2013, the provisions of that act shall prevail.

(d) Notwithstanding subdivision (a), the retired person's retirement allowance shall be considered an overpayment to the extent it is payable during any period in which the retired person is employed and paid for that employment in excess of 120 working days or 960 hours, whichever is greater, in any one fiscal year of any other 12-month period designated by the board of supervisors. Such overpayment shall be subject to collection by the retirement system. This section does not preclude the retirement system from taking additional action as it deems necessary to reinstate the person as a member of the system or terminate or suspend their retirement allowance.

Government Code Section 31680.9 (Add)

A retired member who is employed pursuant to Section 7522.56 shall have their retirement allowance be considered an overpayment to the extent it is payable during any period in which the retired member is employed and paid for that employment in excess of 960 hours or other equivalent limit in a calendar year or fiscal year. Such overpayment shall be subject to collection by the retirement system. This section does not preclude the retirement system from taking additional action as it deems necessary to reinstate the person as a member of the system or terminate or suspend their retirement allowance.

Government Code Section 31783.5 (Amend)

(a) Whenever a person or estate entitled to payment of a member's accumulated contributions or any other benefit fails to claim the payment or cannot be located, the amount owed from the retirement fund shall be administered in accordance with subdivision (c).

(b) The board shall attempt to locate the claimant through such means as the board in its sound discretion deems reasonable including, but not limited to, a registered or certified letter, ~~return receipt requested~~, mailed to the last known address of the claimant.

(c) Notwithstanding any provision of law to the contrary, the amounts described in subdivision (a) shall be held for the claimant. If the amounts are not claimed within five years after the last attempted contact with the claimant, the amounts shall be deposited in and become a part of the pension reserve fund. The board may at any time after transfer of unclaimed amounts, upon receipt of information satisfactory to it, authorize the return of amounts so held in reserve to the credit of the claimant. Those amounts shall be paid only to claimants who have not yet attained the age of mandatory distribution under the Internal Revenue Code



6. SACRS Nomination Committee - 2024-2025 SACRS Board of Directors Elections – No Action

Vivian Gray, Los Angeles CERA & SACRS Nomination Committee Chair

A. SACRS Board of Directors Elections 2024-2025



October 1, 2023

To: SACRS Trustees & SACRS Administrators/CEO's
 From: Vivian Gray, SACRS Immediate Past President, Nominating Committee Chair
 SACRS Nominating Committee
 Re: SACRS Board of Director Elections 2024-2025 - Elections Notice

SACRS BOD 2024-2025 election process will begin January 1, 2024. Please provide this election notice to your Board of Trustees and Voting Delegates.

| DEADLINE | DESCRIPTION |
|----------------|---|
| March 1, 2024 | Any regular member may submit nominations for the election of a Director to the Nominating Committee, provided the Nominating Committee receives those nominations no later than noon on March 1 of each calendar year regardless of whether March 1 is a Business Day. Each candidate may run for only one office. Write-in candidates for the final ballot, and nominations from the floor on the day of the election, shall not be accepted. |
| March 25, 2024 | The Nominating Committee will report a final ballot to each regular member County Retirement System prior to March 25 |
| May 10, 2024 | Nomination Committee to conduct elections during the SACRS Business Meeting at the Spring Conference |
| May 10, 2024 | Board of Directors take office for 1 year |

Per SACRS Bylaws, Article VIII, Section 1. Board of Director and Section 2. Elections of Directors:

Section 1. Board of Directors. The Board shall consist of the officers of SACRS as described in Article VI, Section 1, the immediate Past President, and two (2) regular members

A. Immediate Past President. *The immediate Past President, while he or she is a regular member of SACRS, shall also be a member of the Board. In the event the immediate Past President is unable to serve on the Board, the most recent Past President who qualifies shall serve as a member of the Board.*

B. Two (2) Regular Members. *Two (2) regular members shall also be members of the Board with full voting rights.*

Section 2. Elections of Directors. *Any regular member may submit nominations for the election of a Director to the Nominating Committee, provided the Nominating Committee receives those nominations no later than noon on March 1 of each calendar year regardless of whether March 1 is a Business Day. Each candidate may run for only one office. Write-in candidates for the final ballot, and nominations from the floor on the day of the election, shall not be accepted.*

The Nominating Committee will report its suggested slate, along with a list of the names of all members who had been nominated, to each regular member County Retirement System prior to March 25. The Administrator of each regular member County Retirement System shall be responsible for communicating the Nominating Committee's suggested slate to each trustee and placing the election of



SACRS Directors on his or her board agenda. The Administrator shall acknowledge the completion of these responsibilities with the Nominating Committee.

Director elections shall take place during the first regular meeting of each calendar year. The election shall be conducted by an open roll call vote, and shall conform to Article V, Sections 6 and 7 of these Bylaws.

Newly elected Directors shall assume their duties at the conclusion of the meeting at which they are elected, with the exception of the office of Treasurer. The incumbent Treasurer shall co-serve with the newly elected Treasurer through the completion of the current fiscal year.

The elections will be held at the SACRS Spring Conference May 7-10, 2024. Elections will be held during the Annual Business meeting on Friday, May 10, 2024, in Santa Barbara at the Hilton Santa Barbara Beachfront Resort.

If you have any questions, please contact Vivian Gray at vgray@lacara.com.

Thank you for your prompt attention to this timely matter.

Sincerely,

Vivian Gray

Vivian Gray, Trustee, Los Angeles CERA and SACRS Nominating Committee Chair

CC: SACRS Board of Directors
SACRS Nominating Committee Members
Sulema H. Peterson, SACRS Executive Director



**SACRS Nomination Submission Form
SACRS Board of Directors Elections 2024-2025**

All interested candidates must complete this form and submit along with a letter of intent. **Both the form and the letter of intent must be submitted no later than March 1, 2024.** Please submit to the Nominating Committee Chair at vgray@lacera.com **AND** to SACRS at sulema@sacrs.org. If you have any questions, please feel free to contact Sulema Peterson at SACRS at (916) 701-5158.

| | |
|---|--|
| Name of Candidate | Name: |
| Candidate Contact Information (Please include – Phone Number, Email Address and Mailing Address) | Mailing Address: Email Address: Phone: |
| Name of Retirement System Candidate Currently Serves On | System Name: |
| List Your Current Position on Retirement Board (Chair, Alternate, Retiree, General Elected, Etc) | <input type="radio"/> Chair <input type="radio"/> Alternate <input type="radio"/> General Elected <input type="radio"/> Retiree <input type="radio"/> Other _____ |
| Applying for SACRS Board of Directors Position (select only one) | <input type="radio"/> President <input type="radio"/> Vice President <input type="radio"/> Treasurer <input type="radio"/> Secretary <input type="radio"/> Regular Member |
| Brief Bio in Paragraph Format | |



7. SACRS Audit Report – Action

Steve Delaney, Orange CERS, SACRS Audit Committee Chair

No report, Audit is currently under review.

No printed materials for this item.



8. SACRS Education Committee Report – No Action

JJ Popowich, Los Angeles CERA, SACRS Education Committee Chair

No report, and no printed materials for this item.



9. SACRS Program Committee Report – No Action

Adele Tagaloa, Orange CERS & SACRS Program Committee Chair

- A. SACRS Annual Fall 2023 Conference Report.
Verbal report, no printed materials for this item.



10. SACRS Affiliate Committee Report – No Action

Joanne Svendsgaard, SACRS Affiliate Committee Chair

- A. Affiliate Committee report. Verbal update no printed materials for this item.



11. SACRS Bylaws Committee Report – No Action

Barbara Hannah, San Bernardino CERA, SACRS Bylaws Committee Chair

- A. Bylaws Committee report. Verbal report, no printed materials for this item.



12. SACRS Fall Conference Breakout Reports – No Action

A representative from each breakout will give a report on their breakouts on Wednesday, November 8th. Verbal reports, no printed materials for this item.

- A. Administrator Breakout
- B. Affiliate Breakout
- C. Attorney Breakout
- D. Disability/Operations & Benefits Combo Breakout
- E. Internal Auditors Breakout
- F. Investment Officer Breakout
- G. Safety Trustee Breakout
- H. General Trustee Breakout



13. Adjournment

Next scheduled SACRS Business Meeting will be held Friday, May 10, 2023, at the Hilton Santa Barbara Beachfront Resort, Santa Barbara, CA.

SACRS Legislative Proposals 2024



Presented by:
Jennifer Esquivel Zahry, Chief Legal Officer



Use of Prepaid Cards and Payment to Accounts Included in Living Trust

- 31452.6 –
 - authorization to deliver payment to prepaid account
 - “account of member” to include an account that is part of living trust
- 31590 –
 - authorizes benefits to be deposited into a prepaid account under a program established by the Board (if authorized).



Post-Retirement Employment – 31680.6

Payment in Excess of Limit

Adds that monthly benefit payments will be deemed an overpayment of benefits and subject to collection by the retirement system if retiree is paid by the employer for work that exceeds the 960-hour limit.



Remove “Return Receipt Requested” requirement



31628

Notice of Funds on
Deposit to Non-
vested Members

31783.5

Notice to
Beneficiaries

Recommendations



Prepaid Cards and Payment
to Member Account
Contained in Trusts

Recommend Vote in Favor



Post-Retirement
Overpayments

Recommend Vote in Favor



Remove “Return Receipt
Requested” Requirement

Recommend Vote in Favor



September 15, 2023

RE: SACRS Legislative Proposals 2024

Dear SACRS Board of Directors,

The SACRS Legislative Committee has developed a legislative package for consideration in the upcoming 2024 legislative session. These proposals reflect the input of SACRS member systems and are intended to provide technical and administrative clarity to various sections of the County Employees Retirement Law of 1937 (CERL or '37 Act).

Proposed amendments to the CERL include the following:

- Clarification that a retiree's pension payment can be deposited in a trust account controlled by that member. This is not intended to change the statutory intent that an ongoing pension payment must be made to a natural person; however, the amendment provides uniformity to an issue that has been interpreted differently across the '37 Act systems. SACRS' tax counsel from the Hanson Bridgett law firm has reviewed the language for appropriateness and compliance with federal and California law.
- Authority for a Board of Retirement to make payments to retirees through a prepaid account (like a debit card). This amendment is intended to accommodate retirees who may not have a traditional checking or savings account, leaving the only option to receive regular pension payments through paper check by mail or in-person. The COVID-19 pandemic and past natural disasters have shown that the use of paper checks can be adversely affected in delivering promised benefits. This amendment only authorizes the system to utilize prepaid accounts as a payment method; it does not mandate it.
- Removal of requirement for a certified mail "return receipt" when sending notices to terminated members or beneficiaries that they have contributions or unclaimed benefits remaining with the system. Though IRS regulations require registered or certified mail for locating members and beneficiaries, the "return receipt" language found in the CERL is not an IRS requirement and reflects an outdated practice. Certified mail now allows the sender to electronically track the letter at significant cost savings.



- Direction for retirement systems to take certain actions when retired members exceed the 960-hour post-retirement employment limit. The proposed amendments would require the system to offset the member's retirement allowance by the equivalent excess hours paid above 960 hours to ensure that the retired member is not receiving a pension and a salary outside of the prescribed limit. These amendments do not preclude retirement system from also reinstating the member into active service as the system deems necessary.

We thank the Legislative Committee for reviewing these proposals and engaging in a collaborative, deliberative process to achieve consensus on issues. Though seemingly technical, these amendments represent process improvements that will provide administrative efficiencies to retirement systems and members.

Respectfully,

/s/

David Nelsen and Eric Stern
Co-Chairs, Legislative Committee

ATTACHMENT

- SACRS Draft Language – 2024 CERL Amendments

Government Code Section 31452.6 (Amend)

31452.6. (a) The board shall comply with and give effect to a revocable written authorization signed by a retired member or beneficiary of a retired member entitled to a retirement allowance or benefit under this chapter or the California Public Employees' Pension Reform Act of 2013, authorizing the treasurer or other entity authorized by the board to deliver the monthly warrant, check, or electronic fund transfer, for the retirement allowance or benefit to any specified bank, savings and loan institution, ~~or~~ credit union, or prepaid account to be credited to the account of the retired member or survivor of a deceased retired member. That delivery is full discharge of the liability of the board to pay a monthly retirement allowance or benefit to the retired member or survivor of a deceased retired member.

(b) Any payments directly deposited by electronic fund transfer following the date of death of a person who was entitled to receive a retirement allowance or benefit under this chapter or the California Public Employees' Pension Reform Act of 2013 shall be refunded to the retirement system.

(c) In order to obtain information from a financial institution following the death of a retired member or the beneficiary of a retired member, as provided in subdivision (o) of Section 7480, the board may certify in writing to the financial institution that the retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or the beneficiary of a retired member.

(d)(1) For purposes of this section, "the account of the retired member or survivor of a deceased retired member," may include an account held in a living trust or an income only trust (Miller Trust) that is controlled by the retired member or survivor of a deceased retired member or is established for the retired member's (or survivor of a deceased retired member's) benefit in order to qualify for State Medicaid or comparable assistance.

(d)(2) For purposes of this section, the term "prepaid account" shall have the same meaning as defined in, and meet the applicable requirements of, Section 1339.1 of the Unemployment Insurance Code.

Government Code Section 31590 (Amend)

(a) All warrants, checks, and electronic fund transfers drawn on the retirement fund shall be signed or authorized by at least two board officers or employees, designated by the board or by the treasurer if designated by the board. If the treasurer is designated by the board, the board shall also designate the auditor to sign or authorize warrants, checks, and electronic fund transfers. The authorization may be by blanket authorization of all warrants, checks, or electronic fund transfers appearing on a list or register, or may be by a standing order to draw warrants, checks, or electronic fund transfers, which shall be good until revoked. If the treasurer and auditor are designated by the board, a warrant, check, or electronic fund transfer is not valid until it is signed or authorized, numbered, and recorded by the county auditor, except as provided in subdivision (c).

(b)(1) Any person entitled to the receipt of benefits may authorize the payment of the

benefits to be directly deposited by electronic fund transfer into the person's account at the financial institution of the person's choice under a program for direct deposit by electronic transfer established by the board or treasurer if authorized by the board. The direct deposit shall discharge the system's obligation in respect to that payment.

(2) Such person may also authorize the payment of their benefits to be deposited into a prepaid account under a program established by the board or treasurer if authorized by the board. The payment of the benefit into the prepaid account shall discharge the system's obligation in respect to that payment. For purposes of this paragraph, the term "prepaid account" shall have the same meaning as defined in, and meet the applicable requirements of, Section 1339.1 of the Unemployment Insurance Code.

(c) The board may, or, if authorized by the board, the treasurer shall, authorize a trust company or trust department of any state or national bank authorized to conduct the business of a trust company in this state or the Federal Reserve Bank of San Francisco or any branch thereof within this state, to process and issue payments by check or electronic fund transfer.

Government Code Section 31628 (Amend)

If the service of a member is discontinued other than by death or retirement, upon proper application submitted to the retirement board, he or she shall be paid all of his or her accumulated contributions, in accordance with this chapter, minus a withdrawal charge, if a withdrawal charge has been provided for by the regulations of the board. The board may order payment in whole or in part withheld for a period not to exceed six months after date of separation. If a member does not file the proper application, the board shall send to the member, not more than 90 days after termination of service, at his or her last known address, a registered or certified letter, ~~return receipt requested~~, stating that he or she has money to his or her credit on the books of the retirement system and that if he or she does not claim the money within 10 years after date of notice, in the case of persons first employed before January 1, 1976, or within five years in the case of persons first employed on and after January 1, 1976, the money will be deposited in and become a part of the current pension reserve fund.

Government Code Section 31680.2 (Amend)

(a) Any person who has retired may be employed in a position requiring special skills or knowledge, as determined by the county or district employing them, for a period of time not to exceed 90 working days or 720 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend their retirement allowance, and no deductions shall be made from their salary as contributions to this system.

(b) (1) This section shall not apply to any retired person who is otherwise eligible for employment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day

of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

(3) Beginning January 1, 2013, if any provision of this section conflicts with the California Public Employees' Pension Reform Act of 2013, the provisions of that act shall prevail, except that the limit on postretirement employment provided in subdivision (a) to the greater of 90 working days or 720 hours shall remain effective.

(c) Notwithstanding subdivision (a), the retired person's retirement allowance shall be considered an overpayment to the extent it is payable during any period in which the retired person is employed and paid for that employment in excess of 90 working days or 720 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors. Such overpayment shall be subject to collection by the retirement system. This paragraph does not preclude the retirement system from taking additional action as it deems necessary to reinstate the person as a member of the system or terminate or suspend their retirement allowance.

Government Code Section 31680.3 (Amend)

(a) Notwithstanding Section 31680.2, any member who has been covered under the provisions of Section 31751 and has retired may be reemployed in a position requiring special skills or knowledge, as determined by the county or district employing the member, for a period of time not to exceed 120 working days or 960 hours, whichever is greater, in any one fiscal year and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend the person's retirement allowance, and no deductions shall be made from the person's salary as contributions to this system.

(b) (1) This section shall not apply to any retired member who is otherwise eligible for reemployment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

(c) Beginning January 1, 2013, if any provision of this section conflicts with the California Public Employees' Pension Reform Act of 2013, the provisions of that act shall prevail.

(d) Notwithstanding subdivision (a), the retired member's retirement allowance shall be considered an overpayment to the extent it is payable during any period in which the retired member is employed and paid for that employment in excess of 120 working days or 960 hours, whichever is greater, in any one fiscal year. Such overpayment shall be subject to collection by the retirement system. This subdivision does not preclude the retirement system from taking additional action as it deems necessary to reinstate the person as a member of the system or terminate or suspend their retirement allowance.

Government Code Section 31680.6 (Amend)

(a) Notwithstanding Section 31680.2, any county subject to Section 31680.2 may, upon adoption of a resolution by a majority vote by the board of supervisors, extend the period of time provided for in Section 31680.2 for which a person who has retired may be employed in a position requiring special skills or knowledge, as determined by the county or district employing him or her, not to exceed 120 working days or 960 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend his or her retirement allowance, and no deductions shall be made from his or her salary as contributions to this system.

(b) (1) This section shall not apply to any retired person who is otherwise eligible for employment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

(c) Beginning January 1, 2013, if any provision of this section conflicts with the California Public Employees' Pension Reform Act of 2013, the provisions of that act shall prevail.

(d) Notwithstanding subdivision (a), the retired person's retirement allowance shall be considered an overpayment to the extent it is payable during any period in which the retired person is employed and paid for that employment in excess of 120 working days or 960 hours, whichever is greater, in any one fiscal year of any other 12-month period designated by the board of supervisors. Such overpayment shall be subject to collection by the retirement system. This section does not preclude the retirement system from taking additional action as it deems necessary to reinstate the person as a member of the system or terminate or suspend their retirement allowance.

Government Code Section 31680.9 (Add)

A retired member who is employed pursuant to Section 7522.56 shall have their retirement allowance be considered an overpayment to the extent it is payable during any period in which the retired member is employed and paid for that employment in excess of 960 hours or other equivalent limit in a calendar year or fiscal year. Such overpayment shall be subject to collection by the retirement system. This section does not preclude the retirement system from taking additional action as it deems necessary to reinstate the person as a member of the system or terminate or suspend their retirement allowance.

Government Code Section 31783.5 (Amend)

(a) Whenever a person or estate entitled to payment of a member's accumulated contributions or any other benefit fails to claim the payment or cannot be located, the amount owed from the retirement fund shall be administered in accordance with subdivision (c).

(b) The board shall attempt to locate the claimant through such means as the board in its sound discretion deems reasonable including, but not limited to, a registered or certified letter, ~~return receipt requested~~, mailed to the last known address of the claimant.

(c) Notwithstanding any provision of law to the contrary, the amounts described in subdivision (a) shall be held for the claimant. If the amounts are not claimed within five years after the last attempted contact with the claimant, the amounts shall be deposited in and become a part of the pension reserve fund. The board may at any time after transfer of unclaimed amounts, upon receipt of information satisfactory to it, authorize the return of amounts so held in reserve to the credit of the claimant. Those amounts shall be paid only to claimants who have not yet attained the age of mandatory distribution under the Internal Revenue Code



Alameda Administrative Appeal Process

Presented by:

Jennifer Esquivel Zahry

Chief Legal Officer

Policy Recitals

- Special Pays Policy
- Alameda Decision
- Resolution 2020-1
 - Active Member Contributions
 - Opportunity to Appeal
 - Notice of Proposed Action
 - Member Objection
 - KCERA Response
- Appeal Process



Board of Retirement Resolution 2021-05

APPROVAL OF APPEALS PROCESS FOR BENEFIT DETERMINATIONS ARISING
OUT OF THE ALAMEDA SUPREME COURT DECISION
("ALAMEDA APPEALS")

Appeals Process Authorized by Board of Retirement Resolution 2021-05

- Issues raised on appeal must have been raised in member's initial objection.
- Issue raised may only be one of two issues:
 - whether Special Pay properly excluded
 - whether calculations are correct
- Schedule
 - Member's written statement
 - KCERA's Reply
 - Only written evidence allowed (no oral testimony)
 - Oral argument permitted at discretion of the Board





Participants

Member/Appellant – Presents arguments supporting their Objection to staff’s action

Advocacy Counsel – Presents arguments supporting KCERA staff’s action

Board Counsel – Advises Board on legal issues related to the issue before the Board

Final Board Determination

- Board action on the appeal is to occur at a duly noticed Board Meeting.
- Board reserves the right to request additional information from the parties if it determines such information is warranted.
- Oral Argument occurs during Open Session
- Board may meet in Closed Session with its Advisory Counsel following Open Session
- Board votes on the matter in Open Session, following any Closed Session discussion.
- Member may appeal the Board's decision in the Kern County Superior Court.



Due Process Reminders

No Ex Parte Communication.

- Advocacy counsel is separate and distinct from the Board's Advisory Counsel.
- To protect member's right to due process, advocacy counsel (and involved staff) does not speak with Board members about the substance of the appeal outside the presence of the member and their counsel, if any.
- Board members should direct questions on substance to Advisory Counsel.
- Staff can answer process questions.



Questions?

**BEFORE THE BOARD OF RETIREMENT
KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
RESOLUTION No. 2021-05**

In the matter of:

**APPROVAL OF APPEALS PROCESS FOR BENEFIT DETERMINATIONS ARISING
OUT OF THE *ALAMEDA* SUPREME COURT DECISION (“*ALAMEDA APPEALS*”)**

Ayes: Gonzalez, Kaufman, Kratt, Whitezell, Seibly (Alternate)

Noes: None

Absent: Couch, Franey, Hughes, Skidmore

Dominic D. Brown,
Secretary to the Board of Retirement,
Kern County Employees' Retirement Association



RESOLUTION

Section 1. WHEREAS:

- (a) The Board of Retirement adopted the Administration of Special Allowances Initiated by KCERA Plan Sponsors Policy (“Special Pays Policy”) on December 12, 2018. The Special Pays Policy allows KCERA members or Plan Sponsors to appeal a determination regarding whether a Special Pay item is pensionable through an administrative appeal process provided by KCERA.

- (b) On July 30, 2020, the California Supreme Court issued a decision in the case of *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County*

Employees' Retirement Assn., et al. (2020) 9 Cal.5th 1032 (the "*Alameda Decision*"). The *Alameda Decision* concludes that all amendments to the definition of Compensation Earnable in Government Code section 31461, enacted as a result of the Public Employees' Pension Reform Act of 2013 and related statutory changes to the County Employees Retirement Law of 1937 ("CERL") (collectively at times, ("PEPRA")), effective January 1, 2013, are constitutional, and that CERL retirement boards may not be contractually bound or estopped by settlement agreements, board resolutions, or other similar actions, from implementing those amendments. Specifically, the *Alameda Decision* determined that CERL retirement boards may not include Special Allowances ("Special Pay(s)") in retirement allowance calculations, if such items are not considered "compensation" under section 31640 or are excluded from "compensation earnable" under section 31461 or "pensionable compensation" under section 7522.34, as applicable.

- (c) On August 24, 2020, the Board adopted a Resolution to comply with the *Alameda Decision*'s directives regarding mandatorily excluded pay items. Resolution No. 2020-01 directed staff to apply those directives related to "PEPRA Exclusions" to individuals who retired on or after January 1, 2013, effective with the first retiree payroll occurring after the August 31, 2020 retiree payroll and to apply the directives related to "*Alameda Exclusions*" to all retiree

payroll for individuals who retired on or after July 30, 2020, when the Supreme Court overturned *Guelfi* footnote 6.¹

- (d) After implementing the *Alameda* Decision, the Board adopted Resolution 2021-01 on January 20, 2021 to determine and address all active member contributions erroneously taken on and after January 1, 2013, on PEPRAs Exclusions and/or *Alameda* Exclusions, in a manner that complies with applicable federal tax compliance rules and California law.
- (e) The Board, through these Resolutions, directed staff to notify the affected members of the Board's implementation of the *Alameda* Decision through appropriate means and provide members with an opportunity to administratively appeal factual determinations KCERA made regarding pay code designations with which they may disagree.
- (f) KCERA sent a letter ("Notice") to each affected member about the implementation of the *Alameda* Decision. Depending on the circumstances of the member, the Notice informed the member of one or more of the following (1) the determination KCERA had made with regard to the member's retirement account; (2) resulting adjustments to the member's retirement allowance or bi-weekly contribution amount; (3) a pending Contribution Correction and/or (4) the need to collect overpaid benefits or underpaid contributions. The Notice

¹ As used herein, the term "PEPRA Exclusions" shall refer to any payments that are not permitted by subdivision (b)(2), (3) or (4) of Government Code section 31461 to be included in "compensation earnable," or by subdivision (c) of Government Code section 7522.34 to be included in "pensionable compensation." "Alameda Exclusions" shall refer to types of pay used to fund "in-kind" benefits which the Alameda Decision determined county retirement plans must exclude from the pension calculation because such pays cannot be received in cash and therefore are not considered "compensation," as that term is defined by statute.

also informed the affected member of their ability to object to the proposed action if they disagreed with the calculations provided, if a recently excluded pay code did not reflect the nature of the services performed, if they believed an incorrect pay code was used, or if they had another objection to the proposed action.

- (g) Affected members were required to submit a written objection (“Objection”) via email or mail to KCERA within 30-60 days of the date of the Notice. Members who timely objected received a written response (“Response”) from KCERA’s Chief Executive Officer. The Response included a summary of the concerns in the member’s Objection, the basis for Staff’s determination, citation to legal authority for KCERA’s actions, and instructions regarding how to further appeal the CEO’s Response to the Board. Members received 30 days from the date of the Response to request their Objection be referred to the Board for a final determination (“Board Referral”).
- (h) It is the Board’s intent to ensure due process of affected members who appeal a determination made by KCERA Staff during its implementation of the *Alameda* Decision (“Alameda Appeal”). This Resolution sets forth the process for the Board Referral of *Alameda* Appeals. The process is designed to facilitate filing an Alameda Appeal without the services of an attorney; however, members may engage legal representation at their discretion.

Section 2. NOW, THEREFORE BE IT RESOLVED, by the Board of Retirement of Kern County Employees’ Retirement Association as follows:

Effective as of December 3, 2021, the following process is authorized for *Alameda* Appeals presented to the Board:

A. Consideration of Issues

While *Alameda* Appeals are guided by the written Objection(s) submitted by the member, for purposes of such proceedings, a member may only raise issues with the Board that were set forth in their initial Objection. The ultimate issue(s) for the Board's determination are limited to one or more of the following, as applicable:

- 1) Whether the Special Pay was properly excluded from "compensation earnable" under Government Code section 31461(b) or "pensionable compensation" under Government Code section 7522.34(c); and/or
- 2) Whether KCERA's calculations or other numerical data used to make corrections as the result of the *Alameda* Decision are incorrect.

B. Appeals Related to the Same Special Pay from Members of the Same Department or Classification

If there are members of the same grade or class of position appealing the exclusion of the same Special Pay, then such appeals may be grouped together by KCERA for purposes of analyzing the excluded item and making a final determination on these appeals.

C. Submission of Documents to the Board

- 1) As to all Board Referrals in an *Alameda* Appeal, the following schedule applies:
 - a. Member, individually or through counsel, may submit a written Statement to the Board by sending it to legal@kcera.org. The Statement

is due 30 days following the “Confirmation of Board Referral” sent by KCERA to the member, unless KCERA directs that the Statement is due on a later date so as to facilitate the referenced grouping of proceedings or for other administrative reasons.

- b. KCERA, through the CEO or KCERA’s Legal counsel, may submit a Reply Statement to the Board, and such Reply Statement is due not later than 30 days after the date the Member’s Statement is due or received, whichever is later.
- c. All evidence provided on *Alameda* Appeals shall be submitted in documentary form, though oral argument will be permitted at the discretion and under the control of the Board.

D. Final Determination by the Board

- 1) The Board will take action on the member’s *Alameda* Appeal at a duly noticed and properly agendized meeting of the Board. The member and member’s counsel, if any, will be notified of the date the Board will consider the appeal and will be advised of the opportunity to address the Board in open session on that date.
- 2) *Alameda* Appeals will be scheduled for determination by the Board no fewer than 30 days, and no more than 90 days, from the due date of KCERA’s Reply Statement, unless the Board grants itself additional time to make such a determination. The Board reserves the right to request additional information from the parties should it determine, in its sole discretion, such information is

warranted. The Board will control the time allocated for oral argument of parties or their counsel during its consideration of *Alameda Appeals*.

- 3) Following the open session in which any oral arguments are heard, the Board may meet in closed session with its Legal counsel for purposes consistent with the Ralph M. Brown Act. The Board will take a vote regarding the *Alameda Appeals* in open session. KCERA will also provide written notice of the Board's decision to the member or their counsel. The Board's decision will be final.
- 4) If the affected member disagrees with the Board's decision, the member may seek judicial review of the Board's decision. Any judicial review of the Board's decision in *Alameda Appeals* shall be subject to Code of Civil Procedure section 1085. *Shelden v. Marin County Employees' Retirement Association* (2010) 189 Cal. App. 4th 458.

E. Ability to Utilize a Hearing Officer

The Board reserves the right to utilize the services of a Hearing Officer to review the documentary evidence and issue findings of fact and a recommended decision on the *Alameda Appeals* should it determine, in its sole discretion, such action is warranted.

IN WITNESS WHEREOF, the above Resolution for KCERA is hereby adopted by the BOARD on this 3rd day of December 2021.



Chief Executive Officer's Report

Presented by: Matthew Henry, Chief Operations Officer

November 2023



Office Update

- Staffing
 - Recruitments: Deputy/Senior Deputy Chief Legal Officer, KCERA Accountant I/II, Administrative Specialist/Senior Specialist, Member Services Technician
- Member Outreach: Retirement Seminar 10/25/23
- Disability Update
- Received the 2023 PPCC Award



Operations Activity

- Member Services
 - 16 new retirements and calculations
 - 52 death benefit calculations
 - 83 service-credit purchase calculations
 - 42 retirement estimates
 - 157 new active members
 - 104 terminations with disposition packets
 - 25 in-person appointments
 - 187 walk-ins
 - 577 phone calls
 - 280 emails
- Communications
 - Monitoring website traffic analytics
 - End-of-Career seminar
- Accounting & Reporting
 - Service Purchases – 45 days
 - ACFR Preparation
- Information Technology
 - Retro Split Project
 - Tax withholding update for retirement estimates
 - October cyber security month



Upcoming Events

- Administrative Committee – Early December
- Finance Committee – Meeting to be scheduled soon
- Investment Committee – No meetings currently scheduled
- Board of Retirement – Next regular monthly meeting will be December 13, 2023





CIO REPORT

INVESTMENT PROGRAM
UPDATE

November 2023

Presented by:

Daryn Miller, CFA

Chief Investment Officer



Rebalancing

OCTOBER ACTIVITY

- Fixed Income
 - Sell \$25MM Stone Harbor
- Commodities
 - Sell \$15MM Gresham
- Midstream
 - Sell \$10MM Harvest

Reporting period covers 10/01/2023 to 10/20/2023

| Asset Class | Actual | Policy Target | Adj. Policy Target | Diff. Act. vs. Adj. Pol. |
|---------------------|--------|---------------|--------------------|--------------------------|
| Public Equities | 31.6% | 33.0% | 34.1% | -2.5% |
| Fixed Income | 24.2% | 25.0% | 28.0% | -3.8% |
| Core | 15.9% | 15.0% | 18.0% | -2.1% |
| Credit | 8.3% | 10.0% | 10.0% | -1.7% |
| Commodities | 4.1% | 4.0% | 4.0% | 0.1% |
| Hedge Funds | 10.7% | 10.0% | 10.0% | 0.7% |
| Alpha Pool | 4.4% | 8.0% | 8.0% | -3.6% |
| Midstream Energy | 5.7% | 5.0% | 5.0% | 0.7% |
| Core Real Estate | 5.7% | 5.0% | 7.5% | -1.8% |
| Private Real Estate | 2.5% | 5.0% | 2.5% | 0.0% |
| Private Equity | 3.9% | 5.0% | 3.9% | 0.0% |
| Private Credit | 5.0% | 8.0% | 5.0% | 0.0% |
| Opportunistic | 3.2% | 0.0% | 0.0% | 3.2% |
| Cash | -1.0% | -8.0% | -8.0% | 7.0% |
| Total | 100.0% | 100.0% | 100.0% | 0.0% |

Positioning

ACTUAL VS POLICY TARGET

Public Equity: underweight vs. policy target and adjusted policy target. Underweight is primarily in domestic large cap.

Core Fixed Income: overweight vs. policy target and underweight vs. adjusted policy target.

Private Equity: underweight vs. policy target is reallocated to other asset classes where we see better return opportunity, including **Midstream**, and **Opportunistic**.

Private Credit: the underweight vs. policy target has recently increased due to increasing the Strategic Asset Allocation Private Credit target from 5% to 8%.

Asset allocation reflects the Strategic Asset Allocation approved at the August 2023 Board meeting and updated Investment Policy Statement approved at the September 2023 Board meeting.



Key Initiatives

Enhancing return while managing risk

- Currency management
- Improve hedge fund program returns
- Multi-asset research / tactical asset allocation
- Opportunistic investments
- Private Markets
- Repositioning fixed income



Investment Committee Meetings

Next meeting November — date TBD

The next IC meeting agenda will include the following items:

- Private Market fund recommendation(s)

The last IC meeting was held on October 18th

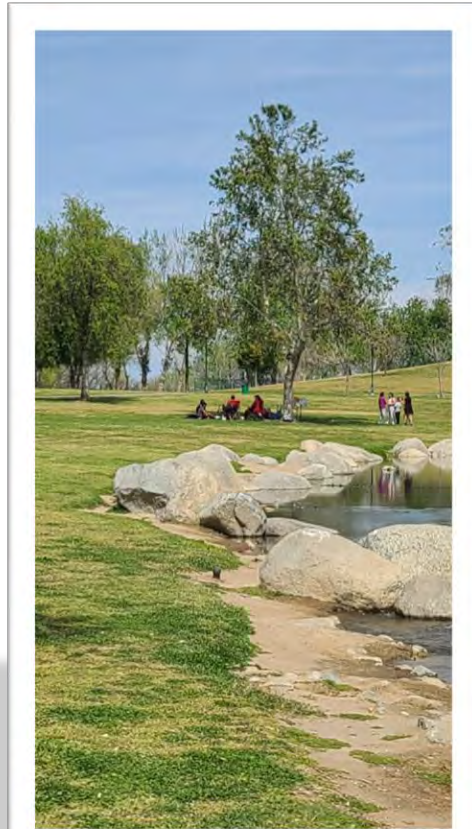




CLO Report November 2023

Jennifer Esquivel Zahry, Chief Legal Officer
Maggie Peralta-Lee, KCERA Senior Paralegal
Irma Chavez, KCERA Senior Legal Secretary
Sofia Reyes, KCERA Senior Paralegal (Ret.)

Legislative Updates



- Disability Retirement Presumptions
 - AB 1020 – signed by Governor;
 - effective 1/1/24
- Remote Meeting Bill
 - AB 557 – signed by Governor;
 - effective 1/1/24



November Calendar

| | Pending CLO Review |
|---|--------------------|
| Operational Contracts | 2 |
| Investment/ Custodial Documents | 3 |
| Disability Matters | 9 |
| Community Property Matters | 6 |
| Staff Inquiries | 6 |
| Member Inquiries | 6 |
| Board/Committee Meetings/Staff Meetings/ Conferences | 11 |
| Special Projects | 2 |



| Q3 2023 Metrics | Completed |
|---|-----------|
| Operational Contracts | 6 |
| Investment/ Custodial Documents | 37 |
| Board Documents | 27 |
| Disability Matters | 14 |
| Community Property Matters | 59 |
| Legal Correspondence | 104 |
| Administrative Appeals | 3 |
| Board/Committee Meetings/Staff Meetings/ Conferences | 62 |
| Post-Retirement Employment | 4 |
| Probate Matters | 16 |
| Public Records Act Requests | 8 |
| Special Pay Codes | 2 |
| Trainings Board Members/ Staff | 1 |



October 5, 2023

TO: State Association of County Retirement Systems

FROM: Edelstein Gilbert Robson & Smith, LLC

RE: **Legislative Update – October 2023**

The California Legislature closed out its work for the 2023 legislative session on the evening of September 14th, sending approximately 900 bills to the Governor for consideration. The Governor has until October 14th to act on those measures.

While there were several areas of public policymaking that captured the Legislature's attention this year, labor and employment policy primarily dominated the legislative landscape. This was driven by ongoing strikes affecting the entertainment and Southern California lodging industries. Additionally, threatened strikes by healthcare workers, state and local public employee unions, UPS, pending statewide ballot measures, and a referendum to overturn a recently enacted restaurant wage law, the media deemed summer 2023 to be California's "[Hot Labor Summer](#)".

The Democrat dominated and labor-friendly Legislature responded with dozens of legislative proposals aimed at assisting its most important constituency: organized labor. With overwhelming 3/4 supermajorities in each house of the Legislature, labor-backed, Democrat-authored labor bills are almost certain to pass. Among the many labor-backed bills that the Governor has acted on are:

[SB 799 \(Portantino\) Unemployment Insurance for Striking Workers -- VETOED](#)

This bill would have made striking workers who have been on strike for more than two weeks eligible for unemployment insurance benefits.

[SB 616 \(Gonzalez\) – Paid Sick Leave -- SIGNED](#)

This bill would extend the annual amount of paid sick leave required to be given to an employee from three days to five days.

The Governor has not yet acted on [AB 1](#) which would allow legislative employees to join a union and collectively bargain for their wages and working conditions.

Legislation of Interest

SB 885 (Committee on Labor, Public Employment and Retirement). This is the annual committee omnibus bill that contains various cleanup provisions for CalSTRS, CalPERS and CERL systems. The amendments to the CERL make non-substantive, technical changes as well as conform provisions on Required Minimum Distributions to federal law under the SECURE ACT 2.0 by referencing the federal law instead of a specific age.



The Governor signed this bill into law.

AB 1020 (Grayson) – CERL Disability Presumptions. This bill would establish several new disability retirement presumptions for various injuries and illnesses in the CERL, similar to provisions that exist in the Labor Code. The bill is sponsored by the California Professional Firefighters. The author and sponsor agreed to technical clarifications proposed by SACRS that were amended into the bill in June. CSAC remains opposed to the bill.

The bill is on the Governor's desk.

AB 1637 (Irwin) - Local Government Websites and Email Addresses. Would, no later than January 1, 2029, require a local agency, as defined, that maintains an internet website for use by the public to ensure that the internet website utilizes a “.gov” top-level domain or a “.ca.gov” second-level domain and would require a local agency that maintains an internet website that is noncompliant with that requirement to redirect that internet website to a domain name that does utilize a “.gov” or “.ca.gov” domain. This bill, no later than January 1, 2029, would also require a local agency that maintains public email addresses to ensure that each email address provided to its employees utilizes a “.gov” domain name or a “.ca.gov” domain name. By adding to the duties of local officials, the bill would impose a state-mandated local program.

The bill is on the Governor's desk.

AB 557 (Hart) - Brown Act Emergency Teleconferencing Sunset Extension. This bill would remove the sunset in current law to allow teleconferencing during certain emergencies as well as increase the time period when the Board must renew the findings of an emergency or need for social distancing from 30 days to 45 days.

The bill is on the Governor's desk.

SB 537 (Becker) - Teleconference Flexibilities. This bill would allow expanded teleconference flexibilities for multijurisdictional, cross county legislative bodies if certain requirements are met, along with adding to the list of circumstances where a member is permitted to participate remotely. The bill has been narrowed considerably as it advanced through various policy committees in each house.

The bill was held on the Assembly Floor and may be considered when the Legislature returns in January.

2024 Legislative Preview

The legislative committee is currently working on proposals for consideration at the fall conference.



Kern County Employees' Retirement Association

11125 River Run Boulevard
Bakersfield, CA 93311

Tel (661) 381-7700 • Fax (661) 381-7799

Toll Free (877) 733-6831

TTY Relay (800) 735-2929

www.kcera.org

Administrative Record

In re *Alameda* Appeal of Tracy Wolfe

**KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
BOARD OF RETIREMENT**

In Re *Alameda* Appeal of Tracy Wolfe

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| 1 | Excerpt from Memorandum of Understanding Between County of Kern and Service Employees International Union Local 521, March 28, 2015 – August 27, 2017 | BOR-001 |
| 2 | Excerpt from Memorandum of Understanding Between County of Kern and Service Employees International Union Local 521, August 28, 2017 – October 31, 2019 | BOR-010 |
| 3 | KCERA Board of Retirement Resolution 2020-01 – Employer Pay Codes of Employee Compensation Included in Compensation Earnable and Pensionable Compensation in Compliance with California Supreme Court's <i>Alameda</i> Decision, adopted August 24, 2020 | BOR-019 |
| 4 | KCERA Letter re Change in Retirement Benefit, dated October 14, 2020 | BOR-023 |
| 5 | T. Wolfe Appeal Request, received November 23, 2020 | BOR-025 |
| 6 | KCERA Board of Retirement Resolution 2021-01 – Corrective Distributions for Active and Deferred Employees Who Paid Contributions on Pay Codes Excluded from Compensation Earnable and Pensionable Compensation in Compliance with California Supreme Court's <i>Alameda</i> Decision, adopted January 20, 2021 | BOR-026 |
| 7 | KCERA Response to Request for Administrative Appeal re Monthly Pension Reduction following the <i>Alameda</i> Decision, dated April 21, 2021 | BOR-029 |
| 8 | T. Wolfe Request for Board Agenda Placement, dated May 17, 2021 | BOR-035 |
| 9 | KCERA Letter re Pension Benefit Overpayment, dated May 26, 2021 | BOR-036 |
| 10 | T. Wolfe Objection to Proposed Collection of Overpayment, dated June 24, 2021 | BOR-037 |
| 11 | KCERA Board of Retirement Resolution 2021-05 – Approval of Appeals Process for Benefit Determinations Arising Out of the <i>Alameda</i> Supreme Court Decision (" <i>Alameda</i> Appeals"), adopted December 3, 2021 | BOR-038 |
| 12 | KCERA Letter re Board of Retirement Action on <i>Alameda</i> Phase 4, dated May 5, 2022 | BOR-045 |
| 13 | KCERA Response to Objection re Pension Benefit Overpayment, dated February 13, 2023 | BOR-046 |
| 14 | KCERA Letter re Confirmation of Board Referral, dated June 19, 2023 | BOR-051 |

**KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
BOARD OF RETIREMENT**

In Re *Alameda* Appeal of Tracy Wolfe

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| 16 | T. Wolfe Counsel Letter of Representation, dated July 25, 2023 | BOR-054 |
| 17 | T. Wolfe Appellant's Brief in Support of Appeal, dated August 18, 2023 | BOR-055 |
| 18 | T. Wolfe Counsel Response to KCERA Request for Extension, dated August 31, 2023 | BOR-069 |
| 19 | KCERA Reply to Tracy Wolfe's Opening Brief, dated September 29, 2023 | BOR-070 |

MEMORANDUM OF UNDERSTANDING

MARCH 28, 2015 THROUGH AUGUST 27, 2017

COUNTY OF KERN

AND

**SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 521**

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A. Standby

1. Definition of Standby - An employee who is required during off-duty hours to remain on call on the County's premises or elsewhere or under conditions so circumscribed that he cannot use the time effectively for his own purposes is working while "on-call." Employees who are working while "on-call" are on "standby." An employee who is not required to remain on the County's premises or elsewhere and is merely required to leave word at his home or with County officials where he may be reached, or is merely required to be available via a beeper, pager, or other communications device, is not working while "on-call" and is not on "standby." This definition of "standby" is intended to be the same definition as "working while on-call" which is contained in 29 CFR ' 785.17 and to duplicate the definition of compensable standby (i.e., working while "on-call") found in the Fair Labor Standards Act as it is presently interpreted.

2. Compensation for Standby - An employee required by the department head to be on stand-by duty shall receive one-quarter of his/her hourly pay, or the federal minimum wage, whichever is higher for the hours required to be on stand-by. Employees on stand-by duty, who are called back to work, shall not receive stand-by pay while in a called-back status.

B. Availability Pay

1. It is agreed by the parties that because of urgent situations, employees in certain classifications must frequently be available to report to work in the manner required by their department head. Such employees shall be required to wear a pager, beeper, or other communications device to ensure their availability. The department head shall not impose conditions, which so restrict the employee that the employee is on standby as defined by Article V, Section 4.A, unless the employee is placed on standby.

2. As compensation for being available to respond to such situations, those employees shall receive either (1) a biweekly allowance equal to five percent (5%) of their biweekly base salary, (2) one-quarter of his/her hourly pay for the hours required to be available, or (3) a biweekly allowance as set forth in an agreement for rental rates. Employees required to respond shall not receive the one-quarter pay for the hours that they receive full compensation, including any two-hour minimum call back overtime pay.

3. Employees required to respond to phone calls who do not return to work, shall only be compensated for the actual time they work rounded to the nearest tenth of an hour.

4. Employees who actually return to work shall be eligible for the two-hour minimum call back overtime pay, but if called back multiple times within the two hours, will only receive compensation for the two hours or the total time actually worked, whichever is greater.

5. Classifications eligible to receive availability pay shall include all classifications listed in the Memorandum of Understanding dated March 27, 2012 through March 27, 2015, and any subsequent amendments thereto, which are identified in Appendix A to this MOU.

6. The Kern County Human Resources Division is authorized upon agreement with SEIU to add additional classifications to those eligible for availability pay, and shall maintain a list which is incorporated by reference into this agreement.

C. Availability Pay - Additional Work Units

In the event that SEIU identifies additional work units in which employees are specifically required to be available for after-hours emergency/urgent response for the protection of public safety or property and/or for the maintenance of systems that impact public safety or property, the parties agree to meet and confer regarding inclusion of the work unit in a category of availability pay.

Article V, Section 4 is intended to govern all of the standby and availability rights of the employees covered by this MOU. None of the Ordinance Code or provisions relating to standby or availability pay shall apply to those employees.

Appendix A – Availability Pay Classifications from 2012-2015 MOU

Classifications eligible for a biweekly allowance equal to five percent (5%) of their biweekly base salary:

1. Kern County Sheriff's Office

Network Systems Administrator
Technical Services Supervisor
Information Systems Specialist I-DT, II-DT, III
Senior Information Specialist
Sheriff's Civil Litigation Coordinator
Deputy Coroner
Supervising Deputy Coroner
Evidence Technician
Aircraft Mechanic
Supervising Aircraft Mechanic
Maintenance Worker IV
Sheriff's Dispatch Assistant, if assigned to the Tactical Dispatch Team
Sheriff's Dispatch Supervisor, if assigned to the Tactical Dispatch Team
Sheriff's Dispatcher I, II, if assigned to the Tactical Dispatch Team
Sheriff's Senior Dispatcher, if assigned to the Tactical Dispatch Team

2. General Services Division

Computer Operator
Supervising Computer Operator
Technology Services Supervisor
Network Systems Administrator
Senior Information Systems Specialist
Communications Technician III
Supervising Communications Technician
Telecommunications Engineer
Graphic Artist
Video Services Producer
Local Area Network Systems Administrator
Maintenance Worker I, II, III, IV, V
Maintenance Carpenter
Air Conditioning Mechanic
Maintenance Electrician
Maintenance Painter
Maintenance Supervisor

3. Public Health Services

EMS Coordinator
Senior EMS Coordinator

4. Public Works Department

Waste Management Supervisor
Wastewater Treatment Plant Operator I, II, III, Trainee
Wastewater Specialist I, II

Sewer Maintenance Worker I, II
Facilities Specialist Administrative Coordinator
Supervising Disposal Gate Attendant
Waste Management Specialist
Waste Management Supervisor
Waste Management Support Supervisor
Supervising Building Inspector
Supervising Building Inspector (C)
Building Inspector Specialist
Building Inspector Specialist (C)
Building Inspector
Building Inspector (C)
Engineering Aide I, II, III
Engineering Technician I, II, III
Engineering Technician I, II, III (C)
Engineer
Engineer (C)

5. Kern County District Attorney

Criminalist I, II, III
Supervising Criminalist

6. Kern County Fire Department

Programmer I, II
Systems Analyst
Senior Information Systems Specialist
Information Systems Specialist
Supervising Aircraft Mechanic
Aircraft Mechanic
Fire Equipment Mechanic
Supervising Heavy Equipment Mechanic
Equipment Maintenance Superintendent

7. Mental Health Services

Recovery Specialist
Mental Health Therapist
Mental Health Nurse
Staff Nurse
Mental Health Unit Supervisor
Supervising Mental Health Clinician
LAN System Administrator
Senior Information Specialist

Classifications eligible for one-quarter of his/her hourly pay for the hours required to be available:

1. Kern Medical Center

| | |
|------------------------------------|---|
| Respiratory Therapist | Anesthesia Technician II |
| Pharmacist | Clinical Laboratory Scientist II |
| Senior Pharmacist | Clinical Nurse Specialist |
| Clinical Pharmacist | Cardiopulmonary Services Clinical Coordinator |
| Radiology Technologist | Clinical Supervisor |
| Utilizations Review Nurse | Computer Operator II |
| CT Technician | Computer Operator III |
| Ultrasound Technician I, II, | Healthcare Application Analyst II |
| Home Health Care Nurse | Hospital Nursing Shift Manager |
| Home Health Care Pharmacist | Hospital Picture Archiving & Communication |
| Orthopedic Technician I, II, III | Technology Services Supervisor |
| Supervising Orthopedic Technician | Information System Specialist III |
| Hospital Staff Nurses | Medical Support Tech |
| Licensed Vocational Nurse | MRI Tech |
| Nursing Attendant | Network Systems Administrator |
| Surgical Technician I, II | Obstetrical Technician II |
| Per Diem MRI Technician | Per Diem Nurse I |
| Per Diem Nurse II | Per Diem Pharmacist |
| Trauma Nurse Coordinator | Per Diem Ultra Sound Tech |
| Physicians Assistant | Programmer II |
| Pulmonary Function Technician | Senior Information Systems Specialist |
| Systems Analyst II | |
| Supervising Radiology Technologist | |

2. Public Health Services

Hazardous Material Specialists I, II, III, IV
Environmental Health Specialist I, II, III, IV

3. Aging and Adult Services

Deputy Conservator
Social Service Worker I, II, III, IV, V

4. Animal Services

Shelter Supervisor
Senior Animal Control Officer
Animal Control Officer

5. Department of Human Services

Social Worker III, IV, V
Social Service Supervisor I, II

Classifications eligible for biweekly allowance set forth in agreement for rental rates:

1. Parks Department

Park Caretaker

Groundskeeper I, II, III

Maintenance Worker I, II, III, IV

Equipment Operator

Park Supervisor

Area Park Supervisor

MEMORANDUM OF UNDERSTANDING

AUGUST 28, 2017 – OCTOBER 31, 2019

COUNTY OF KERN

AND

**SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 521 - BARGAINING UNITS 1-6**

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required to be on stand-by. Employees on stand-by duty, who are called back to work, shall not receive stand-by pay while in a called-back status.

4. A department head seeking to place employees on standby duty shall first, make a reasonable effort to solicit volunteers prior to mandating any employee in Standby/Availability.

B. Availability Pay

1. Due to urgent situations, employees in certain classifications must frequently be available to report to work outside their regular work schedule, upon request of their department head or designee. Such employees shall be required to carry a communications device to ensure their availability. The department head shall not impose conditions, which so restrict the employee that the employee is on standby as defined by Article V, Section 4.A, unless the employee is placed on standby.
2. As compensation for being available to respond to such situations, those employees shall receive either (1) a biweekly allowance equal to five percent (5%) of their biweekly base salary, or (2) one-quarter of his/her hourly pay for the hours required to be available. Employees required to respond shall not receive the one-quarter pay for the hours that they receive full compensation, including any two-hour minimum call back overtime pay.
3. A department head seeking to place employees on availability duty shall first, make a reasonable effort to solicit volunteers prior to mandating any employee in Standby/Availability.
4. Employees required to remain available shall not receive the one-quarter pay for the hours that they receive full compensation, including any two-hour minimum call back overtime pay.
5. Employees required to provide an after-hour service response, but who do not return to work, shall be eligible for a minimum of 30 minutes call back overtime pay, and compensated for the actual time they work over 30 minutes rounded to the nearest tenth of an hour.
6. Employees who actually return to work shall be eligible for the two-hour minimum call back overtime pay, but if called back multiple times within the two hours, will only receive compensation for the two hours or the total time actually worked, whichever is greater.
7. Classifications eligible to receive availability pay shall include all classifications listed in Appendix A of this Agreement.
8. The parties agree to meet and confer regarding the addition of other classifications to Appendix A at any time during the term of this Agreement. The Chief Human Resources Officer is authorized upon agreement with SEIU to add additional classifications to those eligible for availability pay, and shall maintain a list which is incorporated by reference into this agreement.

C. Availability Pay - Additional Work Units

In the event that SEIU identifies additional work units in which employees are specifically required to be available for after-hours emergency/urgent response for the protection of public safety or property and/or for the maintenance of systems that impact public safety or property, the parties agree to meet and confer regarding inclusion of the work unit in a category of availability pay.

Article V, Section 4 is intended to govern all of the standby and availability rights of the employees covered by this Agreement. None of the Ordinance Code or provisions relating to standby or availability pay shall apply to those employees.

Section 5. Bi-lingual Pay

In accordance with Chapter 1, Exhibit H of the Kern County Policy and Administrative Procedures Manual, the County agrees to pay \$25 per pay period for those pay periods in which an eligible employee is assigned to a designated position requiring bi-lingual abilities. The County shall expand the Bilingual Pay Program to include the payment of \$50 per pay period for those positions, which require written bilingual skills to perform a critical part of the employee's job.

Appendix A – Availability Pay Classifications

Classifications eligible for a biweekly allowance equal to five percent (5%) of their biweekly base salary:

1. Kern County Sheriff's Office

Network Systems Administrator
Technical Services Supervisor
Information Systems Specialist I-DT, II-DT, III
Senior Information Specialist
Sheriff's Civil Litigation Coordinator
Deputy Coroner
Supervising Deputy Coroner
Evidence Technician
Aircraft Mechanic
Supervising Aircraft Mechanic
Maintenance Worker IV
Maintenance Supervisor (added November 2016)
Sheriff's Dispatch Assistant, if assigned to the Tactical Dispatch Team
Sheriff's Dispatch Supervisor, if assigned to the Tactical Dispatch Team
Sheriff's Dispatcher I, II, if assigned to the Tactical Dispatch Team
Sheriff's Senior Dispatcher, if assigned to the Tactical Dispatch Team
Departmental Public Information Officer
Technical Support Specialist II/III (added March 2020)
Technical Support Engineer I/II (added March 2020)

2. General Services Division

Computer Operator
Supervising Computer Operator
Technology Services Supervisor
Network Systems Administrator
Senior Information Systems Specialist
Communications Technician II (added December 2016)
Communications Technician III
Supervising Communications Technician
Telecommunications Engineer
Graphic Artist
Video Services Producer
Local Area Network Systems Administrator
Maintenance Worker I, II, III, IV, V
Maintenance Carpenter
Air Conditioning Mechanic
Maintenance Electrician
Maintenance Painter
Maintenance Supervisor
Fiscal Support Supervisor (added April 2017)
Help Desk Technician I, II, III (added November 7, 2018)
Help Desk Supervisor (added November 7, 2018)
Information Systems Specialist I, II, III (added November 7, 2018)
Senior Information Systems Specialist (added November 7, 2018)
Local Area Network Administrator (added November 7, 2018)

Network Systems Administrator (added November 7, 2018)
Technology Services Supervisor (added November 7, 2018)
Telecommunications Network Administrator (added November 7, 2018)
Systems Programmer I, II (added November 7, 2018)
Systems Analyst I, II (added April 13, 2019)
Technical Support Engineer I/II (added March 2020)
Technical Support Specialist I/II/III (added March 2020)

3. Public Health Services

EMS Coordinator
Senior EMS Coordinator
Environmental Health Technician II (added February 2018)
Public Health Epidemiologist (added March 2020)

4. Public Works Department

Waste Management Supervisor
Waste Management Technician II (added July 2017)
Wastewater Treatment Plant Operator I, II, III, Trainee
Wastewater Specialist I, II
Sewer Maintenance Worker I, II
Facilities Specialist Administrative Coordinator
Supervising Disposal Gate Attendant
Waste Management Specialist
Waste Management Supervisor
Waste Management Support Supervisor
Supervising Building Inspector
Supervising Building Inspector (C)
Building Inspector Specialist
Building Inspector Specialist (C)
Building Inspector
Building Inspector (C)
Engineering Aide I, II, III
Engineering Technician I, II, III
Engineering Technician I, II, III (C)
Engineer
Engineer (C)
Road Maintenance Worker I, II, III (added November 7, 2018)
Supervising Road Maintenance Worker (added November 7, 2018)
Road Superintendent (added November 7, 2018)
Maintenance Painter (added November 7, 2018)
Supervising Maintenance Painter (added November 7, 2018)
Highway Paint Equipment Superintendent (added November 7, 2018)
Traffic Signal Technician I, II, Senior (added November 7, 2018)
Supervising Heavy Equipment Mechanic (added November 7, 2018)
Equipment Maintenance Superintendent (added November 7, 2018)
Administrative Coordinator (added April 13, 2019)

5. Kern County District Attorney

Criminalist I, II, III
Supervising Criminalist

6. Kern County Fire Department

Programmer I, II
Systems Analyst
Senior Information Systems Specialist
Information Systems Specialist
Supervising Aircraft Mechanic
Aircraft Mechanic
Fire Equipment Mechanic
Supervising Heavy Equipment Mechanic
Equipment Maintenance Superintendent
Structural Maintenance Superintendent (added May 2016)
Maintenance Worker III and IV (added May 2016)
Goundskeeper III (added May 2016)
Light Vehicle Driver (added May 2016)
Fire Equipment Technician (added May 2016)
Fire Dispatcher (added May 2016)
Supervising Fire Dispatcher (added May 2016)
Storekeeper (added April 13, 2019)
Warehouse Supervisor (added April 13, 2019)
Technical Support Specialist II/III (added March 2020)
Technical Support Engineer I/II (added March 2020)

7. Behavioral Health and Recovery Services

Recovery Specialist
Mental Health Therapist
Mental Health Nurse
Staff Nurse
Mental Health Unit Supervisor
Supervising Mental Health Clinician
LAN System Administrator
Senior Information Specialist
Technology Services Supervisor (added October 2017)
Network Systems Administrator (added November 7, 2018)
Maintenance Worker (added April 13, 2019)
Technical Support Engineer II (added March 2020)

8. Parks

Maintenance Worker I-IV
Maintenance Electrician (added August 2016)
Maintenance Plumber (added August 2016)

9. Department of Human Services

Maintenance Worker I-IV (added May 2016)
Maintenance Supervisor (added October 2017)

Classifications eligible for one-quarter of his/her hourly pay for the hours required to be available:

10. Public Health Services

Hazardous Material Specialists I, II, III, IV
Environmental Health Specialist I, II, III, IV

11. Aging and Adult Services

Deputy Conservator
Social Service Worker I, II, III, IV, V

12. Animal Services

Shelter Supervisor
Senior Animal Control Officer
Animal Control Officer

13. Department of Human Services

Social Worker III, IV, V
Social Service Supervisor I, II
Human Services Program Specialist (December 2018)

14. Mental Health

For the following units: PEC/CSU, ACT, DBT, MIST, Crisis Walk in Center:
Clinical Supervisor (added May 2016)
Mental Health Unit Supervisor (added May 2016)
Mental Health Nurse (added May 2016)
Mental Health Therapist (added May 2016)
Mental Health Recovery Specialist (added May 2016)

Classifications eligible for biweekly allowance set forth in agreement for rental rates:

1. Parks Department

Park Caretaker
Groundskeeper I, II, III
Maintenance Worker I, II, III, IV
Equipment Operator
Park Supervisor
Area Park Supervisor

**BEFORE THE BOARD OF RETIREMENT
KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
RESOLUTION No. 2020-01**

In the matter of:

**EMPLOYER PAY CODES OF EMPLOYEE COMPENSATION INCLUDED IN
COMPENSATION EARNABLE AND PENSIONABLE COMPENSATION IN
COMPLIANCE WITH CALIFORNIA SUPREME COURT'S *ALAMEDA* DECISION**

Ayes: Couch, Dodgin, Gonzalez, Kratt, Skidmore, Whitezell, Nunneley (Alt), Seibly (Alt)
Noes: Robinson
Absent: Franey, Kaufman

Dominic D. Brown,
Secretary to the Board of Retirement,
Kern County Employees' Retirement Association



RESOLUTION

Section 1. WHEREAS:

(a) The Kern County Employees' Retirement Association ("KCERA") Board of Retirement ("Board") is required by Government Code sections 31461 and 31542, to determine *compensation earnable* for those KCERA members ("legacy members") who are not "new members" under the Government Code section 7522.04, subd. (f) ("PEPRA Members"), and is required by Government Code section 7522.34, to determine *pensionable compensation* for those individuals who are PEPRA members.

(b) The Board adopted Resolution No. 12-05, that initially sought to comply with Assembly Bill 197 (2012-2013), as it amended section 31461, in the context of KCERA's pre-existing settlement agreement relating to the pensionability of certain pay codes for legacy members ("post-*Ventura* settlement agreement"). The Board also adopted Resolution No. 12-06 relating to the inclusion of pay codes in pensionable compensation, some of which appear also to have been included in the context of provisions of the post-*Ventura* settlement agreement for PEPRA members.

(c) On July 30, 2020, the California Supreme Court filed its decision in *Alameda*, which, pursuant to Supreme Court Rule 8.532, is expected to be final thirty days later (the "*Alameda* Decision"). The *Alameda* Decision concludes that all amendments to the definition of compensation earnable in Government Code section 31461, enacted as a result of the Public Employees' Pension Reform Act of 2013 and related statutory changes to CERL ("PEPRA"), effective January 1, 2013 are constitutional, and that CERL retirement boards may not be contractually bound or estopped by settlement agreements, board resolutions, or other similar actions, from implementing those amendments. The *Alameda* Decision further determines that CERL retirement boards may not include items in retirement allowance calculations, either compensation earnable under section 31461, as amended, or pensionable compensation under section 7522.34, that the applicable statutes require them to exclude ("PEPRA Exclusions").

(d) The *Alameda* Decision also held that CERL retirement boards have no discretion to include pay items in retirement allowance calculations that are excluded under CERL, PEPRA, or other applicable statutes even without the enactment of PEPRA ("*Alameda*

Exclusions), disapproving of statements to the contrary in footnote no. 6 of *Guelfi v. Marin County Employees' Retirement Assn.* (1983) 145 Cal.App.3d 297 (“*Guelfi* footnote 6”).

(e) The Board hereby determines that the *Alameda* Decision and other applicable law require it to change its determinations of certain pay codes for either compensation earnable, pensionable compensation, or both, as resolved below.

(f) This Resolution is intended to comply with the requirements of the Internal Revenue Code of 1986, as amended or replaced from time to time and the regulations issued thereunder (the “Code”) as applicable.

Section 2. NOW, THEREFORE BE IT RESOLVED, by the Board of Retirement of Kern County Employees' Retirement Association as follows:

Effective as of August 24, 2020, the following actions are authorized and required of KCERA:

1) Comply with *Alameda's* directives regarding mandatorily excluded pay items, which includes the PEPRA Exclusions, and apply that directive to all retiree payroll for individuals who retire on or after January 1, 2013 (including those who will retire on or after the date of this Resolution), effective with the first retiree payroll occurring after *Alameda* is final, that is, as of the August 31, 2020 retiree payroll;

2) Comply with *Alameda's* directives regarding the Board's lack of authority to include the *Alameda* Exclusions in compensation earnable and pensionable compensation, as applicable, and apply that directive to all retiree payroll for individuals who retire on or

after July 30, 2020, when the Supreme Court overturned *Guelfi* footnote 6 and KCERA was thus on notice of that statement of law (including those who will retire on or after the date of this Resolution);

3) Determine all active member contributions that were erroneously taken on and after January 1, 2013, on PEPRA Exclusions and any that were potentially erroneously taken on *Alameda* Exclusions, and propose a methodology to address those errors in a manner that complies with applicable federal tax compliance rules and California law;

4) With respect to overpayments that occurred prior to the August 31, 2020 payroll, invoke the “system-wide” error correction provisions in KCERA’s Overpayment and Underpayment of Member Benefits Policy and Overpayment and Underpayment of Member Contributions Policy (collectively “Error Correction Policies”);

5) Present revised pay codes as soon as practicable to the Board to ratify exclusions from compensation earnable and pensionable compensation in compliance with *Alameda*, and communicate to KCERA participating employers that member contributions are no longer to be taken on such pay codes;

6) Inform KCERA members of the foregoing actions through appropriate means; and

7) This resolution supersedes any previous resolutions for employer pay codes of employee compensation.

RESOLUTION HISTORY

- 1) This Resolution was:
 - a) Approved by the Board on August 24, 2020.

Executive Team

Dominic D. Brown, CPA, CFE
Executive Director

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
General Counsel

Matthew Henry, CFE
Assistant Executive Director

Kern County Employees'
Retirement Association



Board of Retirement

Rick Kratt, Chair
Dustin Dodgin, Vice-Chair
David Couch
Phil Franey
Juan Gonzalez
Jordan Kaufman
Edward Robinson
Lauren Skidmore
Tyler Whitezell
Bradly Brandon, Alternate
Chase Nunneley, Alternate
Robb Seibly, Alternate

October 14, 2020

Tracy Wolfe

Subject: Change in Retirement Benefit

Dear Ms. Wolfe:

On August 24th, the Board of Retirement approved a Resolution to implement the recent California Supreme Court decision in the *Alameda* case. Following that meeting, KCERA Staff began assessing the impact of the decision on the special pay codes utilized by our plan sponsors. This Court case is significant and has required review and analysis of over 200 unique pay codes for two distinct types of retired members.

Based upon a thorough review of your pay code history, KCERA Staff has identified pay code(s) within the final average compensation that must be excluded from the pension calculation. Excluding these pay codes has resulted in a decrease to your pension benefit.

Your retirement benefit will change from \$3,430.89 to \$2,134.08 per month and will begin with your November payment. This benefit change is effective as of August 30, 2020. This means that your pension has been overpaid by KCERA from August 30, 2020 up to November 30, 2020.

At this time, KCERA Staff believes it is premature to recommend action on whether or to what extent KCERA will collect pension payments that were overpaid prior to the effective date. However, Staff will present this issue to the Board of Retirement at a future date when all financial impacts to the pension plan are known and have been thoroughly evaluated. We encourage you to review the Alameda Decision Resources page on KCERA's website and attend future Board meetings when this issue will be formally addressed.

Because pay code designations apply to an entire member group, individual objections to pay code designations are not designed to be challenged through KCERA's Administrative Appeal process. However, if you disagree with the recalculation above because you believe your pension benefit has been recalculated inappropriately, a recently excluded pay code(s) did not reflect the nature of the services performed, an incorrect pay code was

Change in Retirement Benefit

October 14, 2020

Page 2

used or you have another objection to the recalculation, you may submit a written request describing your desired outcome. Please send your request to legal@kcera.org or the KCERA mailing address. You must submit your request by December 13, 2020 to begin the Administrative Appeal process. Additional information on the appeal process has been included for your convenience.

On behalf of everyone at KCERA, I would like to say how sorry we are for the disruption and stress caused by these benefit changes. Although we can't pretend to understand exactly what you are going through, please know how much we care about our KCERA retirees. We will continue to provide as much information as quickly as we can. KCERA remains committed to quality customer service, timely payment of benefits, and its duties under the law. We will do our best to recommend action that complies with the law and minimizes the effect on our members. Thank you for understanding.

If you have any questions, please contact the KCERA office at administration@kcera.org or (661) 381-7700.

Sincerely,



Dominic D. Brown
Executive Director

Enclosures

BOR-024

KCERA

ATTN: EXECUTIVE DIRECTOR

11125 River Run Blvd

Bakersfield CA 93311

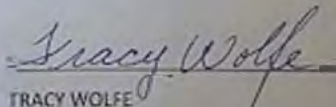
Dear KCERA, My name is Tracy Wolfe and I'm a 20 year plus retired Senior Animal Control Officer for KC Animal Services. I'm writing this letter asking that you not reduce my retirement benefits. My "stand-by," "availability pay" was never an option, it was mandatory. In my beginning years, I had to rent a hotel room in the metro Bakersfield area so I would be in close proximity to my call outs. I gave up weekends, holidays and valuable time that could have been spent with my family, but instead I worked days, weeks and months of on call for % of my hourly wage. In the beginning that was about \$4.50 an hour.

I was so dedicated that I was awarded Officer of the year for my 16 hour days during the 2017 Erskine Fire, helping the animals and people of my community. I received acknowledgement from Congress and the Senate for my dedication to the community. I was first on scene on the chimpanzee attack in Havilah CA in 2005. One of the worst calls of my career. The things I have seen in my career, some of them unbelievable.

I was called out at 1:00am in the morning for the Turkey truck turned over off the 58/99 interchange. I worked all through the night, and then completed my regular day shift after that. I don't have a huge retirement after all the years of working for the County of Kern. When I receive a letter saying you are going to reduce my income by \$1,300.00 a month, with little or no notice. That is my house and car payment.

Please reconsider your decision in regards to the reduction of my retirement pension. Those hours, days and weeks of being on call, again being mandatory. Having to be ready to leave my home within minutes notice, sometime working all through the night sometimes going into the next day. To this day, being on call, is still mandatory, not voluntary. I worked hard for all those years. Please don't punish me for being a dedicated employee with the County of Kern.

Respectfully


TRACY WOLFE

[REDACTED]

[REDACTED]

**BEFORE THE BOARD OF RETIREMENT
KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
RESOLUTION No. 2021-01**

In the matter of:

**CORRECTIVE DISTRIBUTIONS FOR ACTIVE AND DEFERRED EMPLOYEES WHO
PAID CONTRIBUTIONS ON PAY CODES EXCLUDED FROM COMPENSATION
EARNABLE AND PENSIONABLE COMPENSATION IN COMPLIANCE WITH
CALIFORNIA SUPREME COURT'S ALAMEDA DECISION**

Ayes: Couch, Dodgin, Franey, Gonzalez, Kratt, Robinson, Skidmore, Whitezell,
Nunneley (Alternate)

Noes: None

Absent: Kaufman

Dominic D. Brown,
Secretary to the Board of Retirement,
Kern County Employees' Retirement Association



RESOLUTION

Section 1. WHEREAS:

(a) The Kern County Employees' Retirement Association ("KCERA") Board of Retirement ("Board") is required by Government Code sections 31461 and 31542, to determine *compensation earnable* for those KCERA members ("legacy members") who are not "new members" under the Government Code section 7522.04, subd. (f) ("PEPRA Members"), and is required by Government Code section 7522.34, to determine *pensionable compensation* for those individuals who are PEPRA members.

(b) The Board adopted Resolution No. 12-05, that initially sought to comply with Assembly Bill 197 (2012-2013), as it amended section 31461, in the context of KCERA's pre-existing settlement agreement relating to the pensionability of certain pay codes for legacy members ("post-*Ventura* settlement agreement"). The Board also adopted Resolution No. 12-06 relating to the inclusion of pay codes in pensionable compensation, some of which appear also to have been included in the context of provisions of the post-*Ventura* settlement agreement for PEPRA members.

(c) On July 30, 2020, the California Supreme Court filed its decision in *Alameda*, which, pursuant to Supreme Court Rule 8.532, became final thirty days later (the "*Alameda* Decision"). The *Alameda* Decision concludes that all amendments to the definition of compensation earnable in Government Code section 31461, enacted as a result of the Public Employees' Pension Reform Act of 2013 and related statutory changes to CERL ("PEPRA"), effective January 1, 2013 are constitutional, and that CERL retirement boards may not be contractually bound or estopped by settlement agreements, board resolutions, or other similar actions, from implementing those amendments. The *Alameda* Decision further determines that CERL retirement boards may not include items in retirement allowance calculations, either compensation earnable under section 31461, as amended, or pensionable compensation under section 7522.34, that the applicable statutes require them to exclude ("PEPRA Exclusions").

(d) On August 24, 2020, the Board adopted Resolution No. 2020-01 which required KCERA determine all active member contributions that were erroneously taken on and after January 1, 2013, on PEPRA Exclusions and any that were potentially erroneously

taken on *Alameda* Exclusions, and propose a methodology to address those errors in a manner that complies with applicable federal tax compliance rules and California law.

Section 2. NOW, THEREFORE BE IT RESOLVED, by the Board of Retirement of Kern County Employees' Retirement Association as follows:

Effective as of January 20, 2021, the following actions are authorized and required of KCERA:

- 1) Distribute Corrective Distributions to all active and deferred members who paid employee contributions that were erroneously taken on PEPRA Exclusions on and after January 1, 2013, and any that were erroneously taken on *Alameda* Exclusions on and after the member's first contribution payment, with interest at the applicable rate as set for in KCERA's Overpayment and Underpayment of Member Contributions Policy (collectively "Error Correction Policies");and
- 2) Provide active and deferred members who receive Corrective Distributions with the ability to change the default tax withholding on the Corrective Distribution.

RESOLUTION HISTORY

- 1) This Resolution was:
 - a) Approved by the Board on January 20, 2021.

Executive Team

Dominic D. Brown, CPA, CFE
Executive Director

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
General Counsel

Matthew Henry, CFE
Assistant Executive Director

KERN COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION



Board of Retirement

Dustin Dodgin, Chair
Juan Gonzalez, Vice-Chair
David Couch
Phil Franey
Jordan Kaufman
Rick Kratt
Chase Nunneley
Edward Robinson
Lauren Skidmore
Tyler Whitezell
Bradly Brandon, Alternate
Robb Seibly, Alternate

April 21, 2021

Tracy Wolfe



Subject: Response to Request for Administrative Appeal re Monthly Pension Reduction following the *Alameda* decision

Ms. Wolfe:

This letter addresses the concerns you raised in your Request for Administrative Appeal received by KCERA November 23, 2020.

Responses to Concerns Raised

1. Services Performed Outside Normal Working Hours. Your appeal states your duties as a Senior Animal Control Officer required you to respond to significant incidents involving animals that occurred at all hours. .

The pay code excluded from your pension calculation as a result of the *Alameda* decision was an “availability” type pay: specifically, KP-Availability Pay – 25%. PEPRAs legislative changes to the California Employees’ Retirement Association (CERL) excludes “[p]ayments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise” from the pension calculation effective January 1, 2013. (See Cal. Gov. Code §31461(b)(3)). Unfortunately, this statute does not distinguish between mandatory and non-mandatory services. Thus, the decision to allow your availability pay to remain pensionable was not within the KCERA Board’s discretion.

The California Supreme Court’s decision in *Alameda* to uphold the PEPRAs statutes, means that compensation for “availability” and “on-call” type services must be excluded from the pension calculation when the compensation is paid to a member for rendering additional services outside of their “normal working hours” regardless of whether the additional services are required by law, by the job classification, or otherwise.

If an employee's position or employer requires an employee to be "available" or "on call" to provide "additional services" as needed or as required by their job duties in order to respond to emergency situations, the employer may agree to increase the compensation rate the employee receives for those "additional services". However, neither the compensation rate nor the mandatory nature of the "additional service" alters the pension plan's designation of the pay code. The pension plan ("Plan") administrator (KCERA) is only authorized to designate the pay code according to its governing rules and laws.

The services you describe in your letter seem to have required you to be "available" to respond to any emergency or situations involving animal control services that may have occurred during or after normal working hours. Any services provided during your scheduled work hours is pensionable, and any services that occurred or were performed outside of your normal working hours is considered an "additional service." Consequently, the compensation for the "additional services" has been properly excluded under the law.

2. Pension Spiking. The 2013 PEPRA legislation described above was intended to curb pension spiking. KCERA does not claim that your "additional services" were performed to "spike" your pension, but the law (as upheld in the *Alameda* decision) is not contingent on KCERA finding that a member was attempting to or was purposefully "spiking" their pension. The legislation is intended to curtail a lifetime benefit based on an employee providing "additional services" over a short period of their career. As such, KCERA is required to apply the law to all its members as written by the California Legislature and as recently interpreted by the California Supreme Court. .

It is important to note that your pay history demonstrates that your prior retirement benefit was based on your compensation from 2015-2016 when you received the most KP availability pay. Your adjusted benefit is based on the compensation you received during the next highest consecutive 12 months of your career (which was the compensation you received the year prior to your retirement).

Information re: Administrative Appeal

Based on the above, I do not have a basis to include your excluded pay code. If you disagree with this determination, you may request to be placed on the Board of Retirement agenda and address the Board directly. In order to do so, you must mail, email (to legal@kcera.org) or hand deliver a written statement requesting to have your item placed on the Board of Retirement agenda within 30 days from the date of this letter.

Please know that the Board's meetings are open to the public. If your request is placed on the Board's agenda, any material you submit, including your November 23, 2020 letter (with your address redacted), will become a public record. KCERA posts all agenda material on its website and all agenda material is available to the public upon proper request.

Re: Wolfe, T. - Response to Request for Administrative Appeal re Monthly Pension
Reduction following *Alameda* decision
April 21, 2021
Page 3

If you have any questions about the process, please contact legal@kcera.org.

Sincerely,




Dominic D. Brown, Executive Director

PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF KERN

I am employed in the County of Kern, State of California. I am over the age of 18 years and not a party to the within action. My business address is 11125 River Run Boulevard, Bakersfield, California 93311.

On **April 21, 2021**, I served the foregoing document described as **Response to Request for Administrative Appeal regarding Monthly Pension Reduction following the *Alameda* decision** on the interested party(ies) in this action by placing a true copy thereof in sealed envelopes addressed as follows:

Tracy Wolfe


I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

EXECUTED this **21th day of April, 2021**, at Bakersfield, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Maggie Peralta-Lee



Signature

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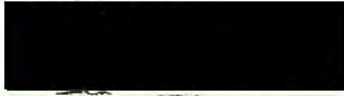

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| Certified Mail Fee | |
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| Extra Services & Fees (check box, add fee as appropriate) | |
| <input type="checkbox"/> Return Receipt (hardcopy) | \$ |
| <input type="checkbox"/> Return Receipt (electronic) | \$ |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$ |
| <input type="checkbox"/> Adult Signature Required | \$ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ |
| Postage | |
| \$ | |
| Total Postage and Fees | |
| \$ | |

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| Street and Apt. N Tracy Wolfe | |
| City, State, ZIP+4 | |

PS Form 3800, 11-15-10

Reverse for Instructions

| SENDER: COMPLETE THIS SECTION | COMPLETE THIS SECTION ON DELIVERY | | | | | | | | | | | | | | | | |
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| <ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. | <p>A. Signature <input checked="" type="checkbox"/> DT Wolfe <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> | | | | | | | | | | | | | | | | |
| <p>1. Article Addressed to:</p> <p>Tracy Wolfe</p>   <p>9590 9402 3379 7227 8183 77</p> | <p>B. Received by (Printed Name) C. Date of Delivery C19 4-23-</p> | | | | | | | | | | | | | | | | |
| <p>2. Article Number (Transfer from service label)</p> <p>7017 2680 0000 6139 8163</p> | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No</p> <p>APR 27 11:46 AM KOEHLER</p> <p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery</td> <td></td> </tr> </table> <p>Domestic Return Receipt</p> | <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® | <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ | <input checked="" type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery | <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation™ | <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery | <input type="checkbox"/> Insured Mail | | <input type="checkbox"/> Insured Mail Restricted Delivery | |
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| <input type="checkbox"/> Insured Mail Restricted Delivery | | | | | | | | | | | | | | | | | |

From: Tracy Wolfe [REDACTED]
Sent: Monday, May 17, 2021 7:52 AM
To: legal
Subject: Pension reduction

Dear KCERA, I request to be placed on the Board of retirement agenda, to be able to address the board directly. Thank you. Tracy Wolfe

Sent from my iPhone

Executive Team

Dominic D. Brown, CPA, CFE
Executive Director

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
General Counsel

Matthew Henry, CFE
Assistant Executive Director

KERN COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION



Board of Retirement

Dustin Dodgin, Chair
Juan Gonzalez, Vice-Chair
David Couch
Phil Franey
Jordan Kaufman
Rick Kratt
Edward Robinson
Lauren Skidmore
Tyler Whitezell
Bradly Brandon, Alternate
Chase Nunneley, Alternate
Robb Seibly, Alternate

May 26, 2021

Tracy L Wolfe
[REDACTED]
[REDACTED]

Subject: Pension Benefit Overpayment

Dear Tracy L Wolfe:

On September 28, 2020, you were notified that your retirement benefit would be reduced as a result of the California Supreme Court Decision in the *Alameda* case. Although your benefit was reduced with your 11/30/2020 payment, the benefit change was effective as of August 30, 2020. This means that your pension had been overpaid by \$2,635.45.

KCERA is required to pursue collection of the \$2,635.45 overpayment. KCERA may receive this amount by either (a) lump sum payment or (b) through additional amounts deducted from future monthly benefit(s). KCERA has arranged for an approximate monthly repayment amount of \$219.62 to be deducted from your monthly benefit payment, beginning in June 2021, unless KCERA receives a lump sum payment in full prior to that date. Deductions will continue for 12 months.

If you object to the proposed action or payment arrangement above, you may submit a written objection describing the basis for your objection and any requested action. Please send your request to legal@kcera.org or the KCERA mailing address. You must submit your request by June 24, 2021 to begin the Administrative Appeal process. Additional information on the appeal process has been included for your convenience.

KCERA appreciates your cooperation in resolving this issue. If you have any questions or concerns, please contact the KCERA office at administration@kcera.org or (661) 381-7700.

Sincerely,

A handwritten signature in blue ink that reads 'Dominic D Brown'.

Dominic D Brown
Executive Director

From: Tracy Wolfe <[REDACTED]>
Sent: Thursday, June 24, 2021 6:09 PM
To: legal
Cc: administration
Subject: Objecting to proposed action

Dear KCERA, I request at this time that you do not take any further money out of my reduced retirement payment. I can not afford to have any more money taken out of my retirement at this time. Your letter states that additional information on the appeal process has been included for your convenience. I only received the one page document. Thank you, Tracy Wolfe

**BEFORE THE BOARD OF RETIREMENT
KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
RESOLUTION No. 2021-05**

In the matter of:

**APPROVAL OF APPEALS PROCESS FOR BENEFIT DETERMINATIONS ARISING
OUT OF THE *ALAMEDA* SUPREME COURT DECISION (“*ALAMEDA* APPEALS”)**

Ayes: Gonzalez, Kaufman, Kratt, Whitezell, Seibly (Alternate)

Noes: None

Absent: Couch, Franey, Hughes, Skidmore

Dominic D. Brown,
Secretary to the Board of Retirement,
Kern County Employees' Retirement Association



RESOLUTION

Section 1. WHEREAS:

- (a) The Board of Retirement adopted the Administration of Special Allowances Initiated by KCERA Plan Sponsors Policy (“Special Pays Policy”) on December 12, 2018. The Special Pays Policy allows KCERA members or Plan Sponsors to appeal a determination regarding whether a Special Pay item is pensionable through an administrative appeal process provided by KCERA.

- (b) On July 30, 2020, the California Supreme Court issued a decision in the case of *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County*

Employees' Retirement Assn., et al. (2020) 9 Cal.5th 1032 (the "*Alameda Decision*"). The *Alameda Decision* concludes that all amendments to the definition of Compensation Earnable in Government Code section 31461, enacted as a result of the Public Employees' Pension Reform Act of 2013 and related statutory changes to the County Employees Retirement Law of 1937 ("CERL") (collectively at times, ("PEPRA")), effective January 1, 2013, are constitutional, and that CERL retirement boards may not be contractually bound or estopped by settlement agreements, board resolutions, or other similar actions, from implementing those amendments. Specifically, the *Alameda Decision* determined that CERL retirement boards may not include Special Allowances ("Special Pay(s)") in retirement allowance calculations, if such items are not considered "compensation" under section 31640 or are excluded from "compensation earnable" under section 31461 or "pensionable compensation" under section 7522.34, as applicable.

- (c) On August 24, 2020, the Board adopted a Resolution to comply with the *Alameda Decision*'s directives regarding mandatorily excluded pay items. Resolution No. 2020-01 directed staff to apply those directives related to "PEPRA Exclusions" to individuals who retired on or after January 1, 2013, effective with the first retiree payroll occurring after the August 31, 2020 retiree payroll and to apply the directives related to "*Alameda Exclusions*" to all retiree

payroll for individuals who retired on or after July 30, 2020, when the Supreme Court overturned *Guelfi* footnote 6.¹

- (d) After implementing the *Alameda* Decision, the Board adopted Resolution 2021-01 on January 20, 2021 to determine and address all active member contributions erroneously taken on and after January 1, 2013, on PEPPRA Exclusions and/or *Alameda* Exclusions, in a manner that complies with applicable federal tax compliance rules and California law.
- (e) The Board, through these Resolutions, directed staff to notify the affected members of the Board's implementation of the *Alameda* Decision through appropriate means and provide members with an opportunity to administratively appeal factual determinations KCERA made regarding pay code designations with which they may disagree.
- (f) KCERA a sent letter ("Notice") to each affected member about the implementation of the *Alameda* Decision. Depending on the circumstances of the member, the Notice informed the member of one or more of the following (1) the determination KCERA had made with regard to the member's retirement account; (2) resulting adjustments to the member's retirement allowance or bi-weekly contribution amount; (3) a pending Contribution Correction and/or (4) the need to collect overpaid benefits or underpaid contributions. The Notice

¹ As used herein, the term "PEPPRA Exclusions" shall refer to any payments that are not permitted by subdivision (b)(2), (3) or (4) of Government Code section 31461 to be included in "compensation earnable," or by subdivision (c) of Government Code section 7522.34 to be included in "pensionable compensation." "Alameda Exclusions" shall refer to types of pay used to fund "in-kind" benefits which the Alameda Decision determined county retirement plans must exclude from the pension calculation because such pays cannot be received in cash and therefore are not considered "compensation," as that term is defined by statute.

also informed the affected member of their ability to object to the proposed action if they disagreed with the calculations provided, if a recently excluded pay code did not reflect the nature of the services performed, if they believed an incorrect pay code was used, or if they had another objection to the proposed action.

- (g) Affected members were required to submit a written objection (“Objection”) via email or mail to KCERA within 30-60 days of the date of the Notice. Members who timely objected received a written response (“Response”) from KCERA’s Chief Executive Officer. The Response included a summary of the concerns in the member’s Objection, the basis for Staff’s determination, citation to legal authority for KCERA’s actions, and instructions regarding how to further appeal the CEO’s Response to the Board. Members received 30 days from the date of the Response to request their Objection be referred to the Board for a final determination (“Board Referral”).
- (h) It is the Board’s intent to ensure due process of affected members who appeal a determination made by KCERA Staff during its implementation of the *Alameda* Decision (“Alameda Appeal”). This Resolution sets forth the process for the Board Referral of *Alameda* Appeals. The process is designed to facilitate filing an Alameda Appeal without the services of an attorney; however, members may engage legal representation at their discretion.

Section 2. NOW, THEREFORE BE IT RESOLVED, by the Board of Retirement of Kern County Employees’ Retirement Association as follows:

Effective as of December 3, 2021, the following process is authorized for *Alameda* Appeals presented to the Board:

A. Consideration of Issues

While *Alameda* Appeals are guided by the written Objection(s) submitted by the member, for purposes of such proceedings, a member may only raise issues with the Board that were set forth in their initial Objection. The ultimate issue(s) for the Board's determination are limited to one or more of the following, as applicable:

- 1) Whether the Special Pay was properly excluded from "compensation earnable" under Government Code section 31461(b) or "pensionable compensation" under Government Code section 7522.34(c); and/or
- 2) Whether KCERA's calculations or other numerical data used to make corrections as the result of the *Alameda* Decision are incorrect.

B. Appeals Related to the Same Special Pay from Members of the Same Department or Classification

If there are members of the same grade or class of position appealing the exclusion of the same Special Pay, then such appeals may be grouped together by KCERA for purposes of analyzing the excluded item and making a final determination on these appeals.

C. Submission of Documents to the Board

- 1) As to all Board Referrals in an *Alameda* Appeal, the following schedule applies:
 - a. Member, individually or through counsel, may submit a written Statement to the Board by sending it to legal@kcera.org. The Statement

is due 30 days following the “Confirmation of Board Referral” sent by KCERA to the member, unless KCERA directs that the Statement is due on a later date so as to facilitate the referenced grouping of proceedings or for other administrative reasons.

- b. KCERA, through the CEO or KCERA’s Legal counsel, may submit a Reply Statement to the Board, and such Reply Statement is due not later than 30 days after the date the Member’s Statement is due or received, whichever is later.
- c. All evidence provided on *Alameda* Appeals shall be submitted in documentary form, though oral argument will be permitted at the discretion and under the control of the Board.

D. Final Determination by the Board

- 1) The Board will take action on the member’s *Alameda* Appeal at a duly noticed and properly agendaized meeting of the Board. The member and member’s counsel, if any, will be notified of the date the Board will consider the appeal and will be advised of the opportunity to address the Board in open session on that date.
- 2) *Alameda* Appeals will be scheduled for determination by the Board no fewer than 30 days, and no more than 90 days, from the due date of KCERA’s Reply Statement, unless the Board grants itself additional time to make such a determination. The Board reserves the right to request additional information from the parties should it determine, in its sole discretion, such information is

warranted. The Board will control the time allocated for oral argument of parties or their counsel during its consideration of *Alameda Appeals*.

- 3) Following the open session in which any oral arguments are heard, the Board may meet in closed session with its Legal counsel for purposes consistent with the Ralph M. Brown Act. The Board will take a vote regarding the *Alameda Appeals* in open session. KCERA will also provide written notice of the Board's decision to the member or their counsel. The Board's decision will be final.
- 4) If the affected member disagrees with the Board's decision, the member may seek judicial review of the Board's decision. Any judicial review of the Board's decision in *Alameda Appeals* shall be subject to Code of Civil Procedure section 1085. *Shelden v. Marin County Employees' Retirement Association* (2010) 189 Cal. App. 4th 458.

E. Ability to Utilize a Hearing Officer

The Board reserves the right to utilize the services of a Hearing Officer to review the documentary evidence and issue findings of fact and a recommended decision on the *Alameda Appeals* should it determine, in its sole discretion, such action is warranted.

IN WITNESS WHEREOF, the above Resolution for KCERA is hereby adopted by the BOARD on this 3rd day of December 2021.

Executive Team

Dominic D. Brown, CPA, CFE
Chief Executive Officer

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
Chief Legal Officer

Matthew Henry, CFE
Chief Operations Officer



Board of Retirement

Juan Gonzalez, Chair
Tyler Whitezell, Vice-Chair
Jeanine Adams
David Couch
Phil Franey
Joseph D. Hughes
Jordan Kaufman
Rick Kratt
Traco Matthews
Dustin Contreras, Alternate
Chase Nunneley, Alternate
Robb Seibly, Alternate

May 5, 2022

Tracy Wolfe
[Redacted]
[Redacted]

Subject: Board of Retirement Action on Alameda Phase 4

Dear Tracy Wolfe,

At the April 13, 2022 Regular Meeting of the Board of Retirement, KCERA Staff provided an update on Phase 4 of KCERA's implementation of the *Alameda* decision. At this meeting, the Board voted to recover the overpaid pension benefits that exceeded overpaid contributions between January 1, 2013 and August 30, 2020, the date of the *Alameda* decision, from each member's Employer.

Anticipated Impact to You

KCERA Staff has performed a thorough calculation and believes you were overpaid retirement benefits that exceeded the amount of your overpaid contributions. The decision by the Board of Retirement means that this overpayment will be collected from the County Of Kern. There is no further impact to you on the overpaid benefits from the date of your retirement until the date of the *Alameda* decision.

KCERA is legally required to collect all overpaid benefits from the date of the *Alameda* decision on Aug 30, 2020 through the date your pension was adjusted. According to KCERA's records, you are making monthly payments of \$219.62. This will continue until the balance of \$2,635.45 has been paid in full.

Objection to Action

If you disagree with the action the Board took at the April 13, 2022 meeting, you may submit a written request describing your objection and desired outcome. Please send your request to legal@kcera.org or submit your written document to the KCERA mailing address. You must submit your request by June 04, 2022 to begin the Administrative Appeal process.

If you have any questions or concerns, please contact the KCERA office at administration@kcera.org or (661) 381-7700.

Sincerely,

Dominic D. Brown
KCERA Chief Executive Officer

Executive Team

Dominic D. Brown, CPA, CFE
Chief Executive Officer

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
Chief Legal Officer

Matthew Henry, CFE
Chief Operations Officer



Board of Retirement

Tyler Whitezell, Chair
Phil Franey, Vice-Chair
Jeanine Adams
David Couch
Juan Gonzalez
Joseph D. Hughes
Jordan Kaufman
Rick Kratt
Dustin Contreras, Alternate
Chase Nunneley, Alternate
Robb Seibly, Alternate
6th Member (Vacant)

February 13, 2023

Tracy L. Wolfe
[Redacted]

Subject: Response to Objection re Pension Benefit Overpayment

Dear Ms. Wolfe:

This letter addresses the concerns you raised in your objection to proposed action received by KCERA June 24, 2021.

Your objection was in response to KCERA's May 26, 2021 letter which informed you of additional deductions that were required from your retirement allowance as a result of the *Alameda* decision. The \$2,635.45 overpayment addressed in KCERA's May letter reflected the three months following the *Alameda* decision (August 2020, September 2020, and October 2020) in which you continued to receive part of the pension benefit that was excluded by the California Supreme Court decision. Once paid, this amount will not reduce your monthly pension benefit beyond the initial reduction in November 2020.

Because the *Alameda* decision was effective on August 30, 2020, KCERA is required to pursue collection of the \$2,635.45 overpayment. KCERA's letter informed you the amount could be paid by either (a) lump sum payment or (b) through additional amounts deducted from future monthly benefit(s). At that time, KCERA offered to set up a monthly repayment amount of \$219.62 to be deducted from your monthly benefit payment for 12 months.

KCERA intends to address your objection to the payment of overpaid pension benefits at the same time as your November 2020 objection to the reduction of your pension benefits. You should be receiving additional correspondence on that process within the next few months.

Information re: Administrative Appeal

Please know that the Board's meetings are open to the public. Any material you submit, including your June 24, 2021 email and November 21, 2020 letter (with your email address and mailing addresses redacted), will become a public record. KCERA posts all agenda material on its website and all agenda material is available to the public upon proper request.

Re: Wolfe, T. - Response to Objection re Pension Benefit Overpayment
February 13, 2023
Page 2

If you have any questions about the process, please contact legal@kcera.org.

Sincerely,




Dominic D. Brown
Chief Executive Officer

PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF KERN

I am employed in the County of Kern, State of California. I am over the age of 18 years and not a party to the within action. My business address is 11125 River Run Boulevard, Bakersfield, California 93311.

On **February 13, 2023**, I served the foregoing document described as **Response to Objection re Pension Benefit Overpayment** on the interested party(ies) in this action by placing a true copy thereof in sealed envelopes addressed as follows:

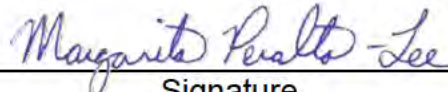
Tracy Wolfe


I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

EXECUTED this **13th day of February, 2023**, at Bakersfield, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Maggie Peralta-Lee



Signature

7017 2680 0000 6139 7876

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| SENDER: COMPLETE THIS SECTION | COMPLETE THIS SECTION ON DELIVERY |
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| <ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. | <p>A. Signature <i>T Wolfe</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Tracy Wolfe</i> C. Date of Delivery <i>2-16-11</i></p> |
| <p>1. Article Addressed to:</p> <p style="text-align: center;">Tracy L. Wolfe </p> | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> |
| <p style="text-align: center;"> 9590 9402 5615 9274 4006 69</p> | <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> |
| <p>2. Article Number (Transfer from service label)</p> <p style="text-align: center;">7017 2680 0000 6139 7876</p> | <p style="text-align: center;">11 Mail Restricted Delivery 0</p> |
| <p>PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt</p> | |

Executive Team

Dominic D. Brown, CPA, CFE
Chief Executive Officer

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
Chief Legal Officer

Matthew Henry, CFE
Chief Operations Officer



Board of Retirement

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Joseph D. Hughes
Jordan Kaufman
Rick Kratt
John Sanders
Dustin Contreras, Alternate
Chase Nunneley, Alternate
Robb Seibly, Alternate

June 19, 2023

Tracy L. Wolfe



Subject: Confirmation of Board Referral

This letter serves as the formal "Confirmation of Board Referral" pursuant to Board of Retirement Resolution 2021-05.

You requested an administrative appeal because KCERA Staff excluded KP- Availability Pay – 25% from your final average compensation calculation and reduced your monthly pension effective August 30, 2020 ("Alameda Appeal").

Resolution 2021-05 provides guidelines for certain challenges to KCERA Staff's implementation of the *Alameda* Decision.

Under the Resolution, the Board may determine:

- 1) Whether your Special Pay was properly excluded from "compensation earnable" under Government Code section 31461((b) and/or
- 2) Whether KCERA's calculations or other numerical data used to make corrections as the result of the Alameda Decision are incorrect

A copy of Resolution 2021-05 is attached for your reference.

Information re: Board Referral

Attached you will find copies of written communications between you and KCERA regarding the *Alameda Decision* and your request for an Alameda Appeal. Copies of this correspondence, along with any additional written statement you or KCERA Staff submit, will be incorporated into the Administrative Record ("the Record") to be considered by the Board.

If you'd like to submit an additional written statement to the Board of Retirement, you may do so by sending the statement via email to legal@kcera.org. The written statement must

be received by July 19, 2023. If you choose not to submit an additional statement, please let us know so we can accelerate the deadline for KCERA Staff's Reply Statement. (See Resolution for Reply Statement deadlines).

After all written statements are submitted, you will be notified of the date the Board will consider the appeal and will be advised of the opportunity to address the Board in open session. Alameda Appeals will be scheduled for determination by the Board no fewer than 30 days, and no more than 90 days, from the due date of KCERA's Reply Statement.

The Alameda Appeal process is designed to provide you with an opportunity to present your grievance to the Board of Retirement without the services of an attorney; however, you may seek legal representation at your discretion.

Please feel free to contact our office or email the Legal Unit with any questions.

Sincerely,



Jennifer Esquivel Zahry
KCERA Chief Legal Officer

Enclosures



Executive Team

Dominic D. Brown, CPA, CFE
Chief Executive Officer

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
Chief Legal Officer

Matthew Henry, CFE
Chief Operations Officer



Board of Retirement

Tyler Whitezell, Chair
Phil Franey, Vice-Chair
Jeanine Adams
David Couch
Juan Gonzalez
Joseph D. Hughes
Jordan Kaufman
Rick Kratt
John Sanders
Dustin Contreras, Alternate
Chase Nunneley, Alternate
Robb Seibly, Alternate

July 19, 2023

Tracy L. Wolfe



Subject: Request for Extension for Response

Dear Ms. Wolfe,

On July 19, 2023 you called KCERA to request an extension of time for submission of response to the Confirmation of Board Referral dated June 19, 2023. KCERA hereby grants a 30-day extension submission of an additional written statement to the Board of Retirement.

Please send the statement via email to legal@kcera.org. The written statement must be received by August 18, 2023. If you choose not to submit an additional statement, please let us know so we can accelerate the deadline for KCERA Staff's Reply Statement. (See Resolution for Reply Statement deadlines).

After all written statements are submitted, you will be notified of the date the Board will consider the appeal and will be advised of the opportunity to address the Board in open session. Alameda Appeals will be scheduled for determination by the Board no fewer than 30 days, and no more than 90 days, from the due date of KCERA's Reply Statement.

The Alameda Appeal process is designed to provide you with an opportunity to present your grievance to the Board of Retirement without the services of an attorney; however, you may seek legal representation at your discretion.

Please feel free to contact our office or email the Legal Unit with any questions.

Sincerely,



Maggie Peralta-Lee
Senior Paralegal

RLS RAINS LUCIA STERN ST. PHALLE & SILVER, PC

Jacob A. Kalinski
Partner
JKalinski@RLSlawyers.com

July 25, 2023

VIA EMAIL [LEGAL@KCERA.ORG] & FIRST-CLASS MAIL

Maggie Peralta-Lee
Kern County Employees' Retirement Association
11125 River Run Blvd.
Bakersfield CA 93311

Re: *Appeal of Tracy Wolfe*

Dear Ms. Peralta-Lee,

The purpose of this letter to inform the Kern County Employees' Retirement Association ("KCERA") that I have been retained to represent Tracy Wolfe with respect to her appeal before the KCERA Board regarding its decision to exclude certain remuneration from the calculation of compensation earnable.

Please direct any further communications on this matter to me. Thank you.

Very truly yours,

**RAINS LUCIA STERN
ST. PHALLE & SILVER, PC**



Jacob A. Kalinski

JAK:mrh

cc: Tracy L. Wolfe

1 JACOB A. KALINSKI, SBN 233709
2 GIDIAN R. MELLK, SBN 214404
3 **RAINS LUCIA STERN ST. PHALLE & SILVER, PC**
4 1428 2nd Street, Suite 200
5 Santa Monica, CA 90401
6 Tel: 310.393.1486
7 Fax: 310.395.5801
8 E-mail: JKalinski@RLSlawyers.com

9 Attorneys for Appellant, Tracy Wolf

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BEFORE THE BOARD OF ADMINISTRATION OF THE KERN COUNTY
EMPLOYEES RETIREMENT ASSOCIATION

TRACY WOLF,

Appellant,

v.

KERN COUNTY EMPLOYEES
RETIREMENT ASSOCIATION,

Respondent.

**APPELLANT'S BRIEF IN SUPPORT
OF APPEAL**

1 **I. INTRODUCTION**

2 Appellant, Tracy Wolf, hereby files her brief in support of her appeal from the
3 decision of the Kern County Employees Retirement Association (“KCERA”) to exclude her
4 “on call,” or “standby,” or “availability” pay from the calculation of her compensation
5 earnable pursuant to the California Supreme Court’s decision in *Alameda County Deputy*
6 *Sheriff’s Assoc. v. Alameda County Employees’ Retirement Assoc.* (2020) 9 Cal. 5th 1032
7 (“*Alameda*”). *Alameda* upheld the constitutionality of amendments to Government Code
8 section 31461, including subdivision (b)(3), which excluded from compensation earnable
9 “payments for additional services rendered outside of normal working hours.”

10 This appeal does not involve a challenge to *Alameda*. Rather, as the evidence
11 submitted by Ms. Wolf plainly shows, the on-call pay she earned was not “payments for
12 additional services rendered outside of normal working hours”; rather her work assignment,
13 as well as that for the one other Senior Animal Control Officer, required her to regularly
14 work 24-hours shifts where she was expected to be available at all times. These shifts were
15 mandatory. This type of schedule was worked by all “persons in the same grade or class of
16 positions during the period,” *i.e.*, both Animal Control Officers employed by Kern County.
17 (See Section 31461, subdivision (a).) Ms. Wolf thus did not perform extra voluntary work in
18 order to increase her pension, the pension “spiking” with which *Alameda* was concerned.

19 That Ms. Wolf’s scheduled work was not “rendered outside of normal working hours”
20 is also supported by the Memorandum of Understanding (“MOU”) between Kern County and
21 the Service Employees’ International Union (“SEIU”), of which Ms. Wolf was a member.
22 The MOU provides for “on call” and “availability” pay. It is “availability” pay that KCERA
23 claims in its April 21, 2021 correspondence to Ms. Wolf that is excluded from her pension
24 calculation. Interestingly, the relevant sections indicate that the County is first required to
25 seek volunteers prior to mandating that an employee report to work for after-hours calls. In
26 the case of Animal Control, however, the County never first sought “volunteers,” but required
27 Ms. Wolf, as a Senior Animal Control Officer to be available for all calls at all times, should
28 a subordinate fail to respond to a dispatch.

1 Accordingly, any on-call pay Ms. Wolf received was for work performed during her
2 “normal working hours,” and should be treated as compensation earnable.

3 **II. STATEMENT OF FACTS**

4 Tracy Wolf was hired by Kern County as an animal care worker in January 1999. She
5 thereafter promoted to Animal Care Officer and, in or about 2003, promoted to Animal
6 Control Officer. As such, she was responsible for her own area of Kern County, and could
7 have been called by the Sheriff’s Department (“Department”) at any time to respond to an
8 incident in her area. During her early years, Ms. Wolf had to rent a hotel room in the metro
9 Bakersfield area so she could be in close proximity to her call-outs; indeed, Ms. Wolf was
10 required to be available within minutes of receiving a telephone call. To perform her job, Ms.
11 Wolf had to give up weekends and holidays with her family in order to always be available
12 for these mandatory working hours.

13 In 2012, Ms. Wolf promoted to Senior Animal Control Officer in 2012; there were
14 two Senior Animal Control Officer positions. As a Senior, Ms. Wolf supervised nine Animal
15 Control Officers. If an Animal Control Officer did not respond when contacted by the
16 Department for a call-out, the Department would call Ms. Wolf, who then had to resolve the
17 incident. Accordingly, Ms. Wolf had to be available at all times. Ms. Wolf retired in 2020.

18 Article V, Section 4 of the Memorandum of Understanding between Kern County and
19 the Service Employees’ International Union, Local 521, of which Ms. Wolf was a represented
20 member, provides:

21 Standby and Availability Pay

22 A. Standby

23 1. Definition of Standby - **Only after first seeking volunteers**, an
24 employee who is required during off-duty hours to remain “on-call” on
25 the County’s premises or elsewhere or under conditions so circumscribed
that he/she/they cannot use the time effectively for his/her/their own
purposes is working while “on-call.”

26 Employees who are working while “on-call” are on “standby.” An
27 employee who is not required to remain on the County's premises or
28 elsewhere and is merely required to leave word at his/her/their home or
with County officials where he/she/they may be reached, or is merely
required to be available via a communications device, is not working

1 while “on-call” and shall not be considered on “standby.” **This**
2 **definition of “standby” is intended to be the same definition as**
3 **“working while on-call” which is contained in 29 CFR 785.17¹ and**
4 **to duplicate the definition of compensable standby (i.e., working**
5 **while “on-call”)** found in the Fair Labor Standards Act as it is presently
6 interpreted.

7
8 2. Compensation for Standby - An employee required by the department
9 head to be on stand-by duty shall receive one-quarter of his/her/their
10 hourly pay, or the federal minimum wage, whichever is higher for the
11 hours required to be on stand-by. Employees on stand-by duty, who are
12 called back to work, shall not receive stand-by pay while in a called-back
13 status.

14 3. A department head seeking to place employees on standby duty shall
15 first, make a reasonable effort to solicit volunteers prior to mandating
16 any employee in Standby/Availability.

17 B. Availability Pay

18 1. Due to urgent situations, employees in certain classifications must
19 frequently be available to report to work outside their regular work
20 schedule, upon request of their department head or designee. Such
21 employees shall be required to carry a communications device to ensure
22 their availability. The department head shall not impose conditions,
23 which so restrict the employee that the employee is on standby as defined
24 by Article V, Section 4.A, unless the employee is placed on standby.

25 2. As compensation for being available to respond to such situations,
26 those employees shall receive either (1) a biweekly allowance equal to
27 5% of their biweekly base salary, or (2) one-quarter of his/her/their
28 hourly pay for the hours required to be available. Employees required to
respond shall not receive the one quarter pay for the hours that they
receive full compensation, including any 2-hour minimum call back
overtime pay.

3 3. A department head seeking to place employees on availability duty
shall **first, make a reasonable effort to solicit volunteers** prior to
mandating any employee in Standby/Availability.

4 4. Employees required to remain available shall not receive the one-
quarter pay for the hours that they receive full compensation, including
any 2-hour minimum call back overtime pay.

5 5. Employees required to provide an after-hour service response, but who
do not return to work, shall be eligible for a minimum of 30 minutes call
back overtime pay, and compensated for the actual time they work over
30 minutes rounded to the nearest tenth of an hour.

6 6. Employees who return to work shall be eligible for the 2-hour
minimum call back overtime pay, but if called back multiple times within

1 “An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while ‘on call’.”

1 the 2 hours, will only receive compensation for the 2 hours or the total
2 time actually worked, whichever is greater.

3 7. Classifications eligible to receive availability pay shall include all
4 classifications listed in Appendix A of this Agreement.

5 (Emphasis added.)

6 III. LEGAL AND PROCEDURAL BACKGROUND

7 Effective January 1, 2013, the legislature adopted the Public Employees' Pension
8 Reform Act ("PEPRA"). Although many of its provisions applied only to "new members"²
9 (see Government Code sections 7522.15 and 7522.34), some, such as the additions to
10 Government Code section 31461, applied to public employees who had commenced
11 employment prior to January 1, 2013. The additions to Section 31461 included subdivision
12 (b)(3), which states:

13 (b) "Compensation earnable" does not include, in any case, the
14 following:

15 (3) Payments for additional services **rendered outside of normal
16 working hours**, whether paid in a lump sum or otherwise.

17 (Stats 2012 ch 296 § 28 (AB 340); emphasis added.)

18 On July 30, 2020, the California Supreme Court issued its decision in *Alameda*, which
19 involved a challenge by plaintiffs to the application of the changes to Section 31461 to legacy
20 members (*i.e.*, those who commenced employment prior to January 1, 2013). Plaintiffs
21 therein argued that the changes to Section 31461 impaired their vested contractual right to
22 receive pension benefits according to the law as it existed prior to PEPRA in violation of
23 Article I section 9 of the California Constitution. (*Alameda, supra*, 9 Cal.5th at p. 1053.) The
24 Court ultimately concluded that the additions to the definition of compensation earnable did
25 not violate the California Constitution. (*Id.* at 1103.)

26 After the Court's decision in *Alameda*, KCERA issued a series of resolutions
27 implementing *Alameda*. Staff were directed to notify the affected members and provide them

28 _____
² Generally, those individuals who became a member of any public retirement system for the
first time on or after January 1, 2013, and who were not members of any other public
retirement system prior to that date, but also includes others as set forth in Government Code
section 7522.04(f).

1 with an opportunity to administratively appeal factual determinations made by KCERA with
2 which they might disagree.

3 On September 28, 2020, KCERA notified Ms. Wolf that her retirement benefit would
4 be reduced, per *Alameda*, effective August 30, 2020. On May 26, 2021, KCERA further
5 informed Ms. Wolf that KCERA was required to pursue collection of the overpayment
6 provided to her from August 30 to November 30, 2020, in the amount of \$2,635.45. On June
7 24, 2021, Ms. Wolf informed KCERA that she was objecting to the proposed action.

8 On May 5, 2022, KCERA informed Ms. Wolf that, at its April 22, 2022 Regular
9 Meeting of the Board of Retirement, KCERA had voted to recover pension benefits that were
10 purportedly overpaid between January 2, 2013 and August 30, 2020, the date of the *Alameda*
11 decision. These purported overpayments included those paid to Ms. Wolf as set forth in
12 KCERA's May 26, 2021 letter.

13 This appeal follows.

14 **IV. ARGUMENT**

15 **A. THE PURPOSE OF PEPRA WAS TO AVOID PENSION SPIKING.**

16 KCERA owes its highest duty to its members. Article XVI, section 17 of the
17 California Constitution, states, in pertinent part:

18 (b) The members of the retirement board of a public pension or
19 retirement system shall discharge their duties with respect to the system
20 solely in the interest of, and for the exclusive purposes of providing
21 benefits to, participants and their beneficiaries, minimizing employer
contributions thereto, and defraying reasonable expenses of
administering the system. A retirement board's duty to its participants
and their beneficiaries shall take precedence over any other duty.

22 (See *Nowicki v. Contra Costa County Employees' Retirement Assn.* (2021) 67 Cal. App. 5th
23 736, 747.) With regard to pension legislation, pension provisions shall be liberally construed
24 with all ambiguities resolved in favor of the pensioner. (*Barrett v. Stanislaus County*
25 *Employees Retirement Assn.* (1987) 189 Cal.App.3d 1593, 1603.)

26 KCERA's first task in construing a statute such as Government Code section 31461 is
27 to ascertain the intent of the legislature so as to effectuate the purpose of the law. (*Dyna-*
28 *Med., Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386–1387.) The

1 legislature’s intent in adopting PEPRA was discussed in *Alameda*, wherein the Court noted:

2 A bill analysis prepared in connection with the pre-PEPRA version of
3 Assembly Bill 340 explained that the purpose of these changes was to
4 circumscribe CERL’s “very broad and general definition of
5 ‘compensation earnable’” **in order to reduce pension “‘spik[ing],”**
6 **the manipulation of an employee’s pattern of work and pay to**
7 **produce inflated compensation earnable during the final**
8 **compensation period.** (Assem. Com. on Public Employees, Retirement
9 and Social Security, Analysis of Assem. Bill No. 340 (2011–2012 Reg.
10 Sess.) as amended Apr. 25, 2011, p. 2.)

11 (9 Cal. 5th at 1061; emphasis added.) The purpose behind the adoption of PEPRA—and
12 section 31461—is thus eminently clear.

13 In furtherance of this purpose, the legislature defined “compensation earnable” as “the
14 employee’s ‘average compensation ... for the period under consideration upon the basis of
15 the average number of days ordinarily worked by persons in the same grade or class of
16 positions during the period, and at the same rate of pay.’” (*Id.* at 1057.) Thus,

17 [a]mong employees in this peer group, differences in pension benefits
18 are therefore determined by variations in individual employees’ average
19 daily compensation during the final compensation period, rather than by
20 the relative amount of time the employees worked. An employee
21 becomes entitled to a greater pension benefit than his or her peers by
22 being compensated at a higher rate, not by working more days. This is
23 so because the calculation required by section 31461 assumes that all
24 employees have worked the same number of days—that is, “the average
25 number of days ordinarily worked by persons in the same grade or class
26 of positions during the period”....

27 (*Id.* at 1096.) Accordingly, section 31461, subdivision (b)(3) excludes from compensation
28 earnable payments for “additional services rendered outside of normal working hours.” The

Alameda Court explained:

29 An often-cited example of such compensation is on-call duty pay, **which**
30 **is provided to employees in return for voluntarily making**
31 **themselves available to be called to work outside their normal**
32 **working hours.** Because such pay is cash remuneration, it is
33 “compensation” under section 31460. Yet because compensation
34 earnable excludes overtime pay and is calculated on the basis of the days
35 “ordinarily” worked by an employee’s peers (§ 31461, subd. (a)), the
36 inclusion of payment for services provided outside normal hours in
37 compensation earnable is arguably inconsistent with the statutory
38 concept.

(*Id.* at 1062; emphasis added.) The Court continued:

1 We emphasize that there is nothing inherently abusive in the practices
2 addressed by section 31461, subdivision (b)(2) through (4), at least when
3 divorced from their pension consequences. **Accepting voluntary on-**
4 **call duty** and cashing out unused leave time to the extent permitted by
5 an employer are ordinary practices that serve proper public policy
6 interests. Yet **by not expressly excluding such payments when**
7 **determining a county employee’s pension benefit, the pre-PEPRA**
8 **definition of compensation earnable allowed an employee to**
9 **considerably increase his or her pension benefit by volunteering for**
10 **a large quantity of on-call duty** or by accumulating and cashing out a
11 large quantity of unused leave time during the final compensation period.
12 Because such enhancements are arguably inconsistent with the
13 underlying concept of compensation earnable, **which is intended to**
14 **reflect pay for work ordinarily performed during the course of a**
15 **year**, these types of enhancement have been characterized as pension
16 spiking.

17 (*Id.* at 1063; emphasis added.) And finally, the Court reiterated:

18 The long-standing exclusion of overtime from compensation earnable,
19 now embodied in section 31461.6, confirms that an employee’s
20 pensionable compensation is generally to be based on pay for work
21 performed during normal working hours. Consistently with this
22 exclusion of overtime, subdivision (b)(3) requires the exclusion of
23 compensation for other services rendered outside normal working hours.
24 **This restriction prevents employees from volunteering, during their**
25 **final compensation period, to perform additional services outside**
26 **normal working hours in order to artificially inflate their daily rate**
27 **of pay.** Subdivision (b)(3) therefore reinforces the portion of section
28 31461 that requires compensation earnable to be based on the same work
year for all employees within a particular pay grade.

(*Id.* at 1097; emphasis added.)

Here, it must first be noted that all Animal Control Officers, and both Senior Animal Control Officers, of which Ms. Wolf was one commencing in 2012, were, respectively, “in the same grade or class of positions during the period, and [earned] the same rate of pay,” as required by the statute. (See Section 31461, subdivision (a).) Further, in correspondence dated April 21, 2021 to Ms. Wolf from KCERA’s Executive Director, Dominic Brown, Mr. Brown incorrectly stated that “[u]nfortunately, [section 31461 (b)(3)] does not distinguish between mandatory and non-mandatory services.” While the statute does not appear to make that distinction on its face, *Alameda* makes it apparent that PEPRA was concerned with **voluntary** services. As will be discussed, *infra*, none of the work in which Ms. Wolf engaged as an Animal Control Officer was voluntary. Interestingly, the relevant MOU provisions discussing “stand-by” and “availability” pay provide that the County must **first seek**

1 **volunteers** for after-hours work prior to requiring an employee to perform such work. (See
2 *supra*, Statement of Facts, MOU Article V, Section 4.) The County did **not** seek volunteers
3 prior to requiring Ms. Wolf to respond to calls.

4 Mr. Brown further wrote:

5 The 2013 PEPRA legislation described above was intended to curb
6 pension spiking. KCERA **does not claim** that your “additional services”
7 were performed to “spike” your pension, but the law (as upheld in the
8 *Alameda* decision) is not contingent on KCERA finding that a member
9 was attempting to or was purposefully “spiking” their pension. The
10 legislation is intended to curtail a lifetime benefit based on an employee
11 providing “additional services” over a short period of their career.

12 (Emphasis added.) It is thus evident that KCERA does not believe Ms. Wolf undertook any
13 of her work in order to spike her pension, the curtailing of which was, as noted, the purpose
14 behind the implementation of PEPRA. Moreover, the “additional services” Ms. Wolf
15 performed—which, as will be discussed, *infra*, were not, in fact, “additional,” but part and
16 parcel of her job—did not occur “over a short period” of her career, but over the course of
17 approximately 20 years.

18 Ms. Wolf did not make herself available to work when she would otherwise not be.
19 Rather, she was compensated for the round-the-clock responsibility required by her
20 employer. The “call out” pay that she was provided is therefore completely unlike the
21 compensation the legislature was concerned about when it enacted Government Code section
22 31416, subdivision (b)(3). Indeed, it is evident—and acknowledged by KCERA—that Ms.
23 Wolf did not undertake these hours in order to “spike” her pension. Consequently, this pay
24 cannot be excluded from compensation earnable.

25 **B. MS. WOLF DID NOT PERFORM “ADDITIONAL SERVICES...OUTSIDE OF**
26 **NORMAL WORKING HOURS.”**

27 The standby compensation at issue here was paid to Ms. Wolf as part of her normal
28 working hours. Significantly, she was required to work during the hours for which she
received the standby pay as part of her regular work schedule.

As set forth above, the purpose of Government Code section 31461, subdivision
(b)(3) is to prevent “employees from volunteering, during their final compensation period, to

1 perform additional services outside normal working hours in order to artificially inflate their
2 daily rate of pay.” Here, Ms. Wolf did not volunteer to make herself available when she
3 would otherwise not be. Rather, she was compensated for the round-the-clock responsibility
4 required by her employer. The standby pay provided to Ms. Wolf was therefore completely
5 unlike the compensation the legislature was concerned about when it enacted Government
6 Code section 31416, subdivision (b)(3). Consequently, it cannot be excluded from
7 compensation earnable.

8 The standard for determining whether on-call time is subject to salary and hourly
9 compensation is largely the same under federal and California law. (*Henry v. Med-Staff, Inc.*
10 (C.D. Cal. July 5, 2007) No. SA CV 05-603, 2007 WL 1998653, at *6.) Cases determining
11 whether on-call time is salary, and thus compensable under the FLSA,³ are highly persuasive
12 for determining if such time is compensable under the Cal. Labor Code. (*Id.*)

13 Under California law, as well as under the FLSA, on-call time is compensable if “the
14 restrictions placed on the [on-call] time of the employee are such that the employee is unable
15 to effectively engage in private pursuits[.]” (*Henry*, 2007 WL 1998653 at *6 (quoting Cal.
16 Division Labor Standards Enforcement Manual § 46.6.3).) In making this determination,
17 California courts utilize seven factors which were enunciated by the Ninth Circuit in *Berry v.*
18 *County of Sonoma* (9th Cir. 1994) 30 F.3d 1174 (called the “*Berry* factors”):

- 19 1. Whether there was an on-premises living requirement;
- 20 2. Whether there were excessive geographical restrictions on the
21 employee’s movements;
- 22 3. Whether the frequency of calls was unduly restrictive;
- 23 4. Whether a fixed time limit for the employee to respond to a callout
24 was unduly restrictive;

25 ³ The MOU provides that its definition of “standby” “is intended to be the same definition as
26 ‘working while on-call’ which is contained in 29 CFR 785.17 and to duplicate the definition of
27 compensable standby (i.e., working while ‘on-call’) found in the Fair Labor Standards Act as it
28 is presently interpreted,” i.e., “[a] employee who is required to remain on call on the employer's
premises or so close thereto that he cannot use the time effectively for his own purposes is
working while ‘on call’.”

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- 5. Whether the on-call employee could easily trade responsibilities;
- 6. Whether the use of a pager (or cell phone) could ease restrictions; and
- 7. Whether the employee had actually engaged in personal activities during on-call time.

(*Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508, 523-24, quoting *Berry, supra*, 30 F.3d at 1180.) Perhaps even more significantly here, courts also consider whether the parties had an agreement, such as an MOU, regarding on-call (or standby) status. (See *Berry, supra*, 30 F.3d at 1180.) The *Berry* court stated:

The significance and importance of evaluating the agreements between the parties is that the existence of such agreements assists the trier of fact in determining whether the parties characterized the time spent waiting on-call as actual work. An agreement between the parties which provides at least some type of compensation for on-call waiting time may suggest the parties characterize waiting time as work. Conversely, an agreement pursuant to which the employees are to be paid only for time spent actually working, and not merely waiting to work, may suggest the parties do not characterize waiting time as work.

(*Id.* at 1180-1181.) The parties’ MOU clearly provides compensation for an employee’s required waiting time. The MOU also requires minimum wage be paid for on-call time, which is consistent with such time being considered regular working hours.

Although Ms. Wolf was not required to live on her employer’s premises, she was responsible for her own area of Kern County, first as an Animal Control Officer and then as a Senior Animal Control Officer. During her early years, Ms. Wolf had to rent a hotel room in the metro Bakersfield area so she could be in close proximity to her call-outs; indeed, Ms. Wolf was required to be available within minutes of receiving a telephone call. To perform her job, Ms. Wolf had to give up weekends and holidays with her family in order to always be available for these mandatory call-outs.

As a Senior, Ms. Wolf supervised nine Animal Control Officers. If an Animal Control Officer did not respond when contacted by the Department for a call-out, the Department would call Ms. Wolf, who then had to resolve the incident. Accordingly, Ms. Wolf had to be available at all times.

It is a misnomer to call the hours Ms. Wolf was required to be available “standby” or

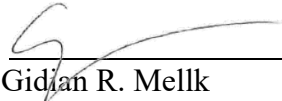
1 “availability” pay. Rather, these were mandatory, scheduled work hours that were performed
2 by all other members of her grade or class, *i.e.*, an integrated aspect of Ms. Wolf’s normal
3 working schedule. It would elevate form over substance to exclude the subject compensation
4 from compensation earnable because it took the form of “standby” or “availability” pay. In
5 essence, the pay was provided to Ms. Wolf to compensate her for the fact that her job duties
6 required her to work 24 shifts for the benefit of the County.

7 **V. CONCLUSION**

8 For the foregoing reasons, it is respectfully requested that this appeal be granted, and
9 the “standby” or “availability” pay provided to Ms. Wolf be included in compensation
10 earnable as set forth in Government Code section 31461.

11
12 Dated: August 18, 2023

Respectfully submitted,
RAINS LUCIA STERN
ST. PHALLE & SILVER, PC

13
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15 By: 
16 Gidian R. Mellk
Attorneys for Appellant, Tracy Wolf

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF KERN,

I have read the foregoing BRIEF ON APPEAL, and know its contents.

/ X / I am a party to this action. The matters stated in the foregoing document are true of my own knowledge, to the best of my ability to remember such facts.

/ / I am / / an Officer / / a partner of the ****, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe that the matters stated in the foregoing document are true.

/ / I am one of the attorneys for *** a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on 8-17, 2023 at Weldon, California.
City

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DocuSigned by:

Tracy Wolf

5BEED9C19AAE4F1...

TRACY WOLF, Declarant

PROOF OF SERVICE

I am employed in the City of Santa Monica, State of California. I am over 18 years of age and not a party to this action. My business address is Rains Lucia Stern St. Phalle & Silver, PC, 1428 2nd Street, Suite 200, Santa Monica, CA 90401.

On the date below I served a true copy of the following document(s):

BRIEF ON APPEAL

on the interested parties to said action by the following means:

- (BY MAIL)** By placing a true copy of the above, enclosed in a sealed envelope with appropriate postage, for collection and mailing following our ordinary business practices. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- (BY OVERNIGHT DELIVERY)** By placing a true copy of the above, enclosed in a sealed envelope with delivery charges to be billed to Rains Lucia Stern St. Phalle & Silver, P.C., for delivery by an overnight delivery service to the address(es) shown below.
- (BY FACSIMILE TRANSMISSION)** By transmitting a true copy of the above by facsimile transmission from facsimile number (310) 395-5801 to the attorney(s) or party(ies) shown below.
- (BY MESSENGER)** By placing a true copy of the above in a sealed envelope and by giving said envelope to an employee of Action Messenger for guaranteed, same-day delivery to the address(es) shown below.
- (BY HAND DELIVERY)** By personal delivery of a true copy of the above to the attorneys or parties shown below
- (BY E-MAIL or ELECTRONIC TRANSMISSION)** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable period of time, after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Kern County Employees’ Retirement
Association
11125 River Run Boulevard
Bakersfield, CA 93311
Via: legal@kcera.org

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

DATED: August 18, 2023 /s/ Cheryl L. Mitchell
Cheryl L. Mitchell

From: Gidian Mellk <gmellk@rlslawyers.com>
Sent: Thursday, August 31, 2023 2:22 PM
To: legal
Subject: [EXTERNAL] Tracy Wolf

Follow Up Flag: Follow up
Flag Status: Flagged

*** This email originated from a source outside the kcera.org domain. Use caution when sending or using sensitive information. ***

Ms. Chavez,

Yes, I consent to the requested two-week extension for KCERA's brief in the Tracy Wolf matter.

Regards,
Gidian

Gidian Rachel Mellk
Attorney at Law
Rains Lucia Stern
St. Phalle & Silver, PC
310.393.1486 Phone
310.395.5801 Fax
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**KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
BOARD OF RETIREMENT**

**IN RE ALAMEDA APPEAL OF
TRACY WOLF**

**REPLY OF KERN COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION TO TRACY
WOLFE'S OPENING BRIEF**

I. INTRODUCTION

Member Tracy Wolfe ("Member") requested this administrative hearing to challenge the Board's decision to exclude compensation she received as "availability pay" from the calculation of her "compensation earnable." The Board determined it was required to exclude Member's "availability pay" because it was a payment for services rendered outside of normal working hours under California Government Code section 31461(b)(3).

II. STATEMENT OF FACTS

A. The Board of Retirement (Board)

On July 30, 2020, the California Supreme Court issued its opinion in the *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032 ("the *Alameda* decision"). The Board held a Special Meeting on August 24, 2020, to review the Court's decision. At the Board's Regular Meeting on September 9, 2020, the Board determined that PEPRA, along with the *Alameda* decision mandated certain pay codes be excluded from certain members' pension calculations. The Board approved Resolution 2020-01¹ which implemented the changes to certain pay code designations required by the *Alameda* decision and the Public Employees Reform Act of 2013 (PEPRA) that had not been previously implemented. On October 14, 2020, the Board approved the redesignation of pay code

¹ All sources cited in this Reply are either included within the Administrative Record or attached as an Exhibit to this Reply.

1 “KP”—25% “Availability pay” from “pensionable” to “non-pensionable.”² Following the
2 redesignation of the KP pay code, KCERA’s Staff began to implement the Board’s
3 decision.

4 **B. Correspondence to Member**

5 Staff identified Member as a retired member whose Final Average Compensation
6 (FAC) period would change based on the redesignation of her “availability pay.” Staff
7 notified Member of the potential impact to her pension and her ability to object to Staff’s
8 proposed action. (October 14, 2020 Letter). Member timely objected to KCERA
9 reducing her pension and asserted many of the same arguments made in Appellant’s
10 Opening Brief (AOB). (November 23, 2020 Objection). CEO Dominic Brown responded
11 to Member’s Objection, explained KCERA’s understanding of the legal authority that
12 mandated Member’s pension be reduced, and informed Member about how to move
13 forward with her Objections. (April 23, 2021 Letter). Member timely requested a hearing
14 before the Board on May 17, 2021. (May 17, 2021 Email). On May 26, 2021, KCERA
15 notified Member of the overpaid pension amount owed from August 30, 2020 to
16 November 30, 2020 and provided information about objecting to the proposed action.
17 (May 26, 2021 Letter). Once again, Member submitted a timely objection. (June 24,
18 2021 Email). On May 5, 2022, KCERA notified Member of the Board’s decision on
19 Phase 4 of the *Alameda* Implementation to allow the overpaid pension benefits that
20 exceeded member contributions from January 2013 to August 30, 2020 to be collected
21 from the County of Kern rather than from the individual members. (May 5, 2022). At the
22 request of the Member, the Member’s administrative appeal was delayed until the Board
23 returned to in-person meetings and allowed the public to return to the board room. In
24 February 2023, KCERA initiated the Administrative Appeal process for determinations

25 ² KCERA Staff analyzed over 200 pay codes utilized by its plan sponsors and recommended the Board
26 change several pay codes from pensionable to non-pensionable in light of the *Alameda* decision. This
27 Reply only references the “KP” “availability pay” because it is the only pay code that affected the
28 Member’s pension calculation.

1 arising out of the *Alameda* decision approved by the Board in Resolution 2021-05.
2 KCERA confirmed Member's intent to present her Objections to the Board on June 19,
3 2023. This briefing followed.

4 **C. Member History**

5 Member first became a KCERA member in 2001 and retired in 2019 after nearly
6 eighteen (18) years with the Kern County Animal Services as an Animal Control Officer
7 and a Senior Animal Control Officer.³ At her retirement in 2019, Member's FAC period
8 was from September 2015 to September 2016. Once the KP pay was excluded from
9 Member's compensation earnable calculation, Member's FAC period shifted to the 12-
10 months immediately preceding her retirement.

11 **D. MOU**

12 According to the Memorandum of Understanding governing the Member's
13 classification, "availability pay" was reserved for work outside an employee's regular
14 work schedule:

15 Article V. Section 4.B. "Availability Pay"

16 1. Due to urgent situations, employees in certain classifications
17 must frequently **be available to report to work outside their**
18 **regular work schedule**, upon request of their department head or
19 designee. Such employees shall be required to carry a
20 communications device to ensure their availability. The department
21 head shall not impose conditions, which so restrict the employee
22 that the employee is on standby as defined by Article V, Section
23 4,A, unless the employee is placed on standby.

24 2. **As compensation for being available** to respond to such
25 situations, those **employees shall receive** either (1) a biweekly
26 allowance equal to five percent (5%) of their biweekly base salary,
27 or (2) **one-quarter of his/her hourly pay for the hours required**
28 **to be available**. Employees required to respond shall not receive
the one-quarter pay for the hours that they receive full

26 ³ Member is a Tier I general member and as such her pension is subject to those payments that are
27 included in and not excluded from "compensation earnable". Also, as a Tier I member, Member's final
28 average compensation (FAC) is based on her highest 12-months of consecutive earnings.

1 compensation, including any two-hour minimum call back overtime
2 pay.

3 **3.** A department head seeking to place employees on availability
4 duty shall first, make a reasonable effort to solicit volunteers prior to
5 mandating any employee in Standby/Availability.

6 **4. Employees required to remain available shall not receive the**
7 **one-quarter pay for the hours that they receive full**
8 **compensation,** including any two-hour minimum call back overtime
9 pay.

10 (See SEIU 8/28/2017-10/31/2019 MOU).⁴

11 **E. Kern County Animal Services**

12 The Director of the Kern County Animal Services (KCAS), Nick Cullen, explains
13 that 40 hours per week (80 hour pay periods) are the normal working hours of Animal
14 Control Officers and Senior Animal Control Officers (ACOs). (Declaration of Nick Cullen,
15 ¶9, attached as Exhibit A). He states that after-hours on-call pay in the form of
16 “availability pay” is authorized for KCAS employees under the MOU; however, ACOs
17 are only eligible for such pay when services are rendered outside their normal working
18 hours. (Exhibit A, ¶¶10 and 17). Mr. Cullen has worked for KCAS since 2005 and has
19 been the Director since 2014. (Exhibit A, ¶¶2 and 4). He states these practices have
20 been in place throughout his time with KCAS. (Exhibit A, ¶20). Director Cullen confirms
21 ACOs, have never been required to perform after-hours on-call services nor have they
22 been required to perform such services in a particular service area. (Exhibit A, ¶¶11, 12,
23 and 14). ACOs who want to work an after-hours on-call schedule and receive
24 “availability pay” are placed on the after-hours on-call schedule but can choose and
25 have chosen to opt-out of that schedule in whole or in part. (Exhibit A, ¶¶11, 12, and
26 14). In fact, Director Cullen reports that KCAS reduces “on-call” services to certain

27 _____
28 ⁴ There is another MOU covering 3/28/15 to 8/27/17 that applied to Member during her employment with
KCAS. Article V. Section 4.B. Availability Pay has slight variations in the language but is substantively
the same as the MOU cited above. This MOU will be included in the Administrative Record.

1 service areas when there are not sufficient employees voluntarily participating in the
2 after-hours on-call schedule. (Exhibit A, ¶15).

3 **III. ISSUE**

4 The sole issue before your Board is whether the “availability pay” received by the
5 Member was properly excluded from her compensation earnable calculation.

6 **IV. ARGUMENT**

7 **A. MEMBER’S “AVAILABILITY PAY” CANNOT BE INCLUDED IN HER**
8 **COMPENSATION EARNABLE CALCULATION**

9 In 2012, the Legislature added California Government Code section 31461(b) to
10 the definition of “compensation earnable.” Subsection (b) excludes and limits the types
11 of compensation that can be included in a Member’s pension calculation. (*Alameda*,
12 *supra* 9 Cal. 5th at 1060). Subdivision 31461(b)(3) states, “Compensation earnable’
13 does not include, ... [p]ayments for additional services rendered outside normal working
14 hours, whether paid as a lump sum or otherwise.” (Cal. Gov. Code § 31461(b)(3)).

15 The *Alameda* decision upheld the constitutionality of the legislative changes
16 under the Public Employees’ Pension Reform Act of 2013 (PEPRA) to section 31461(b),
17 including subdivision 31461(b)(3) and made clear that the Board has no authority to
18 adopt an interpretation that is inconsistent with the statute as amended:

19 It is not within [a board's] authority to expand pension benefits beyond
20 those afforded by the authorizing legislation. ... The scope of the board's
21 power as to benefits is limited to administering the benefits set by the
22 [legislative body].” [citations omitted]. This conclusion follows from
23 principles governing the authority of administrative bodies generally: “[I]t is
24 well established that the rulemaking power of an administrative agency
25 does not permit the agency to exceed the scope of authority conferred on
the agency by the Legislature. [Citation.] A ministerial officer may not .
26 . . . under the guise of a rule or regulation vary or enlarge the terms of a
legislative enactment or compel that to be done which lies without the
27 scope of the statute’ [Citation.]

26 (*Alameda, supra*, 9 Cal.5th at 1067).

27 ///

28 ///

1 Government code section 31461(b)(3) is clear---if Member’s “availability pay” was
2 compensation for “services performed outside her normal working hours,” that pay must
3 be excluded from her pension calculation.

4 **1. Member’s “Availability Pay” Was Compensation for Services Performed**
5 **Outside Normal Working Hours**

6 Member contends that the “availability pay” she received was for services she
7 provided as part of her normal working hours because she was regularly scheduled for
8 such services, she was required to perform such services, and she was required to be
9 in such close proximity that she had to give up time with her family to respond to on-call
10 situations. However, the MOU terms, the statements from her prior Director, and
11 California case law conflict with her position.

12 **a. Member’s MOU.**

13 The “Availability Pay” section of Member’s MOU expressly states that the pay is
14 authorized only for work that is performed outside normally working hours: “certain
15 classification must frequently **be available to report to work outside their regular**
16 **work schedule**, upon request of their department head or designee.” (8/28/17-10/31/19
17 MOU Article V. Section 4.B). Additionally, the MOU clarifies that the compensation
18 received is “**for being available**”. (8/28/17-10/31/19 MOU Article V. Section 4.B).
19 Thus, under the MOU, Member could not receive “availability pay” unless she was
20 performing services outside of her normal working hours.

21 **b. Member’s Employing Department.**

22 Director Cullen’s work history with KCAS from 2005 to present shows he was at
23 KCAS with Member and was the Director of KCAS while Member was receiving
24 “availability pay.” (Exhibit A, ¶¶2 and 4). His statements that “availability pay” can only
25 be paid for services rendered outside an ACOs normal working hours is consistent with
26 the provisions of the MOU. (Exhibit A, ¶17). He also confirms that 40-hour work weeks
27 (80 hour pay periods)—not 24 hour shifts--are the normal working hours for ACOs. (
28 Exhibit A, ¶9; AOB at p. 12, lines 4-6).

///

1 **c. California Case Law**

2 The *City of Pleasanton v. Board of Administration* (2012) 211 Cal.App.4th 522
3 interpreted the term “normal working hours” as it related to “availability pay.” In that
4 case, the court found the compensation received for being regularly scheduled to “be
5 available” was not part of the employee’s normal working hours. (*City of Pleasanton*,
6 *supra*, 211 Cal.App.4th at 539). Plaintiff asserted a portion of the compensation received
7 when he was regularly assigned to a “back up schedule” was part of his normal working
8 hours. (*Id.* at 527-529). The court found plaintiff’s position to be without reason given his
9 MOU terms, testimony from his supervisor that the compensation was intended for
10 services outside of normal working hours, and the fact that, if true, plaintiff would be
11 working an additional 50% more hours for 7.5% of his base salary. (*Id.* at 539). The
12 court found it more reasonable to view the back up pay as compensation for being
13 “available” to work on a standby basis outside of his normal working hours. (*Id.*
14 (emphasis added)).

15 Similarly, Member’s position that 24-hour shifts were her normal working hours
16 should not be deemed a reasonable interpretation of Government Code section
17 31461(b)(3) or the “availability pay” provisions of her MOU. As the court noted in *City of*
18 *Pleasanton*, Member’s argument would mean her normal work week was not 40 hours,
19 but over 160 hours—a difference of more than 200%. Yet for the additional 100+ hours
20 added to her normal work week she was compensated with a quarter of her base salary
21 per hour. Based on the declaration of her Director at KCAS and the language in her
22 MOU, it is more reasonable to view her “availability pay” as compensation for being
23 “available” to work outside normal working hours as opposed to part of her normal work
24 hours. (*City of Pleasanton, supra*, 211 Cal.App.4th at 539).

25 **2. Section 31641(b)(3) Excludes All Payments for Services Performed**
26 **Outside Normal Working Hours and Does not Distinguish between Voluntary and**
27 **Mandatory Services**

28 Member emphasizes the Legislature’s intent in enacting PEPRA was to
address pension-spiking. (AOB, at p.9). In doing so, Member incorrectly instructs your

1 Board that it must consider whether the services performed outside normal working
2 hours were “voluntary” or “mandatory” and, asserts your Board can not exclude
3 payments under section 31461(b)(3) unless the Member volunteered to perform such
4 services. (AOB, at p.8-9, p.9, line 20-21). This is incorrect.

5 The *Alameda* Court noted that after the amendment to section 31461,
6 “compensation earnable now excludes any compensation determined by the local
7 retirement board to have been paid to enhance a member’s retirement benefit (id.,
8 subd. (b)(1)) and any compensation for services rendered outside normal working hours
9 (id., subd. (b)(3)).” (*Alameda, supra*, 9 Cal.5th at 1060). The contrast between the plain
10 language in Section 31461(b)(1) and 31461(b)(3) is important. The former allows the
11 Board to determine whether certain compensation was paid to enhance a member’s
12 retirement benefit while the latter merely directs the Board to exclude any “payments for
13 additional service rendered outside normal working hours.” The Legislature did not give
14 the Board discretion to apply section 31461(b)(3) in any other way than as plainly
15 stated. Had the Legislature intended the exclusion in 31461(b)(3) to turn on whether
16 the services performed were “voluntary” or “mandatory,” it would have included the
17 provisions of section 31461(b)(3) into section 31461(b)(1).

18 Likewise, if the *Alameda* Court chose to condition the constitutionality of
19 section 31461(b)(3) on such services being voluntary, it would have expressly and
20 directly said so. Member points to the examples provided by the *Alameda* Court of
21 members “voluntarily” taking on extra shifts to increase their pension as dispositive of
22 the Court’s position. However, the plain language of the statute and the Court’s broad
23 view of the legislative intent behind PEPRA belies that argument. Beyond the Court’s
24 examples of “voluntary” pension-spiking, the Court emphasized that the purpose of
25 section 31461(b)(3) was broader than merely preventing member from voluntarily
26 inflating their pay:

27 [T]he purpose was to bring administrative practice under section 31461 into
28 closer alignment with the system’s underlying theory by excluding income
 designed to artificially inflate a pension benefit (§ 31461, subd. (b)(1)) and
 limiting the inclusion of other types of compensation that were reasonably

1 **viewed as inconsistent with CERL’s general approach to pensionable**
2 **compensation (§ 31461, subd. (b)(2), (3)).** Stated differently, the Legislature
3 was attempting to reduce manipulation and abuse by closing loopholes created
4 by the very general language of sections 31460 through 31462, which define
5 “compensation,” “compensation earnable,” and “final compensation.” Each of the
6 changes in subdivision (b)(1) through (3) is arguably inherent in the overall intent
7 of section 31461, but the failure of the statute expressly to address these specific
8 circumstances left their fate to the interpretations of 20 individual county
9 retirement boards. This was exacerbated after our decision in *Ventura County*
10 confirmed and gave effect to the broadly inclusive language of sections 31460
11 and 31461. **PEPRA’s amendment compels uniformity on the issues it**
12 **addresses, guaranteeing that compensation earnable will be implemented**
13 **consistently** with the Legislature’s intent in each CERL county.

14 (*Alameda, supra*, 5 Cal.5th at 1102 (emphasis added)).

15 There is nothing in the language of section 31641(b)(3) or the *Alameda*
16 decision that gives the Board authority to ignore the plain directive in the subsection or
17 that restricts the Board’s ability to lawfully apply the statute as written. Thus, Member’s
18 “availability pay” must be excluded simply because the pay is only for services outside
19 of normal working hours, as described in the MOU and the practices of the KCAS.
20 (8/28/17-10/31/19 MOU Article V. Section 4.B and Exhibit A).

21 Additionally, Member’s “availability pay” was properly excluded because she
22 was not required to perform after-hours on-call services, she did not have to perform
23 such services in a particular service area, she did not have to be at any particular
24 location while “being available”, and she performed such services in addition to, not as
25 part of her normal working hours. (Exhibit A). Because not all ACOs choose to
26 participate in after-hours on-call services, not all ACOs received “availability” pay let
27 alone performed the same number of after-hours on-call service hours. These
28 circumstances, in addition to those cited in the preceding paragraph seem to be
exactly the type of compensation the Legislature was concerned about when it enacted
section 31461(b)(3).

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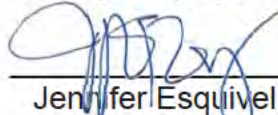
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V. CONCLUSION

For the reasons described above, your Board should find Member's "availability pay" was properly excluded from her compensation earnable calculation.

Dated: September 29, 2023

Kern County Employees' Retirement Association

By: 

Jennifer Esquivel Zahry
Chief Legal Officer

EXHIBIT A

BOR-080

1 KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (KCERA)
2 11125 RIVER RUN BOULEVARD
3 BAKERSFIELD, CA 93311
4 TEL (661) 381-7700 FAX (661) 381-7799
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9 ADMINISTRATIVE APPEAL OF TRACY)
10 WOLFE, Member and Claimant)

**DECLARATION OF NICK CULLEN IN
SUPPORT OF KERN COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION'S REPLY TO
TRACY WOLFE'S REQUEST FOR
ADMINISTRATIVE APPEAL**

11 _____)
12 _____)
13 _____)
14 _____)
15 I, Nick Cullen, do hereby declare the following:

- 16
- 17 1. I am over the age of eighteen years old. I have personal knowledge of the matters
18 herein.
 - 19 2. I have been employed by the County of Kern as the Director of Kern County Animal
20 Services ("KCAS") since 2014.
 - 21 3. As the Director, my duties include planning, organizing, managing, and supervising the
22 programs of the Animal Services Department.
 - 23 4. I have worked for KCAS since 2005.
 - 24 5. Before my appointment to Director, I was employed as an Animal Control Officer for 6
25 years.
 - 26 6. I am familiar with the work schedules of the Animal Control Officers and the Senior
27 Animal Control Officers (collectively referred to as "ACOs").
28

1 7. I am also familiar with the after-hours "on-call" types of pay authorized for and received
2 by ACOs.

3 8. Similarly, I am familiar with KCAS' use of "availability pay" and the scheduling related
4 to "availability pay" for ACOs.

5 9. ACOs are scheduled to work 40 hours per week (80 hours per pay period). These hours
6 are the normal working hours for ACOs.

7 10. "Availability pay" is an after-hours "on-call" form of compensation that has been utilized
8 by and authorized for use by ACOs for services rendered outside the 40-hour week (80 hour
9 pay period).

10 11. "Availability pay" is not and has never been mandatory for ACOs.

11 12. KCAS has had several employees over the years who have declined to be included on
12 the after-hours "on-call" schedule.

13 13. KCAS serves several areas within Kern County: Metro Bakersfield, Lake Isabella (Kern
14 River area), Taft, Frazier Park, Tehachapi, Mojave, East Kern, and North County (Shafter,
15 Delano, McFarland).

16 14. ACOs who volunteer for an after-hours "on-call" schedule may choose to work in certain
17 service areas and may opt-out or choose not to work an after-hours "on-call" schedule in other
18 service areas.

19 15. At times, KCAS has had to reduce the amount of "on-call" areas because it did not have
20 enough personnel voluntarily participating in the after-hours "on-call" schedule.

21 16. ACOs who participate in the after-hours "on-call" schedule do so in addition to, not as
22 part of, their normal working hours.

23 17. ACOs who volunteer to perform after-hours "on-call" services receive "availability pay"
24 for remaining "available" after their normal working hours.

25 18. ACOs who participate in after-hours "on-call" services are not required to be at any
26 specific location while "on-call"; they only need to be "available" to be contacted.

27 //

28

1 19. If called while performing after hours "on-call" services, ACOs are generally expected
2 to make contact via telephone within 15 minutes, and if needed, would be typically expected
3 to arrive at a location within two (2) hours.

4 20. The KCAS has retained the scheduling practices described above throughout my
5 employment with the Department.

6
7 I declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct.

9
10 Executed this 28th day of September 2023, at Bakersfield, California.

11
12 

13 Nick Cullen,
14 Director of Kern County Animal Services, Declarant

PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF KERN

I am employed in the County of Kern, State of California. I am over the age of 18 years and not a party to the within action. My business address is 11125 River Run Boulevard, Bakersfield, California 93311.

On **September 29, 2023**, I served the foregoing document described as **Reply of Kern County Employees' Retirement Association to Tracy Wolfe's Opening Brief** on the interested party(ies) in this action by placing a true copy thereof in sealed envelopes addressed as follows:

Jacob A. Kalinski
Gidian R. Mellk
RAINS LUCIA STERN ST. PHALLE & SILVER, PC
1428 2nd Street, Suite 200
Santa Monica, CA 90401
JKalinski@RLSlawyers.com
gmellk@rslawyers.com
cmitchell@rslawyers.com

By U.S. Mail – I enclosed such document in sealed envelope(s) with the name(s) and address(es) of the person(s) served as shown on the envelope(s) and caused such envelope(s) to be deposited in the mail at Bakersfield, California. The envelope(s) was/were mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

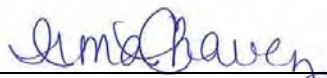
By Electronic Mail – I caused a copy of such document to be transmitted via electronic mail in Portable Document Format ("PDF") Adobe Acrobat from the electronic address: legal@kcera.org.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

EXECUTED this **29th day of September, 2023**, at Bakersfield, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Irma Chavez



Signature

BOR-084

1 JACOB A. KALINSKI, SBN 233709
2 GIDIAN R. MELLK, SBN 214404
3 **RAINS LUCIA STERN ST. PHALLE & SILVER, PC**
4 1428 2nd Street, Suite 200
5 Santa Monica, CA 90401
6 Tel: 310.393.1486
7 Fax: 310.395.5801
8 E-mail: JKalinski@RLSlawyers.com

9 Attorneys for Appellant, Tracy Wolf

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BEFORE THE BOARD OF ADMINISTRATION OF THE KERN COUNTY
EMPLOYEES RETIREMENT ASSOCIATION

TRACY WOLF,

Appellant,

v.

KERN COUNTY EMPLOYEES
RETIREMENT ASSOCIATION,

Respondent.

**APPELLANT'S REPLY BRIEF IN
SUPPORT OF APPEAL**

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Stevenson v. Board of Retirement of the Orange County Employee Retirement System
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Federal Cases

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1 **I. INTRODUCTION**

2 Appellant, Tracy Wolf, respectfully requests that the Board of Administration take
3 into consideration this reply to KCERA’s response to our opening brief, pursuant to both
4 Section 2(D)(2) of Resolution No. 2021-05, as well as the Board’s general jurisdiction over
5 this proceeding. Indeed, KCERA made three arguments in its brief—all inter-related—that
6 must be addressed, in order that the Board is able to reach a proper decision: 1) that
7 “availability pay” cannot be included in compensation earnable; 2) that Ms. Wolf was not
8 compensated for 24-hour shifts; and 3) that the law does not distinguish between voluntary
9 and mandatory working hours. For the reasons explained herein, KCERA’s arguments must
10 be rejected and Ms. Wolf’s appeal should be granted.

11 **II. THE COMPENSATION RECEIVED BY MS. WOLF WAS FOR WORK**
12 **PERFORMED WITHIN HER REGULARLY SCHEDULED HOURS AND SO**
13 **MUST BE INCLUDED IN COMPENSATION EARNABLE.**

14 As we demonstrated in our Opening Brief, Tracy Wolf was employed by the County
15 of Kern (“County”) in the classification of Animal Control Officer for approximately nine
16 years, and Senior Animal Control Officer for approximately eight years. As part of the
17 required job duties, all persons in that classification are required to regularly and consistently
18 perform standby duties. Making oneself available for her employer is indeed work and, for
19 persons in Ms. Wolf’s classification, such availability is part of the normal working hours.

20 **A. “AVAILABILITY” PAY**

21 Kern County has categorized the pay at issue here as “availability pay.” Pursuant to
22 the parties’ MOU, such pay is reserved for work outside an employee’s normal work
23 schedule. (See Article V, Section 4 of the Memorandum of Understanding between Kern
24 County and the Service Employees’ International Union, Local 521.) Accordingly, KCERA
25 argues, Ms. Wolf’s compensation was necessarily for work performed outside of her
26 regularly scheduled hours.

27 Labelling Ms. Wolf’s compensation as “availability pay” under the MOU, however,
28 does not exclude it from compensation earnable. In fact, several other retirement systems

1 and/or counties governed by the County Employees Retirement Law (“CERL”) have found
2 on-call pay or stand-by pay to be at least potentially within an employee’s normal working
3 hours (depending on other criteria, such as whether the standby is mandatory or voluntary,
4 consistently scheduled and performed by similarly situated employees). As such, it cannot be
5 the case that, merely because the item of pay is called “stand-by” or “availability pay,” or
6 because it provides compensation to an employee for making him or herself available, it is
7 automatically excluded as being outside of normal working hours.

8 **1. SBCERS**

9 After the decision by the California Supreme Court in *Alameda County Deputy*
10 *Sheriff’s Association v. County of Alameda* (2020) 9 Cal. 5th 1032 (“*Alameda*”), the Santa
11 Barbara County Employees Retirement’ System (“SBCERS”) produced a detailed “Stand-by
12 Duty Fact Finding Report” designed to explore whether and under what conditions stand-by
13 pay should be included in compensation earnable. (Declaration of Jacob A. Kalinski
14 (“Kalinski Decl.”; Exhibit A thereto.) In the Report, SBCERS stated, in pertinent part:

15 We found significant evidence to support the determination made by the Board
16 of Retirement in 2012 that stand-by duty is performed as part of the normal
17 working hours of membership. In departmental interviews departmental
18 management often held the position that such time was part of the member’s
19 normal schedule and was a cost effective way of managing their department.
20 We also found that once we applied a statistical test to the data in order to
21 compare a member’s pay to that of other class members, the finding on normal
22 working schedule is rendered moot because of policies of convenience
23 surrounding schedule changes or because the stand-by was only worked by a
24 small number of members performing specialized assignments.

25 Using job classifications to create cohorts of similarly situated employees
26 produces what may be viewed as an arbitrary result. The variables of population
27 and diversity of assignments within the series mean that some groups get it and
28 other groups don’t; this happens regardless of the individual contract between
the employer and the member. We cite the barbell pattern and the existence of
specialized assignments within classifications to support this view. However,
departing from County job classifications to define a member’s peer group may
be inconsistent with the statute and may be seen as equally arbitrary, placing the
Board of Retirement in the position of defining classes of County employment
in a manner different than the employer.

Based on this research, we cannot conclude that all past stand-by duty should be
removed from compensation earnable unilaterally and without consideration of

1 individual job classifications. Further, we conclude that any determination that
2 a correction to a member account is necessary can only be made on an
3 individual basis. We found many instances where stand-by was part of normal
4 working schedules of members and that it was worked by all similarly situated
5 members, but not at the same amount.

6 (*Id.* at p. 6.)

7 SBCERS' report also contained a section entitled, "Criteria for Normal Working
8 Hours, which stated:

9 Government code section 31461(b)(3) requires that payments for additional
10 services rendered outside of normal working hours, whether paid in a lump sum
11 or otherwise, be excluded. Going further, the Alameda decision reasons that
12 voluntary service should be excluded from compensation earnable. In its
13 opinion the Court stated:

14 *We emphasize that there is nothing inherently abusive in the*
15 *practices addressed by section 31461, subdivision (b)(2) through*
16 *(4), at least when divorced from their pension consequences.*
17 *Accepting voluntary on-call duty and cashing out unused leave*
18 *time to the extent permitted by an employer are ordinary*
19 *practices that serve proper public policy interests. Yet by not*
20 *expressly excluding such payments when determining a county*
21 *employee's pension benefit, the pre-PEPRA definition of*
22 *compensation earnable allowed an employee to considerably*
23 *increase his or her pension benefit by volunteering for a large*
24 *quantity of on-call duty or by accumulating and cashing out a*
25 *large quantity of unused leave time during the final compensation*
26 *period. Because such enhancements are arguably inconsistent*
27 *with the underlying concept of compensation earnable, which is*
28 *intended to reflect pay for work ordinarily performed during the*
course of a year, these types of enhancement have been
characterized at pension spiking.

21 In its opinion, the court clearly differentiates voluntary stand-by from mandatory
22 stand-by pay and excludes only the former from compensation earnable. With
23 regard to the broader issue of stand-by pay's inclusion in compensation
24 earnable, the Court Opinion is more permissive and notes the legitimate purpose
25 of such pay. The Court also drew comparison to other statutes that govern the
26 exclusion of Overtime pay. Specifically, the Court notes the similar nature of
27 the language in G.C. 31461(b) "normal working hours" with the use of the
28 words "normally scheduled or regular working hours" in G.C. 31461.6, a statute
that generally excludes overtime from compensation earnable unless it is
regularly scheduled. From this, we conclude that the Court did not allow all
stand-by pay as a potential item of compensation earnable; rather, it disallowed
stand-by pay that was used to enhance a member's pension beyond the amount
that would be earned by the average member of the class.

1
2 In Staff's view, in making the connection with the principal of controlling
3 pension enhancement, the Court is providing an important distinction.
4 Volunteering for additional duty is not the only way a member could potentially
5 enhance their pension through performance of an hourly duty. There are other
6 methods of implementation to consider, including the employer's policies. For
7 that reason, we adopted criteria for normal working hours that also excludes
8 employees from assuming another employees' mandatory time, duty that results
9 from ad hoc assignments from management and, incident related duty.

7 The concept of normal working hours suggests routine, frequency, advance
8 planning, even handedness and consistency. We adopted criteria that the
9 standby pay had to have a clear connection with a member's regular duty and,
10 that there was a clear expectation that it was the member's responsibility to
11 perform the duty. The regularly recurring nature of such stand-by duty was
12 considered evidence that such duty was a normal part of the member's regular
13 job as assigned by the department.

11 (*Id.* at p. 15.)

12 Clearly, SBCERS does not take the position that on-call pay or stand-pay are, by
13 definition, "outside of normal working hours." A greater analysis of the particular job duties
14 associated with the on-call pay is required.

15 Here, as Animal Control Officer, Ms. Wolf was responsible for her own area of Kern
16 County, and could have been called by the Sheriff's Department ("Department") at any time
17 to respond to an incident in her area. During her early years, Ms. Wolf had to rent a hotel
18 room in the metro Bakersfield area so she could be in close proximity to her call-outs; indeed,
19 Ms. Wolf was required to be available within minutes of receiving a telephone call. To
20 perform her job, Ms. Wolf had to give up weekends and holidays with her family in order to
21 always be available for these mandatory working hours.

22 After being promoted to Senior Animal Control Officer in 2012, Ms. Wolf supervised
23 nine Animal Control Officers. If an Animal Control Officer did not respond when contacted
24 by the Department for a call-out, the Department would call Ms. Wolf, who then had to
25 resolve the incident. Accordingly, Ms. Wolf had to be available at all times.

26 **2. SBCERA**

27 The San Bernardino County Employees Retirement Association ("SBCERA")
28 considered an appeal by certain "Resident and Rural Crimes" deputies who were provided

1 with on-call pay in exchange for making themselves available to respond on a mandatory
2 basis. In the decision of Hearing Officer Duane Bennett, which was adopted by SBCERA, he
3 explained:

4 The Hearing Officer does not dispute the analysis of Respondent in reference to
5 *Alameda*, which discussed “on-call pay” as pay “provided to employees in
6 return for voluntarily making themselves available to be called to work outside
7 their normal working hours.” It is axiomatic that such stand-by pay would
8 violate the tenets of PEPR, as additional services outside of normal working
9 hours. However, despite the characterization of On-Call Pay (OC4), the pay in
10 this instance does not appear to fall within the definition of traditional on-call
11 pay prohibited as compensation earnable by *Alameda*.

12 There is a preponderance of evidence that the Appellants did not dictate their
13 On-Call Pay, as referenced in Government Code section 31461 (b)(3) and
14 *Alameda*. Likewise, there is a preponderance of evidence that the Appellants
15 did not seek to artificially inflate their daily rates of pay, nor spike or manipulate
16 their retirement benefits by “volunteering” for additional services through On-
17 Call Pay duties.

18 Instead, it appears that the Department used On-Call Pay to fulfill routine rural
19 service responsibilities and special needs via Resident and Rural Crimes
20 deputies. Arguably, by using On-Call Pay, the Department avoided paying
21 required overtime through a predetermined and negotiated salary process.

22 (Kalinski Decl., Exhibit B1 at p. 12 and Exhibit B2.)

23 Once again, neither the hearing officer, nor SBCERA, excluded the on-call pay from
24 compensation earnable merely because of its label or the fact that the employee’s MOU
25 provided for traditional regular hours.

26 **3. ORANGE COUNTY**

27 On December 20, 2022, the County of Orange passed a resolution regarding on-call
28 pay and its understanding of whether certain groups of employees who received on-call pay
for regularly scheduled hours. The Resolution provides, in pertinent part:

WHEREAS, the parties [the County of Orange and the Association of Orange
County Deputy Sheriffs], in principle and practice, have treated the following
units of job assignments, referenced herein as “a” to “j”, as employees with
different and distinct duties, responsibilities and schedules which under the
analysis of *Stevenson v. Board of Retirement of the Orange County Employee
Retirement System*, 186 Cal.App.4th 498 (2010) could be deemed a different
“grade,” even if the formal recognition of such distinctions was not required in
the past. These job assignments were and are separate and apart from others in

1 the employees' shared, broader classifications, and employees within these job
2 assignments were selected based upon their specialized training and assigned job
3 duties, including the requirement that they provide on-call or canine handler
4 maintenance services:

- 5 a. Homicide Detail
- 6 b. Hazard Devices Squad – Explosive Detection Squad
- 7 c. Statewide Transportation
- 8 d. Special Victims Detail
- 9 e. Special Weapons and Tactics Team (SWAT)
- 10 f. Tactical Support Team – Crisis Negotiator
- 11 g. Major Accident Reconstruction Team
- 12 h. DA Special Assignment Unit
- 13 i. DA Homicide Unit
- 14 j. Canine Handlers

15 ***

16 **BE IT FURTHER RESOLVED THAT** the on-call and canine handler
17 maintenance services rendered by employees in these Job Grades have been and
18 shall be considered for all purposes as part of the employees' ordinarily required
19 regular work week, and not as having been rendered outside normal working
20 hours, to the extent required to be served, ordinarily served by all employees in
21 the same job grade and not voluntarily served at the election of the employees.

22 (Kalinski Decl., Exhibit C1, C2, and C3 at p. 7.)

23 The Resolution clearly establishes that many employees work on-call pay which
24 is not rendered outside of normal working hours, where the on-call pay is required to be
25 served, ordinarily served by all employees in the same grade or class and not voluntarily
26 served at the election of the employees. Wolf's on-call pay responsibilities were also
27 not rendered outside of normal working hours.

28 **B. KCERA ERRONEOUSLY CONFLATES THIS SITUATION WITH
WHAT IS REQUIRED UNDER THE FLSA.**

KCERA cites to the case of *City of Pleasanton v. Board of Administration* (2012) 211
Cal.App.4th 522, 539 and the Court's observation therein that the employee's "normal"
workweek could not include stand-by time because the employee did not get paid the same
hourly rate for the standby time.

1 KCERA’s argument seems to be directed at a contention Wolf is not making here—
2 that she is required to be compensated at minimum wage for the standby time under the
3 FLSA.¹ The Board need not make such a determination here. The County and Wolf’s union,
4 Service Employees’ International Union, Local 521, have already determined that Wolf must
5 be compensated for her standby services. The question here is only whether those services
6 were outside of her normal working hours.

7 The hours worked by Ms. Wolf were certainly within her normal working hours. To
8 paraphrase from SBCERS, Ms. Wolf’s standby duties were routine, frequent, planned in
9 advance, evenly distributed and consistent. To be a Senior Animal Control Officer is to work
10 standby for the benefit of the County.

11 C. **THE DISTINCTION BETWEEN VOLUNTARY AND MANDATORY**
12 **SERVICES IS CRUCIAL.**

13 KCERA contends that Ms. Wolf is incorrect in stating that the Board must consider
14 whether the services she performed were voluntary or mandatory, because the plain language
15 of the statute, Government Code section 31461, subdivision (b)(3), does not include those
16 terms. KCERA further contends that if the California Supreme Court, in *Alameda* “chose to
17 condition the constitutionality of section 31461 (b)(3) on such services being voluntary, it
18 would have said so.” (KCERA brief, p. 8.) In doing so, KCERA summarily discounts the
19 court’s explanation of the legislature’s intent in adopting PEPRA:

20 A bill analysis prepared in connection with the pre-PEPRA version of
21 Assembly Bill 340 explained that **the purpose of these changes was to**
22 **circumscribe CERL’s “very broad and general definition of**
23 **‘compensation earnable’” in order to reduce pension ““spik[ing],”**
24 the manipulation of an employee's pattern of work and pay to produce
inflated compensation earnable during the final compensation period.
(Assem. Com. on Public Employees, Retirement and Social Security,
Analysis of Assem. Bill No. 340 (2011–2012 Reg. Sess.) as amended
Apr. 25, 2011, p. 2.)

25 (9 Cal. 5th at 1061; emphasis added), claiming that the purpose of the legislation “was
26

27 ¹ Our Opening Brief reference to *Berry v. County of Sonoma* (9th Cir. 1994) 30 F.3d 1174
28 was designed to show that Wolf’s standby duties were significant.

1 broader than merely preventing member[s] from voluntarily inflating their pay[.]” (KCERA
2 brief, p. 8.) However, as the court noted at the outset of its opinion, “The PEPRA provision at
3 issue here amended CERL’s definition of compensation earnable to exclude or limit the
4 inclusion of additional types of compensation **in an effort to prevent perceived abuses of
5 the pension system.**” (*Id.* at 1052; emphasis added.) The court further wrote:

6 A review of the exclusions and limitations in PEPRA’s amendment
7 of section 31461 demonstrates that **the Legislature sought to limit
8 pension spiking by eliminating practices that**, while arguably
permitted under the broad language of the preexisting definition, are
inconsistent with the statute’s overall concept of compensation earnable.

9 (*Id.* at 1061; emphasis added.) And further:

10 Accepting **voluntary on-call duty** and cashing out unused leave time to
11 the extent permitted by an employer are ordinary practices that serve
12 proper public policy interests. **Yet by not expressly excluding such
13 payments when determining a county employee’s pension benefit,
14 the pre-PEPRA definition of compensation earnable allowed an
15 employee to considerably increase his or her pension benefit by
16 volunteering for a large quantity of on-call duty** or by accumulating
and cashing out a large quantity of unused leave time during the final
compensation period. Because such enhancements are arguably
inconsistent with the underlying concept of compensation earnable,
which is intended to reflect pay for work ordinarily performed during the
course of a year, these types of enhancement have been characterized as
pension spiking.

17 (*Id.* at 1063; emphasis added.) Finally, even the quotation KCERA used in its brief supports
18 Ms. Wolf’s argument:

19 **[T]he purpose** [of PEPRA] was to...limit[] the inclusion of other types
20 of compensation that were reasonably viewed as inconsistent with
21 CERL’s general approach to pensionable compensation.... Stated
22 differently, **the Legislature was attempting to reduce manipulation
and abuse by closing loopholes** created by the very general language
of sections 31460 through 31462, which define “compensation,”
“compensation earnable,” and “final compensation.

23 (*Id.* at 1102, emphasis added; KCERA brief, p. 8-9.)

24 *Alameda* thus makes it apparent that PEPRA was concerned with **voluntary** services.
25 As was discussed in Ms. Wolf’s opening brief, none of the work in which she engaged as an
26 Animal Control Officer was voluntary. The analysis provided by SBCERA, SBCERS and
27 OCERS also demonstrate that the distinction between whether on-call pay or stand-by pay is
28 voluntary or mandatory is crucial.

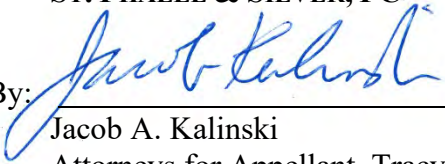
1 **III. CONCLUSION**

2 Based on the foregoing, as well as the arguments set forth in Ms. Wolf’s opening
3 brief, it is respectfully requested that the Board find that all of Ms. Wolf’s compensation be
4 considered “compensation earnable.”

5
6 Dated: October 19, 2023

Respectfully submitted,

**RAINS LUCIA STERN
ST. PHALLE & SILVER, PC**

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9 By: 
10 Jacob A. Kalinski
Attorneys for Appellant, Tracy Wolf

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PROOF OF SERVICE

I am employed in the City of Los Angeles, State of California. I am over 18 years of age and not a party to this action. My business address is Rains Lucia Stern St. Phalle & Silver, PC, 16130 Ventura Blvd., Suite 600, Encino CA 91436.

On the date below I served a true copy of the following document(s):

APPELLANT’S REPLY BRIEF

on the interested parties to said action by the following means:

- (BY MAIL)** By placing a true copy of the above, enclosed in a sealed envelope with appropriate postage, for collection and mailing following our ordinary business practices. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- (BY OVERNIGHT DELIVERY)** By placing a true copy of the above, enclosed in a sealed envelope with delivery charges to be billed to Rains Lucia Stern St. Phalle & Silver, P.C., for delivery by an overnight delivery service to the address(es) shown below.
- (BY FACSIMILE TRANSMISSION)** By transmitting a true copy of the above by facsimile transmission from facsimile number (310) 395-5801 to the attorney(s) or party(ies) shown below.
- (BY MESSENGER)** By placing a true copy of the above in a sealed envelope and by giving said envelope to an employee of Action Messenger for guaranteed, same-day delivery to the address(es) shown below.
- (BY HAND DELIVERY)** By personal delivery of a true copy of the above to the attorneys or parties shown below
- (BY E-MAIL or ELECTRONIC TRANSMISSION)** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable period of time, after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE SERVICE LIST

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

DATED: October 19, 2023


/s/ Michele Hengesbach
Michele Hengesbach

SERVICE LIST

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Jennifer Esquivel Zahry
Kern County Employees' Retirement Association
11125 River Run Boulevard
Bakersfield CA 93311
Email: legal@kcera.org
(Via Email Only)

Ashley K. Dunning
Nossaman LLP
50 California Street, 34th Street
San Francisco CA 94111
adunning@nossaman.com
(via Email Only)

Tracy Wolf

(via US Mail Only)

1 JACOB A. KALINSKI, SBN 233709
2 GIDIAN R. MELLK, SBN 214404
3 **RAINS LUCIA STERN ST. PHALLE & SILVER, PC**
4 1428 2nd Street, Suite 200
5 Santa Monica, CA 90401
6 Tel: 310.393.1486
7 Fax: 310.395.5801
8 E-mail: JKalinski@RLSlawyers.com

9 Attorneys for Appellant, Tracy Wolf

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BEFORE THE BOARD OF ADMINISTRATION OF THE KERN COUNTY
EMPLOYEES RETIREMENT ASSOCIATION

TRACY WOLF,

Appellant,

v.

KERN COUNTY EMPLOYEES
RETIREMENT ASSOCIATION,

Respondent.

**DECLARATION OF JACOB A.
KALINSKI IN SUPPORT OF
APPELLANT'S REPLY BRIEF**

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I, Jacob A. Kalinski, hereby declare as follows:

1. I have personal knowledge of the facts contained herein and am competent to testify if called upon to do so.

2. I am an attorney licensed to practice law in the State of California. I am a partner at the law firm of Rains Lucia Stern St. Phalle & Silver, PC, attorneys for Appellant, Tracy Wolf, in the above-entitled matter.

3. Attached hereto as Exhibit A is a true and correct copy of the Stand-by Duty Fact Finding Report distributed by the Santa Barbara County Employees' Retirement System.

4. Attached hereto as Exhibit B1 is a true and correct copy of the Proposed Findings of Fact, Conclusion and Recommendation of Hearing Officer Duane Bennett in *San Bernardino County Sheriff's Employees' Benefit Association v. San Bernardino County Employees' Retirement Association*.

5. Attached hereto as Exhibit B2 is a true and correct copy of the San Bernardino County Employees' Retirement Association's Meeting Minutes from February 3, 2022, adopting the decision of Hearing Officer Bennett.

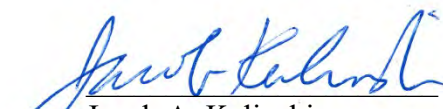
6. Attached hereto as Exhibit C1 is a true and correct copy of the Resolution of the Board of Supervisors of the County of Orange, passed by the Board on December 20, 2022.

7. Attached hereto as Exhibit C2 is a true and correct copy of a Memorandum dated December 16, 2022 from Orange County Supervisor Andrew Do regarding adoption of the Resolution attached as Exhibit C1.

8. Attached hereto as Exhibit C3 is a true and correct copy of December 20, 2022 agenda/minutes from the Regular Meeting of the Board of Supervisors, Orange County.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 19, 2023 in Encino, California.


Jacob A. Kalinski

SANTA BARBARA COUNTY EMPLOYEES' RETIREMENT SYSTEM

Stand-by Duty Fact Finding Report

November 10, 2020

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Executive Summary

Review Background and Procedures

This report was prepared in response to the California Supreme Court Ruling in Alameda County Deputy Sheriffs' Assoc. v. Alameda County Employees' Retirement Association (the Alameda Decision). The Alameda Decision, among other things, clarified the responsibility of the Board of Retirement to broadly construe the provisions of PEPPRA that seek to control pension enhancement. The facts of the Alameda case specifically dealt with the inclusion of irregularly and voluntarily performed stand-by duty in compensation earnable.

Based on a review performed in 2012, SBCERS Board of Retirement has held that stand-by duty is part of the normal working hours of membership and therefore stand-by pay should be included in compensation earnable for legacy members. In response to the Alameda Decision, staff prepared this report in order to provide a current review of stand-by duty in the context of normal working hours and evaluate individual member use in comparison with class averages. The report was the result of interviews with 11 County of Santa Barbara operating departments, interviews with affected members and analysis of thousands of time card entries made by SBCERS members. In making this report, we sought to gather information that would demonstrate:

1. Whether stand-by duty is part of the normal working hours of SBCERS membership.
2. Whether inclusion of stand-by pay in compensation earnable was resulting in members receiving pensions greater than the average of similarly situated members.

Analysis Criteria for Compensation Earnable

For the purposes of this report we established criteria for both normal working hours and similarly situated members. For normal working hours we adopted the criteria that stand-by duty needed to be mandatory and uniformly distributed across the classification. In this report, we describe the factors that demonstrate normal working hours. These factors included regular scheduling and performance of the member's regular job for which the member earns their base pay. We also concluded that in order for the stand-by duty to be part of the member's regular schedule it could not be the result of assuming another member's scheduled work time or be the result of an ad hoc or incident related need. In order to determine the average compensation earnable for similarly situated members, we utilized the County's existing job classification system.

Analysis of Santa Barbara County Stand-by Duty

The County uses several earnings codes to account for duty performed by members on an hourly basis. In addition to hourly stand-by duty, the County also has stand-by per call pay and special duty pay types that are paid in lump sum each bi-weekly pay period regardless of utilization. Total compensation paid to members working stand-by averaged \$22,785 per pay period. On average, the County utilized 93 legacy members to work approximately 5,821 hours of stand-by duty per pay period. This is an average of 63 Hours of stand-by duty per affected employee. This utilization is the equivalent of an additional 72 full time equivalent employees on an hours performed basis.

The County has members in more than 114 job classifications that work stand-by duty. The functions most reliant on stand-by to cover operational responsibility are located within public safety, welfare and

protective services and those who support critical infrastructure. Eleven departments account for almost all of the stand-by duty performed by legacy plan members.

Analysis of Normal Working Hours

Most operational managers took the position that stand-by duty was ultimately mandatory; however, many had also adopted informal policies of convenience. We also found several instances of stand-by that was driven by the member's job assignment or job location. However, in the instances where stand-by duty was truly mandatory and job specific, we often were unable to demonstrate that similarly situated members of the same grade or class (job classification) all performed the assigned duty. This is due to the fact that the specialized assignments were performed by members in large job classifications. In this way, we were unable to determine that such stand-by duty was uniform across the broad classification.

In our department interviews, we found multiple examples of job classifications in the County that met all of our criteria for normal working hours. In all circumstances, these were small job classifications, with the class description closely matched to the member's job assignment and where each member performed a very consistent function within the class. The conclusion from departmental interviews was supported by data analysis.

Analysis of Stand-by Duty Utilization

To perform our analysis of stand-by duty we measured utilization across two different dimensions for each pay period. First, we evaluated how frequently members performed stand-by duty. Second, we measured the volume of stand-by duty performed within each instance. Using these two factors we were able to measure dispersion of stand-by duty performance for each job classification. In reviewing the calculated dispersion we arrived at a result that correlated with the results of our qualitative interviews. Specifically, we found that:

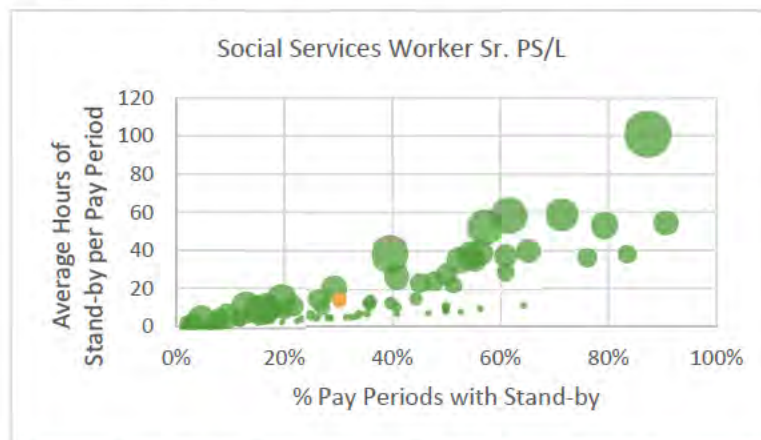


Figure 1 Chart of Social Services Worker Sr. PS/L shows a broad dispersion that is consistent with flexible departmental scheduling policies (bullet 2).

1. There are instances of job classifications performing stand-by duty that are part of normal working schedules and worked by all members of the classification. In these instances the dispersion analysis showed a tight grouping or smaller distribution of outcomes relative to the mean. We estimate that these classifications account for significantly less than 50% of the classifications using stand-by.

2. There are instances of stand-by duty that are part of normal working schedules but not performed by all members in the job classification at the same frequency or volume. In these instances the dispersion analysis showed a broad distribution of results, with numerous members performing stand-by duty at rates greater than one standard deviation from the class mean. We found this result to be consistent with departments who had adopted policies of convenience with regard to scheduling members on stand-by duty.

3. Numerous classifications contain highly specialized assignments that result in certain members performing stand-by duty at a high rate, but the majority of members in the classification perform little or no stand-by duty at all. In these cases, the dispersion analysis often displayed a barbell pattern, with a small group of members performing stand-by duty at rates greater than one standard deviation from the class mean. The members in these classifications met all of the criteria for normal working hours except for the uniformity criteria (because most members of the classification do not perform the specialized assignment).

Conclusions and Recommendations

We found significant evidence to support the determination made by the Board of Retirement in 2012 that stand-by duty is performed as part of the normal working hours of membership. In departmental interviews departmental management often held the position that such time was part of the member's normal schedule and was a cost effective way of managing their department. We also found that once we applied a statistical test to the data in order to compare a member's pay to that of other class members, the finding on normal working schedule is rendered moot because of policies of convenience surrounding schedule changes or because the stand-by was only worked by a small number of members performing specialized assignments.

Using job classifications to create cohorts of similarly situated employees produces what may be viewed as an arbitrary result. The variables of population and diversity of assignments within the series mean that some groups get it and other groups don't; this happens regardless of the individual contract between the employer and the member. We cite the barbell pattern and the existence of specialized assignments within classifications to support this view. However, departing from County job classifications to define a member's peer group may be inconsistent with the statute and may be seen as equally arbitrary, placing the Board of Retirement in the position of defining classes of County employment in a manner different than the employer.

Based on this research, we cannot conclude that all past stand-by duty should be removed from compensation earnable unilaterally and without consideration of individual job classifications. Further, we conclude that any determination that a correction to a member account is necessary can only be made on an individual basis. We found many instances where stand-by was part of normal working schedules of members and that it was worked by all similarly situated members, but not at the same amount. The dispersion may be attributable to volunteerism but also to myriad other factors having nothing to do with the goal of enhancing a members pension and more to do with the efficient management of personnel resources.

Ultimately, we concluded that the current system of accounting for stand-by duty does not support reliable and consistent outcomes. Management policy is subject to change based on the preferences and style of individual managers and the County's budgetary cycles. In order for the Board of Retirement and SBCERS staff to ensure consistent outcomes, the underlying policies of the County need to remain consistent. We do not believe that consistency will be achieved unless the related policies have greater permanence.

For that reason, we recommend that the Board of Retirement adopt the following recommendations as its determinations regarding the inclusion of stand-by duty in compensation earnable prospectively, for all legacy members.

Recommendation 1: Remove stand-by pay codes from the schedule of earnings codes included in compensation earnable.

We recommend that the Board of Retirement remove the following hourly earnings codes from its calculation of compensation earnable.

| Earning Code | Title | Hourly | Amount | Employee Group |
|--------------|-----------------------|--------|--------|---------------------------|
| STA | Stand By 2 | Y | \$2.00 | Local 620 |
| SBY | Stand By 2.6 | Y | \$2.60 | Local 721, PPOA |
| STB | Stand By 3 | Y | \$3.00 | Local 620, Local 721, ETA |
| SSB | Sheriff Stand By | Y | \$4.00 | DSA |
| SBF | Stand By Firefighters | Y | \$4.00 | Local 2046 |
| STE | Stand By 4 | Y | \$4.00 | Local 721 |

This recommendation should be considered concurrently with Recommendation 2.

Recommendation 2: Establish clear guidance for future inclusion of new stand-by duty earnings codes in compensation earnable.

We recommend that the Board of Retirement establish the following standards for inclusion of new earnings codes used to account for stand-by duty when inclusion in compensation earnable is proposed.

1. Normal working schedule and any mandatory stand-by duty included in that schedule must be clearly defined in writing, including the number of stand-by duty hours normally scheduled for each job classification and associated earning code in an executed memorandum of understanding. Such hours shall be the maximum hours includable in compensation earnable for a member of the class.
2. The County must have documented time card procedures that direct employees to separately account for ad hoc, voluntary or assumed stand-by duty using an earning code that is recognizable as not included in compensation earnable and for which retirement contributions will not be collected. For the purposes of this requirement, the earnings codes identified in Recommendation 1 are suitable.
3. County scheduling procedures must allocate and track stand-by duty hours to all affected members of a class.

Recommendation 3: Remove the earning code STC from the schedule of earnings codes included in compensation earnable and refund contributions made on such pay subsequent to December 31, 2012.

In our review, we concluded that the earning code STC has been erroneously included in compensation earnable since the passage of PEPPRA. In recognition that this was included as an item of compensation earnable incorrectly, we recommend that contributions made since January 1, 2013 on this pay be refunded to active members and that STC not be included in compensation earnable at retirement.

Recommendation 4: Affirm the inclusion of the earnings codes DAP, DEP and SPA in compensation earnable.

These earnings codes are a fixed amount paid to employees of the Public Defender, District Attorney and Behavioral Wellness department. In our review, we concluded that these codes are more similar to a special duty pay, which remains a valid category of compensation earnable post-PEPRA. They are paid regardless of utilization or timing and paid to employees in professional classifications that are generally exempt from overtime except in very limited circumstances (Attorneys and Doctors).

Recommendation 5: Consider implementation of procedures for evaluation of corrections.

Direct staff to develop and recommend procedures for the implementation of any necessary corrections to retired or active member accounts and benefits. The procedures should include the application of the Board's Errors, Corrections and Collections Policy, the applicable statute of limitations, a process for considering member and employer input, and a procedure for the calculation and implementation of any required corrections. At the option of the Board of Retirement, these recommendations may be brought to the full Board or preliminarily to an ad hoc committee.

Review Background and Procedures

On July 30, 2020, the California Supreme Court issued its decision in *Alameda County Deputy Sheriffs' Assoc. v. Alameda County Employees' Retirement Association* (the Alameda Decision). The Alameda Decision is the culmination of seven years of litigation pertaining to 2012 amendments to the County Employees' Retirement Law (CERL) made as part of the Public Employees' Pension Reform Act of 2013 and the companion bill, AB 197 (together, "PEPRA"). PEPRA established new benefit plans for new employees and modified the definition of "compensation earnable" for members who were active employees at the time of PEPRA's passage and thereafter.

Compensation earnable is a statutory term that defines the items of compensation that SBCERS uses to calculate contributions and pension benefits for members of pre-PEPRA benefit plans. Prior to PEPRA, the statutory definition of compensation earnable, as interpreted by the courts, included special items of compensation such as stand-by, leave cash-outs, and special duty pay types. Effective January 1, 2013, PEPRA made several changes to the definition of compensation earnable for then-current members of CERL retirement systems.

In response to these changes and after study and consideration in 2012, SBCERS staff reviewed plan sponsor compensation policies and recommended several modifications to compensation earnable to the SBCERS Board of Retirement. At that time, staff concluded that stand-by duty was part of the normal working hours and regular duties of members and, similar to actions taken by several other CERL systems at the time, the SBCERS Board of Retirement determined to allow stand-by duty pay to remain in compensation earnable. Immediately following the enactment of PEPRA, other CERL retirement systems, including the three defendants in the Alameda case, adopted policies excluding certain items of compensation they found to be subject to exclusion under PEPRA definitions. One of the items of compensation excluded by those three systems was stand-by duty pay. Employee groups sued to reverse the exclusion of stand-by pay (among other items) as an item of pay for "additional services rendered outside of normal working hours."

What Did the Supreme Court's Decision Say About Stand-by pay?

The primary cases at issue have been sent back to the trial court for further proceedings and new information may become available in the future as part of that further consideration. However, the Supreme Court ruling made clear that items of compensation paid for "additional services rendered outside normal working hours" must be excluded, as must compensation paid to enhance a member's retirement benefit, and are not limited to the examples provided in the statute. In this regard, some items of compensation related to stand-by pay should be excluded from compensation earnable.

The decision contains extensive discussion of the exclusion from compensation earnable of pay for "additional services outside of normal working hours" and reasons that such language "prevents employees from volunteering, during their final compensation period, to perform additional services outside of normal working hours to artificially inflate their daily rate of pay."

The court did not categorically state that all items of stand-by pay are excluded, and noted in its opinion the similarity of stand-by pay to overtime pay, citing another compensation earnable statute that excludes overtime pay except where the overtime is worked within the employee's "normally scheduled or regular working hours." Accordingly, this review of plan sponsor management practices is intended to evaluate,

based on current information, whether or not stand-by pay should continue to be included in compensation earnable in whole or in part.

Departmental Interviews

SBCERS staff met with designated departmental management staff and County Human Resources department labor relations team members to document the purposes for which departments are using stand-by duty along with how it is scheduled and assigned to members. The interviews also inquired about the use of various earnings codes, the affected job classifications and the conditions imposed on members while on stand-by duty.

For the purposes of this review, SBCERS staff interviewed responsible officials for the 11 departments that are the largest users of stand-by duty. These departments are responsible for almost all of stand-by duty awarded since the passage of PEPRA. The departments reviewed included membership in both general and safety classifications and covered a broad range of classifications including first responders, professional tradespeople, traditional office workers and medical professionals. Four other departments that had de minimus utilization and were not interviewed.

| Department | Functions Utilizing Stand-by Duty |
|-----------------------------------|--|
| Fire | Dispatch Duty, Public Information, Information Technology, Arson Investigations, Air Support Unit, Emergency Operations Support, Wildland Fire Crew, and Construction |
| Sheriff | Air Support, Cuyama Valley Patrol Operations and Intermittently in all divisions. |
| Social Services | Child Welfare Services and Adult Protective Services |
| Behavioral Wellness | Assertive Community Treatment, Psychiatric Health Facility, Crisis and Recovery Emergency Services, Medical Staff, Information Technology, Administration and Intermittently in all divisions. |
| General Services | Information Technology, Communications and Facilities maintenance. |
| Parks - Community Services | Cachuma Lake Recreation Area, Jalama Beach, Water Lift Stations |
| Public Health | Animal Services, Disease Control, Environmental Health, Emergency Medical Services |
| Public Works | Laguna Sanitation Plant Operations and Sewer Operations. |
| Probation | Institutions |
| District Attorney | Duty Deputy |
| Public Defender | Duty Deputy |

Member Interviews

SBCERS identified and noticed 607 legacy plan members who have earned stand-by duty pay since the passage of PEPRA. Members were notified of potential impacts to their retirement account and encouraged to call SBCERS member services in order to arrange for a virtual counseling session. During the virtual counseling session, members were asked to take a voluntary survey. The voluntary survey documented the member's stand-by duty history, including the member's assignment and role. The survey also asked members to provide information regarding how they were assigned to stand-by duty.

Data Analysis

SBCERS staff reviewed the timecard submissions and pay history of members who have received stand – by pay subsequent to the passage of PEPRA. This involved the review of thousands of time card entries over a seven-year period. Utilizing analytical and statistical procedures, SBCERS reviewed stand-by duty time entries for consistency throughout the member’s course of employment. Staff also reviewed individual member stand-by duty time coding in the context of class averages.

Analysis Criteria for Compensation Earnable

The compensation earnable statute is constructed in two parts, the first part of the compensation earnable statute 31461 (a) provides that general definition for compensation earnable that defines compensation earnable as average compensation for the number of days ordinarily worked by persons in the same grade or class of positions (emphasis added).

*31461. (a) “Compensation earnable” by a member means **the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay...***

Explained simply, SBCERS staff interprets 31461(a) as limiting compensation earnable to that what is earned by similarly situated members. The second part of the compensation earnable statute 31461(b) lists items of compensation that are specifically excluded by the statute. In relation to stand – by duty pay, one component of the statute is particularly applicable as disallowing pay for additional services performed outside of normal working hours (emphasis added).

*31461(b)(3) Payments for **additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.***

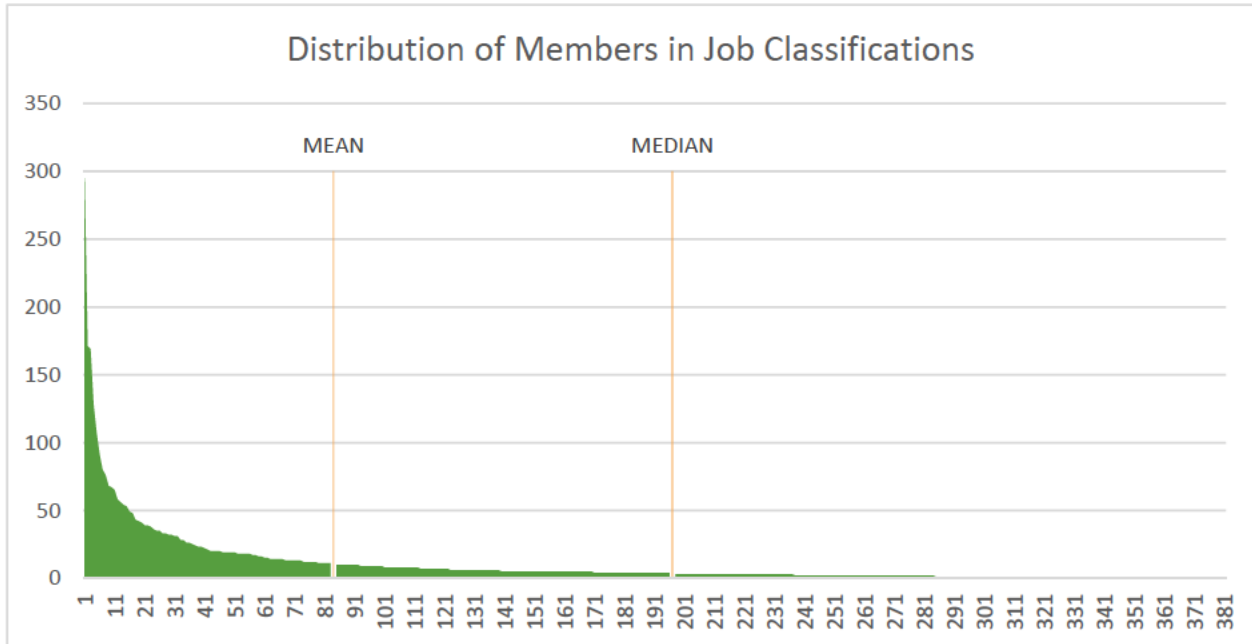
In accordance with the statutes discussed above, staff established criteria for use in performing our analysis.

Criteria for Available to Similarly Situated Members

The County of Santa Barbara currently utilizes 385 active job classifications within its payroll system to classify approximately 4,035 current employees. These classifications include a range of positions covering all aspects of the County workforce. They include hourly and salaried positions as well as regular and contract employees. The largest classification currently holds 295 members while 97 classifications currently hold only a single member. On average, each classification has approximately 11 members, however, the median classification holds just 4 members. The 27 largest job classifications account for over 50% of the County workforce.

Many job classifications are built in a series that allows for job progression, for example, Social Services Worker is followed by Social Services Worker Sr. In other classifications, the series progression is denoted by the use of I, II, III, Sr., Supervisor or Expert at the end of the classification title. In a series, there is generally commonality across job classes in the example duties provided. In addition to series progression, some classifications have alternates that denote “restricted”, which indicates that they are performing duties that exempt them from employee group representation. If job classifications were

grouped by series, the distribution of members in job classifications would concentrate into even fewer groups of similar employees with the size of each group increasing significantly.



The classification process is a product of management’s organizational design and employee collective bargaining efforts. Generally, the process of creating or modifying a classification involves the County Human Resources department studying the job duties of a position in coordination with the requesting department and preparing a class specification that is then reviewed by the responsible employee group and operating department. Upon completion, the classification is considered by the County Board of Supervisors. Using this process, minor modifications to the classification schedule are made with regularity throughout the year. These modifications include new classifications and re-classifications of various positions based on job duties.

During the 2006 -2008 fiscal years, the County completed a major reclassification effort that was the foundation for the current County classification system. The 2006-2008 reclassification effort was implemented in multiple phases and affected a broad range of classifications included clerical and leadership classifications. One iteration of the reclassification effort resulted in the consolidation of 60 classifications into 12 classifications. Reports prepared for the County Board of Supervisors at the time stated that the objective of the project was to:

“Provide a more flexible classification and compensation structure that would increase overall organizational capacity, provide departments with greater operational flexibility, and improve customer service delivery”¹

¹ <https://santabarbara.legistar.com/LegislationDetail.aspx?ID=463161&GUID=B9B235CB-00DC-4B6E-B7F9-EFCAA327083E&Options=ID|Text|&Search=Classification>

Safety classifications have been more stable in number, however, the example duties provided discuss a broad range of activities and don't include discussion of the specific specializations involved in operating a modern public safety department. The example duties provided in the job classifications for a Sheriff Deputy and a Sheriff Deputy – Special Duty are exactly the same, while providing greater compensation for senior class. Sheriff Deputy – Special Duty being the senior class in the series tends to hold more employees who perform specialized functions for the department. Safety classifications in other departments are similar in that the example duties are broad in nature and replicate throughout the classification series.

The classification schedules currently adopted are based around theories of efficient public sector management colloquially referred to as "broad-banding." The central concept around broad-banding was that it gives management the flexibility to staff operations free from the encumbrances of the classification process. However, a consequence of broad-banding is that it groups a diverse range of assignments into a single job classification.

Simultaneous to broad-banding, the County, like all other organizations has evolved over time and is consistently providing new services, changing methods of service for existing services and eliminating others. As a result, the County maintains several job classifications that encompass a broad range of tasks that are incompatible from a scheduling perspective due to the various service demands they support.

In our study, we identified that a significant portion of the stand-by duty assigned to members occurred within large job classifications. We also found that the major determinate of a members schedule and the amount of stand-by a member was assigned was more correlated to the member's

assignment to a specific program and work location staffed by the member's job class. We did not find that schedules or the assignment of stand-by duty correlated to the member's greater job classification.

In the course of our work, we identified several instances where assignments within classifications were awarded using competitive practices. In many circumstances members were asked to demonstrate specialized skills or reasons for which they were uniquely suited to a duty. Some were required to apply

Sheriff Department Classifications

Members of Sheriff Deputy-Special Duty classification are assigned to almost all the commands and divisions of the Sheriff's Department. All of these various units require that employees have the basic skill set possessed by Sheriff Deputy Specialty Duty classification; however, the scheduling demands are entirely different depend on the employees duty and location.

Air Support Unit members receive specialized training in order to operate air assets and perform law enforcement functions that utilize those assets. Due to the limited availability of members having this specialized skill set and the need to have air assets available 24 hours a day, members employed in this division typically perform stand – by duty at a greater rate than counterparts in other divisions.

We found similar duty driven schedule divisions within basic patrol functions. In the Sheriff Deputy classification, we found that demand for stand – by duty is driven by the employee's work location. Employees performing patrol services in the rural Cuyama Valley were assigned ten times the amount of stand-by duty as the average Sheriff Deputy assigned stand-by over the same period. The increased rate of stand – by was due to the distant work location being an hour away from major population centers and the absence of other Sheriff Deputies available to support an officer in need. Accordingly, the two Sheriff Deputies assigned to patrol the Cuyama Valley area (and who live the area) are assigned stand – by duty for essentially all hours that they are not on active duty.

for various duties, submit letters of intent, and in limited cases interview for the assignments. In certain departments, we found that there was no defined process for awarding specific assignments.

Several of the County's MOUs describe procedures for special assignments that are unique across job classifications. These special assignments include, Air Support Unit duty, Staff positions in the fire department and working in the Psychiatric Health Facility among others. As described in the MOUs, some of these special roles are location specific, for example, working in the Psychiatric Health Facility or Juvenile Hall is deemed a separate and specific duty within MOU documents. Many of these special roles are identified in the MOUs and have unique pay codes associated with them.

Notwithstanding our determination that job classification is an overly broad classification system we found it to be the only available objective method of determining a members "**grade or class of positions**" as is contemplated in government code section 31461(a). From a practical perspective, we reviewed the County payroll accounting procedures, budgetary procedures and were unable to determine an alternate method of classification that would allow us to reliably group members by assignment or location - the two drivers of stand-by pay - in a consistent and objective manner. We found several departments that utilize the location or budget units to capture certain instances of specialty assignments or work locations, but the data was not uniform across all departments and classifications.

Our decision to use Job Classification to establish criteria for the grade or class of positions affected, is further reinforced by the ruling of the Fourth District Court of Appeal in *Stevenson v. Board of Retirement* (2010) 186 Cal.App.4th 498. In that matter, OCERS had excluded from compensation earnable overtime pay worked by a narcotics investigator who contended that his pay should have been included because a similar amount of overtime was worked by other narcotics investigators. The Court of Appeal rejected this contention because applicable Memoranda of Understanding and other evidence of job classifications within Orange County demonstrated that the job of "narcotics investigator," although a distinct assignment within the Sheriff's Department, was not itself a "grade or class" of employment. Rather the broader class of "investigator" applied equally to narcotics investigators and other investigators in the department who did not regularly work overtime. Accordingly, the claim for inclusion of overtime within compensation earnable was rejected.

The determination to use job classification in order to determine similarly situated members, favors members who are working in smaller classifications because of the need to limit compensation earnable to the average compensation based on the average number of days worked.

| Definition of Similarly Situated Members |
|--|
| Members within a job class as defined in a plan sponsor salary resolution. |

Criteria for Normal Working Hours

Government code section 31461(b)(3) requires that payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise, be excluded. Going further, the Alameda decision reasons that voluntary service should be excluded from compensation earnable. In its opinion the Court stated:

*We emphasize that there is nothing inherently abusive in the practices addressed by section 31461, subdivision (b)(2) through (4), at least when divorced from their pension consequences. Accepting **voluntary on-call duty** and cashing out unused leave time to the extent permitted by an employer are ordinary practices that serve proper public policy interests. Yet by not expressly excluding such payments when determining a county employee's pension benefit, the pre-PEPRA definition of compensation earnable allowed an employee to considerably increase his or her pension benefit by volunteering for a large quantity of on-call duty or by accumulating and cashing out a large quantity of unused leave time during the final compensation period. Because such enhancements are arguably inconsistent with the underlying concept of compensation earnable, which is intended to reflect pay for work ordinarily performed during the course of a year, these types of enhancement have been characterized as pension spiking.*

In its opinion, the court clearly differentiates voluntary stand-by from mandatory stand-by pay and excludes only the former from compensation earnable. With regard to the broader issue of stand-by pay's inclusion in compensation earnable, the Court Opinion is more permissive and notes the legitimate public purpose of such pay. The Court also drew comparison to other statutes that govern the exclusion of Overtime pay. Specifically, the Court notes the similar nature of the language in G.C. 31461(b) "normal working hours" with the use of the words "normally scheduled or regular working hours" in G.C. 31461.6, a statute that generally excludes overtime from compensation earnable unless it is regularly scheduled. From this, we conclude that the Court did not disallow all stand-by pay as a potential item of compensation earnable; rather, it disallowed stand-by pay that is used to enhance a member's pension beyond the amount that would be earned by the average member of the class.

In Staff's view, in making the connection with the principal of controlling pension enhancement, the Court is providing an important distinction. Volunteering for additional duty is not the only way a member could potentially enhance their pension through performance of an hourly duty. There are other methods of implementation to consider, including the employer's policies. For that reason, we adopted criteria for normal working hours that also excludes employees from assuming another employees mandatory time, duty that results from ad hoc assignments from management and, incident related duty.

The concept of normal working hours suggests routine, frequency, advance planning, even-handedness and consistency. We adopted criteria that the stand-by pay had to have a clear connection with a member's regular duty and, that there was a clear expectation that it was the member's responsibility to perform the duty. The regularly recurring nature of such stand-by duty was considered evidence that such duty was a normal part of the member's regular job as assigned by the department.

Examples of this include members who held specialized skills, or were responsible for maintaining critical infrastructure equipment. Other examples include myriad location based pay scenarios wherein members

Wastewater Plant Operators

The County maintains several small job classifications for employees who maintain and support critical wastewater infrastructure. These employees work in both the Community Services and Public Works Departments. They operate and maintain Wastewater Treatment Plants that operate 24 hours a day, 7 days a week.

While they don't occur often, wastewater plant failures can result to significant threats to the health and safety of the area they serve. The County uses stand-by duty to ensure that employees are available to respond and critical incidents are corrected timely. Stand-by time costs significantly less than regular time and reduces the need to staff additional shifts of employees to cover evening and weekend hours. There are currently a total of 9 members in the wastewater plant operator series for the Public Works Department and 2 members in the Water & Sewage Plant Operator series for the Community Services Department.

Due to the small number of these employees who are trained to operate very complex and unique pieces of equipment, members of these classifications are assigned stand – by duty regularly and at a high rate. When employees on stand-by report to work after call in, they are performing the same function that they perform while they are working regular time.

were assigned stand-by regularly due to need to staff an operation continuously or due to limited availability of other responsive members. We found in some circumstances that there was a general correlation between the size of geographically available workforce and the rate at which members worked stand-by duty. If a small number of members are located in an area that requires continuous service, then stand-by was likely to be utilized in a higher instance.

We considered Ad Hoc assignments that derive from short-term operational needs. In the case of ad hoc assignment, we didn't view backfilling another member's illness, or being on stand-by to support a special event as part of a member's normal and recurring working hours. We viewed stand-by that results from a natural disaster; however frequently they may occur, as not a normal duty. If an Animal Control Officer – Supervisor that normally manages a shelter is placed on stand-by in order to support field operations, that would also be an example of irregular duty and not meet our definition of normal working hours. We found that a significant amount of stand-by time coded is attributable to these factors. The following chart illustrates the criteria and factors for consideration that we adopted in evaluating the information gathered.

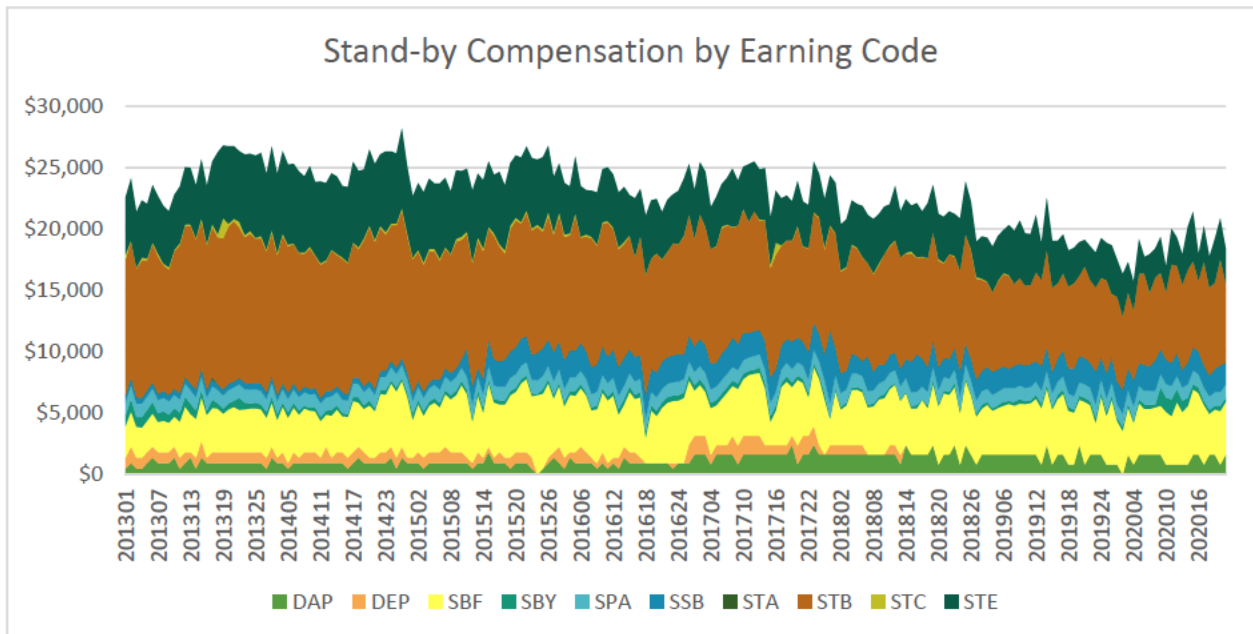
| Normal Working Hours | |
|--|--|
| <u>Out – Not Compensation Earnable</u> | <u>In – May be Compensation Earnable</u> |
| Voluntary – Voluntary agreement to stand – by. | Mandatory – Stand-by duty that is mandatory for all in the same classification. |
| Ad Hoc – Occasional assignment to stand-by duty on the basis of non-recurring factors, regardless if mandatory. | Scheduled in Advance – Stand-by duty scheduled in advance as part of normal scheduling practices. |
| Assumed time – Time assumed to cover another employees obligation to work stand-by. | Recurring – Stand-by duty that is recurring at set intervals and allocated on established rules. |
| Incident Related – Stand-by duty related to specific non-recurring incidents, emergency declarations, special events and disasters. | Uniform – Members within a job class assigned to work stand-by duty on a regular or rotational basis. |
| Selective – Stand-by duty that is assigned to individual members but not to other members who possess the same qualifications. | |

Analysis of County of Santa Barbara Stand-by Duty

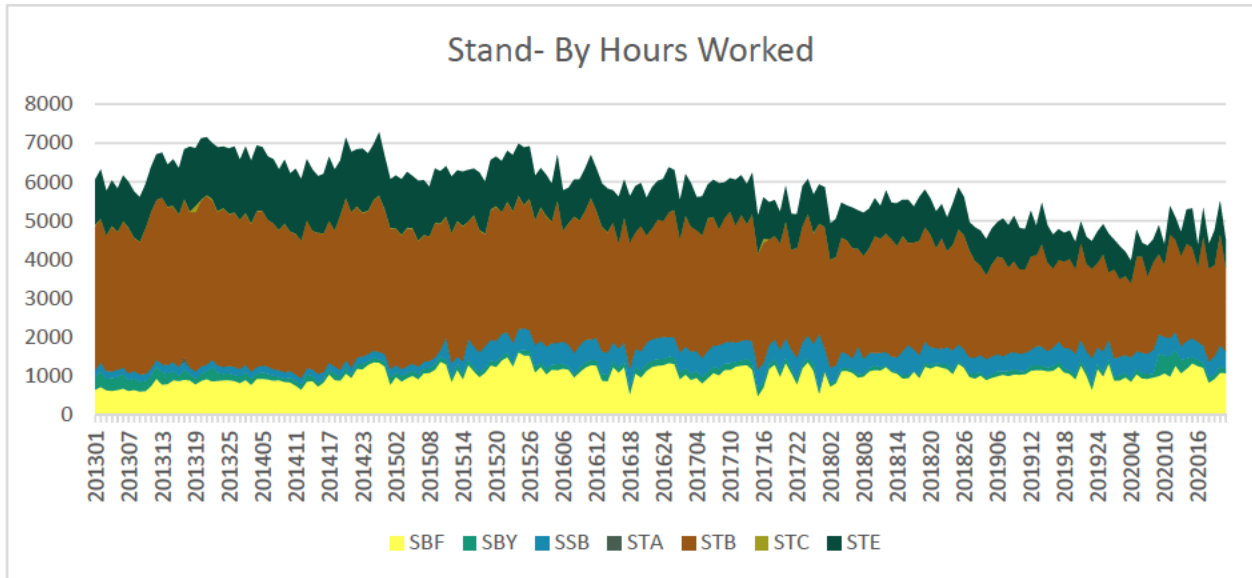
The County of Santa Barbara utilized 10 separate earnings codes during the period studied to account for Stand-by Duty performed by legacy members. Earnings codes are differentiated based on the amount of pay and the specific standards negotiated with in various memorandum of understanding. Six of the earnings codes are used to account for hours based work. The County uses one code (STC) to compensate employees on a per call basis, for accepting phone calls between midnight and 6:00am. Three earnings codes (DEP, DAP and SPA) are paid as a pay period lump sum amount and are not hours based.

| Earning Code | Title | Hourly | Amount | Employee Group |
|--------------|-----------------------------------|--------|---------------------------|---------------------------|
| STA | Stand By 2 | Y | \$2.00 | Local 620 |
| SBY | Stand By 2.6 | Y | \$2.60 | Local 721, PPOA |
| STB | Stand By 3 | Y | \$3.00 | Local 620, Local 721, ETA |
| SSB | Sheriff Stand By | Y | \$4.00 | DSA |
| SBF | Stand By Firefighters | Y | \$4.00 | Local 2046 |
| STE | Stand By 4 | Y | \$4.00 | Local 721 |
| STC | Per Call Stand-by | N | \$10.00 per call | Local 620 |
| DEP | Public Defender Deputy Duty | N | \$768.00 per pay period | Local 620 |
| DAP | District Attorney Deputy Duty | N | \$800.00 per pay period | DDA |
| SPA | Physician Stand-by - Special Duty | N | \$1,100.00 per pay period | UAPD |

The County has on average provided \$22,785 in compensation earnable per pay period since January 1, 2013. The amount of compensation earnable provided has been declining slightly over time as the County's work force transitions to members enrolled in PEPRA pension plans. PEPRA plan members do not receive stand-by pay as pensionable compensation. On an average dollar per pay period basis, the three most utilized earnings codes were STB (\$9,312), STE (\$4,470) and SBF (\$4,113). Over the period, the member contributions averaged \$1,052 per pay period.



The County utilized on average 93 legacy members to work approximately 5,808 hours of stand-by duty per pay period. This is an average of 63 Hours of Stand-by Duty per affected employee. This utilization is the equivalent of an additional 72 full time equivalent employees on an hours performed basis.



The County has members of over 114 job classifications that work stand-by duty. The top 11 job classifications with the highest average utilization each pay period are listed in the table below. The functions most reliant on stand-by to cover operational responsibility are located within public safety, welfare and protective services and those who support critical infrastructure. We have included in Appendix B a complete listing of affected job classifications listed in accordance with the governing Memorandum of Understanding. Viewed another way, the table above shows the 11 County Departments that accounted for the almost all of the County’s stand-by duty compensation. In total, compensation related to Stand-by Duty represents approximately 0.2% of the total compensation earnable recorded each pay period.

| Average Number of Employees Utilizing Stand-by | Job Class |
|--|--------------------------|
| 7 | SOC SVCS WORKER SR PS/L |
| 6 | FIRE CAPTAIN STAFF |
| 6 | ANIMAL CONTROL OFF II |
| 5 | EDP OFFICE AUTO SPEC II |
| 3 | WASTEWTR PLANT OPER III |
| 3 | SOCIAL SVCS PRACTITIONER |
| 3 | SOCIAL SERVICES SUPV II |
| 5 | SHERIFFS DEPUTY S/DUTY |
| 3 | BUILDING MAINT WORKER |
| 3 | FIRE EQUIPMENT OPER |
| 3 | Park Ranger II |

| Average Stand-by Compensation Per Pay Period | Department |
|--|----------------------------|
| \$4,477 | Social Services |
| \$4,113 | Fire |
| \$4,077 | General Services |
| \$2,998 | Behavioral Wellness |
| \$1,331 | Parks - Community Services |
| \$1,556 | Sheriff |
| \$1,211 | District Attorney |
| \$1,112 | Public Health |
| \$979 | Public Works |
| \$871 | Public Defender |
| \$392 | Probation |

Stand-by Duty County Policy and Normal Working Hours

In our interviews with responsible department managers, we set out to assess whether or not the departmental practices for scheduling aligned with the criteria that we established for our review. We found that procedures and policies varied across departments. We also found that while most operational managers took the position that stand-by duty was ultimately mandatory, many had also adopted informal policies of convenience. These policies of convenience mean that for the most part, managers did not have to enforce mandatory provision - *volunteering is fine so long as equity considerations are not being raised by employees who are not working stand-by.*

Notwithstanding the volunteering, we also found several instances of stand-by that was driven by the member's job assignment or job location. However, in the instances where stand-by duty was truly mandatory and job specific, we often were unable to demonstrate that similarly situated members of the same grade or class (job classification) performed the assigned duty. This is due to the fact that these specialized assignments were performed by members of large job classifications. We also found numerous instances where a material portion of the actual stand-by duty worked within the class appeared to be either ad hoc or intermittent in nature.

Ultimately, in our department interviews we found multiple examples of job classifications in the County that met all of our criteria for normal working hours and paid to all similarly situated members. In all circumstances, these were small job classifications, with the class description closely matched to the member's job assignment and where each member performed a very consistent function within the class.

The chart displays some of the classifications that we found to meet all the criteria, based on statistical analysis, we anticipate that there are other qualifying classifications.

| Department | Operational Unit | Defined by Job Class | Mandatory for all employees | Uniform Distribution of Hours within unit |
|----------------------------|---|----------------------|-----------------------------|---|
| Community Services – Parks | Overnight Campgrounds <i>Water/Sewer Plant Operator Series</i> | ☑ | ☑ | ☑ |
| Fire | Construction <i>Fire Equipment Operator Series</i> | ☑ | ☑ | ☑ |
| Public Works | Laguna Sanitation District <i>Wastewater Plant Operator Series</i> | ☑ | ☑ | ☑ |

We found several examples of unique duties within larger classifications that appeared to meet all criteria, except for the fact that they are performed by members who are part of large job classifications. In many cases we found that the members who are in these classifications had special skills and abilities not possessed by other members of the class. Examples of specializations within large classifications are Public Information Officers and Arson Investigators within the Fire classifications and Air Support Unit members in the Sheriff Classifications. In other areas we found that stand-by was the result of a specific duty assignment location. Examples of this included Park Rangers assigned to overnight campgrounds, Sheriff Deputy's assigned to Cuyama Valley, and Maintenance workers assigned to the Laguna Sanitation District.

| Department | Operational Unit | Defined by Job Class | Mandatory for all employees | Uniform Distribution of Hours within unit |
|----------------------------|--|--------------------------|-------------------------------------|---|
| Community Services – Parks | Overnight Campgrounds <i>Park Ranger Series</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Fire | Air Support Unit, PIO, Arson Investigators, Dispatch Duty Officer, EOC, Wildland Fire Crew (EI) <i>Fire Captain – Staff</i> <i>Fire Inspector Engineer - Staff</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Probation | Institutions Management <i>Supervising Deputy Probation Officers</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Public Health | EMS <i>PH Improvement Coordinator</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Public Health | Animal Services <i>Animal Control Officer Supervisor</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Public Works | Laguna Sanitation District <i>Maintenance Worker Series</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Sheriff | Cuyama Resident Deputies <i>Sheriff Deputy</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Sheriff | Air Support Unit <i>Sheriff Deputy - Special Duty</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

We found other classifications where the performance of stand-by duty did not meet the criteria because the department’s policies were permissive of volunteering, or the assignment of stand-by duty was not uniform. These are the classifications that were generally subject to management policies of convenience.

| Department | Operational Unit | Defined by Job Class | Mandatory for all employees | Uniform Distribution of Hours within unit |
|-----------------|--|-------------------------------------|-------------------------------------|---|
| Public Health | Environmental Health <i>Hazardous Materials Specialist Series</i> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Public Health | Animal Services <i>Animal Control Officer Series</i> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Social Services | Adult Protective Services and Child Welfare Services <i>Social Services Worker Series</i> <i>Social Services Practitioner Series</i> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

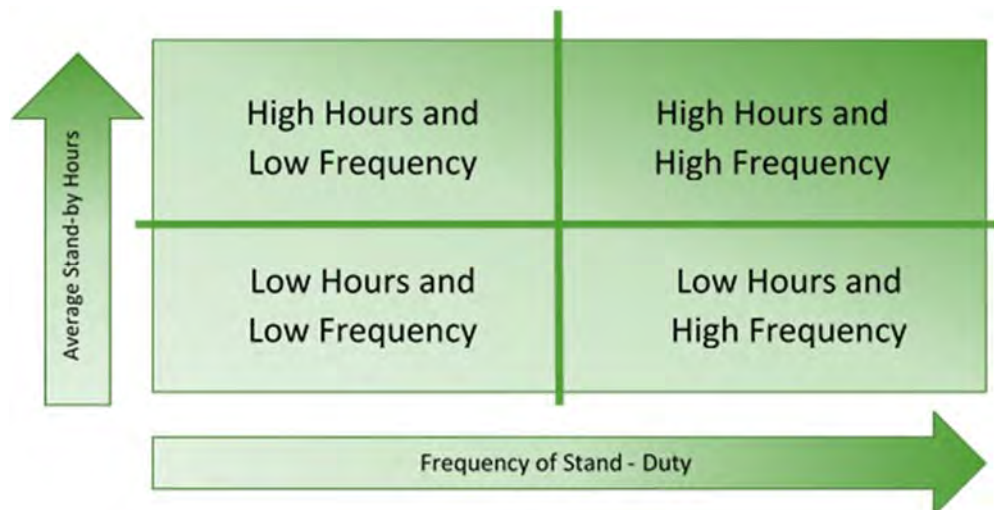
Stand-by Duty Performance Analysis

In order to analyze the hours ordinarily worked by a member of a class we developed several metrics. First, we evaluated the classifications to assess a relative trend of stand-by performance. A consistent and level usage of stand-by indicated that the County had a regular operating need for afterhours duty coverage by the employees of a given job class. We next measured the impact or cost of that need by comparing the average compensation earnable with and without for the class.

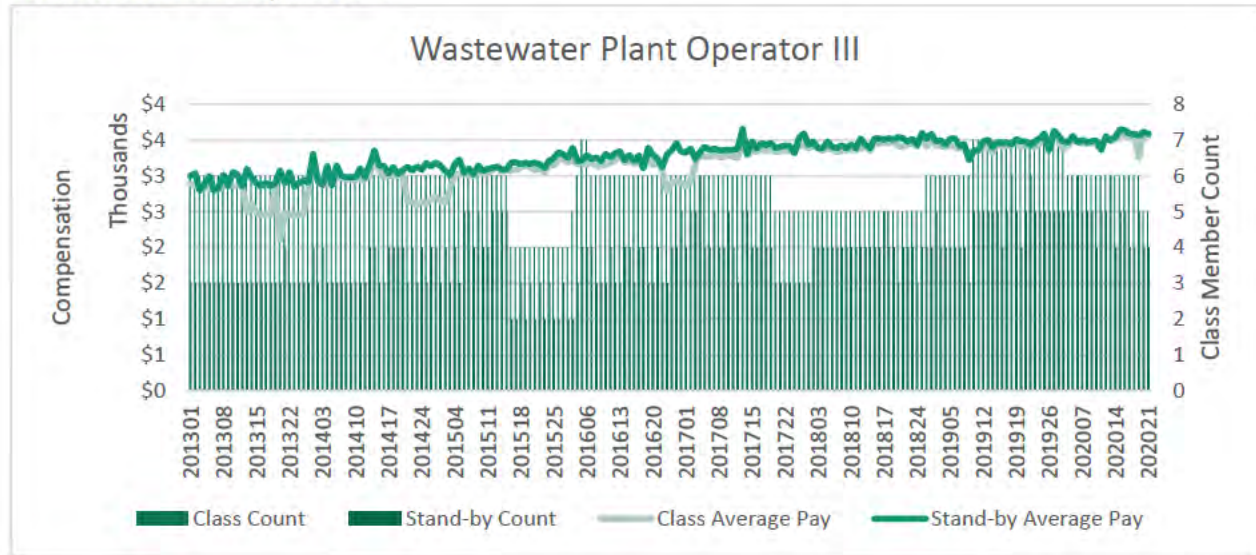
We then evaluated the frequency of stand-by duty across the class membership and the volume of stand-by duty performed within each job class. In order to establish a measure of frequency, we calculated the number of pay periods each member spent in the class and the number pay periods each member performed stand-by duty. From this we were able to calculate the probability that an employee worked stand-by during their tenure. In order to establish the volume of stand-by duty for each member we calculated the average number of hours a member worked per pay period in a given job classification.

Using this analysis we were able to assess the consistency of stand-by duty across the job class. The charts on the following pages shows volume (Average Hours Worked per Pay Period) on the Y-Axis and the Frequency (Average number of pay periods in which the duty is performed) on the X-Axis for each member of the job classification. The resulting scatter plot displays each member's stand-by duty performance relative to the class average for both metrics (orange dot). Shown on the following pages are 3 separate job classifications where stand-by duty was significant. The size of the plot point in the chart is an intensity indicator, it represents the average hours of stand-by worked with the periods that had no stand-by excluded from the calculation. We chose three classifications and that represented a variety of work types. The three classes also provide a graphic example of three separate results.

The closer the data points are grouped, the stronger the indication that all employees within the class were performing stand-by duty in the same relative manner. Charts with more dispersion indicated that the performance of stand-by duty is inconsistent across the class. Bar belled charts indicate overall inconsistency but show how a small group of members within a class may be working stand-by consistently. This view also displays the impact on the member pensions with outliers in the northwest quadrant indicating that select members received larger beneficial impacts than the group.

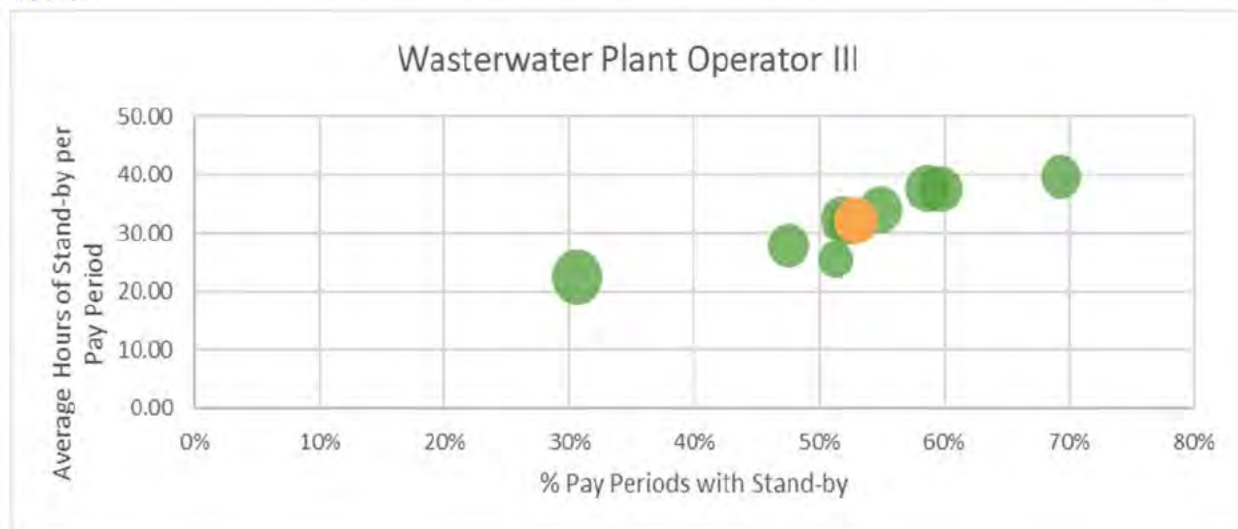


Wastewater Plant Operator III

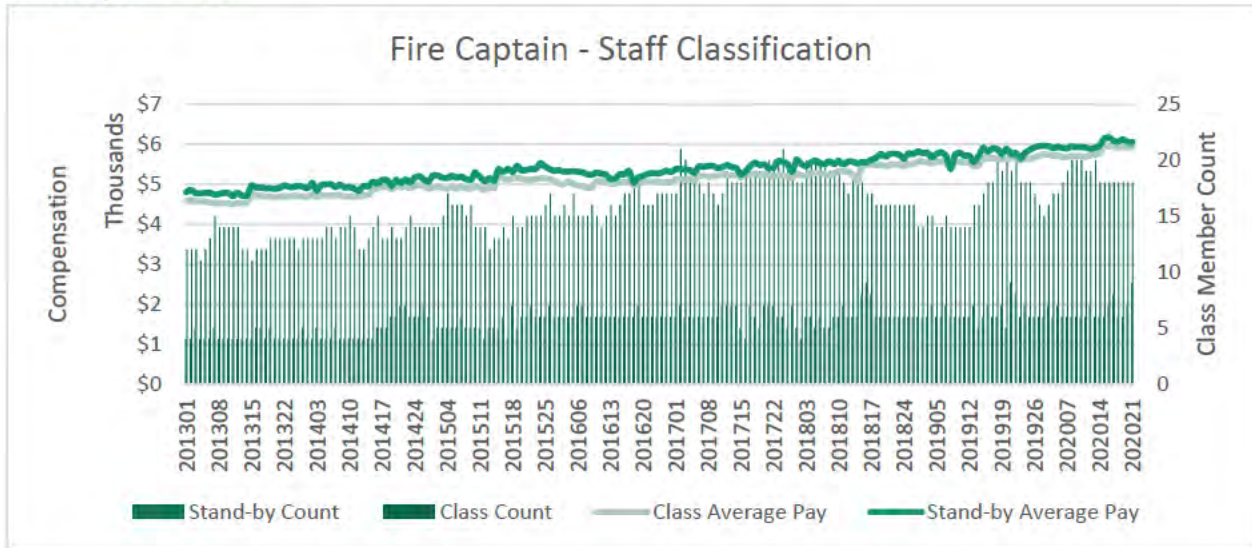


During the period studied, 9 members recorded time in the Wastewater Plant Operator III Job Classification. Of the 9 members, all have been in the class for more than 26 pay periods, or one year. On average, the County employed 6 Wastewater Plant Operator III positions during the period studied. Of these 6 positions, an average of 3.8 were awarded stand-by duty during each pay period. The positions average pay before overtime was \$3,157 per pay period. Members awarded stand-by duty earned on average \$3,280 per pay period, an average increase of \$123. For the purposes of this analysis we eliminated overtime, vacation cash outs and administrative payroll adjustments.

In the following chart, we analyze the individual performance of stand-by duty and how it affects compensation earnable for individual members of the class. The Wastewater Plant Operator III members are grouped together. This indicates that the members of the class are performing stand-by at the same relative frequency and volume. With respect to the Waste Water Plant Operator III we found the data supports the notion that stand-by duty is performed uniformly and consistently across the class. As noted above, we also found that the operating division’s policies conformed with our criteria for normal working hours.

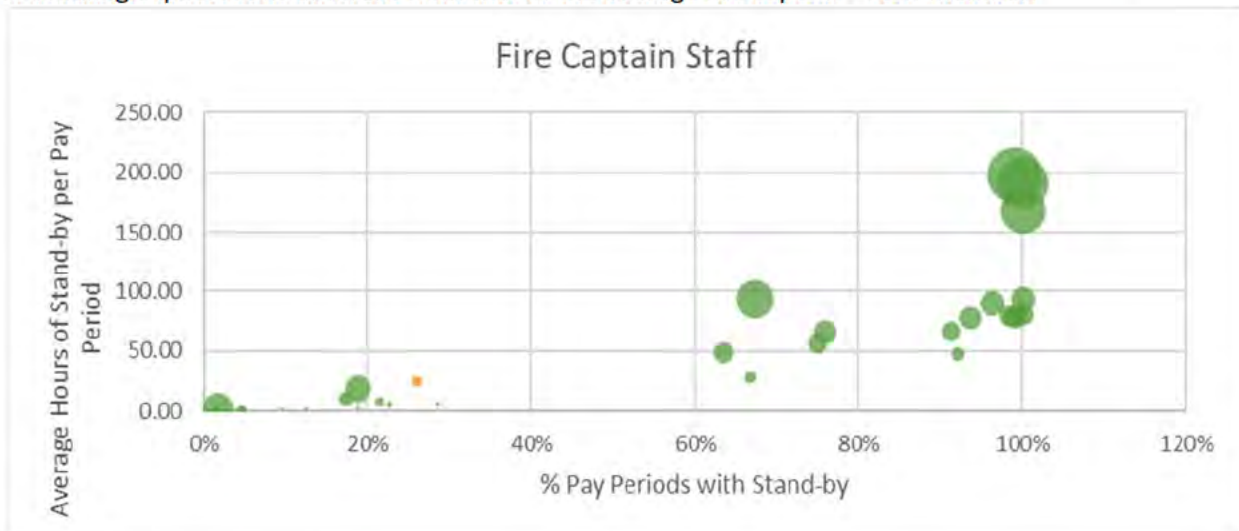


Fire Captain - Staff

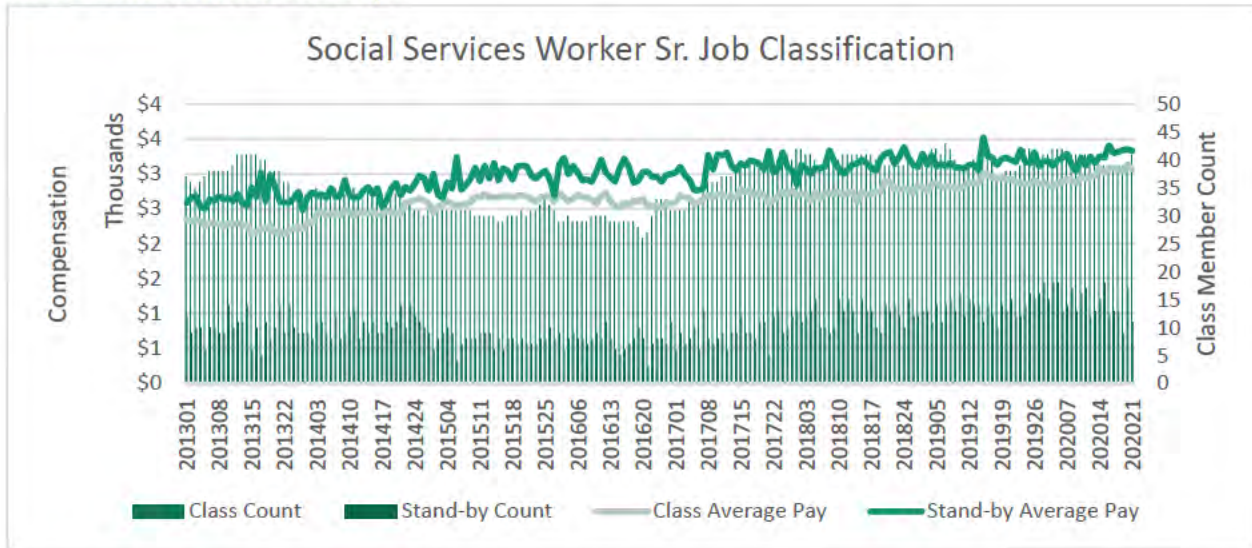


During the period studied, 65 members recorded time in the Fire Captain – Staff Job Classification. Of the 65 members, 27 members were in the class for less than 26 pay periods, or one year. The classification is used relatively flexibly with the Fire Captain – Shift classification. Class members are rotated through the classification based on job assignment and it is relatively common for members to move between the two different classifications, which have different compensation practices.

On average, the County employed 16 Fire Captain – Staff positions during the period studied. Of these 16 positions, an average of 5.5 were awarded stand-by duty during each pay period. The positions average pay before overtime was \$5,155 per pay period. Members awarded stand-by duty earned on average \$5,375 per pay period, an average increase of \$220. For the purposes of this analysis we eliminated overtime, vacation cash outs and administrative payroll adjustments. The Fire Captain Staff Classification displays a barbell pattern. This appears due to the fact that certain units within the department are continuously performing a high rate of stand-by duty. Based on interviews we know that Fire Captain – Staff members assigned to public relations, dispatch duty officers and arson investigations have scheduling expectations different from that of the average fire captain – staff member.

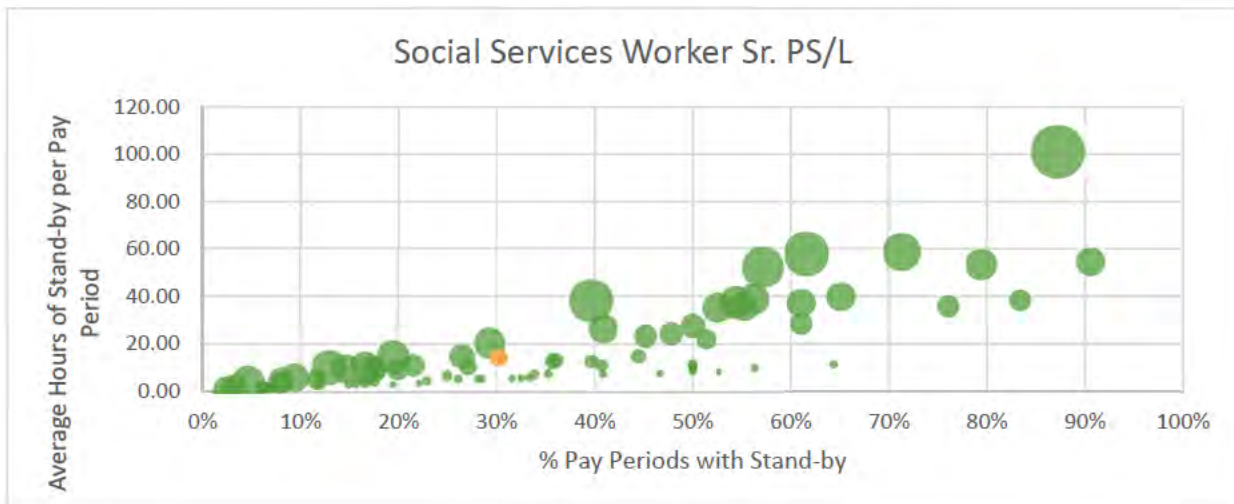


Social Services Worker Sr. PS/L



During the period studied, 89 members recorded time in the Social Services Worker Sr. PS/L Class. The classification is the Sr. or master class in the series. On average, the County employed 36 Social Services Worker Sr. PS/L positions during the period studied. Of these 36 positions, an average of 10.5 were awarded stand-by duty during each pay period. The positions average pay before overtime was \$2,644 per pay period. Members awarded stand-by duty earned on average \$2,999 per pay period, an average increase of \$355. For the purposes of this analysis we eliminated overtime, vacation cash outs and administrative payroll adjustments.

The Social Services Worker Sr. PS/L displays a widely dispersed pattern. This dispersion shows that while stand-by duty is a consistent operational need for the county, the actual performance is varied and inconsistent across the classification due to the variety of programs supported, the location of assigned coverage areas and volunteerism. This result is consistent with our interviews which indicated that location considerations drove utilization and revealed that while stand-by performance is ultimately mandatory, management has maintained a policy of convenience that allows for employees to trade shifts and arrange coverage so long as it is approved by a supervisor.



Measure of Dispersion by Classification

Using the data we gathered, we were able to calculate the dispersion of frequency and volume of stand-by performance by calculating the Coefficient of Variation (CV) by job classification for each measure. Also known as the relative standard deviation or ratio of standard deviation to the mean, the CV measures the dispersion of a data set relative to the mean. This is an imperfect measurement and can be noisy for smaller classifications; however, we have found the lower the CV of the classification, the more likely it is to meet our criteria for inclusion in compensation earnable. We provide the results for hours based earnings codes and classifications in the [appendices of this report](#).

In evaluating the CV results across all classifications, we estimate that significantly less than 50% of the total stand-by duty performed will meet our criteria for inclusion in compensation earnable based on it being the amount “ordinarily worked by a member of the same grade or class.” This estimate is provided before consideration of the County’s actual operating procedure and whether the duty is part of a member’s normal working schedule, which likely would reduce that result further.

Small Job Classifications

Within the population of members working stand-by duty we identified 16 classifications with fewer than five members overall and 58 classifications with fewer than five members who work stand-by. Of the classifications with less than five members, eight only had one member. For very small classifications the definition of “normal” and “ordinary” presents a complex consideration. For a classification of one, ordinary and normal could be as simple as what happened. There is no variation within work schedules to analyze.

In general, the smaller the classification the more likely we are to see smaller variation in the assigned duties; what follows is that the smaller the classification, the more likely there is to be homogenous scheduling across the class. However, what variation there is complicates analysis due to the outsize affect one member can have on the class average. In several smaller classifications we see a phenomena where one member of the classification has no stand-by duty, however, the remainder of the class is working stand-by duty in a consistent manner. In this case, we have one member that is creating dispersion, not by electing to work more hours on average (potential pension enhancement) but by electing to **NOT** work thereby reducing their compensation earnable to an amount below the class average and ostensibly increasing the compensation earnable of other members of the class.

Non – Hourly Earnings Codes

In our review, we identified several earning codes that are similar to stand-by but not paid on an hourly basis. STC is a “\$10 per call pay” that is awarded when an employee takes a phone call or service request between the hours of 12:00am and 6:00am. DAP, DEP and SPA earnings codes are a fixed amount paid to employees of the Public Defender, District Attorney and Behavioral Wellness department. These codes are not hours based, rather they are bi-weekly fixed amount paid to an employee who is assigned the responsibility for answering service requests made after 5:00pm and before 8:00am M-F and any time on Saturday and Sunday.

Conclusions, Findings and Recommendations

In evaluation of the facts gathered along with analysis of the data, we conclude that there is a material portion of stand-by duty that meets the criteria for inclusion in compensation earnable for legacy members. We were able to support this conclusion on the basis of departmental interviews, member interviews and by using statistical measurements of the data. However, we also conclude that the majority of stand-by duty (greater than 50%) being performed likely does not meet the test for inclusion in compensation earnable.

We support this conclusion that the majority of stand-by duty should be excluded from compensation earnable prospectively through our observations of:

- inconsistent policy across operating divisions of the County,
- the County's creation of broad job classifications that group disparate job assignments into a single class and,
- the County's large geographic service area that places differing scheduling demands on members based on their job location.

These findings are not a criticism of the County; rather it is an acknowledgement that operating policy design and workload management procedures are intended to maximize service outcomes. The issue of calculating a member's pension benefit is second to the objective priorities of operational management when it comes to ensuring the quality delivery of critical services. Further, management has never received direction to modify classification procedures or time reporting in the manner contemplated by the Court. As a result, the current policy framework does not permit a reliable systematic approach to controlling pension enhancement that could result from volunteerism or other management practices that create uneven outcomes.

Further, the issues of "normal working schedule", "ordinarily worked" and "similar class or pay grade" are ephemeral qualities that change with each new management regime and budgetary cycle. Absent a rigid policy constraint it is entirely likely that what was includable in 2013, may not be so in 2015 but again be includable in 2020. Looking backward, there is no way to determine with absolute certainty whether a specific instance of stand-by pay should be included or not based simply on the records maintained.

Overall, we found some evidence to support the determination made by the Board of Retirement in 2012 that stand-by duty is performed as part of the normal working hours of membership. In interviews departmental management often held the position that such time was part of the member's normal schedule and was a cost effective way of managing their department. We also found that once we applied a statistical test to the data in order to compare a members pay to that of similarly situated members, a study not performed in 2012, that a finding on normal working schedule is not supportable in the majority of cases.

Using job classifications to create cohorts of similarly situated employees produces what may be viewed as an arbitrary result. The variables of population and diversity of assignments within the series mean that some groups get it and other groups don't; this happens regardless of the individual contract between the employer and the member. We cite the barbell pattern and the existence of specialized assignments within classifications to support this view. However, departing from County job classifications to define a member's peer group may be inconsistent with the statute and may be seen as equally arbitrary, placing

the Board of Retirement in the position of defining classes of County employment in a manner different than the employer.

This is exemplified by the many instances we found where stand-by was part of normal working schedules of members and that the Board could conclude that it was worked by all similarly situated members. Given those two conclusions, the question then goes to what happens when the amount of stand-by worked by an individual member of the class is far in excess of the class average. This may be attributable to volunteerism but also to myriad other factors having nothing to do with the goal of enhancing a members pension. For that reason, we recommend that the Board of Retirement adopt the following recommendations as its determinations regarding the inclusion of stand-by duty in compensation earnable prospectively.

Recommendation 1: Remove pay codes from the schedule of earnings codes included in compensation earnable.

We recommend that the Board of Retirement remove the following hourly earnings codes from its calculation of compensation earnable.

| Earning Code | Title | Hourly | Amount | Employee Group |
|---------------------|-----------------------|---------------|---------------|---------------------------|
| STA | Stand By 2 | Y | \$2.00 | Local 620 |
| SBY | Stand By 2.6 | Y | \$2.60 | Local 721, PPOA |
| STB | Stand By 3 | Y | \$3.00 | Local 620, Local 721, ETA |
| SSB | Sheriff Stand By | Y | \$4.00 | DSA |
| SBF | Stand By Firefighters | Y | \$4.00 | Local 2046 |
| STE | Stand By 4 | Y | \$4.00 | Local 721 |

We support this recommendation on the basis that the current operating policies of the County do not support consistent outcomes with regard to the calculation and determination of compensation earnable at the individual member level. This recommendation should be considered concurrently with Recommendation 2.

Recommendation 2: Establish clear guidance for future inclusion of new stand-by duty earnings codes in compensation earnable.

We recommend that the Board of Retirement establish the following standards for inclusion of new earnings codes used to account for stand-by duty when inclusion in compensation earnable is proposed.

1. Normal working schedule and any mandatory stand by duty included in that schedule must be clearly defined in writing, including the number of stand-by duty hours normally scheduled for each job classification and associated earning code in an executed memorandum of understanding. Such hours shall be the maximum hours includable in compensation earnable for a member of the class.
2. The County must have documented time card procedures that direct employees to separately account for ad hoc, voluntary or assumed stand-by duty using an earning code that is not to be included in compensation earnable, and for which no retirement contributions are collected. For the purposes of this requirement, the earnings codes identified in Recommendation 1 are suitable.

3. County scheduling procedures must allocate and track stand-by duty hours to all affected members of a class.

Recommendation 3: Remove the earning code STC from the schedule of earnings codes included in compensation earnable and refund contributions made on such pay subsequent to December 31, 2012.

In our review, we concluded that the earning code STC has been erroneously included in compensation earnable since the passage of PEPRA. STC is a "\$10 per call pay" that is awarded when an employee takes a phone call or service request between the hours of 12:00am and 6:00am. By its very nature it is not subject to a normal schedule, rather, it is an incident based pay more similar to overtime pay. In recognition that this was included as an item of compensation earnable incorrectly, we recommend that contributions on this pay be refunded to active members.

Recommendation 4: Affirm the inclusion of the earnings codes DAP, DEP and SPA in compensation earnable.

These earnings codes are a fixed amount paid to employees of the Public Defender, District Attorney and Behavioral Wellness department. These codes are not hours based, rather they are bi-weekly fixed amount paid to an employee who is assigned the responsibility for answering service requests made after 5:00pm and before 8:00am M-F and any time on Saturday and Sunday. Due to budgetary considerations, the County is not currently using the DEP code for public defenders. In our review, we concluded that these codes are more similar to a special duty pay. They are paid regardless of utilization or timing and paid to employees in professional classifications that are generally exempt from overtime except in very limited circumstances (Attorneys and Doctors).

Recommendation 5: Consider implementation of procedures for evaluation of corrections.

Direct staff to develop and recommend procedures for the implementation of any necessary corrections to retired or active member accounts and benefits. The procedures should include the application of the Board's Errors, Corrections and Collections Policy, the applicable statute of limitations, a process for considering member and employer input, and a procedure for the calculation and implementation of any required corrections. At the option of the Board of Retirement, these recommendations may be brought to the full Board or preliminarily to an ad hoc committee.

Appendix A: Job Classification Dispersion Statistics

| Job Class Title | Count of Members with stand-by | | Dispersion Statistics | | | | % of stand-by Members within 1SD of Mean | | Freq. CV | Additional Dispersion Statistics | | | | | | |
|------------------------------|--------------------------------|-------------|-----------------------|-----------|-------------|-------------|--|--|----------|----------------------------------|-----------|-------------|-------------|---------------------------------------|--|---------|
| | with stand-by | Total Count | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Vol. CV |
| ADMHS CASE WORKER | 23 | 66 | 11.22% | 22.17% | 33.39% | -10.95% | 86% | 21% | 198% | 5.9 | 17.2 | 23.1 | -11.3 | 91% | 26% | 291% |
| ADMHS PRACTITIONER II | 14 | 69 | 4.87% | 16.22% | 21.09% | -11.35% | 93% | 13% | 333% | 2.7 | 10.7 | 13.4 | -8.0 | 94% | 14% | 398% |
| ADMHS PRACTITIONER INTERN | 30 | 104 | 12.12% | 26.67% | 38.79% | -14.55% | 86% | 14% | 220% | 9.5 | 24.7 | 34.2 | -15.2 | 89% | 18% | 260% |
| ADMHS PSYCHIATRIC TECH II | 7 | 37 | 8.37% | 23.93% | 32.30% | -15.56% | 92% | 11% | 286% | 7.3 | 27.6 | 34.9 | -20.3 | 95% | 14% | 377% |
| ADMHS RECOVERY ASSISTANT | 15 | 56 | 8.85% | 21.30% | 30.15% | -12.45% | 89% | 16% | 241% | 6.7 | 22.0 | 28.6 | -15.3 | 93% | 20% | 330% |
| ADMHS TEAM SUPV-PRACTITIONER | 9 | 38 | 8.01% | 25.32% | 33.33% | -17.30% | 92% | 16% | 316% | 2.8 | 8.0 | 10.9 | -5.2 | 92% | 16% | 282% |
| ALCOHOL & DRUG SERVICE SPEC | 5 | 19 | 11.24% | 23.45% | 34.69% | -12.22% | 84% | 11% | 209% | 3.8 | 9.7 | 13.5 | -5.8 | 89% | 16% | 251% |
| ANIMAL CONTROL OFF I | 10 | 13 | 52.80% | 40.24% | 93.04% | 12.56% | 54% | 54% | 76% | 19.9 | 18.4 | 38.3 | 1.5 | 46% | 46% | 92% |
| DEPUTY DISTRICT ATTY SR | 27 | 35 | 6.37% | 5.03% | 11.40% | 1.34% | 60% | 60% | 79% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| ANIMAL CONTROL OFF II | 13 | 14 | 77.11% | 27.70% | 104.81% | 49.42% | 86% | 86% | 36% | 35.0 | 17.7 | 52.7 | 17.3 | 71% | 71% | 51% |
| ANIMAL CONTROL OFF SUPV | 7 | 11 | 38.99% | 36.72% | 75.71% | 2.27% | 45% | 45% | 94% | 15.6 | 15.5 | 31.2 | 0.1 | 45% | 45% | 99% |
| DEP PUBLIC DEFENDER III | 19 | 28 | 5.59% | 5.02% | 10.61% | 0.58% | 54% | 54% | 90% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| AIRCRAFT MECHANIC | 1 | 5 | 0.24% | 0.47% | 0.71% | -0.24% | 80% | 0% | 200% | 0.1 | 0.1 | 0.2 | -0.1 | 80% | 0% | 200% |
| BUILDING MAINT WORKER | 12 | 34 | 15.70% | 24.73% | 40.43% | -9.04% | 79% | 15% | 158% | 13.6 | 21.2 | 34.8 | -7.7 | 79% | 15% | 157% |
| DEPUTY DISTRICT ATTY IV | 23 | 32 | 6.06% | 5.87% | 11.93% | 0.20% | 59% | 59% | 97% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| COMPUTER SYSTEMS SPEC I | 6 | 22 | 9.33% | 17.84% | 27.17% | -8.50% | 82% | 9% | 191% | 5.8 | 17.5 | 23.2 | -11.7 | 95% | 23% | 303% |

| Job Class Title | Count of Members with stand-by | Total Count | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Freq. CV | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Vol. CV |
|---------------------------|--------------------------------|-------------|--------|-----------|-------------|-------------|---------------------------------------|--|----------|------|-----------|-------------|-------------|---------------------------------------|--|---------|
| | | | | | | | | | | | | | | | | |
| COMPUTER SYSTEMS SPEC II | 12 | 59 | 5.00% | 14.16% | 19.16% | -9.15% | 90% | 10% | 283% | 2.1 | 7.2 | 9.3 | -5.0 | 92% | 12% | 340% |
| CUSTODY DEPUTY | 117 | 365 | 1.55% | 3.40% | 4.96% | -1.85% | 87% | 19% | 220% | 0.0 | 0.1 | 0.1 | -0.1 | 89% | 21% | 235% |
| HVAC SPECIALIST | 3 | 6 | 20.51% | 22.51% | 43.02% | -2.00% | 83% | 33% | 110% | 19.8 | 22.2 | 41.9 | -2.4 | 83% | 33% | 112% |
| CUSTODY DEPUTY S/DUTY | 23 | 83 | 1.51% | 4.12% | 5.62% | -2.61% | 90% | 18% | 273% | 0.0 | 0.1 | 0.2 | -0.1 | 94% | 22% | 287% |
| CCS SUPERVISING THERAPIST | 1 | 5 | 0.39% | 0.78% | 1.17% | -0.39% | 80% | 0% | 200% | 0.0 | 0.1 | 0.1 | 0.0 | 80% | 0% | 200% |
| COMM EQUIP TECH SR | 2 | 4 | 45.33% | 45.33% | 90.66% | 0.00% | 75% | 25% | 100% | 39.2 | 39.2 | 78.4 | 0.0 | 75% | 25% | 100% |
| COMM SYSTEMS SUPV | 1 | 1 | 75.61% | 0.00% | 75.61% | 75.61% | 0% | 0% | 0% | 75.6 | 0.0 | 75.6 | 75.6 | 0% | 0% | 0% |
| DEP PUBLIC DEFENDER IV | 14 | 26 | 3.10% | 3.48% | 6.58% | -0.39% | 85% | 38% | 113% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| CUSTODY SERGEANT | 17 | 43 | 2.75% | 4.95% | 7.70% | -2.20% | 84% | 23% | 180% | 0.1 | 0.1 | 0.2 | -0.1 | 81% | 21% | 180% |
| DEP PROBATION OFFICER SUP | 11 | 35 | 17.67% | 31.96% | 49.62% | -14.29% | 83% | 14% | 181% | 8.2 | 15.0 | 23.2 | -6.8 | 86% | 17% | 182% |
| HAZARD MATERIALS SUPV | 4 | 7 | 35.24% | 42.64% | 77.88% | -7.40% | 71% | 29% | 121% | 42.8 | 53.9 | 96.7 | -11.1 | 71% | 29% | 126% |
| DEP PUBLIC DEFENDER II | 13 | 27 | 3.56% | 4.51% | 8.07% | -0.94% | 85% | 33% | 127% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| EDP NETWORK TECH II | 7 | 7 | 42.00% | 13.88% | 55.87% | 28.12% | 71% | 71% | 33% | 33.7 | 10.5 | 44.2 | 23.2 | 57% | 57% | 31% |
| DEPUTY DISTRICT ATTY III | 15 | 40 | 3.04% | 4.30% | 7.33% | -1.26% | 70% | 8% | 141% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| ADMHS REHABILITATION SPEC | 4 | 11 | 17.52% | 24.81% | 42.33% | -7.29% | 73% | 9% | 142% | 6.0 | 8.7 | 14.7 | -2.7 | 73% | 9% | 144% |
| EDP NETWORK TECH III | 5 | 6 | 50.71% | 23.08% | 73.78% | 27.63% | 83% | 83% | 46% | 41.7 | 19.7 | 61.4 | 22.1 | 83% | 83% | 47% |
| DEP PUBLIC DEFENDER I | 14 | 27 | 6.92% | 10.05% | 16.97% | -3.13% | 85% | 37% | 145% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| DA INVESTIGATOR III | 1 | 3 | 0.18% | 0.25% | 0.42% | -0.07% | 67% | 0% | 141% | 0.1 | 0.2 | 0.3 | -0.1 | 67% | 0% | 141% |
| EDP OFFICE AUTO SPEC I | 6 | 13 | 12.09% | 25.31% | 37.39% | -13.22% | 85% | 31% | 209% | 15.3 | 38.5 | 53.8 | -23.2 | 92% | 38% | 252% |

| Job Class Title | Count of Members with stand-by | Total Count | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Freq. CV | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Vol. CV |
|--------------------------|--------------------------------|-------------|--------|-----------|-------------|-------------|---------------------------------------|--|----------|------|-----------|-------------|-------------|---------------------------------------|--|---------|
| | | | | | | | | | | | | | | | | |
| EDP OFFICE AUTO SPEC II | 18 | 31 | 20.91% | 27.84% | 48.74% | -6.93% | 77% | 35% | 133% | 24.3 | 32.6 | 56.8 | -8.3 | 74% | 32% | 134% |
| MAINTENANCE PLUMBER | 3 | 9 | 16.97% | 25.49% | 42.46% | -8.52% | 78% | 11% | 150% | 15.5 | 23.2 | 38.7 | -7.7 | 78% | 11% | 150% |
| FIRE CAPTAIN SHIFT | 19 | 96 | 1.47% | 5.32% | 6.79% | -3.85% | 93% | 13% | 362% | 0.4 | 1.8 | 2.2 | -1.4 | 97% | 17% | 464% |
| FIRE CAPTAIN STAFF | 31 | 65 | 25.92% | 38.80% | 64.72% | -12.88% | 75% | 23% | 150% | 24.6 | 46.3 | 70.8 | -21.7 | 83% | 31% | 188% |
| BUILDING MAINT SUPV | 4 | 15 | 10.31% | 17.69% | 28.00% | -7.38% | 80% | 7% | 172% | 8.0 | 14.0 | 21.9 | -6.0 | 73% | 0% | 175% |
| ADMHS TEAM SUPV-RN | 2 | 8 | 20.99% | 37.23% | 58.21% | -16.24% | 75% | 0% | 177% | 27.4 | 54.8 | 82.3 | -27.4 | 88% | 13% | 200% |
| FIRE ENG INSPECTOR SHIFT | 9 | 104 | 1.29% | 8.39% | 9.68% | -7.10% | 98% | 7% | 652% | 0.4 | 3.3 | 3.7 | -2.9 | 98% | 7% | 760% |
| FIRE ENG INSPECTOR STAFF | 12 | 35 | 27.58% | 40.00% | 67.58% | -12.42% | 74% | 9% | 145% | 22.4 | 33.5 | 55.9 | -11.1 | 74% | 9% | 150% |
| DA INVESTIGATOR I | 2 | 8 | 0.18% | 0.33% | 0.51% | -0.15% | 75% | 0% | 182% | 0.1 | 0.2 | 0.4 | -0.1 | 88% | 13% | 188% |
| PSYCHIATRIC NURSE SR | 3 | 11 | 7.88% | 14.98% | 22.86% | -7.10% | 82% | 9% | 190% | 5.8 | 13.2 | 19.0 | -7.4 | 91% | 18% | 226% |
| FIREFIGHTER STAFF | 7 | 50 | 12.26% | 30.72% | 42.98% | -18.46% | 86% | 0% | 251% | 10.0 | 25.1 | 35.1 | -15.1 | 86% | 0% | 251% |
| HAZ MATERIALS SPEC II | 12 | 17 | 28.62% | 23.50% | 52.12% | 5.12% | 53% | 53% | 82% | 26.4 | 22.7 | 49.0 | 3.7 | 53% | 53% | 86% |
| PARK RANGER I | 2 | 8 | 16.06% | 32.34% | 48.40% | -16.28% | 88% | 13% | 201% | 8.0 | 18.9 | 26.9 | -10.8 | 88% | 13% | 235% |
| HAZ MATERIALS SPEC SR | 5 | 7 | 31.07% | 32.71% | 63.78% | -1.64% | 71% | 43% | 105% | 33.3 | 35.8 | 69.1 | -2.4 | 71% | 43% | 107% |
| JUVENILE INST OFFICER | 5 | 122 | 0.06% | 0.46% | 0.52% | -0.40% | 97% | 1% | 711% | 0.0 | 0.4 | 0.4 | -0.4 | 99% | 3% | 1056% |
| MAINTENANCE WORKER II | 6 | 79 | 2.94% | 11.54% | 14.48% | -8.60% | 94% | 1% | 393% | 2.0 | 8.0 | 10.0 | -5.9 | 94% | 1% | 393% |
| EDP OFFICE AUTO COORD | 1 | 1 | 0.49% | 0.00% | 0.49% | 0.49% | 0% | 0% | 0% | 0.2 | 0.0 | 0.2 | 0.2 | 0% | 0% | 0% |
| PARK RANGER II | 19 | 34 | 25.70% | 37.94% | 63.63% | -12.24% | 76% | 32% | 148% | 14.8 | 24.9 | 39.6 | -10.1 | 76% | 32% | 169% |
| PARK RANGER III | 8 | 9 | 45.62% | 37.30% | 82.91% | 8.32% | 56% | 56% | 82% | 32.1 | 34.1 | 66.2 | -2.0 | 89% | 78% | 106% |

| Job Class Title | Count of Members | | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Freq. CV | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Vol. CV |
|----------------------------|------------------|-------------|--------|-----------|-------------|-------------|---------------------------------------|--|----------|------|-----------|-------------|-------------|---------------------------------------|--|---------|
| | with stand-by | Total Count | | | | | | | | | | | | | | |
| HEALTH EDUCATION ASST SR | 1 | 6 | 0.24% | 0.55% | 0.79% | -0.30% | 83% | 0% | 224% | 0.0 | 0.1 | 0.1 | 0.0 | 83% | 0% | 224% |
| PH PERFORM IMPROVE COORD | 5 | 8 | 16.19% | 18.39% | 34.57% | -2.20% | 75% | 38% | 114% | 18.5 | 24.1 | 42.6 | -5.5 | 75% | 38% | 130% |
| ELECTRONICS SYSTEMS TECH | 3 | 4 | 18.46% | 30.59% | 49.05% | -12.13% | 75% | 50% | 166% | 15.1 | 25.3 | 40.4 | -10.2 | 75% | 50% | 168% |
| DEP PUBLIC DEFENDER SR | 3 | 16 | 0.45% | 1.09% | 1.54% | -0.64% | 88% | 6% | 244% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| DA INVESTIGATOR SUPV | 1 | 7 | 0.17% | 0.42% | 0.59% | -0.25% | 86% | 0% | 245% | 0.1 | 0.3 | 0.5 | -0.2 | 86% | 0% | 245% |
| FACILITIES SUPERVISOR | 1 | 5 | 5.38% | 10.77% | 16.15% | -5.38% | 80% | 0% | 200% | 6.3 | 12.6 | 19.0 | -6.3 | 80% | 0% | 200% |
| PSYCHIATRIC NURSE II | 9 | 47 | 9.69% | 25.39% | 35.07% | -15.70% | 87% | 6% | 262% | 4.4 | 14.2 | 18.6 | -9.8 | 91% | 11% | 320% |
| DA INVESTIGATOR II | 2 | 15 | 0.09% | 0.22% | 0.31% | -0.13% | 87% | 0% | 255% | 0.0 | 0.1 | 0.2 | -0.1 | 93% | 7% | 296% |
| PUBLIC HEALTH NURSE | 20 | 66 | 5.08% | 10.71% | 15.80% | -5.63% | 85% | 15% | 211% | 0.8 | 1.8 | 2.6 | -1.0 | 88% | 18% | 224% |
| PUBLIC HEALTH NURSE SUPV | 8 | 12 | 19.98% | 19.62% | 39.59% | 0.36% | 58% | 58% | 98% | 3.4 | 3.5 | 6.9 | -0.1 | 83% | 50% | 103% |
| FINANCIAL SYS ANALYST I | 1 | 9 | 0.35% | 0.98% | 1.33% | -0.63% | 89% | 0% | 283% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| FIRE EQUIPMENT OPER | 3 | 3 | 92.36% | 1.15% | 93.51% | 91.21% | 67% | 67% | 1% | 44.3 | 2.2 | 46.5 | 42.1 | 33% | 33% | 5% |
| FIRE EQUIPMENT OPER SUPV | 1 | 1 | 91.22% | 0.00% | 91.22% | 91.22% | 0% | 0% | 0% | 55.3 | 0.0 | 55.3 | 55.3 | 0% | 0% | 0% |
| COMPUTER SYSTEMS SPEC SUPV | 1 | 9 | 0.19% | 0.55% | 0.74% | -0.35% | 89% | 0% | 283% | 0.1 | 0.2 | 0.2 | -0.1 | 89% | 0% | 283% |
| SHERIFFS DEPUTY | 61 | 258 | 1.43% | 10.18% | 11.62% | -8.75% | 99% | 22% | 711% | 1.1 | 9.9 | 11.0 | -8.8 | 99% | 22% | 895% |
| GEOLOGIST REGISTERED | 1 | 3 | 0.65% | 0.92% | 1.57% | -0.27% | 67% | 0% | 141% | 0.4 | 0.6 | 1.0 | -0.2 | 67% | 0% | 141% |
| SHERIFFS DEPUTY S/DUTY | 69 | 164 | 3.04% | 11.35% | 14.38% | -8.31% | 96% | 38% | 374% | 1.7 | 9.1 | 10.8 | -7.4 | 96% | 38% | 526% |
| ENVIRON HEALTH SPEC | 3 | 20 | 0.20% | 0.59% | 0.79% | -0.39% | 90% | 5% | 292% | 0.0 | 0.0 | 0.1 | 0.0 | 90% | 5% | 294% |

| Job Class Title | Count of Members with stand-by | Total Count | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Freq. CV | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Vol. CV |
|--------------------------|--------------------------------|-------------|--------|-----------|-------------|-------------|---------------------------------------|--|----------|------|-----------|-------------|-------------|---------------------------------------|--|---------|
| | | | | | | | | | | | | | | | | |
| ENVIRON HEALTH SPEC SR | 3 | 12 | 3.11% | 9.36% | 12.47% | -6.26% | 92% | 17% | 301% | 2.6 | 8.6 | 11.2 | -6.0 | 92% | 17% | 329% |
| SHERIFFS SERGEANT | 23 | 71 | 1.08% | 5.35% | 6.44% | -4.27% | 99% | 31% | 494% | 0.5 | 3.8 | 4.3 | -3.3 | 99% | 31% | 760% |
| SOC SVCS WORKER SR PS/L | 79 | 89 | 30.24% | 23.80% | 54.04% | 6.44% | 62% | 62% | 79% | 14.2 | 17.7 | 31.9 | -3.5 | 83% | 72% | 125% |
| EDP SYS & PROG ANLST I | 1 | 14 | 0.07% | 0.25% | 0.32% | -0.18% | 93% | 0% | 361% | 0.0 | 0.1 | 0.2 | -0.1 | 93% | 0% | 361% |
| SOCIAL SERVICES SUPV I | 8 | 9 | 43.93% | 29.18% | 73.11% | 14.75% | 56% | 56% | 66% | 49.5 | 34.4 | 84.0 | 15.1 | 56% | 56% | 69% |
| SOCIAL SERVICES SUPV II | 24 | 28 | 22.90% | 25.24% | 48.14% | -2.34% | 82% | 68% | 110% | 16.2 | 19.3 | 35.5 | -3.2 | 89% | 75% | 120% |
| MAINT ELECTRICIAN | 1 | 1 | 35.71% | 0.00% | 35.71% | 35.71% | 0% | 0% | 0% | 34.4 | 0.0 | 34.4 | 34.4 | 0% | 0% | 0% |
| HEALTH EDUCATION ASST | 2 | 22 | 0.45% | 1.68% | 2.12% | -1.23% | 95% | 5% | 374% | 0.1 | 0.3 | 0.4 | -0.2 | 95% | 5% | 396% |
| SOCIAL SERVICES WORKER | 76 | 122 | 16.21% | 19.36% | 35.56% | -3.15% | 83% | 45% | 119% | 9.0 | 14.3 | 23.3 | -5.3 | 87% | 49% | 159% |
| PROG/BUS LDR-ATTY | 1 | 18 | 0.10% | 0.43% | 0.54% | -0.33% | 94% | 0% | 412% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| DEPUTY DISTRICT ATTY II | 3 | 40 | 0.39% | 1.79% | 2.18% | -1.40% | 93% | 0% | 458% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| SOCIAL SVCS PRACTITIONER | 61 | 87 | 20.65% | 21.28% | 41.93% | -0.63% | 79% | 49% | 103% | 8.6 | 10.8 | 19.4 | -2.1 | 89% | 59% | 124% |
| ACCOUNTANT I | 1 | 29 | 0.36% | 1.90% | 2.26% | -1.54% | 97% | 0% | 529% | 0.0 | 0.2 | 0.3 | -0.2 | 97% | 0% | 529% |
| EDP SYS & PROG ANLST SR | 1 | 30 | 0.02% | 0.09% | 0.10% | -0.07% | 97% | 0% | 539% | 0.0 | 0.2 | 0.2 | -0.2 | 97% | 0% | 539% |
| COMMUNICATIONS DISP II | 1 | 31 | 0.03% | 0.14% | 0.17% | -0.12% | 97% | 0% | 548% | 0.0 | 0.0 | 0.0 | 0.0 | 97% | 0% | 548% |
| MAINTENANCE LEADER | 2 | 36 | 1.56% | 9.08% | 10.65% | -7.52% | 97% | 3% | 581% | 1.2 | 7.2 | 8.4 | -5.9 | 97% | 3% | 590% |
| DEP PROBATION OFFICER SR | 3 | 81 | 0.30% | 1.79% | 2.09% | -1.48% | 96% | 0% | 590% | 0.2 | 0.9 | 1.1 | -0.8 | 96% | 0% | 540% |
| COST ANALYST II | 1 | 37 | 0.17% | 1.01% | 1.18% | -0.84% | 97% | 0% | 600% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| PSYCHIATRIC NURSE SUPV | 3 | 3 | 44.75% | 37.37% | 82.12% | 7.38% | 33% | 33% | 84% | 42.5 | 33.3 | 75.7 | 9.2 | 33% | 33% | 78% |

| Job Class Title | Count of Members with stand-by | Total Count | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Freq. CV | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Vol. CV |
|--|--------------------------------|-------------|--------|-----------|-------------|-------------|---------------------------------------|--|----------|------|-----------|-------------|-------------|---------------------------------------|--|---------|
| | | | | | | | | | | | | | | | | |
| STAFF PHYSICIAN | 1 | 41 | 2.44% | 15.43% | 17.86% | -12.99% | 98% | 0% | 632% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| DEP PROBATION OFFICER RADIO COMMUNICATION SYSTEMS ENGINEER | 4 | 151 | 0.12% | 0.75% | 0.86% | -0.63% | 97% | 0% | 647% | 0.1 | 0.4 | 0.5 | -0.3 | 97% | 0% | 612% |
| VICTIM WITNESS PROG ASST II | 1 | 1 | 90.00% | 0.00% | 90.00% | 90.00% | 0% | 0% | 0% | 71.6 | 0.0 | 71.6 | 71.6 | 0% | 0% | 0% |
| JUVENILE INST OFFICER SR | 8 | 18 | 11.29% | 18.24% | 29.53% | -6.95% | 78% | 22% | 162% | 8.4 | 14.0 | 22.3 | -5.6 | 83% | 28% | 166% |
| WASTEWTR PLANT OPER II | 1 | 49 | 0.02% | 0.12% | 0.13% | -0.10% | 98% | 0% | 693% | 0.0 | 0.0 | 0.0 | 0.0 | 98% | 0% | 693% |
| WASTEWTR PLANT OPER III | 5 | 6 | 34.30% | 21.57% | 55.87% | 12.73% | 67% | 67% | 63% | 21.0 | 13.4 | 34.4 | 7.5 | 50% | 50% | 64% |
| DEPT BUS SPEC I | 9 | 9 | 52.93% | 9.90% | 62.83% | 43.03% | 78% | 78% | 19% | 32.2 | 5.5 | 37.7 | 26.6 | 56% | 56% | 17% |
| MEDICAL ASSISTANT | 2 | 68 | 1.46% | 11.54% | 13.00% | -10.08% | 99% | 1% | 789% | 0.9 | 6.8 | 7.6 | -5.9 | 99% | 1% | 789% |
| ASST DEPT LDR-EXEC | 2 | 100 | 0.05% | 0.40% | 0.45% | -0.35% | 98% | 0% | 819% | 0.1 | 0.7 | 0.8 | -0.7 | 99% | 1% | 974% |
| FIREFIGHTER SHIFT | 1 | 94 | 0.01% | 0.05% | 0.06% | -0.05% | 99% | 0% | 964% | 0.0 | 0.0 | 0.0 | 0.0 | 0% | 0% | -- |
| SOCIAL SVCS WORKER SR | 4 | 141 | 0.41% | 3.96% | 4.37% | -3.56% | 98% | 1% | 972% | 0.1 | 1.4 | 1.5 | -1.2 | 99% | 2% | 1047% |
| DEPT BUS SPEC II | 1 | 1 | 20.41% | 0.00% | 20.41% | 20.41% | 0% | 0% | 0% | 13.1 | 0.0 | 13.1 | 13.1 | 0% | 0% | 0% |
| ADMN OFFICE PRO III | 2 | 123 | 0.52% | 5.65% | 6.17% | -5.14% | 99% | 1% | 1094% | 0.5 | 5.3 | 5.8 | -4.8 | 99% | 1% | 1104% |
| VICTIM WITNESS PROG SUPV | 1 | 168 | 0.01% | 0.17% | 0.19% | -0.16% | 99% | 0% | 1292% | 0.0 | 0.1 | 0.1 | -0.1 | 99% | 0% | 1292% |
| WASTEWTR PLANT OPER CHIEF | 2 | 2 | 10.18% | 9.69% | 19.87% | 0.49% | 0% | 0% | 95% | 18.1 | 17.8 | 35.9 | 0.3 | 50% | 50% | 98% |
| ADMN OFFICE PRO SR | 1 | 2 | 0.40% | 0.40% | 0.81% | 0.00% | 0% | 0% | 100% | 0.1 | 0.1 | 0.1 | 0.0 | 0% | 0% | 100% |
| WASTEWTR PLANT OPER SUPV | 3 | 215 | 0.47% | 6.59% | 7.06% | -6.12% | 100% | 1% | 1401% | 0.1 | 0.5 | 0.6 | -0.5 | 99% | 0% | 1030% |
| | 3 | 535 | 0.37% | 5.98% | 6.35% | -5.61% | 100% | 0% | 1628% | 0.0 | 0.4 | 0.4 | -0.3 | 100% | 0% | 1627% |
| | 5 | 5 | 45.42% | 20.94% | 66.36% | 24.48% | 60% | 60% | 46% | 25.6 | 9.2 | 34.7 | 16.4 | 40% | 40% | 36% |

| Job Class Title | Count of Members with stand-by | Total Count | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Freq. CV | Mean | Std. Dev. | Upper bound | Lower Bound | % of Total Members within 1SD of Mean | % of stand-by Members within 1SD of Mean | Vol. CV |
|----------------------------|--------------------------------|-------------|--------|-----------|-------------|-------------|---------------------------------------|--|----------|-------|-----------|-------------|-------------|---------------------------------------|--|---------|
| | | | | | | | | | | | | | | | | |
| WTR & SEWAGE PLANT OPER II | 1 | 1 | 97.56% | 0.00% | 97.56% | 97.56% | 0% | 0% | 0% | 110.5 | 0.0 | 110.5 | 110.5 | 0% | 0% | 0% |
| WTR/SEW PLANT OPER CHIEF | 1 | 1 | 99.51% | 0.00% | 99.51% | 99.51% | 0% | 0% | 0% | 118.4 | 0.0 | 118.4 | 118.4 | 0% | 0% | 0% |

Appendix B: Affected Job Classifications

| | |
|--|---------------------------|
| District Attorney Association | |
| DEPUTY DISTRICT ATTY II | DEPUTY DISTRICT ATTY IV |
| DEPUTY DISTRICT ATTY III | DEPUTY DISTRICT ATTY SR |
| Deputy Sheriff Association | |
| COMMUNICATIONS DISP II | DA INVESTIGATOR III |
| CUSTODY DEPUTY | DA INVESTIGATOR SUPV |
| CUSTODY DEPUTY S/DUTY | SHERIFFS DEPUTY |
| CUSTODY SERGEANT | SHERIFFS DEPUTY S/DUTY |
| DA INVESTIGATOR I | SHERIFFS SERGEANT |
| DA INVESTIGATOR II | |
| Engineers & Technicians Association | |
| ENVIRON HEALTH SPEC | HAZ MATERIALS SPEC II |
| ENVIRON HEALTH SPEC SR | HAZ MATERIALS SPEC SR |
| GEOLOGIST REGISTERED | HAZARD MATERIALS SUPV |
| Fire Fighters Local 2046 | |
| FIRE CAPTAIN SHIFT | FIRE EQUIPMENT OPER |
| FIRE CAPTAIN STAFF | FIRE EQUIPMENT OPER SUPV |
| FIRE ENG INSPECTOR SHIFT | FIREFIGHTER SHIFT |
| FIRE ENG INSPECTOR STAFF | FIREFIGHTER STAFF |
| Probation Peace Officers Association | |
| DEP PROBATION OFFICER | JUVENILE INST OFFICER |
| DEP PROBATION OFFICER SR | JUVENILE INST OFFICER SR |
| DEP PROBATION OFFICER SUP | DEP PROBATION OFFICER SUP |
| SEIU Local 721 | |
| SOC SVCS WORKER SR PS/L | SOCIAL SERVICES WORKER |
| SOCIAL SERVICES SUPV I | SOCIAL SVCS PRACTITIONER |
| SOCIAL SERVICES SUPV II | SOCIAL SVCS WORKER SR |
| Union of American Physicians and Dentists | |
| STAFF PHYSICIAN | |
| Unrepresented | |
| PROG/BUS LDR-ATTY | |

| SEIU Local 620 | |
|------------------------------|--------------------------------------|
| ACCOUNTANT I | EDP SYS & PROG ANLST I |
| ADMHS CASE WORKER | EDP SYS & PROG ANLST SR |
| ADMHS PRACTITIONER II | ELECTRONICS SYSTEMS TECH |
| ADMHS PRACTITIONER INTERN | FACILITIES SUPERVISOR |
| ADMHS PSYCHIATRIC TECH II | FINANCIAL SYS ANALYST I |
| ADMHS RECOVERY ASSISTANT | HEALTH EDUCATION ASST |
| ADMHS REHABILITATION SPEC | HEALTH EDUCATION ASST SR |
| ADMHS TEAM SUPV-PRACTITIONER | HVAC SPECIALIST |
| ADMHS TEAM SUPV-RN | MAINT ELECTRICIAN |
| AIRCRAFT MECHANIC | MAINTENANCE LEADER |
| ALCOHOL & DRUG SERVICE SPEC | MAINTENANCE PLUMBER |
| ANIMAL CONTROL OFF I | MAINTENANCE WORKER II |
| ANIMAL CONTROL OFF II | MEDICAL ASSISTANT |
| ANIMAL CONTROL OFF SUPV | PARK RANGER I |
| BUILDING MAINT SUPV | PARK RANGER II |
| BUILDING MAINT WORKER | PARK RANGER III |
| CCS SUPERVISING THERAPIST | PH PERFORM IMPROVE COORD |
| COMM EQUIP TECH SR | PSYCHIATRIC NURSE II |
| COMM SYSTEMS SUPV | PSYCHIATRIC NURSE SR |
| COMPUTER SYSTEMS SPEC I | PSYCHIATRIC NURSE SUPV |
| COMPUTER SYSTEMS SPEC II | PUBLIC HEALTH NURSE |
| COMPUTER SYSTEMS SPEC SUPV | PUBLIC HEALTH NURSE SUPV |
| COST ANALYST II | RADIO COMMUNICATION SYSTEMS ENGINEER |
| DEP PUBLIC DEFENDER I | VICTIM WITNESS PROG ASST II |
| DEP PUBLIC DEFENDER II | VICTIM WITNESS PROG SUPV |
| DEP PUBLIC DEFENDER III | WASTEWTR PLANT OPER CHIEF |
| DEP PUBLIC DEFENDER IV | WASTEWTR PLANT OPER II |
| DEP PUBLIC DEFENDER SR | WASTEWTR PLANT OPER III |
| DEPT BUS SPEC I | WASTEWTR PLANT OPER SUPV |
| DEPT BUS SPEC II | WASTEWTR PLANT OPER TR |
| EDP NETWORK TECH II | WTR & SEWAGE PLANT OPER II |
| EDP NETWORK TECH III | WTR/SEW PLANT OPER CHIEF |
| EDP OFFICE AUTO COORD | ADMN OFFICE PRO II |
| EDP OFFICE AUTO SPEC I | ADMN OFFICE PRO III |
| EDP OFFICE AUTO SPEC II | ADMN OFFICE PRO SR |

Appendix C: Government Code Section 31461

31461(a) "Compensation earnable" by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence. Compensation, as defined in Section 31460, that has been deferred shall be deemed "compensation earnable" when earned, rather than when paid.

(b) "Compensation earnable" does not include, in any case, the following:

(1) Any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:

(A) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

(B) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

(C) Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(4) Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

(c) The terms of subdivision (b) are intended to be consistent with and not in conflict with the holdings in *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003)110 Cal.App.4th 426.

(Amended by Stats. 2012, Ch. 297, Sec. 2. (AB 197) Effective January 1, 2013.)

31461.6(a) "Compensation earnable" shall not include overtime premium pay other than premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory

maximum workweek or work period applicable to the employee under Section 201 and following of Title 29 of the United States Code.

(b) This section shall not apply to a member who is subject to the California Public Employees' Pension Reform Act of 2013.

(Amended by Stats. 2013, Ch. 247, Sec. 6. (AB 1380) Effective January 1, 2014.)

SAN BERNARDINO COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION
BOARD OF RETIREMENT



SAN BERNARDINO COUNTY SHERIFF'S)
EMPLOYEES' BENEFIT ASSOCIATION, }

Appellant, }

vs. }

SAN BERNARDINO COUNTY
EMPLOYEES' RETIREMENT
ASSOCIATION,

Respondent.

SBCERA File No. 21-1006-1095.7.001PL

Proposed Findings of Fact
Conclusion and Recommendation

INTRODUCTION

The San Bernardino County Sheriff's Employees' Benefit Association ("SEBA") filed its Opening Brief on or about October 20, 2021 in support of its appeal on behalf of all retired Resident Deputies and Rural Crimes Deputies who had On-Call Pay excluded from their compensation earnable by the San Bernardino County Employees' Retirement Association ("SBCERA") subsequent to the California Supreme Court's decision in *Alameda County Deputy Sheriff's Assoc. v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032 ("*Alameda*"). *Alameda* upheld the constitutionality of amendments to Government Code section 31461, including subdivision (b)(3), which excluded from compensation earnable, "Payments for additional services rendered outside of normal working hours."

Both Resident and Rural Crimes deputies receive On-Call Pay. The On-Call Pay was excluded from the Appellants' final compensation and compensation earnable. The On-Call Pay is described under the MOUs as follows:¹

"Employees who are released from active duty but are required by the Sheriff's Department or District Attorney to leave notice where they can be reached and be able to return to active duty when required by the department shall be assigned to on-call duty.

"While assigned to on-call duty, an employee shall be free to use the time for his or her own purposes. On-call duty requires that employees so assigned shall: (1) leave a telephone number where they can be reached or wear a communicating device; and (2) be able to respond to duty within an hour.

"Assignment of on-call duty and approval of compensation shall be made by the appointing authority based upon the needs of the department. On-call duty shall be compensated at the rate of one hundred fifty-five dollars (\$155.00) per week. Effective July 4, 2009, on-call duty shall be compensated at the rate of one hundred sixty-five dollars (\$165.00) per week. Effective July 3, 2010, on-call duty shall be compensated at the rate of one hundred seventy-five dollars (\$175.00) per week. Effective July 2, 2011, on-call duty shall be compensated at the rate of one hundred eighty-five dollars (\$185.00) per week. Said compensation is exclusive of any other compensation and shall not count as hours worked."

Effective January 1, 2013, the Legislature adopted the Public Employees' Pension Reform Act ("PEPRA"). Although many of its provisions applied only to "New members", (see Government Code sections 7522.15 and 7522.34), some provisions implicated Government Code section 31461 and applied to public employees who had commenced employment prior to January 1, 2013. The amendments to Section 31461 included subdivision (b)(3), which states:

(b) "Compensation earnable" does not include, in any case, the following:

(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

On July 30, 2020, the California Supreme Court issued its decision in *Alameda*, which involved a challenge by plaintiffs to the application of the changes to Section 31461 to legacy members (*i.e.*, those who commenced employment prior to January 1, 2013). The plaintiffs in the case argued that the changes to Section 31461 contravened and impaired their vested contractual right to receive pension benefits according to the law as it existed prior to PEPRA in violation of Article I section 9 of the California Constitution. (*Alameda, supra*, 9 Cal.5th at p. 1053.)

¹ Generally, the references to the MOU are to the latest MOU from 2019-2024.

The Court concluded that the additions to the definition of compensation earnable did not violate the California Constitution. (*Id.* at 1103.) After the Supreme Court’s decision in *Alameda*, SBCERA issued a series of resolutions implementing *Alameda*, and notified affected employees that the On-Call Pay, which had previously been regarded as “compensation earnable,” would no longer be included in final compensation or compensation earnable.

On-Call Pay was excluded from the final compensation of the Appellants as Resident and Rural Crimes deputies. This appeal followed.

On or about October 20, 2021, the Appellants filed their opening brief. The Appellants were represented in the appeal by Jacob A. Kalinski, Esq, Rains Lucia Stern St. Phalle & Silver, PC. The Respondent was represented by Ashley K. Dunning, Esq. and Alexander Westerfield, Esq., Nossaman LLP.

All briefs and exhibits in the matter were filed by November 19, 2021. On that date, the matter was submitted to Hearing Officer Duane E. Bennett for consideration, proposed findings and recommendation.

ISSUE

The issue presented on appeal concerns “compensation earnable” for Appellants (Resident and Rural Crimes deputies) under the County Employees Retirement Law of 1937 (“CERL”), and whether certain On-Call Pay received by the Appellants during their final compensation periods must be included in the calculation of each of the Appellants’ retirement allowances.²

² Respondent also makes reference to the “grade or class” of positions under CERL pursuant to the Court’s discussion in *Stevenson v. Board of Retirement of the Orange County Employees Retirement System* (2010) 186 Cal.App.4th 498, 509. As framed by the parties, there does not appear to be an issue in this matter pertaining to grade or class of employees in regards to the Appellants. Under SBCERA guidelines, the Appellants have presumably been grouped as Appellants as part of the same grade or class of employees. Therefore, the Hearing Officer does not specifically address this aspect.

BACKGROUND AND STATEMENTS ON APPEAL

The Appellants have the burden of proof by a preponderance of the evidence to support their contentions that their retirement benefits should include On-Call Pay in their final compensation or compensation earnable.

As provided by Evidence Code section 500, "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." The burden of proof is only met with reliable, "substantial" evidence. (*Weiser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 783.) Substantial evidence clearly implies that such evidence must be of ponderable legal significance. Such evidence cannot be deemed synonymous with any evidence. "It must be reasonable..., credible, and of solid value..." (*Kuhn v. Dept. of General Service* (1994) 22 Cal.App.4th 1627, 1633.)

Once the initial burden is met, the responding party is charged with producing evidence as to the matters established. The burden of producing evidence means the obligation of a party to introduce evidence sufficient to avoid a ruling against him on the issue. (See Evidence Code section 110.)

Rural Crimes and Resident deputies were described by the Appellants as deputies with special expertise, or who live within a remote community too small to have its own Sheriff's Department and too far from the nearest patrol station to be served by the deputy sheriffs assigned to that station.³

The Appellants argue that Resident and Rural Crimes deputies are needed to continuously staff remote areas of the County, or "outposts," and provide special expertise due to the limited availability of other deputies. These deputies must be available to respond to any emergency, 24 hours a day, seven days a week.⁴

The Appellants acknowledge that the Department places Resident Deputies on a work schedule, but that they are still expected to answer all work calls, regardless of the time of day.⁵ In this regard, they argue that Resident Deputies have around-the-clock schedules. Resident Deputies receive On-Call Pay when they are scheduled to be on call.

Appellant Hoyle stated in his declaration:

³ Declaration of Edward Hoyle at ¶ 5; Declaration of Vincent Balsitis at ¶ 4.

⁴ Hoyle Declaration at ¶ 6; Balsitis Declaration at ¶ 5.

⁵ Hoyle Declaration at ¶ 8; Balsitis Declaration at ¶ 8.

“ Resident Deputies are deputies who live within a community, otherwise known as an ‘outpost,’ which is too small to have its own Sheriff’s Department and too far from the nearest patrol station to be served by the deputy sheriffs assigned to that station. The nearest patrol station to Parker Dam was 100 miles away.

“ Resident Deputies are needed to continuously staff these outposts due to the limited availability of other deputies. In other words, they must be available to respond to any emergency, 24 hours a day, seven days a week.

“ Resident Deputies are chosen because they exhibit skill sets above and beyond those exhibited by patrol deputies.

“ While the Department put me on a work schedule, the schedule was in name only. In fact, regardless of the time of day, and whether or not I was officially off-duty or not on-call, I was expected to answer any and all work-related calls. This is simply the nature of being a Resident Deputy - there are no patrol deputies in the area to take control of an incident.

“ Even if I was technically off-duty or not on-call, I would receive call-out phone calls from the Department on my personal cell phone. This occurred even when I was on vacation.

“ My being technically ‘on-call’ was irrelevant to my job responsibilities; my duties and responsibilities were the same whether or not I was ‘on-call.’ Essentially, I had an around-the-clock workday...” (Hoyle Declaration at page 2.)

Similarly, the Appellants maintain that Rural Crimes Deputies have extensive responsibilities. The responsibilities consist of: (1) conducting criminal investigations into (a) agriculture-related crime, such as livestock, hay, medication, and heavy equipment theft; (b) animal fighting; and (c) metal theft; (2) assisting and testifying for other agencies outside the County; (3) ensuring scrap yard compliance with the regulations; (4) public relations with farmers, ranchers, growers and agriculture organizations; (5) conducting training and presentations, both State-wide and County-wide, on animal fighting; metal and heavy equipment theft; rural crime programs; and a 40-hour Rural Crime School; (6) participating in and/or conducting extensive meetings of the (a) Rural Crimes Task Force, state-wide; (b) County/State Farm Bureau; (c) California Metal Theft Investigators; (d) Western States Livestock Investigators (out-of-state); (e) County animal control; and (f) Terrorism Early Warning Group, as the agriculture representative; and (7) assignment to the Department of Homeland Security to conduct security assessments of commercial agriculture production sites in order to develop a model for critical infrastructure.⁶

It is argued that Rural Crimes Deputies work from nighttime criminal investigations and surveillance into daytime meetings, trainings, or presentations. These deputies help other deputies assigned to patrol stations who come across animal fighting, or other

⁶ See Christopher Wadkins Declaration at ¶ 5.

circumstances beyond their expertise. While the Department also places Rural Crimes Deputies on a work schedule, it is argued that they receive calls for service 24 hours a day, seven days a week, and work around the clock.

The Declaration of Christopher Wadkins stated:

“The responsibilities of a Rural Crimes Deputy are extensive. They consist of: (1) conducting criminal investigations into (a) agriculture-related crime, such as livestock, hay, medication, and heavy equipment theft; (b) animal fighting; and (c) metal theft; (2) assisting and testifying for other agencies outside the County; (3) ensuring scrap yard compliance with the regulations; (4) public relations with farmers, ranchers, growers and agriculture organizations; (5) conducting training and presentations, both State-wide and County-wide, on animal fighting; metal and heavy equipment theft; rural crime programs; and a 40-hour Rural Crime School; (6) participating in and/or conducting extensive meetings of the (a) Rural Crimes Task Force, state-wide; (b) County/State Farm Bureau; (c) California Metal Theft Investigators; (d) Western States Livestock Investigators (out-of-state); (e) County animal control; and (f) Terrorism Early Warning Group, as the agriculture representative; and (7) assignment to the Department of Homeland Security to conduct security assessments of commercial agriculture production sites in order to develop a model for critical infrastructure.

“Rural Deputies are constantly working, often transitioning from nighttime criminal investigations and surveillance into daytime meetings, trainings, or presentations. These deputies are also called in to help deputies assigned to patrol stations who may come across animal fighting, or other circumstances beyond their expertise.

“While I ostensibly had a work schedule, it was a schedule in name only; I received calls for work 24 hours a day, seven days a week.

“While other investigators rotated being on-call, I was always on-call; I was the only deputy responsible for handling incidents related to the types of issues noted above.” (Wadkins Declaration at page 2.)

DISCUSSION AND FINDINGS

The Appellants have the burden of proof by a preponderance of the evidence to support their contentions that retirement benefits should include On-Call Pay in their final compensation or compensation earnable.

As provided by Evidence Code section 500, “Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” The burden of proof is only met with reliable, “substantial” evidence. (*Weiser v. Board of Retirement* (1984) 152

Cal.App.3d 775, 783.) Substantial evidence clearly implies that such evidence must be of ponderable legal significance. Such evidence cannot be deemed synonymous with any evidence. "It must be reasonable..., credible, and of solid value..." (*Kuhn v. Dept. of General Service* (1994) 22 Cal.App.4th 1627, 1633.)

Once the initial burden is met, the responding party is charged with producing evidence as to the matters established. The burden of producing evidence means the obligation of a party to introduce evidence sufficient to avoid a ruling against him on the issue. (See Evidence Code section 110.)

1) *As FLSA Hourly Employees, Did Appellants Have 24-Hour Responsibilities Or Normal Working Hours?*

There is insufficient evidence that the Appellants were FLSA exempt or salaried employees. As such, they served as non-exempt or hourly employees subject to overtime requirements. The Appellants argue that they did not have normal work schedules, and that their schedules required them to work around the clock. In essence, the Appellants argued that they did not have a normal work schedule, and were expected to handle any work-related calls for service regardless of the time of day or night.

As described, Resident Deputies are deputies who live within a community, otherwise known as an outpost, which is too small to have its own Sheriff's Department and too far from the nearest patrol station to be served by the deputy sheriffs assigned thereto. The Appellants contend that where it has been determined by the Sheriff's Department that such deputies are needed to continuously staff these operations due to limited availability of other deputies, they receive stipends for rent and food purportedly as "Special Circumstances Pay". They argue that such deputies must be available for any emergency in a remote area, 24 hours a day, seven days a week.

Given the isolation of various communities listed under the special circumstances sections of the MOUs, Appellants argue that deputies working out of assigned patrol stations would not be able to serve as back-up, given distance requirements. Furthermore, Resident and Rural Crimes deputies are such an integral part of the remote communities to which they are assigned, that the residents view them as their own special patrol deputies, calling on them for any and all public health and safety problems.

The Appellants acknowledge that the Department places Resident and Rural Crimes deputies on a work schedule; however, they maintain that the schedule is in name only. Appellants argue that regardless of the time of day, and whether or not Resident Deputies

are officially off-duty or not on-call, they are expected to answer any and all work-related calls. Therefore, they argue that Resident Deputies have an around-the-clock work day.⁷

As noted above, Rural Crimes Deputies are assigned to cover the entirety of San Bernardino County, or an area of 20,105 square miles. Appellants describe their responsibilities as myriad, including: (1) conducting criminal investigations into (a) agriculture-related crime, such as livestock, hay, medication, and heavy equipment theft; (b) animal fighting; and (c) metal theft; (2) assisting and testifying for other agencies outside the County; (3) ensuring scrap yard compliance with the regulations; (4) public relations with farmers, ranchers, growers and agriculture organizations; (5) conducting training and presentations, both State-wide and County-wide, on animal fighting; metal and heavy equipment theft; rural crime programs; and a 40-hour Rural Crime School; (6) participating in and/or conducting extensive meetings of the (a) Rural Crimes Task Force, state-wide; (b) County/State Farm Bureau; (c) California Metal Theft Investigators; (d) Western States Livestock Investigators (out-of-state); (e) County animal control; and (f) Terrorism Early Warning Group, as the agriculture representative; and (7) assignment to the Department of Homeland Security to conduct security assessments of commercial agriculture production sites in order to develop a model for critical infrastructure.⁸

The Appellants contend that Rural Crimes Deputies are constantly working and possess special expertise, quite often transitioning from nighttime criminal investigations and surveillance to daytime meetings, trainings or presentations. Such deputies are also called upon to assist deputies assigned to patrol stations who may come across animal fighting, or other circumstances beyond their expertise. Likewise, the Appellants argue that neither Resident Deputies, nor Rural Deputies have set working hours; rather, they must be available, and are essentially working 24 hours a day.

The Department's website provides further insight into the goals and Mission of the Rural Crime Task Force:

The mission of the San Bernardino County Sheriff's Department Rural Crime Task Force is to develop solutions to the unique crime problems that afflict citizens in rural areas of San Bernardino County. The task force is committed to making the individuals, businesses and property of rural communities safer. To accomplish this mission, the task force seeks to forge stronger alliances between itself and rural communities, to educate the public concerning the extent and seriousness of a rural crime, and to focus its efforts on the prevention of crime in rural regions of the county, while seeking to improve its overall response. The Rural Crime Task Force works out of the Victor Valley Station, under the command of Captain Jeremy Martinez.

⁷ See Hoyle Declaration at ¶¶ 8, 10; Balsitis Declaration at ¶¶ 8, 10.

⁸ See Wadkins Declaration at ¶ 5.

Rural Crime Definition

A rural crime is a crime committed against property or businesses customarily employed in farming, agri-business, ranching, mining, or related fields, wherein either property is taken or damaged, or normal business practices are hindered or disrupted. These may include (but are not limited to) criminal incidents on farms or ranches where there is loss of animals, crops, products or metals; or incidents involving the loss of construction or heavy equipment; or the theft or destruction of natural resources such as lumber, plants, or wildlife. Rural Crime Resources.⁹

Therefore, Rural Crimes and Resident deputies both service rural and remote portions of the entire County of San Bernardino.

It seems apparent that Resident and Rural Crimes deputies are non-exempt under the FLSA. As referenced in the MOUs, Section 13(b)(20) of the FLSA provides an overtime exemption to law enforcement or fire protection employees of a public agency that employs less than five employees during the workweek in law enforcement or fire protection activities.

Section 7(k) of the FLSA provides that employees engaged in law enforcement may be paid overtime on a “work period” basis. A “work period” may be from 7 consecutive days to 28 consecutive days in length. In general, law enforcement personnel must receive overtime after 86 hours worked during a 14-day work period. It is generally recognized that the 7(k) exemption softens the overtime provisions of the FLSA by allowing employers to extend the length of the work period beyond seven consecutive days and increase the threshold of maximum hours.

Moreover, under certain prescribed conditions, a state or local government agency may give compensatory time, at a rate of not less than one and one-half hours for each overtime hour worked, in lieu of cash overtime compensation. Employees engaged in police work may accrue up to 480 hours of compensatory time. A law enforcement employee must be permitted to use compensatory time on the date requested unless doing so would “unduly disrupt” the operations of the agency. The Hearing Officer notes the provision for overtime and compensatory time in the MOUs.

The Overtime sections of the MOUs state, in relevant part:

(a) Policy – It is the policy of the County to discourage overtime except when necessitated by abnormal or unanticipated workload situations. It is the responsibility of the appointing authorities to arrange for the accomplishment of workloads under their jurisdiction within the normal tours of duty of employees. The County has the right to require overtime to be worked as necessary. (Emphasis added.)

⁹ California Rural Crime Prevention Task Force <http://www.creptf.org/>.

(b) 7(k) Exemption – The parties agree that employees in this Unit are covered by the partial overtime exemption set forth at 29 U.S.C. § 207(k) of the Fair Labor Standards Act. Although the County pays overtime compensation to employees in this Unit in excess of what is required by Section 207(k) or any other provision of the Fair Labor Standards Act, the parties agree that the Section 207(k) partial overtime exemption has been adopted and is applicable to FLSA overtime.

(c) Definition – Overtime shall be defined as all hours actually worked in excess of a regularly scheduled daily work shift, forty (40) hours per week, or eighty (80) hours during a pay period. In designated work locations where the regular work schedule does not call for the employees to work forty (40) hours per week, although it causes the employees to work an average of forty (40) hours per week during a pay period, overtime shall be defined as all hours actually worked in excess of a regularly scheduled daily work shift or eighty (80) hours per pay period. In designated work locations where the regular work schedule does not call for the employees to work at least eighty (80) hours in each pay period, although it causes them to work an average of at least eighty (80) hours per pay period during two (2) consecutive pay periods, overtime shall be defined as actual hours worked in excess of the regularly scheduled daily work shift, or one hundred sixty (160) hours during two (2) consecutive pay periods.

For employees assigned to a twelve (12) hour shift schedule in the detentions and corrections bureau, employees will normally be scheduled to work seven (7) twelve (12) hour shifts in a fourteen (14) day pay period. Overtime for employees assigned to this schedule shall be defined as all hours actually worked in excess of a regularly scheduled daily work shift, or in excess of eighty-four (84) hours per pay period.

(d) Premium Overtime Compensation – Any employee in a regular position authorized by the appointing authority or authorized representative to work overtime shall be compensated at premium rates, i.e., one and one-half (1-1/2) times the employee's regular rate of pay. Payment for premium overtime compensation shall be made on the first regular payday following the pay period in which such overtime is worked, unless premium overtime compensation cannot be computed until some later date, in which case, premium overtime compensation will be paid on the next regular payday after such computation can be made. In lieu of cash payment, upon the request of an employee and approval of the appointing authority, an employee may accrue compensating time off at premium hours. Cash payment at employee's base rate of pay (including POST incentive pay) shall automatically be paid for any compensating time in excess of fifty (50) hours, or any hours on record immediately prior to promotion, demotion or termination of employment. Compensatory time off may be taken with approval of the appointing authority at such time as will not impair the work schedule or efficiency of the department but with consideration given to the well-being of the employee.

Although arguable, there is a preponderance of evidence that the Department has established normal working hours for Rural and Resident Crimes deputies. While recognizing the FLSA 7(k) exemption, the Department and County specifically discourage overtime payments unless absolutely necessary. It follows that under the terms of the MOU, 24-hour work shifts would be inconsistent with both the FLSA and the MOUs. Although the Appellants were routinely on-call, there is sufficient evidence that the Appellants did have "normal work hours" when viewed in the context of the evidence presented. The Declaration of Chief Financial Officer Amy McNerny confirms normal work schedules for the Appellants.

The MOU is replete to references to “normal” and “regular” work hours as argued by the Respondent. The MOU further states, “A pay period shall be comprised of a fourteen (14) calendar day corridor. The first pay period under this Agreement shall commence at 12:01 a.m. Saturday, August 3, 2019, and shall end at 12:00 a.m. (midnight) on the second Friday thereafter. Each subsequent fourteen (14) day period shall commence on the succeeding Saturday at 12:01 a.m. and shall end at midnight on the second Friday thereafter. The pay period and work week may be adjusted in accordance with FLSA requirements. The intent of the County and SEBA is to allow for alternative shift scheduling without violating requirements of the FLSA. Under no circumstances shall the right to adjust in accordance with FLSA requirements entitle the County to make such adjustments for the primary purpose of avoiding overtime.”

Interestingly, the MOU also states, “The County may reasonably establish, change, or modify standard days, tours of duty, or shifts for individual positions according to the needs of the service within the established period. Except in instances of law enforcement or staffing emergencies, employees shall be notified personally or by mail by a ranking officer of a shift change no later than forty-eight (48) hours prior to the time the shift change is to become effective...”

Based upon the MOUs and the preponderance of evidence, the Appellants were hourly employees subject to normal work schedules. The fact that the Appellants were FLSA non-exempt employees is also consistent with normal work schedules, as opposed to having 24-hour around the clock responsibilities.

2) *Was The On-Call Pay Received By The Appellants A True Stand-by Pay Or A Form Of Premium Or Assignment Pay For Their Duties As Resident And Rural Crimes Deputies?*

Although the Hearing Officer disagrees with the Appellants regarding not having normal working hours, there is a preponderance of evidence that their On-Call Pay constituted a type of premium or assignment pay that was integral to the duties, responsibilities and salaries of Resident and Rural Crimes deputies.

In this regard, the Hearing Officer analyzes the nature of traditional on-call pay, as argued by the Respondent and discussed in *Alameda*. At page 9 of the Reply, the Respondent states:

Appellants also argue that *Alameda* interprets Section 34161(b)(3) to exclude only those pay items Appellants could volunteer to receive during their final compensation period “to artificially inflate their daily rate of pay.” (SEBA Br. at 12–13 (quoting *Alameda*, 9 Cal. 5th at 1097).) *Alameda*, however, imposes no such limitation on that statutory provision. Indeed, the *Alameda* Court specifically cited on-call duty pay as a mandatory exclusion under Section 31461(b)(3). Discussing the meaning of that provision, the Court noted that “[a]n often-cited example of [payments for ‘additional services rendered outside of normal working hours’] is on-call duty pay, which is provided to employees in return for voluntarily making themselves available to be called to work outside their normal working hours.” (*Alameda*, *supra*, 9 Cal.5th at 1062.) The plain language of Section 31461(b)(3) does not require SBCERA to determine, however, whether a particular member volunteered, or was required by the County, to work on-call on a given day. Rather, OC4 is paid for *any* on-call services, and as defined in the MOUs discussed herein, those services are rendered outside of all Appellants’ normal working hours, because they already have been released from “active duty” in order to be eligible for OC4.

The Hearing Officer does not dispute the analysis of Respondent in reference to *Alameda*, which discussed “on-call pay” as pay “provided to employees in return for voluntarily making themselves available to be called to work outside their normal working hours.” It is axiomatic that such stand-by pay would violate the tenets of PEPRA, as additional services outside of normal working hours. However, despite the characterization of On-Call Pay (OC4), the pay in this instance does not appear to fall within the definition of traditional on-call pay prohibited as compensation earnable by *Alameda*.

There is a preponderance of evidence that the Appellants did not dictate their On-Call Pay, as referenced in Government Code section 31461 (b)(3) and *Alameda*. Likewise, there is a preponderance of evidence that the Appellants did not seek to artificially inflate their daily rates of pay, nor spike or manipulate their retirement benefits by “volunteering” for additional services through On-Call Pay duties.

Instead, it appears that the Department used On-Call Pay to fulfill routine rural service responsibilities and special needs via Resident and Rural Crimes deputies. Arguably, by using On-Call Pay, the Department avoided paying required overtime through a predetermined and negotiated salary process.

The Wadkins and Balsitis declarations indicate that they consistently received On-Call Pay during their assignments and attest to this fact. The On-Call Pay provisions of the MOU are not conditioned on the number of hours worked, and simply depend on the needs or requirements of the Department. As such, the Department strictly determined the on-call status of deputies on a mandated basis. The relevant sections of the MOU provide:

“Employees who are released from active duty but are required by the Sheriff’s Department or District Attorney to leave notice where they can be reached and be able to return to active duty when required by the department shall be assigned to on-call duty. While assigned to on-call duty, an employee shall be free to use the time for his or her own purposes.

“On-call duty requires that employees so assigned shall: (1) leave a telephone number where they can be reached or wear a communicating device; and (2) be able to respond to duty within an hour.

“Assignment of on-call duty and approval of compensation shall be made by the appointing authority based upon the needs of the department...”

It is also apparent that the Departmental needs included mandatory safety coverage obligations in rural or remote locations. Under the Relocation Leave provision of the MOU, it states:

“Employees in regular positions who are required by an appointing authority to change their principal place of residence because of a reassignment to meet the needs of the service shall be granted time off with pay at their base rate of pay not to exceed sixteen (16) work hours.”

The Declaration of Appellant Hoyle indicates that Resident Deputies were continuously required to staff outposts “due to the limited availability of other deputies. In other words, they must be available to respond to any emergency, 24 hours a day, seven days a week...”¹⁰ Similarly, Appellant Wadkins stated that he was always on-call and that he received On-Call Pay every week.¹¹

Despite being described as a type of stand-by pay, the Hearing Officer finds that the On-Call Pay in this instance was actually a misnomer, and was actually an integrated aspect of normal salary and/or premium/assignment compensation for Resident and Rural Crimes deputies. In other words, the On-Call Pay assigned to the Appellants was not a traditional on-call or standby pay. Instead, the pay was an integral aspect of the Department’s standard public safety operations.

The MOU states that On-Call Pay is exclusive and not a part of work hours. However, the Appellants’ responsibilities required the Department to routinely schedule On-Call Pay to service rural portions of the County. In this regard, the On-Call Pay was a type of mandated assignment pay for the Appellants that should be considered in final compensation.¹²

As discussed above, the Department’s description of the Rural Crimes Task force states, in part, “the task force seeks to forge stronger alliances between itself and rural

¹⁰ Declaration of Hoyle at ¶ 6.

¹¹ Declaration of Wadkins at ¶¶ 8-9.

¹² The Hearing Officer is aware of the MOU language stating, “While assigned to on-call duty, an employee shall be free to use the time for his or her own purposes.” The Hearing Officer construes this language to mean that the Appellants were not required to work continuously as a part of on-call duties, as discussed above. Nevertheless, they were still regularly required to be available for safety assignments while on-call.

communities, to educate the public concerning the extent and seriousness of a rural crime, and to focus its efforts on the prevention of crime in rural regions of the county, while seeking to improve its overall response...” Relative to Rural Crimes Deputies, there is a preponderance of evidence that routine payment of On-Call Pay was a central part of this mission.

As described, the On-Call Pay did not have the characteristics of voluntary work and additional services used to manipulate or inflate retirement benefits. For instance, Appellant Wadkins described his “on-call duties” as essential duties:

“The responsibilities of a Rural Crimes Deputy are extensive. They consist of: (1) conducting criminal investigations into (a) agriculture-related crime, such as livestock, hay, medication, and heavy equipment theft; (b) animal fighting; and (c) metal theft; (2) assisting and testifying for other agencies outside the County; (3) ensuring scrap yard compliance with the regulations; (4) public relations with farmers, ranchers, growers and agriculture organizations; (5) conducting training and presentations, both State-wide and County-wide, on animal fighting; metal and heavy equipment theft; rural crime programs; and a 40-hour Rural Crime School; (6) participating in and/or conducting extensive meetings of the (a) Rural Crimes Task Force, state-wide; (b) County/State Farm Bureau; (c) California Metal Theft Investigators; (d) Western States Livestock Investigators (out-of-state); (e) County animal control; and (f) Terrorism Early Warning Group, as the agriculture representative; and (7) assignment to the Department of Homeland Security to conduct security assessments of commercial agriculture production sites in order to develop a model for critical infrastructure.

“Rural Deputies are constantly working, often transitioning from nighttime criminal investigations and surveillance into daytime meetings, trainings, or presentations. These deputies are also called in to help deputies assigned to patrol stations who may come across animal fighting, or other circumstances beyond their expertise...”¹³

It is axiomatic that using Resident/Rural Crimes deputies in on-call assignments had a corresponding savings and service benefit for the County. By using On-Call Pay, the County/Department avoided the necessity of establishing and staffing Sheriff’s substations, or outposts, to cover remote calls for public health and safety services. In this sense, it seems apparent that the On-Call Pay associated with Resident/Rural Crime deputies was an essential part of deputy salaries, and the normal service operations of the Sheriff’s Department. As described by the Appellants, and with all due respect, it could be argued that Resident and Rural Crimes deputies served the roles of small town deputy sheriffs in the vein of an “Andy Taylor”.¹⁴

¹³ Declaration of Wadkins at ¶¶ 5-6.)

¹⁴ Andy Taylor was a fictional small town sheriff played by Andy Griffith in *The Andy Griffith Show* for the CBS television network. The show took place in the fictional town of Mayberry North Carolina, where Taylor was the public safety officer and town sage.

The Hearing Officer recognizes the Respondent's argument that the Appellants received "Special Circumstances Pay," given their assignments in the communities of Barton Flats, Baker, Parker Dam, Havasu Landing and Trona. The MOU states, "The Sheriff shall designate the geographic boundaries of these communities for the purpose of defining residence requirements for eligibility for Special Circumstances Pay."

However, nowhere in the MOU does it state that Special Circumstances Pay equates to hourly compensation, or pay for services associated with the on-call duties required by Resident and Rural Crimes deputies. Instead, the pay appears to be a type of residential/relocation pay, as opposed to pay for actual services. In other words, Special Circumstances Pay appears to compensate a deputy for simply locating to a remote area for public safety presence, convenience and faster response times to distant and/or rural locations.

There is no indication that Special Circumstances Pay was for associated job duties or on-call services required by Resident and Rural Crimes deputies. To assume that the flat rate of Special Circumstances Pay compensated Appellants for their associated duties or service calls, etc. would conflate the overtime language of the MOU, and obfuscate other salary requirements under the FLSA.¹⁵

In *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, the California Supreme Court analyzed the scope of the terms "compensation" and "compensation earnable" under CERL. The Court held: "After considering the language and legislative history of the pertinent CERL provisions, we conclude that the Legislature did not intend to require that a county include its contributions to an employee's deferred compensation plan in 'compensation' as defined in CERL. We also conclude, however, that the *other disputed premiums are 'compensation.'* *With the exception of overtime pay, items of 'compensation' paid in cash, even if not earned by all employees in the same grade or class, must be included in the 'compensation earnable' and 'final compensation' on which an employee's pension is based.*" (*Ventura, supra*, 16 Cal.4th at p. 487. Emphasis added.)

The Hearing Officer reads Government Code § 31461(b)(3) to exclude from compensation earnable "additional services" outside of normal work hours. Section 31461(b)(3) excludes from compensation earnable, "Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise." In this instance, the On-Call Pay in question had nothing to do with "additional" or volunteered services "outside of normal working hours." To the contrary, although it may

¹⁵ The MOU states that the pay equates to a pay differential of \$143.75 per pay period above the base rate of pay...

have been separately paid, the pay appears to be more akin to a pensionable premium assignment pay for essential Departmental services in rural areas of the County.

As stated throughout the evidence submitted by the Appellants, the On-Call Pay was essential to the mission of the Department and the very nature of normal duties required by Resident or Rural deputies. In regards to Rural Crimes Deputies, the Departmental website discussed above makes this aspect clear. The existence of these deputy classifications was predicated upon their rural assignment locations, and the ability to routinely respond, or service remote portions of the largest county in the State of California.

In *Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn.* (2020) 9 Cal.5th 1032, 1097, the Court specifically discussed the purpose of Government Code § 31461(b)(3) and its application to traditional overtime in stating:

“A comparable rationale supports the enactment of section 31461, subdivision (b)(3), which excludes “[p]ayments for *additional services* rendered outside of normal working hours.” Section 31461 bases compensation earnable on the same number of days worked for all employees within a particular pay grade. The long-standing exclusion of overtime from compensation earnable, now embodied in section 31461.6, confirms that an employee’s pensionable compensation is *generally to be based on pay for work performed during normal working hours*. Consistently with this exclusion of overtime, subdivision (b)(3) requires the exclusion of compensation for other services rendered outside normal working hours. *This restriction prevents employees from volunteering, during their final compensation period, to perform additional services outside normal working hours in order to artificially inflate their daily rate of pay...*” (*Emphasis added.*)

Based on the evidence presented in this matter, this is clearly not the case based on the aforementioned analysis. Even if it is assumed that the nature of the On-Call Pay in this instance is ambiguous in regards to Resident and Rural Crimes deputies and “normal work hours,” any such ambiguity should be resolved in favor of the Appellants. In *Ventura*, the Supreme Court stated, “Any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute.” (*Ventura, supra*, 16 Cal.4th at page 490. *Emphasis added.*) “Pension legislation must be liberally construed and applied to the end that the beneficent results of such legislation may be achieved....” (*Bowen v. Board of Retirement* (1986) 42 Cal.3d 572, 577.) “Under a well-established rule, pension legislation should be liberally construed, resolving all ambiguities in favor of the applicant.” (*Barrett v. Stanislaus County Employees Retirement Assn.* (1987) 189 Cal.App.3d 1593, 1603.)

3) *The Nature Of On-Call Pay That Applied To Resident And Rural Crimes Deputies Indicates That It Was Compensation For Normal Salary And Regular Assignments*

The standard for determining whether on-call time is subject to salary and hourly compensation is largely the same under federal and California law.” (*Henry v. Med-Staff, Inc.*, No. SA CV 05-603, 2007 WL 1998653, at *6 (C.D. Cal. July 5, 2007).) Cases determining whether on-call time is salary and compensable under the FLSA are highly persuasive for determining if such time is compensable under the Cal. Labor Code. (*Id.*)

Under California law, as well as under the FLSA, on-call time is compensable if “the restrictions placed on the [on-call] time of the employee are such that the employee is unable effectively to engage in private pursuits[.]” (*Henry*, 2007 WL 1998653 at *6 (quoting Cal. Div. Labor Standards Enforcement Manual § 46.6.3).)

In making this determination, California Courts utilize seven factors which were enunciated by the Ninth Circuit in *Berry v. County of Sonoma*, 30 F.3d 1174 (9th Cir. 1994) (called the “*Berry* factors”):

1. Whether there was an on-premises living requirement;
2. Whether there were excessive geographical restrictions on the employee’s movements;
3. Whether the frequency of calls was unduly restrictive;
4. Whether a fixed time limit for the employee to respond to a callout was unduly restrictive;
5. Whether the on-call employee could easily trade on-call responsibilities;
6. Whether the use of a pager (or cell phone) could ease restrictions; and
7. Whether the employee had actually engaged in personal activities during on-call time.

(*Gomez v. Lincare, Inc.*, 173 Cal. App. 4th 508, 523–24 (2009) [quoting *Berry*, *supra*, 30 F.3d at p. 1180].) As in this instance, courts also consider whether the parties had an agreement, such as an MOU (whether actual or constructive) regarding on-call status. (See *Berry*, *supra*, 30 F.3d at p. 1180.)

The court’s discussion on the agreement, i.e., MOU, between the parties is instructive as to the Hearing Officer’s analysis in this matter. The court stated:

“The significance and importance of evaluating the agreements between the parties is that the existence of such agreements assists the trier of fact in determining whether the parties characterized the time spent waiting on-call as actual work. An agreement between the parties which provides at least some type of compensation for on-call waiting time may suggest the parties characterize waiting time as work. Conversely, an agreement pursuant to which the employees are to be paid only for time spent actually working, and not merely waiting to work, may suggest the parties do not characterize waiting time as work.” (See *Berry*, *supra*, 30 F.3d at pgs. 1180-1081.)

Although the matter of compensation for on-call pay is not at issue, the Hearing Officer concludes that the *Berry* factors provide support for the finding of compensation earnable for On-Call Pay in this instance.

It is apparent that the Department did not require deputies to remain on premises, or at a Departmental facility, while on-call. In fact, the purpose of On-Call Pay, and relocation pay, is to ensure coverage in remote or rural areas of the County where a facility may not exist. On the other hand, despite arguably being able to use personal time, the evidence indicates that there were actual geographic restrictions and limitations placed on the deputies. The Department apparently recognized this aspect in agreeing to compensate deputies for relocation and on-call time.

Given public safety concerns, the time for responses by deputies to calls for service had to be of paramount importance. It is axiomatic that such responses had to be prompt or immediate in many circumstances.

There is also ample evidence that calls for service while deputies were on-call were routine and frequent. The declarations of Christopher Wadkins, Vincent Balsitis and Edward Hoyle all indicate that calls for service were frequent, routine and/or continuous.¹⁶ This aspect alone militates in favor of finding that the On-Call Pay was an actual part of the deputies' normal work, salary or pay.

On the other hand, there was insufficient evidence that deputies were able to swap or trade their on-call responsibilities with other deputies. For instance, the Declaration of Vincent Balsitis states in paragraphs 5-7:

"5. Resident Deputies are needed to continuously staff these outposts due to the limited availability of other deputies. In other words, they must be available to respond to any emergency, 24 hours a day, seven days a week.

"6. Generally, two Resident Deputies are assigned to an area. I was in my assignment for approximately one and one-half years when my partner left and was not replaced. I was thus responsible for responding to nearly all incidents in the area, whether or not I was scheduled to be on duty.

"7. Even when two deputies are assigned to an area and only one is technically on duty, the second deputy must be ready at all times to respond as back-up."

Appellant Wadkins stated in his declaration, "While other investigators rotated being on-call; I was the only deputy responsible for handling incidents related to the types of issues above."¹⁷ In this respect, there is a real question as to whether Resident or Rural Crimes deputies actually had free personal time while on-call, or while receiving On-Call Pay.

¹⁶ See the Declaration of Christopher Wadkins at pg. 2; Declaration of Vincent Balsitis at pg. 2; Declaration of Edward Hoyle at pg. 2.

¹⁷ Declaration of Christopher Wadkins at ¶8.

It is axiomatic that there is no issue as to whether the Appellants should have been compensated for being on-call. Compensation for On-Call Pay (OC4) is readily established through the MOU. Nevertheless, the analysis above serves to support the finding that On-Call Pay represented compensation earnable consistent with the Appellants' normal salaries and regular job duties.

4) *The On-Call Pay For Appellants Was Planned And Scheduled For Coverage In Rural And Remote Areas Of The County*

The preponderance of evidence indicates that the On-Call Pay received by the Appellants was planned and scheduled for public safety coverage and responses in rural/remote areas. As discussed above, the provisions in the MOU provide for location pay, affording additional pay for residing in difficult to access areas. The Respondent does not dispute that Special Circumstances Pay is compensation earnable.

However, as discussed above, the Hearing Officer also finds that the On-Call Pay in question should be included in final compensation and compensation earnable. The pay was not traditional stand-by pay, intermittent, voluntary, conditioned on hours worked, nor subject to manipulation or artificial inflation by the Appellants.

To the contrary, the On-Call Pay appeared to be routinely required, planned, scheduled and paid to Appellants for coverage, needs and services to rural areas. In this regard, the underlying purposes behind PEPRA are not contravened by including the On-Call Pay in the Appellants' final compensation.

The Supreme Court in *Ventura* discussed the need for retirement systems to be able to anticipate funding obligations. PEPRA seeks to further this purpose by excluding transient, intermittent, voluntary, additional pay that could impact a retirement system's ability to meet funding obligations. The Supreme Court stated:

“The payments required by CERL to be included in the calculation of the pension of an employee whose county employer has elected to establish a retirement system governed by CERL presents a question of statutory construction, and thus legislative intent. [¶] Which payments to a county employee other than base pay must be included when determining an employee's final compensation is a question crucial to the proper administration of a CERL pension system, including the ability of the county to anticipate and meet its funding obligation. Any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be

consistent with the clear language and purpose of the statute.” (*Ventura, supra*, 16 Cal.4th at page 490.)

There is a preponderance of evidence that the subject On-Call Pay did not represent additional or voluntary pay of the type discussed by the Court. As noted, the pay appeared to be essential to the Department’s mission, and was consistently paid to Resident and Rural Crimes deputies. Therefore, the pay could certainly be anticipated and budgeted by the Department and Respondent. The prescient analysis of the *Ventura* Court provides authority for the inclusion in final compensation of On-Call Pay for these Appellants.

PROPOSED FINDINGS

1. The Appellants were not salaried employees under the FLSA, exempted from overtime payments for additional services after normal work hours;
2. The Appellants were FLSA non-exempt employees, who were eligible for assignment or premium type payments;
3. The Appellants were assigned on-call duties as required by the Sheriff’s Department on a consistent basis, and received On-Call Pay as a part of normal salary on a consistent basis;
4. There is insufficient evidence that the Appellants volunteered for on-call assignments, volunteered for On-Call Pay, or sought to manipulate On-Call Pay to artificially inflate pensions;
5. On-Call Pay was essential to the normal duties, responsibilities and salaries of the Appellants in their positions as Resident and Rural Crimes Deputies;
6. On-Call Pay was given to the Appellants for essential public safety services to rural and remote parts of the County, where the Sheriff’s Department did not otherwise have a presence;
7. The Appellants’ on-call duties and On-Call Pay were essential to the continuous public safety mission of the Sheriff’s Department and the Rural Crimes Task Force;
8. The On-Call Pay received by the Appellants was not the traditional on-call or stand-by pay prohibited under Government Code § 31461(b)(3);

9. The preponderance of evidence indicates that On-Call Pay constituted a normal part of the Appellants' salaries for planned and scheduled duties related to essential public safety services;
10. In *Ventura County Deputy Sheriff's Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 487, the California Supreme Court held: "After considering the language and legislative history of the pertinent CERL provisions, we conclude that the Legislature did not intend to require that a county include its contributions to an employee's deferred compensation plan... We also conclude, however, that the other disputed premiums are 'compensation.' With the exception of overtime pay, items of 'compensation' paid in cash, even if not earned by all employees in the same grade or class, must be included in the 'compensation earnable' and 'final compensation' on which an employee's pension is based."
11. The Supreme Court also stated, "Any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute." (*Ventura*, supra, 16 Cal. 4th at pg. 490.)

CONCLUSION AND PROPOSED RECOMMENDATION

1. The Hearing Officer finds that the On-Call Pay earned as a part of the Appellants' job duties represented a type of premium or assignment pay, as opposed to the traditional on-call, or stand-by, pay prohibited under *Alameda* and Government Code § 31461.
2. The Hearing Officer finds that there is a preponderance of evidence supporting the Appellant's appeal that pay classified as On-Call Pay should be included in their final compensation and compensation earnable.
3. The Hearing Officer does not intend that this decision and proposed recommendation apply to any other facts or circumstances besides those of these Appellants. The Hearing Officer's analysis is solely based on the evidence presented in this matter, and his jurisdiction is limited to the parties before him.

Dated: December 13, 2021

Respectfully submitted,
/s/ Duane E. Bennett, Hearing Officer



San Bernardino County Employees'
Retirement Association

BOARD OF RETIREMENT

Public live stream access: <https://sbcera.legistar.com/calendar.aspx>

Trustee in-person access: 348 W. Hospitality Lane, 1st Floor, San Bernardino, CA 92408

A video recording of this meeting can be found at: <https://sbcera.legistar.com/Calendar.aspx>

Meeting Minutes

Thursday, February 3, 2022

9:00 AM

Hybrid:
In person (Trustees only)/Online

Trustees Present:

NEAL WANER, Appointed Member (Chair)
MARC BRACCO, Safety Member (Vice-Chair)
JEAN-RENE BASLE, Appointed Member
LOUIS FIORINO, General Member
MICHAEL KENNEDY, Appointed Member
ENSEN MASON, Treasurer
JANICE RUTHERFORD, Appointed Member
DAWN STAFFORD, Retired Member
VERE WILLIAMS, General Member
HARRY HATCH, Alternate Retired Member
JARED NEWCOMER, Alternate Safety Member

Others Present:

DEBBY CHERNEY, Chief Executive Officer
BARBARA HANNAH, Chief Counsel
STACEY BARNIER, Direction of HR and Risk Management
DAVID LANTZER, Senior Staff Counsel
AMY MCINERNY, Chief Financial Officer
DONALD PIERCE, Chief Investment Officer
THOMAS KIM, Investment Officer
CHRISTA JAMES, Recorder
SAM AUSTIN, NEPC
ESTELLA BALLESTEROS, Member
JUDY BOYETTE, Hanson Bridgett
MARK BRADLEY, Member
MARIA D. CASTRO, Member
NORMA SUSAN CHAGOLLAN, Member
ASHLEY DUNNING, Nossaman
ERIN GATES, Staff/Public
JACOB KALINSKI, Esq.
CHRISTOPHER LOCKWOOD, Esq.
ALLAN MARTIN, NEPC

LANCE MOHR, M.D.
SHOAIB NAQVI, M.D.
JANE OATMAN, Esq.
CHERYL A. THOMPSON, Member
JEFFREY WAINSTEIN, M.D.

Absent:

JOHN JOHNSON, Alternate Ex-Officio Member

CALL TO ORDER & PLEDGE OF ALLEGIANCE

Chair Waner called the meeting to order at 9:03 AM and announced that the Board of Retirement Meeting agenda software and live video stream are currently unavailable due to technical difficulties. Staff actively worked on resolving this issue and provided an update as soon as possible. The Board did not discuss or deliberate on action items or take public comment until the live video stream was restored.

In the meantime, and in accordance with statute, the Board discussed non-actionable agenda items, including a recognition item for Allan Martin of NEPC.

Board Chair Waner led the Pledge of Allegiance.

PUBLIC COMMENT

Board Chair Waner announced protocol regarding Public Comment.

Erin Gates, Senior Retirement Specialist at SBCERA, provided Public Comment regarding union negotiations. Board Chair Waner read into the record a public comment submitted via web form by Randy Korgan, Secretary-Treasurer of Teamsters Local 1932, regarding Ares Management.

RECOGNITIONS

Trustee Kennedy arrived at the meeting at 9:12 AM.

1. Recognize Allan Martin of NEPC for his 18 years of service as SBCERA's Investment Consultant. [22-020](#)

The Board of Retirement Trustees and Pierce, staff, recognized Allan Martin of NEPC for his tireless dedication and service to SBCERA over the past 18 years. Trustees provided remarks and thanked Allan for his contributions. Additionally, Board Chair Waner read an email from Former Trustee Dave Williams echoing the sentiments.

CONSENT

Staff pulled Item No. 6 from the agenda to be heard at a future meeting and Trustee Williams pulled Item No's 11, 12 and 13 from the Consent Calendar to be heard in Open Session.

A motion was made by Rutherford, seconded by Bracco, to Approve the Consent Calendar as

amended. The motion carried by the following vote:

- Ayes:** 9 - Waner, Bracco, Rutherford, Basle, Fiorino, Kennedy, Mason, Stafford, and Williams
- 2. Approve minutes of regular meeting conducted on January 6, 2022. [22-025](#)
 - 3. Approve minutes of special meeting conducted on December 21, 2021. [21-273](#)
 - 4. Approve Service Retirements and Change Effective Date. [22-024](#)
 - 5. Pursuant to SBCERA Resolution No. 2021-7, find that the State of Emergency continues to directly impact the ability to meet safely in person and therefore continue conducting the SBCERA Board and Committee meetings in the month of February in a hybrid format. [21-277](#)
 - 6. Approve the Service-Connected Disability Retirement application of Jeffrey Bohner - San Bernardino County - Sheriff. [21-172](#)

Staff pulled this item from the agenda.
 - 7. Approve the Service-Connected Disability Retirement application of Brian J. Butts - San Bernardino County - Sheriff. [21-193](#)
 - 8. Approve the Service-Connected Disability Survivorship of David A. Spink - Barstow Fire Protection District. [22-040](#)
 - 9. Approve the Service-Connected Disability Retirement application of Daisy Vasquez - San Bernardino County - Sheriff. [22-041](#)
 - 10. Approve the Service-Connected Disability Retirement application of Jody Lee Watson - San Bernardino County - Sheriff. [22-031](#)

Trustee Stafford left the meeting at 9:25 AM.

- 11. Adopt SBCERA Resolution No. 2022-1 - Employer Pay Codes of Employee Compensation. [22-013](#)

McInerny & Hannah, staff, reviewed.

A motion was made by Williams, seconded by Rutherford, that this agenda item be Approved. The motion carried by the following vote:

Ayes: 8 - Waner, Bracco, Rutherford, Basle, Fiorino, Kennedy, Mason, and Williams

Absent: 1 - Stafford

Trustee Stafford returned to the meeting at 9:38 AM.

- 12. Approve the 2022 performance evaluation process and timing for the Chief Executive Officer and Chief Counsel. [22-042](#)

A motion was made by Williams, seconded by Fiorino, to Approve this item as amended to include staff feedback through a 360 review process. The motion failed by the following vote:

Ayes: 2 - Fiorino, and Williams

Nays: 7 - Waner, Bracco, Rutherford, Basle, Kennedy, Mason, and Stafford

A motion was made by Mason, seconded by Stafford, that this agenda item be Approved as presented. The motion carried by the following vote:

Ayes: 7 - Waner, Bracco, Rutherford, Basle, Kennedy, Mason, and Stafford

Nays: 2 - Fiorino, and Williams

13. Approve the corrected SBCERA Salary Schedule for Unrepresented Employees effective January 1, 2022. [22-043](#)

Barnier, staff, reviewed.

A motion was made by Mason, seconded by Bracco, that this agenda item be Approved. The motion carried by the following vote:

Ayes: 8 - Waner, Bracco, Rutherford, Basle, Kennedy, Mason, Stafford, and Williams

Abstain: 1 - Fiorino

ACTION ITEMS

14. Action on Deferred Items from Consent, if any. [22-037](#)

Trustee Williams pulled Item No's 11,12 and 13 from the Consent Calendar to be heard in Open Session. Please see entries above.

15. Approve an annual retiree cost-of-living adjustment of 2% effective April 1, 2022. [22-023](#)

McInerney, staff, reviewed.

A motion was made by Stafford, seconded by Williams, that this agenda item be Approved. The motion carried by the following vote:

Ayes: 9 - Waner, Bracco, Rutherford, Basle, Fiorino, Kennedy, Mason, Stafford, and Williams

CLOSED SESSION

16. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION [22-026](#)

Significant exposure to litigation pursuant to paragraph (2) of subdivision of Section 54956.9: Six (6) cases.

No reportable action was taken.

ACTION ITEMS

17. Report by Counsel on actions taken in Closed Session. [22-038](#)

Counsel reported that no reportable action was taken on Item No. 16.

18. Approve and adopt the proposed findings and the recommendations of the hearing officer: Alameda Appeal Group for Sheriff's Residential and Rural Crime Deputies. [21-267](#)

Hannah, staff, reviewed. Jacob Kalinski and Ashley Dunning provided comment.

A motion was made by Williams, seconded by Bracco, that this agenda item be Approved. The motion carried by the following vote:

Ayes: 9 - Waner, Bracco, Rutherford, Basle, Fiorino, Kennedy, Mason, Stafford, and Williams

19. Approve and adopt the proposed findings and the recommendations of the hearing officer: Alameda Appeal Group for General Unit - Craft, Labor and Trade; and Contract Employees. [22-035](#)

Hannah, staff, reviewed. Ashley Dunning provided comment.

A motion was made by Kennedy, seconded by Basle, that this agenda item be Approved. The motion carried by the following vote:

Ayes: 9 - Waner, Bracco, Rutherford, Basle, Fiorino, Kennedy, Mason, Stafford, and Williams

20. Approve and adopt the proposed findings and the recommendations of the hearing officer: Alameda Appeal Group for Nurses Unit. [22-036](#)

Hannah, staff, reviewed. Ashley Dunning provided comment.

A motion was made by Kennedy, seconded by Basle, that this agenda item be Approved. The motion carried by the following vote:

Ayes: 9 - Waner, Bracco, Rutherford, Basle, Fiorino, Kennedy, Mason, Stafford, and Williams

INFORMATION ITEMS

21. Presentation by NEPC of their Quarterly Investment Performance Review for the period ending December 31, 2021. [22-022](#)

Sam Austin and Allan Martin with NEPC presented.

RECEIVE AND FILE

22. Report on the Investment Committee meeting conducted January 11, 2022. [22-019](#)

Received and filed.

23. Adams Street Manager Update. [22-002.1](#)

Received and filed.

CLOSED SESSION

Trustee Mason left the meeting at 12:58 PM.
Trustee Kennedy left the meeting at 12:59 PM.

24. Review and determine the Service-Connected Disability Retirement with Supplemental Retirement Allowance of Estella Ballesteros - San Bernardino County - Facilities Management. [22-004](#)

A motion was made by Williams, seconded by Fiorino, to Approve staff recommendations 1, 2, and 4, but amend 3 finding that Ms. Ballesteros is not capable of gainful employment; therefore, granting the supplemental disability retirement allowance. The motion failed by the following vote:

Ayes: 2 - Fiorino, and Williams

Nays: 5 - Waner, Bracco, Rutherford, Basle, and Stafford

Absent: 2 - Kennedy, and Mason

A motion was made by Basle, seconded by Bracco, to Approve the staff recommendation finding that Ms. Ballesteros is permanently incapacitated for the performance of duties, that Ms. Ballesteros' disability is service-connected; therefore, granting a service-connected disability benefit, and that Ms. Ballesteros is capable of gainful employment; therefore, denying the supplemental disability retirement allowance. Staff shall initiate disability benefit payments with an effective date of February 4, 2017, the day after the last day of regular compensation. The motion carried by the following vote:

Ayes: 5 - Waner, Bracco, Rutherford, Basle, and Stafford

Nays: 2 - Fiorino, and Williams

Absent: 2 - Kennedy, and Mason

25. Review and determine the Service-Connected Disability Retirement with Supplemental Retirement Allowance of Mark Bradley - San Bernardino County - Probation. [22-032](#)

A motion was made by Stafford, seconded by Basle, to Approve the staff recommendation finding that Mr. Bradley is permanently incapacitated for the performance of duties, that Mr. Bradley's disability is non-service connected, and that Mr. Bradley is not capable of gainful employment; therefore, granting the supplemental disability retirement allowance. Staff shall initiate disability benefit payments with an effective date of September 15, 2018, the day after the last day of regular compensation. The motion carried by the following vote:

Ayes: 7 - Waner, Bracco, Rutherford, Basle, Fiorino, Stafford, and Williams

Absent: 2 - Kennedy, and Mason

26. Review and determine the Service-Connected Disability Retirement application of Maria D. Castro - San Bernardino County - Sheriff. [21-173](#)

A motion was made by Bracco, seconded by Stafford, to Approve the staff recommendation finding that Ms. Castro is not permanently incapacitated for the performance of duties; therefore, denying the disability retirement. The motion carried by the following vote:

Ayes: 7 - Waner, Bracco, Rutherford, Basle, Fiorino, Stafford, and Williams

- Absent:** 2 - Kennedy, and Mason
27. Review and determine the Service-Connected Disability Retirement with Supplemental Retirement Allowance of Norma Susan Chagollan - San Bernardino County - Human Services. [22-033](#)
- A motion was made by Bracco, seconded by Basle, to Approve the staff recommendation finding that Ms.Chagollan's disability is non-service connected; therefore, denying a service-connected disability benefit, and that Ms. Chagollan has less than 5 years of service credit and is not eligible to receive a non-service connected disability benefit; therefore, denying the non-service connected disability benefit with supplemental retirement allowance. The motion carried by the following vote:
- Ayes:** 6 - Waner, Bracco, Rutherford, Basle, Fiorino, and Stafford
- Nays:** 1 - Williams
- Absent:** 2 - Kennedy, and Mason
28. Approve and adopt the proposed findings and the recommendations of the referee regarding the Service-Connected Disability Retirement of Cheryl A. Thompson - San Bernardino County - Human Services. [19-774.2](#)
- A motion was made by Stafford, seconded by Bracco, to Approve and adopt the proposed findings and the recommendations of the referee. The motion carried by the following vote:
- Ayes:** 7 - Waner, Bracco, Rutherford, Basle, Fiorino, Stafford, and Williams
- Absent:** 2 - Kennedy, and Mason

Other Closed Session Matters:

29. CONFERENCE WITH LABOR NEGOTIATORS (Government Code section 54957.6) [22-027](#)
 Agency designated representatives: Debby Cherney, Stacey Barnier
 Employee Organization: Service Employees International Union Local 721

No reportable action was taken.

OPEN SESSION

30. Report by Counsel on actions taken in Closed Session. [22-039](#)
- Counsel reported on actions taken in Closed Session and reported that no reportable action was taken on Item No. 29.

EXECUTIVE REPORTS

31. Chief Executive Officer. [22-028](#)
 Cherney, staff, reported.
32. Chief Investment Officer. [21-245](#)

Pierce, staff, reported.

TRUSTEE ATTENDANCE REPORTS

- 33. Report by the Trustees concerning conferences and other meetings attended (as specified by Education & Training Policy No. 003 - "Trustee Travel and Expense Policy"). [22-029](#)

No reports by Trustees on conferences attended.

- 34. Report on January 2022 SACRS Board Meeting by Trustee Williams. [22-030](#)

Trustee Williams reported.

SUGGESTIONS FOR FUTURE AGENDA ITEMS

Trustee Bracco suggested that the Canine Pay item be brought back to the Board to amend the resolution based on fact finding from today's Board of Retirement meeting. Trustee Fiorino suggested a discussion item regarding ethical and moral guidelines for choosing investment managers. Trustee Williams suggested an item to discuss SBCERA's investment direction.

ADJOURN

Board Chair Waner adjourned the meeting at 3:27 PM and commented about the length of monthly Board of Retirement meetings. Board Chair Waner asked Trustees to contact him directly with suggestions on how to make meetings more efficient. Board Chair Waner commended staff on their work ensuring a smooth Board meeting today despite technical difficulties.

Respectfully submitted,

NEAL WANER, Board Chair

DEBBY CHERNEY, Board Secretary

DATED: _____

RESOLUTION NO. _____

RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF ORANGE, CALIFORNIA

RECITALS

WHEREAS, the County of Orange ("County") and the Association of Orange County Deputy Sheriffs ("AOCDS") are currently parties to that certain Memorandum of Understanding, Peace Officer Unit and Supervising Peace Officer Unit, 2019-2023 ("Current MOU") and previously were parties to similar, now-superseded Memoranda of Understanding in effect from at least January 1, 2013, to the date of the Current MOU;

WHEREAS, the County and AOCDS, collectively known as "parties", have entered multiple Memoranda of Understanding ("MOUs") since at least January 1, 2013, that have provided, among other things, for specific classes of employees, their regular work periods and certain elements of pay characterized as "Premium Pay", including on-call pay and canine handler maintenance pay;

WHEREAS, during the terms of such MOUs the parties were not required to designate officially any groups of employees, due to their different duties, responsibilities, and schedules, as being in different grades for the purpose of calculating retirement benefits as there was no reason to do so;

WHEREAS, the parties have recognized in practice that certain groups of "Premium Pay" employees within each designated class were required to serve on-call hours. These on-call hours were, in fact, required, as they were deemed by the Orange County Sheriff's Department and Office of the District Attorney to be part of the requirements to be selected into these particular groups of "Premium Pay" employees.

WHEREAS these "Premium Pay" employees were, on a regular basis, assigned days and hours for being on-call, for which they were responsible to fill and, when called in to work, performed the same services as other employees who are part of the on-call and canine handler units and were paid "Premium Pay," above their normal rates, for providing such services;

WHEREAS, these assigned on-call days and hours were posted weeks, and in some units months, in advance as mandated by the MOU, which provides [w]hen an employee is assigned on-call duty by the County, the employee shall be informed in writing, in advance whenever practicable, of the dates and inclusive hours of such assignment."

WHEREAS, all employees in these specialized units were and are required to serve and ordinarily did serve on-call shifts and canine handler maintenance services as part of their regular duties unique to their specialized units, as generally described by the Departments in letters from the Sheriff's Department and the Office of the District

Attorney dated June 15, 2021 and June 14, 2021, to County Chief Executive Officer, Frank Kim, respectively;

WHEREAS, on-call shifts or canine handler maintenance services were ordinarily assigned to all employees in these specialized units as part of their regularly assigned work periods;

WHEREAS, per the Current MOU, on-call status is treated as a premium pay; not as overtime, as documented in the same;

WHEREAS, while there are no express statements as to intent from the parties to the MOU regarding whether to treat "Premium Pay" as required of and ordinarily worked, thereby base-building, said MOU did provide that contributions be collected from employees' paychecks, which amounts were calculated by OCERS based on both regular and premium pays, collected by County and paid by employees;

WHEREAS, the parties have long recognized, in practice, differences in specialized units of employees in the same general class, based on differences in specialized levels of responsibility, required skills and impacts.

WHEREAS, notwithstanding this practice, the parties did not have business reasons to distinguish in their MOUs such different job responsibilities; however, California Government Code Section 31461(a) provides that "Compensation Earnable" be based on either the same "grade" or "class" of positions;

WHEREAS, the parties, in principle and practice, have treated the following units of job assignments, referenced herein as "a" to "j", as employees with different and distinct duties, responsibilities and schedules which under the analysis of *Stevenson v. Board of Retirement of the Orange County Employee Retirement System*, 186 Cal.App.4th 498 (2010) could be deemed a different "grade," even if the formal recognition of such distinctions was not required in the past. These job assignments were and are separate and apart from others in the employees' shared, broader classifications, and employees within these job assignments were selected based upon their specialized training and assigned job duties, including the requirement that they provide on-call or canine handler maintenance services:

- a. Homicide Detail
- b. Hazard Devices Squad – Explosive Detection Squad
- c. Statewide Transportation
- d. Special Victims Detail
- e. Special Weapons and Tactics Team (SWAT)
- f. Tactical Support Team – Crisis Negotiator
- g. Major Accident Reconstruction Team
- h. DA Special Assignment Unit
- i. DA Homicide Unit
- j. Canine Handlers;

WHEREAS, this Resolution documents and recognizes the existing practice of treating and compensating employees in the enumerated details, squads, teams and units as if they were occupying different job grades in terms of retirement benefits, distinct from others in their broader classifications, but is not intended to, and does not, change the practice or create additional or different classifications that might give rise to additional due process protections, and

NOW, THEREFORE, BE IT RESOLVED that the Orange County Board of Supervisors:

1. Confirms that the foregoing Recitals are true and correct.
2. Recognizes the existing practice of treating employees in the enumerated details, squads, teams and units for all intents and purposes as occupying distinct job grades which are different from other employees in the same broader classifications that are more grounded in seniority and rank but is not intended to, and does not, change the practice or create additional or different classifications that might give rise to additional due process protections.

BE IT FURTHER RESOLVED THAT the on-call and canine handler maintenance services rendered by employees in these Job Grades have been and shall be considered for all purposes as part of the employees' ordinarily required regular work week, and not as having been rendered outside normal working hours, to the extent required to be served, ordinarily served by all employees in the same job grade and not voluntarily served at the election of the employees.



County of Orange

Memorandum

December 16, 2022

To: Robin Stieler, Clerk of the Board

From: Supervisor Andrew Do, 1st District

Subject: Adopt Resolution Pertaining to Memorandum of Understanding with Association of Orange County Deputy Sheriffs Recognizing Certain Work Details, Squads, Teams, and Units as Distinct Job Grades

Doug Chaffee
C. Do for A.D.

S33F

Please add the following item of business to the Board's December 20, 2022, supplemental meeting agenda.

1. Adopt Resolution Pertaining to Memorandum of Understanding with Association of Orange County Deputy Sheriffs Recognizing Certain Work Details, Squads, Teams, and Units as Distinct Job Grades.

BACKGROUND

The County of Orange ("County") and the Association of Orange County Deputy Sheriffs ("AOCDS") are currently parties to a Memorandum of Understanding, Peace Officer Unit and Supervising Peace Officer Unit, 2019-2023 ("Current MOU") and previously were parties to similar, now-superseded Memoranda of Understanding in effect from at least January 1, 2013, to the date of the Current MOU. These MOU have provided, among other things, for specific classes of employees, their regular work periods, and certain elements of pay characterized as "Premium Pay", including on-call pay and canine handler maintenance pay.

In accordance with *Stevenson v. Board of Retirement of the Orange County Employee Retirement System*, 186 Cal.App.4th 498 (2010), the attached resolution documents and recognizes the County's existing practice of treating and compensating employees in the enumerated details, squads, teams and units as if they were occupying different job grades in terms of retirement benefits, distinct from others in their broader classifications, but is not intended to, and does not, change the practice or create additional or different classifications that might give rise to additional due process protections.

RESOLUTION NO. _____

RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF ORANGE, CALIFORNIA

RECITALS

WHEREAS, the County of Orange ("County") and the Association of Orange County Deputy Sheriffs ("AOCDS") are currently parties to that certain Memorandum of Understanding, Peace Officer Unit and Supervising Peace Officer Unit, 2019-2023 ("Current MOU") and previously were parties to similar, now-superseded Memoranda of Understanding in effect from at least January 1, 2013, to the date of the Current MOU;

WHEREAS, the County and AOCDS, collectively known as "parties", have entered multiple Memoranda of Understanding ("MOUs") since at least January 1, 2013, that have provided, among other things, for specific classes of employees, their regular work periods and certain elements of pay characterized as "Premium Pay", including on-call pay and canine handler maintenance pay;

WHEREAS, during the terms of such MOUs the parties were not required to designate officially any groups of employees, due to their different duties, responsibilities, and schedules, as being in different grades for the purpose of calculating retirement benefits as there was no reason to do so;

WHEREAS, the parties have recognized in practice that certain groups of "Premium Pay" employees within each designated class were required to serve on-call hours. These on-call hours were, in fact, required, as they were deemed by the Orange County Sheriff's Department and Office of the District Attorney to be part of the requirements to be selected into these particular groups of "Premium Pay" employees.

WHEREAS these "Premium Pay" employees were, on a regular basis, assigned days and hours for being on-call, for which they were responsible to fill and, when called in to work, performed the same services as other employees who are part of the on-call and canine handler units and were paid "Premium Pay," above their normal rates, for providing such services;

WHEREAS, these assigned on-call days and hours were posted weeks, and in some units months, in advance as mandated by the MOU, which provides [w]hen an employee is assigned on-call duty by the County, the employee shall be informed in writing, in advance whenever practicable, of the dates and inclusive hours of such assignment."

WHEREAS, all employees in these specialized units were and are required to serve and ordinarily did serve on-call shifts and canine handler maintenance services as part of their regular duties unique to their specialized units, as generally described by the Departments in letters from the Sheriff's Department and the Office of the District

Attorney dated June 15, 2021 and June 14, 2021, to County Chief Executive Officer, Frank Kim, respectively;

WHEREAS, on-call shifts or canine handler maintenance services were ordinarily assigned to all employees in these specialized units as part of their regularly assigned work periods;

WHEREAS, per the Current MOU, on-call status is treated as a premium pay; not as overtime, as documented in the same;

WHEREAS, while there are no express statements as to intent from the parties to the MOU regarding whether to treat "Premium Pay" as required of and ordinarily worked, thereby base-building, said MOU did provide that contributions be collected from employees' paychecks, which amounts were calculated by OCERS based on both regular and premium pays, collected by County and paid by employees;

WHEREAS, the parties have long recognized, in practice, differences in specialized units of employees in the same general class, based on differences in specialized levels of responsibility, required skills and impacts.

WHEREAS, notwithstanding this practice, the parties did not have business reasons to distinguish in their MOUs such different job responsibilities; however, California Government Code Section 31461(a) provides that "Compensation Earnable" be based on either the same "grade" or "class" of positions;

WHEREAS, the parties, in principle and practice, have treated the following units of job assignments, referenced herein as "a" to "j", as employees with different and distinct duties, responsibilities and schedules which under the analysis of *Stevenson v. Board of Retirement of the Orange County Employee Retirement System*, 186 Cal.App.4th 498 (2010) could be deemed a different "grade," even if the formal recognition of such distinctions was not required in the past. These job assignments were and are separate and apart from others in the employees' shared, broader classifications, and employees within these job assignments were selected based upon their specialized training and assigned job duties, including the requirement that they provide on-call or canine handler maintenance services:

- a. Homicide Detail
- b. Hazard Devices Squad – Explosive Detection Squad
- c. Statewide Transportation
- d. Special Victims Detail
- e. Special Weapons and Tactics Team (SWAT)
- f. Tactical Support Team – Crisis Negotiator
- g. Major Accident Reconstruction Team
- h. DA Special Assignment Unit
- i. DA Homicide Unit
- j. Canine Handlers;

WHEREAS, this Resolution documents and recognizes the existing practice of treating and compensating employees in the enumerated details, squads, teams and units as if they were occupying different job grades in terms of retirement benefits, distinct from others in their broader classifications, but is not intended to, and does not, change the practice or create additional or different classifications that might give rise to additional due process protections, and

NOW, THEREFORE, BE IT RESOLVED that the Orange County Board of Supervisors:

1. Confirms that the foregoing Recitals are true and correct.
2. Recognizes the existing practice of treating employees in the enumerated details, squads, teams and units for all intents and purposes as occupying distinct job grades which are different from other employees in the same broader classifications that are more grounded in seniority and rank but is not intended to, and does not, change the practice or create additional or different classifications that might give rise to additional due process protections.

BE IT FURTHER RESOLVED THAT the on-call and canine handler maintenance services rendered by employees in these Job Grades have been and shall be considered for all purposes as part of the employees' ordinarily required regular work week, and not as having been rendered outside normal working hours, to the extent required to be served, ordinarily served by all employees in the same job grade and not voluntarily served at the election of the employees.



ORANGE COUNTY SHERIFF'S DEPARTMENT

SHERIFF-CORONER DON BARNES

June 15, 2021

Mr. Frank Kim, CEO
County of Orange
333 N. Santa Ana Blvd.
Santa Ana, CA 92701

Dear Mr. Kim,

This information is provided at the request of the Orange County Board of Supervisors' Ad-Hoc Committee assigned to address information requested by the Association of Orange County Deputy Sheriffs (AOCDS) for the Orange County Employees Retirement System (OCERS). Chairman Andrew Do has asked for specific information about how on-call hours are administered by those units who require staff to be placed on-call.

In order to address each unit specifically, the following information is outlined by unit as described by the respective supervisor responsible for assuring the required staff is on-call during the necessary hours:

Homicide Detail:

Sergeant – The detail sergeant is required to be on-call every weekend from close of business on Friday until business resumes on Monday.

Investigators – Two (2) investigators are on-call each weekend from close of business on Friday until business resumes on Monday. The on-call schedule is created and planned out by the supervisor on a monthly basis and results in investigators being on-call approximately one weekend each month. Investigators can swap weekends with the sergeant's approval and are not forced to adhere to the schedule as long as the required coverage exists.

Recruitment Memos – "This assignment frequently requires personnel to work extended shifts, days off, weekends, holidays, and be placed on-call on a rotational basis." (See attached)



Mr. Frank Kim

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June 15, 2021

Special Victims Detail:

Sergeant – The detail sergeant is required to be on-call every weekend from close of business on Friday until business resumes on Monday.

Investigators – Two (2) investigators are on-call each weekend from close of business on Friday until business resumes on Monday. The on-call schedule is created and planned out by the supervisor on an annual basis and results in investigators being on-call approximately one weekend each month. Investigators can swap weekends with the sergeant's approval and are not forced to adhere to the schedule as long as the required coverage exists.

Recruitment Memos – "This assignment frequently requires personnel to work extended shifts, days off, weekends, holidays, and be placed on-call on a rotational basis." (See attached)

Traffic Investigation / Major Accident Reconstruction Team (MART):

Sergeant – The detail sergeant is required to be on-call every weekend from close of business on Friday until business resumes on Monday

Deputy Sheriffs – Two (2) deputy sheriffs are on-call each weekend from close of business on Friday until business resumes on Monday. The on-call schedule is created and planned by the supervisor six months to a year in advance, resulting in deputies being placed on-call two or three weekends per month. Deputies can swap weekends with the sergeant's approval and are not forced to adhere to the schedule as long as the required coverage exists.

Recruitment Memos – (See attached)

Special Weapons and Tactics (SWAT):

Sergeant – One (1) sergeant is required to be on-call every week of the month from 2230 to 1200 hours. The schedule is projected each month and each of the four (4) sergeants communicate with each other as to which week each will cover. Two (2) of those sergeants are assigned full-time to SWAT and the other two (2) are ancillary.

Investigators/Deputies – Currently, investigators/deputies are not required to be on-call. Prior to a redeployment of SWAT in January 2020, two (2) investigator/deputy team leaders were placed on-call each weekend.

Recruitment Memos – Recruitment memos do not specify any on-call requirement (See attached)



Mr. Frank Kim

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June 15, 2021

Hazardous Device Squad (HDS):

Sergeant – One (1) sergeant is required to be on-call every week from 1600 to 0600 hours. There are a total of two (2) HDS sergeants requiring them to alternate weeks throughout the month/year. There is flexibility to swap weekends based on availability but it is required to have a sergeant on-call.

Investigators/Deputies – Three (3) investigators/deputies are on-call every day of the week from 1600-0600 hours. The on-call schedule is created and planned by the supervisor on a monthly basis. Investigators/deputies can swap weekends with the sergeant's approval and are not forced to adhere to the schedule as long as the required coverage exists. All HDS technicians must be on-call a minimum of five (5) days per month; one of the five (5) days must be on the weekend. On-call status is handled primarily by full-time HDS personnel; however, ancillary HDS personnel can be used on an as needed basis.

Recruitment Memos – "Alternate Bomb Technicians must be able to work overtime and be on-call as needed." (See attached)

Statewide Transportation:

Sergeant – N/A

Deputies – Two (2) deputies are placed on-call during the three (3) travel days of their five (5) day workweek. During the three (3) travel days, the two (2) deputies work regular eight-hour days; but while off-duty during those three travel days, statewide teams are required to remain on-call in case they need to make an unscheduled stop.

There is a Monday-Wednesday team (0400-1230), a Tuesday-Thursday team (0400-1230) and a Wednesday-Friday team (0300-1230). The three teams alternate schedules so that each team eventually works all the trips. On-call pay for day one is 11.5 hours (1230-0000); on-call pay for day two is 15.5 hours (0000-0730, 7.3 hours) and (1600-0000, 8 hours); on-call pay for day three is 7.5 hours (0000-0730). The total on-call pay is 34.5 hours per trip, except for the Wednesday – Friday trip, which is 35.5 hours due to the earlier start time of 0300.

Recruitment Memos – None



ORANGE COUNTY SHERIFF'S DEPARTMENT

SHERIFF-CORONER DON BARNES

Mr. Frank Kim

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June 15, 2021

Crisis Negotiations Team: (CNT is no longer placed on-call)

Sergeant – One (1) sergeant is required to be on-call every weekend of the month from 1600-0600 hours. There are a total of four (4) sergeants that rotate throughout the year, assuming the on-call status approximately one weekend per month.

Investigators/Deputies – Two (2) team leader investigators/deputies are placed on-call every weekend of the month from 1600-0600 hours. The on-call schedule is created and planned by the supervisor on an annual basis. Investigators/deputies can swap weekends with the sergeant's approval and are not forced to adhere to the schedule as long as the required coverage exists.

Recruitment Memos – "CNT negotiators are expected to be on-call and available to respond to all call-outs 24-hours a day, 7 days a week, including holidays." (See attached)

Also enclosed is the completed document outlining the number of pay periods each employee was assigned to their respective unit for FY 19-20. (see attached)

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Hallock".

Jeff Hallock
Undersheriff

Attachments:

Recruitment / Rotational Opportunity Memorandums (10)
Assigned Officers FY 19-20 (1)

cc: Tom Hatch, CHRO
Michelle Aguirre, CFO
Colette Farnes, Director Employee & Labor Relations
Leon Page, County Counsel
Teri Maksoudian, Supervising Deputy County Counsel



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

June 14, 2021

Mr. Frank Kim, CEO
County of Orange
333 N. Santa Ana Blvd.
Santa Ana, CA 92701

Dear Mr. Kim,

The following information is in response to questions posed by the ad-hoc committee assigned to address information requested by the Association of Orange County Deputy Sheriff's for the Orange County Employees Retirement System. Specifically, questions related to on-call hours and the staff receiving on-call pay.

Background:

In the District Attorney's Office, the Special Assignments Unit is responsible for investigating officer-involved shootings (OIS), custodial deaths and police misconduct throughout the county. This unit is available twenty four hours a day, seven days a week and is comprised of five investigators and one supervising investigator. This unit is augmented with staffing from the Homicide Unit and the Homicide Supervisor Investigator serves as the backup to the Special Assignments Supervising Investigator when he is unavailable or if we have multiple incidents. It should be noted that our OIS investigative model is widely acclaimed and being copied by the Attorney General's Office in handling OIS's involving unarmed individuals.

The Supervising Investigator receives on-call pay every weekend and holidays, unless he has relinquished the weekend to the Homicide Supervising Investigator. Additionally, two investigators are on-call each weekend and on holiday weekends, we have 4 investigators on-call. Two from Special Assignments and two from Homicide. The investigators for the most part are on a rotation, but it does periodically change due to assigned caseloads, vacations or significant family events. Responding to the call-outs and being on-call for members of Special Assignments and Homicide is required by our office. Investigators will not be selected for these assignments unless they commit to the on-call schedule and participate in the call-outs. If they are unable to respond to these incidents on a regular basis, they will be reassigned.

Special Assignment Unit:

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: orange-countyattorney.org

MAIN OFFICE
300 N. FLOWER ST.
SANTA ANA, CA 92703
PO. BOX 808 (92702)
(714) 834-3000

NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92832
(714) 773-4480

WEST OFFICE
3141 13TH STREET
WESTMINSTER, CA 92083
(714) 898-7281

HARBOR OFFICE
4091 JAMBOREE RD.
NEWPORT BEACH, CA 92660
(949) 476-4060

JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

CENTRAL OFFICE
300 N. FLOWER ST.
SANTA ANA, CA 92703
PO. BOX 508 (92702)
(714) 834-3032

Special Assignments consists of one Supervising Investigator and five Investigators. Currently we have one unfilled position. Every weekend and holiday the supervising investigator and two investigators are on-call from Friday at 5:00 PM to Monday morning at 7:00 AM. On holidays, Investigators are on-call from 5:00 PM the night before to 7:00 AM the following day.

We have thoroughly searched our records and we cannot locate a memorandum or directive outlining the job or on-call work requirements. I can attest to the history and expectations of the investigators assigned to these units. I have backtracked payroll records to 1999 demonstrating investigators in this unit being on-call. Responding to OIS's, custodial deaths and officer misconduct investigations along with being on-call is mandatory and a requirement to work in either Special Assignments or Homicide. This has been a standing requirement/ standard practice for the past twenty five years that I have been employed by the county.

Below is a breakdown of the on-call hours for fiscal year 2019-2020 for the Special Assignments Unit:

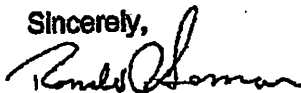
| Name: | Total hours: |
|-------------------------------------|--------------|
| Supervising Investigator Stan Berry | 2604.5 |
| Investigator Craig Brower | 1752 |
| Investigator Carlos Gonzales | 1423.5 |
| Investigator David Melnyk | 993.5 |
| Investigator Pedro Montez | 1411.5 |
| Investigator Brian Sheldon | 1391.5 |

On the following recognized holidays, two additional investigators from the Homicide Unit are placed on-call:

Martin Luther King Day
President's Weekend
Memorial Day
4th of July
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Christmas Day
New Year's Day

On-call status is rotated among the investigators in Special Assignments, but there are deviations for caseloads, vacations and family events. In the Homicide Unit, a sign-up sheet is created listing all the holidays in the beginning of the year and investigators sign-up according to seniority in the unit.

Sincerely,



Ron Seman
Assistant Chief

REGULAR MEETING OF THE BOARD OF SUPERVISORS
ORANGE COUNTY, CALIFORNIA

Tuesday, December 20, 2022, 9:30 A.M.

BOARD HEARING ROOM, FIRST FLOOR
400 W. Civic Center Drive
Santa Ana, California

DOUG CHAFFEE
CHAIRMAN
Fourth District

DONALD P. WAGNER
VICE CHAIRMAN
Third District

ANDREW DO
SUPERVISOR
First District

KATRINA FOLEY
SUPERVISOR
Second District



LISA A. BARTLETT
SUPERVISOR
Fifth District

ATTENDANCE:All Present

EXCUSED:None

PRESENT: COUNTY EXECUTIVE OFFICER Frank Kim
COUNTY COUNSEL Leon J. Page
CLERK OF THE BOARD Robin Stieler

INVOCATION:Supervisor Bartlett, Fifth District, gave the invocation

PLEDGE OF ALLEGIANCE:Supervisor Do, First District, led the assembly in the Pledge of Allegiance

I.PRESENTATIONS/INTRODUCTIONS

Chairman Chaffee presented a resolution commending Fifth District Supervisor, Lisa A. Bartlett for her service on the Board of Supervisors and her leadership to the residents of Orange County for the past 8 years

II.CONSENT CALENDAR (Items 1-12)

15234 **APPROVED AS RECOMMENDED WITH THE EXCEPTION OF ITEM 2 WHICH WAS DELETED; AND ITEMS 1 AND 4 WHICH WERE PULLED FOR DISCUSSION AND SEPARATE VOTE**

BOARD APPOINTMENTS

Chairman Chaffee:

1. [Well Standards Advisory Board - Reappoint James Fortuna, Huntington Beach, John Gregg, Corona Del Mar, Michael Grisso, Chino Hills, Roy Herndon, Villa Park and Nabil Saba, Placentia, for terms ending 1/5/26](#)
31254 **APPROVED AS RECOMMENDED**

2. [Orange County Veterans Advisory Board - Appoint Michael Radigan, Newport Beach and Robert Taylor Buchanan, Rancho Santa Margarita, for terms ending 3/27/24](#)
15234 **DELETED**

OC COMMUNITY RESOURCES

3. **Acting as the Orange County Housing Authority acting as the Housing Successor Agency - Receive and file FY 2021-22 Housing Successor Agency Annual Report and authorize Director or designee to make necessary adjustments under certain conditions - All Districts**

GENERAL ADMINISTRATION

Clerk of the Board:

4. [Adopt resolution approving list of recurring Board of Supervisors resolutions for 2023 and authorizing Chair or other Supervisor to draft and execute resolutions - All Districts](#)
31254 **APPROVED AS RECOMMENDED**
RESO: 22-154
5. [Approve proposed amendments to the Conflict of Interest Code Designated Filer Exhibits for Orange County Fire Authority - All Districts](#)
6. [Approve proposed amendments to the Conflict of Interest Code Designated Filer Exhibits for Buena Park Library District - District 4](#)
7. [Approve proposed amendments to the Conflict of Interest Code Designated Filer Exhibits for Saddleback Valley Unified School District - District 3](#)
8. [Approve proposed amendments to the Conflict of Interest Code Designated Filer Exhibits for South Orange County Community College District - Districts 3 and 5](#)

County Executive Office:

9. [Acting as the Legislative Body of Community Facilities Districts - Receive and file Community Facilities Districts 2001-1, 2002-1, 2003-1, 2004-1, 2015-1, 2016-1 and 2017-1 Report, pursuant to Local Agency Special Tax and Accountability Act - District 5](#)
10. [Receive and file Quarterly Information Technology Projects Progress Report for First Quarter FY 2022-23 - All Districts](#)
11. [Approve rental agreement with 32nd District Agricultural Association dba OC Fair & Event Center for Health Care Agency Bio-terrorism Unit distribution center for essential emergency medicine and medical supplies, 1/1/23 - 12/31/23; renewable through 12/31/27; authorize Chief Real Estate Officer or designee to execute agreement, related documents, option term extensions and amendments under certain conditions; and make California Environmental Quality Act \(CEQA\) exemption findings under CEQA Guidelines Section 15301 - District 5](#)

12. **Internal Audit - [Receive and file Executive Summary of Internal Audit Reports for July - September](#) 2022 - All Districts**

END OF CONSENT CALENDAR

III.DISCUSSION ITEMS (Items 13-S33F)

ELECTED DEPARTMENT HEADS

13. **Auditor-Controller - [Approve appointments of Arounsy Phommasa for Auditor-Controller and Rogelia Martinez for Treasurer-Tax Collector as Extra Help Working Retiree Administrative Manager IIIs to perform role of Business Analysts during the County's property tax system's postproduction stabilization period pursuant to Section 7522.56 \(f\) of Public Employee's Pension Reform Act 2013](#) - All Districts**

15234 **APPROVED AS RECOMMENDED**

14. **District Attorney - [Approve Memorandum of Agreement for participation in Orange County Auto Theft Task Force](#), effective 1/1/23; approve standard agreement with Department of California Highway Patrol 1/1/23 - 1/1/28 (\$1,750,000); and authorize District Attorney or designee to execute standard agreement and to amend agreements under certain conditions - All Districts**

53124 **APPROVED AS RECOMMENDED**

15. **Treasurer-Tax Collector - [Approve resolution approving 2023 Investment Policy Statement and delegating investment authority to Treasurer-Tax Collector](#) - All Districts**

51234 **APPROVED AS RECOMMENDED**

RESO: 22-155

HEALTH CARE AGENCY

16. **[Approve continuation of local emergency by the County's Health Officer and by Chair of Emergency Management Council](#), dated 10/31/22 of emergency related to Respiratory Syncytial Virus (RSV) and other respiratory illnesses; and set review to determine need for continuing local emergency for 1/10/23, 9:30 a.m., and every 30 days thereafter until terminated - All Districts (Continued from Special Meeting 11/2/22, Item 1; 11/29/22, Item 34)**

B.O. **DELETED**

17. **[Approve amendment 1 to contract MA-042-22010732 with Aliso Ridge Behavioral Health, LLC for inpatient behavioral health services](#), 12/20/22 - 6/30/24 (\$26,192,500; new total \$28,615,000); and authorize County Procurement Officer or Deputized designee to execute amendment - District 5**

51234 **APPROVED AS RECOMMENDED**

18. **[Approve amendment 8 to renew contract with Orange County Health Authority dba CalOptima for coordination and provision of behavioral health care services](#), 1/1/23 - 12/31/27; and authorize County Procurement Officer or Deputized designee to execute amendment - All Districts**

21354 **APPROVED AS RECOMMENDED**

OC COMMUNITY RESOURCES

19. [Receive and file Housing Funding Strategy 2022 Update - All Districts](#)
RECEIVED AND FILED

OC PUBLIC WORKS

20. [Approve contracts MA-080-22011510 with AECOM Technical Services, Inc., MA-080-23010490 with](#) Jacobs Engineering Group Inc., MA-080-23010491 with Kimley-Horn and Associates, Inc., and MA-080-23010492 with RDM International, Inc. (\$5,000,000 each; aggregate total \$20,000,000) and contracts MA-080-23010493 with Rivers & Christian and MA-080-23010494 with C & S Engineers, Inc. (\$3,000,000 each; aggregate total \$6,000,000) for on-call airport architectural engineering design services, 12/20/22 - 12/19/25; renewable for two additional one-year terms; make California Environmental Quality Act and other findings; and authorize Director or designee to execute contracts - District 5
- 52134 **APPROVED AS RECOMMENDED**

21. [Approve revised rates for electricity, chilled water and steam produced by Central Utility Facility for](#) heating and cooling, effective 1/1/23; and authorize Director or designee to notify and bill/credit billable entities under certain conditions; make California Environmental Quality Act (CEQA) exemption findings under Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273 - District 2
- 25134 **APPROVED AS RECOMMENDED**

PUBLIC PROTECTION

22. **Probation -** [Approve contract MA-057-23010506 with Omni Enterprise, Inc. for janitorial services](#), 1/1/23 - 12/31/25 (\$2,797,612); renewable through August 31, 2026; and authorize County Procurement Officer or Deputized designee to exercise cost contingency increase not to exceed 10% under certain conditions and execute contract - All Districts
- 13254 **APPROVED AS RECOMMENDED**

SOCIAL SERVICES AGENCY

23. [Approve amendment 3 to agreement WMR0919-A3 with 1736 Family Crisis Center for California](#) Work Opportunity and Responsibility to Kids Housing Support Program services, 7/1/20 - 6/30/23 (\$2,500,000; new total \$4,500,000; cumulative total \$9,500,000); and authorize County Procurement Officer or Deputized designee to execute amendment and future amendments under certain conditions - All Districts
- 54123 **APPROVED AS RECOMMENDED**

24. [Approve contract MA-063-23010611 with Advance OC for OC Healthy Aging Assessment services](#), 1/1/23 - 12/31/23 (\$750,000); renewable for one year; and authorize County Procurement Officer or Deputized designee to execute contract - All Districts
- B.O. **CONTINUED TO 1/10/23, 9:30 A.M.**

25. [Accept grant award for Home and Community Based Services Access to Technology Program, term](#) ending 12/31/24 (\$3,487,249); approve retroactive grant agreement with California Department of Aging for Access to Technology Program, 10/1/22 - 12/31/24; authorize County Procurement Officer or Deputized designee to execute Memorandum of Understanding (MOU) between Social Services Agency and OC Community Resources, 12/20/22 - 12/31/23 (\$3,487,249) and to execute grant award, amendments and related documents under certain conditions - All Districts

13254 **APPROVED AS RECOMMENDED**

GENERAL ADMINISTRATION

County Executive Office:

26. [Approve recommended positions on introduced or amended legislation and/or consider other](#) legislative subject matters; and approve 2023-24 Legislative Platform - All Districts

14235 **APPROVED AS RECOMMENDED**

27. [Approve amendment 3 to contract MA-017-20011849 with Innovative Emergency](#) Management, Inc. for financial cost recovery consulting services, 1/1/23 - 12/31/23 (\$480,000; cumulative total \$1,440,000); and authorize County Procurement Officer or Deputized designee to execute amendment - All Districts

15234 **APPROVED AS RECOMMENDED**

28. [Approve Memorandum of Understanding \(MOU\) with City of Anaheim for interim housing](#) operations of Homekey Program, 12/20/22 - 12/19/26; and authorize Director of Care Coordination or designee to execute MOU - Districts 1, 2, 3 and 4

14235 **APPROVED AS RECOMMENDED**

29. [Approve Memorandum of Understanding \(MOU\) with City of Garden Grove for emergency](#) shelter rehabilitation and operations for Central Cities Navigation Center; and authorize Director of Care Coordination or designee to execute MOU - Districts 1 and 2

12354 **APPROVED AS RECOMMENDED**

30. [Receive and file 2022 Strategic Financial Plan and OC CARES Annual Report for FY 2021-22](#); approve County Executive Office recommended uses of American Rescue Plan Act funds; adopt resolution making certain findings pursuant to Government Code 26227 related to contribution of up to \$40 million in American Rescue Plan Act funding to Mind OC for pre-construction and construction of the Be Well Irvine campus and delegating authority to County Executive Officer or designee to negotiate and enter into an agreement related to this contribution - All Districts

B.O. **DELETED**

31. [Approve grant applications/awards submitted by Probation, OC Public Works, County Executive Office, OC Community Resources and District Attorney](#) in 12/20/22 grant report and other actions as recommended; adopt resolution authorizing Chief Probation Officer or designee to submit, execute grant agreement and amendments as necessary with Board of State and Community Corrections for Mobile Probation Service Centers; adopt resolution authorizing OC Public Works Director or designee to submit application, negotiate, execute grant and implementation agreements and amendments under certain conditions with California Department of Water Resources on behalf of South Orange County Integrated Regional Water Management Group for Proposition 1 - Round 2 IRWM Implementation (\$3,270,800); adopt resolution approving standard agreement HI-2122-22, Amendment 2 with California Department of Aging for Older Americans Act Programs, effective through 3/31/24 (\$47,242); and authorizing OCCR Director or designee to execute amendment and related documents; adopt resolution authorizing District Attorney or designee to execute grant award agreement and amendments with California Office of Emergency Services for Victim/Witness

Assistance Program, 10/1/22 - 9/30/23 (\$3,039,719); and making California Environmental Quality Act and other findings - All Districts

15234 **APPROVED AS RECOMMENDED**
RESO: 22-156 - 22-159

32. [Approve Option to Lease Agreement and Lease Agreement with The Irvine Company](#) for improvements to existing facilities at Balboa Marina and construction of public docks; approve Lease Agreement with City of Newport Beach; adopt resolution finding County Tidelands Property is exempt surplus land pursuant to Government Code Section 54221(f)(1)(H); authorize Chief Real Estate Officer or designee to execute lease agreements, related documents, amendments and option terms under certain conditions; and make California Environmental Quality Act (CEQA) exemption findings under CEQA Guidelines Section 15301 - District 5 (Continued from 12/6/22, Item 22)

53124 **APPROVED AS AMENDED TO INCLUDE THE FOLLOWING LANGUAGE ADDED TO BUILDING AND SAFETY REQUIREMENTS NO. 25, TO READ: IN ADDITION TO ANY ADA COMPLIANCE REQUIRED OF TENANT, TENANT SHALL PROVIDE REASONABLE ACCESSIBILITY ACCOMMODATIONS TO DISABLED MEMBERS OF THE PUBLIC TO FACILITATE ACCESS AND USE OF THE PUBLIC DOCKS AND VESSELS TIED THERETO, INCLUDING BUT NOT LIMITED TO PROVIDING WHEELCHAIR ACCESSIBLE LIFTS. SUCH ACCESSIBILITY ACCOMMODATIONS SHALL BE SUPPORTED BY A PUBLIC RESERVATION SYSTEM WHEREBY USERS CAN SCHEDULE USE OF SUCH ACCOMMODATIONS IN ADVANCE. THESE REASONABLE ACCESSIBILITY ACCOMMODATIONS AND ANY IMPROVEMENTS, FACILITIES, OR APPURTENANCES RELATED THERETO SHALL BE INSTALLED, OWNED, OPERATED AND MANAGED BY TENANT AT TENANT' SOLE COST AND EXPENSE**
RESO: 22-160

33. **Chairman Chaffee and Supervisor Bartlett - [Approve withdrawal of County from Orange County](#)** Power Authority Joint Powers Agreement (JPA); direct County Counsel to send notice to all appropriate parties of County's withdrawal from JPA and demand that Power Authority immediately cease undertaking any activities to procure power for unincorporated residents and desist from incurring any further costs attributable to County (Continued from 12/6/22, Item S26F)

54123 **APPROVED AS RECOMMENDED**
N N

S33A. **County Executive Office - [Approve and adopt side letter agreements with Orange County Employees](#)** Association to eliminate Retiree Medical Grant for new and new unrepresented County employees, freeze Retiree Medical Grant for existing employees and existing unrepresented employees, transition new and all unrepresented employees to County Health Reimbursement Arrangement Plan with option for existing employees and existing unrepresented to place value of their Retiree Medical Grant in County Health Reimbursement Arrangement Plan; authorize Chief Human Resources Officer or designee to administer both Retiree Medical Plan and County's Health Reimbursement Arrangement Plan, enter into agreements, restructure County health insurance plans and as Plan Administrator to amend both Retiree Medical Plan Document and Health Reimbursement Arrangement Plan Document under certain conditions; and approve and adopt side letter agreement with Orange County Employees Association to allow additional vacation usage and cash outs for employees with Annual leave balances greater than 80 hours - All Districts

52134 **APPROVED AS RECOMMENDED**

ELECTED DEPARTMENT HEADS

- S33B. **Sheriff-Coroner** - [Approve contract MA-060-23010019 with Fujitec America, Inc. for elevator/escalator preventative maintenance services, effective upon Board approval for a three-year term \(\\$1,667,772\); renewable for two additional one-year terms; and authorize County Procurement Officer or Deputized designee to execute contract](#) - All Districts
- 15234 **APPROVED AS RECOMMENDED**

GENERAL ADMINISTRATION

- S33C. **County Executive Office** - [Adopt resolution increasing salary for Sheriff-Coroner to \\$289,248; and authorize Chief Human Resources Officer or designee to execute an agreement with Association of Orange County Deputy Sheriffs \(AOCDS\) to allow participation in AOCDS Medical Trust for eligible employees elected as Sheriff-Coroner](#) - All Districts
- 31254 **APPROVED AS RECOMMENDED**
RESO: 22-161
- S33D. **Supervisor Wagner** - [Approve allocation of \\$120,000 from Third District's discretionary funds to go](#) towards \$20,000 grants per school district within the Third District to purchase Narcan supplies
- 32154 **APPROVED AS AMENDED TO ALLOW ALL DISTRICTS TO ALLOCATE DISCRETIONARY FUNDS TO SCHOOL DISTRICTS WITHIN THEIR DISTRICT FOR NARCAN SUPPLIES**

HEALTH CARE AGENCY

- S33E. [Approve termination of Local Health Emergency and Local Emergency related to Respiratory Syncytial Virus \(RSV\) and other respiratory illnesses and rescind Board Resolutions 22-133 and 22-134](#) - All Districts
- 13254 **APPROVED AS RECOMMENDED**

GENERAL ADMINISTRATION

- S33F. **Supervisor Do** - [Adopt resolution pertaining to Memorandum of Understanding with Association of Orange County Deputy Sheriffs recognizing certain work details, squads, teams, and units as distinct job grades](#)
- 14235 **APPROVED AS RECOMMENDED**
RESO: 22-162

IV.PUBLIC HEARINGS (Item 34)**HEALTH CARE AGENCY**

34. [Public Hearing to consider adopting resolution approving update of Maximum 9-1-1 Emergency Basic Life Support ground ambulance and Advanced Life Support paramedic assessment and transport rates for unincorporated areas and cities that have adopted Section 4-9-12 of Codified Ordinances 3517, effective 1/1/23; adopting methodology for adjusting maximum rates, effective 7/1/23; authorizing Director or designee to make annual adjustment to maximum basic life support and advanced life support rates, including mileage and standby time rates, effective July 1st of each year; rescinding Resolution 17-094; and make California Environmental Quality](#)

Act (CEQA) exemption findings under Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273 - All Districts

B.O. **CLOSED PUBLIC HEARING**

24135 **APPROVED AS AMENDED TO INCLUDE RATE SCHEDULE WHEN AUDIT IS CONDUCTED**

RESO: 22-163

V.CLOSED SESSION (Items CS-1-SCS6)

GENERAL ADMINISTRATION

County Executive Office:

CS-1. [CONFERENCE WITH LABOR NEGOTIATOR - Pursuant to Government Code Section 54957.6:](#)

Agency Negotiator:Colette Farnes

Employee Organization:Association of Orange County Deputy Sheriffs (AOCDS)

RE:Terms and Conditions of Employment

B.O. **DELETED**

SCS2. [PUBLIC EMPLOYEE APPOINTMENT - Pursuant to Government Code Section 54957\(b\):](#)

Title:Veterans Services Officer

B.O. **COUNTY COUNSEL READ: THE BOARD UNANIMOUSLY APPROVED THE APPOINTMENT OF GEORGE DIXON TO THE POSITION OF VETERANS SERVICE OFFICER.**

County Counsel:

SCS3. [CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION - Pursuant to Government Code Section 54956.9\(d\)\(1\):](#)

Name of Case:James E. Dovey, et al. v. Niguel Shores Community Association, et al.

OCSC Case No.30-2013-00651468-CU-OR-CJC

B.O. **COUNTY COUNSEL READ: THE BOARD UNANIMOUSLY APPROVED A TECHNICAL AMENDMENT TO THE COUNTY'S OCTOBER 6, 2015 SETTLEMENT AGREEMENT WITH THE NIGUEL SHORES COMMUNITY ASSOCIATION AND OTHER LITIGANTS.THE AMENDMENT UPDATES THE PARTIES' SETTLEMENT AGREEMENT TO INCORPORATE THE NEW REVETMENT REPAIR PLAN AT NIGUEL SHORES AT SALT CREEK BEACH IN DANA POINT WHICH WAS APPROVED BY THE COASTAL COMMISSION ON OCTOBER 13, 2022.**

SCS4. [CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION - Pursuant to Government Code Section 54956.9\(d\)\(2\):](#)

Number of Cases:One Case(s):

B.O. **COUNTY COUNSEL READ: THE BOARD UNANIMOUSLY AUTHORIZED COUNTY COUNSEL TO RETAIN THE LAW FIRM ANDERSON KREIGER LLP TO DEFEND THE COUNTY AGAINST A PART 13 FAA COMPLAINT FILED BY THE BUCHALTER FIRM ON BEHALF OF THE AIRPORT WORKING GROUP.THE FAA CASE WILL BE HANDLED BY ANDERSON KREIGER ATTORNEYS MELISSA ALLISON AT \$565/HOUR, CHRISTINA MARSHALL**

AT \$490/HOUR, AND FIRM ASSOCIATES AT AN HOURLY RATE NOT TO EXCEED \$400/HOUR AND PARALEGALS AT AN HOURLY RATE NOT TO EXCEED \$210/HOUR.THE BOARD ALSO AUTHORIZED AND DIRECTED COUNTY COUNSEL TO SEEK THE DISQUALIFICATION OF THE BUCHALTER FIRM, WHICH PRESENTLY REPRESENTS THE COUNTY AND OC FLOOD CONTROL DISTRICT, FROM PROSECUTING THIS PART 13 COMPLAINT AGAINST THE COUNTY.

SCS5 . [CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION - Pursuant to Government Code Section 54956.9\(d\)\(1\):](#)

Name of Cases:Orange County Flood Control District v. Walter N. Prince, et al, LASC Case No.:22STCV08654; Walter N. Prince v. Orange County Flood Control District, LASC Case No.: 21STCV39624

B.O. **COUNTY COUNSEL READ: THE BOARD UNANIMOUSLY APPROVED A MEDIATOR'S SETTLEMENT, IN THE AMOUNT OF \$500,000, TO SETTLE AND RESOLVE EMINENT DOMAIN AND INVERSE CONDEMNATION LITIGATION WITH MR. WALTER PRINCE CONCERNING OWNERSHIP OF 3.54 ACRES OF LAND ADJACENT TO THE 605 FREEWAY IN THE CITY OF LONG BEACH.THE PROPERTY, OWNED BY MR. PRINCE, WHO IN 1980 PURCHASED THE LAND AT A TAX SALE, IS THE LOCATION OF AN ORANGE COUNTY FLOOD CONTROL DISTRICT FACILITY KNOWN AS THE ROSSMOOR PUMP STATION AND ALSO THE ROSSMOOR RETARDING BASIN.THE SETTLEMENT APPROVED TODAY WILL ALSO REQUIRE THE OC FLOOD CONTROL DISTRICT TO PAY PROPERTY TAXES ON THE PROPERTY IN AN AMOUNT NOT TO EXCEED \$5,000.**

SCS6 . [CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION - INITIATION](#) OF LITIGATION - Pursuant to Government Code Section 54956.9(d)(4):
Number of Cases:One Case

B.O. **COUNTY COUNSEL READ: THE BOARD UNANIMOUSLY AUTHORIZED COUNTY COUNSEL TO FILE A PUBLIC RECORDS ACT LAWSUIT AGAINST THE OC POWER AUTHORITY TO OBTAIN UNREDACTED POWER PURCHASE AGREEMENTS AND RELATED PUBLIC DOCUMENTS FROM THE OC POWER AUTHORITY, AND FURTHER, PURSUANT TO ITS OVERSIGHT POWERS, THE BOARD AUTHORIZED THE BOARD CHAIRMAN TO ISSUE A LEGISLATIVE SUBPOENA TO OBTAIN SAID POWER PURCHASE AGREEMENTS AND RELATED DOCUMENTS FROM THE OC POWER AUTHORITY, AND IF NECESSARY, TO INITIATE LITIGATION TO ENFORCE THE OC POWER AUTHORITY'S PROMPT COMPLIANCE WITH THE BOARD'S LEGISLATIVE SUBPOENA.**

VI.PUBLIC, CEO, ADJOURNMENT & BOARD COMMENTS

PUBLIC COMMENTS:

Steve Rocco - Oral Re: The Board is a direct threat to his health, wealth and death; the Board has the power of life and death; the Board harvests humans and selects their victims; defamation and set up by District Attorney to steal property; Tony Rackauckas and Todd Spitzer are killers because they hate America

Brigitte - Oral Re: World Health Organization quote "We need to have a global experience of a respiratory pathogen released by September 2020 must be put in place in a universal capacity for public relations, management, crowd control and universal acceptance of a vaccine"; Pandemic was planned years ago

Joette - Oral Re: Election numbers do not add up; how can 550,256 conservative voters vote yes to pass Gavin Newsom's Prop 1 while 492,742 voted for Brian Dolly as GOP Governor and 480,963 for GOP Lieutenant Governor; why did conservative voters vote with liberals to pass Prop 1? Do conservative values stop at the hart voting machines?

Ilya Tseglin - Oral Re: Coming to board meetings for ten years after son Nate was beaten unconscious and kidnapped by police and protective services and placed in mental facility, forced to take drugs for medical experimentation; neglected, tortured and abused and left to be destroyed because of false report by Orange County Regional Center Director Larry Landauer

Bryan Kaye - Oral Re: Coming to board meetings because petitions have been ignored; deputies harassing him and his family; forged plea agreement causing holes in his life; people who took his home had a fake animal rescue and was killing dogs

[Name not stated - Oral Re: No vaccine passports; no funding for Composite Apps or any other useless apps](#)

Name not stated - Oral Re: Say no to vaccine mandates; Ed Dowd has websites with statistics and graphs of deaths and disabilities as a result of the vaccine; Pfizer admits vaccine causes cardio myocarditis; gene editing bio weapon that should be stopped; book Unmasking the Masquerade

Carolyn - Oral Re: Please do not give more funding to Composite Apps for disease control and preventative health technology; it is a massive program to track medical information and vaccine status of citizens and a tool to influence behavior; potential for information to be hacked by the IRS and other agencies; takes away privacy and freedom; No voting machines or drop boxes, use paper ballots in person only; one day voting with voter ID

COUNTY EXECUTIVE OFFICER COMMENTS:

None

ADJOURNED:4:28 P.M.

43125 **Adjourned in memory of William G. (Bill) Steiner**

54123 **Adjourned in memory of Ron Taylor and Dr. Michael Iseman**

BOARD COMMENTS:

Supervisor Foley - Oral re: Presented Supervisor Bartlett with a framed commemoration of her work on moving forward the Dana Point Harbor revitalization project

Supervisor Bartlett - Oral Re: It's been an honor and privilege to serve on the Board representing the 5th District and thanked CEO, County Counsel, Clerk of the Board and the entire County team; wished Supervisor Foley the best of luck as the incoming 5th District Supervisor

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KEY

Left Margin Notes

1. = Supervisor Do

A.=Abstained

2. = Supervisor Sarmiento

X.=Excused

3. = Supervisor Wagner
4. = Supervisor Chaffee
5. = Supervisor Foley

N.=No
BO=Board Order

ORD.= Ordinance
RESO. = Resolution

Above numbers refer to Supervisorial Districts (1st number = Moved by; 2nd number = Seconded by)

Chairman, Orange County Board of Supervisors

Orange County Clerk of the Board

PROOF OF SERVICE

I am employed in the City of Los Angeles, State of California. I am over 18 years of age and not a party to this action. My business address is Rains Lucia Stern St. Phalle & Silver, PC, 16130 Ventura Blvd., Suite 600, Encino CA 91436.

On the date below I served a true copy of the following document(s):

DECLARATION OF JACOB A. KALINSKI IN SUPPORT OF APPELLANT’S REPLY

BRIEF on the interested parties to said action by the following means:

(BY MAIL) By placing a true copy of the above, enclosed in a sealed envelope with appropriate postage, for collection and mailing following our ordinary business practices. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

(BY OVERNIGHT DELIVERY) By placing a true copy of the above, enclosed in a sealed envelope with delivery charges to be billed to Rains Lucia Stern St. Phalle & Silver, P.C., for delivery by an overnight delivery service to the address(es) shown below.

(BY FACSIMILE TRANSMISSION) By transmitting a true copy of the above by facsimile transmission from facsimile number (310) 393-1486 to the attorney(s) or party(ies) shown below.

(BY MESSENGER) By placing a true copy of the above in a sealed envelope and by giving said envelope to an employee of First Legal for guaranteed, same-day delivery to the address(es) shown below.

(BY HAND DELIVERY) By personal delivery of a true copy of the above to the attorneys or parties shown below

(BY E-MAIL or ELECTRONIC TRANSMISSION) I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable period of time, after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

DATED: October 19, 2023

/s/ Michele Hengesbach


Michele Hengesbach

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SERVICE LIST

Jennifer Esquivel Zahry
Kern County Employees' Retirement Association
11125 River Run Boulevard
Bakersfield CA 93311
Email: legal@kcera.org
(Via Email Only)

Ashley K. Dunning
Nossaman LLP
50 California Street, 34th Street
San Francisco CA 94111
adunning@nossaman.com
(via Email Only)

Tracy Wolf

(via US Mail Only)

1 **KERN COUNTY EMPLOYEES' RETIREMENT ASSOC.**
2 **JENNIFER ESQUIVEL ZAHRY, SBN 207836**

3 11125 River Run Boulevard
4 Bakersfield, CA 93311
5 Tel: (661) 381-7700
6 Fax.: (661) 381-7799
7 Email: legal@kcera.org

8 **KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**
9 **BOARD OF RETIREMENT**

10
11 **IN RE ALAMEDA APPEAL OF**) **SUR-REPLY OF KERN COUNTY**
12 **TRACY WOLFE**) **EMPLOYEES' RETIREMENT ASSOCIATION**
13) **OPPOSING MEMBER'S APPEAL**
14)
15)
16)
17)

18 KCERA submits the following Sur-Reply in response to Tracy Wolfe's ("Member") Appellant
19 Reply Brief.

20 **I. INTRODUCTION**

21 KCERA's *Alameda* Appeals process, set forth in Board of Retirement Resolution 2021-05,
22 allows members affected by the Board's implementation of the *Alameda* decision to administratively
23 appeal factual determinations KCERA made regarding pay code designations. (Administrative Record
24 "AR" BOR-038-044). The process provides members with the opportunity to submit a written
25 Statement to the Board and allows KCERA, through its counsel, an opportunity to submit a Reply
26 Statement. (AR BOR-042-043). The Resolution does not provide for an additional response by either
27 party. (AR BOR-042-043). However, your Board retains the right to request additional information
28 from the parties should you determine such information is warranted. (AR BOR 043-044).

1 KCERA’s Sur-Reply identifies a recent trial court decision that has addressed the issue
2 currently before your Board.

3 **II. ARGUMENT**

4 **A. FOLLOWING ALAMEDA, A CALIFORNIA TRIAL COURT HAS DETERMINED**
5 **THAT A PAY ITEM IN AN MOU WHICH COMPENSATES FOR WORK THAT CAN**
6 **BE PERFORMED ONLY OUTSIDE NORMAL WORKING HOURS MUST BE**
7 **EXCLUDED FROM COMPENSATION EARNABLE.**

8 On April 14, 2023, the Sacramento Superior Court issued its ruling in *Sacramento County*
9 *Deputy Sheriffs’ Association v. Sacramento County Employees Retirement System*, et al. (Sup. Ct.
10 Sacramento County, 2023, No. 34-2019-80003132) (attached as Exhibit A, cited herein as “Order”
11 and referred to as the “SCERS case”). In that case, the petitioners filed suit against the County’s
12 Retirement System, its Board, Sacramento County, and its Board and alleged, among other things, that
13 the respondents were obligated to include “Canine Handler” pay in members’ pension calculations.
14 (Exh. A, Order, p. 2). Specifically, petitioners asserted the Canine Handler pay was not compensation
15 for work outside normal working hours because the duties were part of the employees’ “normal work”
16 and because the employees consistently undertook these duties. (Exh. A, Order at pp. 12 and 18). The
17 Court found that where the MOU defined the pay as being provided for services outside the
18 employee’s regular “shift” (i.e., outside normal working hours), the pay is mandatorily excluded from
19 compensation earnable under Government Code section 31461(b)(3).¹

20 In reaching its decision, the Court cites the *Alameda* Court’s comments that subsection (b)(3)
21 “serves to reinforce that compensation earnable is to be based on ‘the same work year for all
22 employees within a particular pay grade.’” (Exh. A, Order, at p. 12 (quoting *Alameda, supra*, 9 Cal.5th
23 at p. 1097)). In the SCERS case, petitioner presented no evidence the extra pay for Canine Handlers is
24 “part of those employees’ ‘particular pay grade’ rather than payment for times spent outside of normal
25 working hours to compensate them for this additional time.” (Exh. A, Order, at p. 12). Additionally,
26 the MOU established, and the parties agreed, the Canine Handler pay “cannot be performed during
27 regularly schedule hours.” (Exh. A, Order, at p. 18). In short, the Court found that inclusion of
28

¹ All statutory citations are to the California Government Code unless otherwise stated.

1 Canine Handler pay in “compensation earnable” would violate section 31461 and that “[p]ursuant to
2 *Alameda*, a retirement board has no authority to take action contrary to [this] provision[.]” (Exh. A,
3 Order, at p. 12 (citing *Alameda, supra*, at 9 Cal.5th at p. 1066-1067)).

4 Member’s case presents issues similar to the SCERS case. Like the SCERS case, Member’s
5 MOU provides additional compensation in the form of “availability pay” for times spent outside of
6 normal working hours to compensate Member for the additional time she remained “available”. (Exh.
7 A, Order, at p. 12; AR BOR-005 and BOR-014). The services for which she received “availability
8 pay” could not be performed during her regular work schedule or “shift.” (Exh. A, Order, at p.18 and
9 AR at p.70-78). The Member’s Department (KCAS) allows, but does not require, its employees to
10 participate in after-hours on-call work (i.e., “availability pay”). On the days Member agreed to
11 undertake after-hours on-call work, she had the potential to receive up to three types of pay: (1) her
12 base pay, paid at her hourly rate for her regular 8-hour work schedule; (2) any “availability pay,” paid
13 at 25% of her hourly pay for the hours she remained available after her regular work schedule and
14 before the start of the following days’ work schedule; and (3) any overtime pay, paid if she provided
15 an after-hours service response. (AR BOR-005 and BOR-014). However, she could not receive the
16 availability pay for any time she received regular pay or overtime pay. (AR BOR-005 and BOR-014).
17 Because she could only perform services for “availability pay” between her regular work schedules
18 (i.e., outside normal working hours), section 31461(b)(3) mandates the Board exclude it from
19 Member’s compensation earnable calculation. (AR BOR-005, BOR-014, and BOR-082).

20 **B. THE COUNTY OF KERN’S USE OF AVAILABILITY PAY AND ITS EMPLOYMENT**
21 **PRACTICES RELATED TO THAT PAY ARE DIFFERENT FROM THE**
22 **RETIREMENT SYSTEMS CITED BY MEMBER.**

23 The SCERS case is not binding on your Board. However, the Court’s analysis of the
24 applicable law provides your Board with insight into how one court has viewed section 31461(b)(3)
25 post-*Alameda* and how Kern County’s Superior Court may view the same. The SCERS case is far
26 more relevant to your Board’s decision than any materials generated by another retirement system or a
27 hearing officer’s findings on an unrelated issue.

1 Appellant’s Reply Brief primarily consists of material from three retirement systems regarding
2 those systems’ findings and actions on stand-by pay issues. (Appellant’s Reply Brief “ARB” at p. 3-
3 9). The material quoted in Appellant’s Reply Brief seems to be based on the plan sponsor’s views and
4 employment practices under their County’s MOUs. (ARB at p. 5 (stating Santa Barbara County’s
5 “departmental management often held the position that [stand-by] time was part of the member’s
6 normal schedule”) and ARB at p. 8 (stating Orange County and its Sheriff’s Association agreed that
7 standby was part of several job classifications)). The Declaration of KCAS Director, Nick Cullen,
8 along with the MOU terms, demonstrates that the Kern County Department at issue (and Kern County,
9 generally) does not hold the same views on the uses of “availability pay” and does not maintain the
10 same employment practices as the cited counties. (AR at BOR-005, BOR-014, and BOR-08-083). The
11 views expressed by the systems cited in Appellant’s Reply Brief should not be relied upon as a basis
12 for your Board’s decision in this matter, as the findings quoted in Appellant’s Reply Brief are not
13 consistent with the views expressed by KCERA’s plan sponsor.

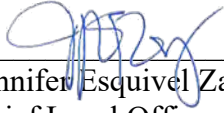
14 **III. CONCLUSION**

15 For the reasons described above, KCERA respectfully requests your Board (1) include
16 KCERA’s Sur-Reply as part of this Administrative Record, (2) find KCERA properly excluded
17 Member’s availability pay from her pension calculation; and (3) direct KCERA Staff to initiate the
18 uncollected overpaid benefits and interest from Member. (AR BOR-036).

19
20 Dated: October 24, 2023

Kern County Employees’ Retirement Association

21
22 By: _____


Jennifer Esquivel Zahry
Chief Legal Officer

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Exhibit A

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

| | | | |
|--|-------------------------------------|---|-------------------|
| DATE/TIME | APRIL 14, 2023 | DEPT. NO | 21 |
| JUDGE | HON. SHELLEYANNE W. L. CHANG | CLERK | D. LASHLEY |
| <p>SACRAMENTO COUNTY DEPUTY SHERIFFS' ASSOCIATION, on behalf of itself and its members;</p> <p style="text-align: center;">Plaintiff/Petitioner,</p> <p>v.</p> <p>SACRAMENTO COUNTY EMPLOYEES RETIREMENT SYSTEM; BOARD OF ADMINISTRATION OF THE SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM; COUNTY OF SACRAMENTO; COUNTY OF SACRAMENTO BOARD OF SUPERVISORS; and DOES 1 through 10, inclusive,</p> <p style="text-align: center;">Defendants/Respondents.</p> | | <p>Case No.: 34-2019-80003132</p> | |
| Nature of Proceedings: | | <p>RULING ON SUBMITTED MATTER RE: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND PETITIONER'S PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF</p> | |

This matter came on for a hearing on the Petition for Writ of Mandate and Complaint for Declaratory Relief and Motion for Summary Judgment on January 13, 2023. After hearing oral argument, the Court took the matter under submission. The Court now issues its ruling on submitted matter. For ease of review the Court has reproduced its tentative ruling below.¹

A. TENTATIVE RULING

Introduction

As presented to the Court, the procedural posture of this matter is problematic because a motion for summary judgment must occur *prior* to the trial on the merits of any matter. The notice of hearing Petitioner filed concerning this hearing indicates that it is a hearing “on the merits of the first Amended Complaint for Declaratory Relief, Verified Petition for Writ of

¹ The Court has corrected the tentative ruling to correct an errant reference to “Petitioner” that should have been a reference to “SCERS.”

Mandate, and Respondent's Motion for Summary Judgment," i.e. the entire action. (ROA # 59.) Although the Court *did* sign the stipulation and order to proceed in this manner, upon reconsideration the Court no longer believes the proposed procedure to be an efficient use of Court resources and only serves to confuse the issues.

The standards upon which a Court must evaluate a Motion for Summary Judgment versus a hearing on the merits are significantly different. Further, in ruling on the merits of a petition for writ of mandate the petitioner carries the burden of establishing entitlement to relief, versus in a motion for summary judgment filed by a defendant, the defendant carries the burden of establishing there is no triable issue of material fact. The Court declines to engage in such a complex web of standards, burdens, and analysis. The hearing on Defendants' Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication is **VACATED** from the Court's calendar. The Court will construe all briefing filed in connection with that motion as briefing concerning the resolution of the claims raised in the Petition and Complaint. Pursuant to the notice Petitioner filed, the Court is now resolving the entirety of the Petition and Complaint.

I. Factual Allegations and Procedural History

Sacramento County Employees Retirement System ("SCERS") is a retirement system administering pension benefits for employees of the County of Sacramento and is governed by the County Employees' Retirement Law ("CERL"). (Gov. Code §§ 31450, et seq.) Petitioner's members are employees who contribute money to fund these pension benefits.

The FAP states three causes of action. The first cause of action for declaratory relief is alleged on the grounds that:

- 1) Respondents are obligated to include all incentive pays in the "pensionable compensation" used to calculate PEPRA Members' benefits, with the exception of incentive pays that are otherwise excludable pursuant to Government Code section 7522.34 (c) and as in *Alameda*. (FAP ¶ 47.)
- 2) Respondents are obligated to include Canine Handler pay² in the "pensionable compensation" used to calculate Legacy members' benefits except as otherwise barred from inclusion by *Alameda*. (FAP ¶ 51.)
- 3) Petitioner's members working 7/12 schedules are entitled to additional service credit for the regularly scheduled hours they work in excess of 2080 hours per year. (FAP ¶¶ 55.)

The second cause of action is for mandamus relief for compliance with Government Code sections 7522, et seq. The third cause of action is for violation of the California Constitution's Contract Clause on the grounds that SCERS has impaired its contractual obligations to Petitioner's members. All three causes of action concern the propriety of the three policy changes.

² Some documents refer to this as the "animal allowance" and some refer to it as "canine handler pay". For purposes of this petition, the reference appears to be a distinction without a difference.

Incentive pays

In a December 14, 2012 letter to the president and members of the SCERS Board, Chief Executive Officer Richard Stensrud recommended that the Board define “pensionable compensation” for PEPRA members to “only include base pay as that term is utilized in County compensation practices. Pensionable compensation under CalPEPRA will not include elements of special compensation, and hence the various differentials, allowances and incentives typically paid to a person in a given job classification will not be counted for retirement benefit purposes.” (Def. Compendium, Tab 6, SCERS 05068.) The Board met on December 19, 2012 and approved Mr. Stensrud’s recommendation effective January 1, 2013. (Def. Compendium, Tab 8, SCERS 04742.) This decision did not impact the “animal allowance” as it was still going to be included in pensionable compensation. The Board also approved a final compensation review process by which it would determine whether an otherwise permissible pay element was paid to enhance a member’s retirement benefit.

In 2018, SCERS adopted the Final Compensation Review Policy which states that “compensation” for PEPRA members “is generally limited to base salary.” This policy does not make any determination as to the retirement benefits paid to any particular member or group of members.

SCERS has never collected member contributions from PEPRA members on any differentials, allowances and incentives other than the animal allowance. (Stern Decl., ¶ 13.)

Petitioner’s President Kevin Mickelson asserts he was told by SCERS Executive Officer Richard Stensrud, prior to the implementation of PEPRA in 2013, that all regular recurring income that’s on a publicly available pay schedule would be included in calculating PEPRA member’s pension benefits. Mickelson also asserts that prior to 2018, the County’s recruiting documents indicated that incentive pays would be counted toward retirement benefits. However, Mickelson maintains that “those documents have since disappeared. They are not archived anywhere and not available anywhere so there is that.”

Petitioner has not provided any evidence as to what categories of incentive pay were previously included in pensionable compensation. Incentive pay excluded from pensionable compensation remains in the publicly available pay schedules.

Canine Handler pay

Pursuant to Addendum #1 to the MOU between Petitioner and the County of Sacramento, canine handlers “shall receive a ten percent (10%) pay differential for time spent in ordinary care and informal training that cannot be performed during regularly scheduled hours.” This compensation is to represent the “amount of time it takes to feed, exercise, groom, and work with the canine on a monthly basis.” The parties agree that in practice this work occurs between regularly-scheduled shifts of duty.

The parties agree that prior to October 2020, SCERS continued to include the canine handler pay in Legacy members’ “compensation earnable” and PEPRA members’ “pensionable

compensation.” In October 2020, SCERS amended its Final Compensation Review Policy to clarify that the canine handler pay “paid to employees for the ordinary care and informal training of canines in overtime or outside of regularly schedule hours” would not be included in Legacy Members’ “compensation earnable” or PEPRA members’ “pensionable compensation.”

SCERS is in the process of refunding member contributions, plus interest, that had been collected from SCERS members for the Canine Handler incentive starting from January 1, 2013 and going forward.

The 7/12 Work Schedule

Employees on the 7/12 schedule work seven days of 12 hours shifts over the course of a two-week pay period, for a total of 84 hours per pay period, instead of the traditional 80. The MOU between Petitioner and the County provides that the County “shall have in its sole discretion the right to discontinue the 7/12 work schedule.” In 1999, Respondent agreed to provide service credit for the additional four hours of the 7/12 schedule, as well as to include the extra four hours when calculating compensation earnable.

Thus, a 7/12 employee could earn as much as 2,192.4 hours of service credit per year, instead of the usual 2,088 hours considered full-time employment on a traditional 80-hour biweekly schedule.

In April 2019, SCERS adopted the Service Credit Policy, which states that no SCERS member may accrue more than one year of service credit for one calendar year of work. SCERS continues to award extra service credit for members who worked a 7/12 work schedule through April 27, 2019. SCERS made this change “based on the conclusion that a more sound interpretation of CERL and applicable federal tax law permits the accrual of not more than one year of service over a 12-month period.” (Def. Compendium, Tab 26, SCERS 03868-03869.) However, from that date forward, even if a SCERS member works more than 2,088 hours in a calendar year, they are given only one year of service credit.

7/12 members are still entitled to include 84 hours of work per bi-weekly pay period in “compensation earnable.”

II. Standard of Review

Code of Civil Procedure section 1085 permits the issuance of a writ of mandate “to compel the performance of an act which the law specially enjoins.” The writ will lie where the petitioner has no plain, speedy and adequate alternative remedy, the respondent has a clear, present and usually ministerial duty to perform, and the petitioner has a clear, present and beneficial right to performance.” (*Sacramento County Alliance of Law Enforcement v. County of Sacramento* (2007) 151 Cal.App.4th 1012, 1020.) “Two basic requirements are essential to the issuance of the writ. (1) A clear, present and usually ministerial duty upon the part of the respondent; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty.” (*Shamsian v. Dept. of Conservation* (2006) 136 Cal.App.4th 621, 640)(citations omitted.)

III. Discussion

A. Request for Judicial Notice

Respondents' request for judicial notice concerning five documents is unopposed. However, the Court finds judicial notice would not be appropriate of the document identified as "Stipulation Re Merced CERA Board Actions Implementing AB 197" attached to the Compendium as Tab 14 as the stipulation in a different legal proceeding, between an employees' retirement system and various employee associations, none of which are parties to this action, concerning the approval of pay codes for compensation earnable, is not relevant to the Court's adjudication of this matter. Accordingly, the request is **DENIED** as to this document, and **GRANTED** as to the remaining four documents. The Court notes that although the existence of a document may be judicially noticeable, the truth of statements contained in the documents is not subject to judicial notice if those matters are reasonably disputable. (*Freemont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113.)

B. Statutory Background

For ease of review, the Court summarizes the relevant statutes referenced by the parties in connection with their arguments.

The County Employees Retirement Law of 1937 ("CERL") recognizes "a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for retirement compensation and death benefit as additional elements of compensation for future services and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of the public service without prejudice and without inflicting a hardship upon the employees removed." (Gov. Code, § 31451.)³ In 2013, the Legislature enacted the Public Employees' Pension Reform Act of 2013 ("PEPRA"). (§ 7522.) PEPRA members are generally public employees who began working after January 1, 2013. (§ 7522.04.) Those employees hired prior to January 1, 2013 are considered Legacy members, and their retirement benefits are determined by CERL, while PEPRA members' benefits are determined by PEPRA.

Section 31461 defines "compensation earnable" for Legacy members. It provides,

- (a) "Compensation earnable" by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence. Compensation, as defined in Section

³ Unless otherwise indicated, all future statutory references are to the Government Code.

31460, that has been deferred shall be deemed "compensation earnable" when earned, rather than when paid.

Subdivision (b) provides that "compensation earnable" does not include:

(1) Any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:

(A) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

(B) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

(C) Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(4) Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

Section 7522.34 defines "pensionable compensation" for PEPRAs members. It provides,

- (a) “Pensionable compensation” of a new member of any public retirement system means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules, subject to the limitations of subdivision (c).

Subdivision (c) provides a list of categories that do not fall within “pensionable compensation.” Subdivision (c)(6) excludes “[p]ayments for additional services rendered outside of normal working ours, whether paid in a lump sum or otherwise. Subdivisions (c)(11) and (c)(12) provide that a public retirement board has broad discretion to further identify categories of compensation that do not fall within “pensionable compensation[:]”

(11) Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a).

(12) Any other form of compensation a public retirement board determines should not be pensionable compensation.

C. Alameda decision and the applicable process

The *Alameda* decision concerns challenges to a provision of PEPRA, which amended CERL’s definition of “compensation earnable to exclude or limit the inclusion of additional types of compensation in an effort to prevent perceived abuses of the pension system.” (*Alameda County Deputy Sheriff’s Assn. v. Alameda County Employees’ Retirement Assn.* (2020) 9 Cal.5th 1032.) Specifically, the case raised two sets of issues:

First, the Alameda County Deputy Sheriff’s Association (Association) and its coplaintiffs (collectively, plaintiffs) contend[ed] that employees in the three counties involved in th[e] matter ha[d] a contractual right to receive pension benefits calculated without regard to PEPRA’s changes, a right based either on (1) [settlement] agreements in effect when PEPRA was enacted or (2) application of the doctrine of equitable estoppel. [fn.] Long prior to the passage of PEPRA, employees in each of these counties had entered into litigation settlement agreements with their respective retirement boards that specif[ied] the types of compensation included in compensation earnable. In some cases, the provisions added by PEPRA conflict[ed] with the terms of these agreements, excluding or restricting items of compensation that the agreements require[d] to be included in compensation earnable. Plaintiffs argue[d] that these agreements confer[red] on existing employees the contractual right to continue to include these items of compensation in their pensionable compensation, notwithstanding their exclusion by the provisions added by

PEPRA, or, alternatively, that the counties [we]re equitably estopped from implementing the PEPRA amendment in a manner inconsistent with the agreements. In turn, Central Contra Costa Sanitary District (District) and the State of California (State) (collectively, defendants) respond that the retirement boards are required to implement the provisions of CERL, including PEPRA's amendment, notwithstanding any contrary agreements they might have entered into with county employees.[fn.]

Wholly apart from these ordinary contract issues, plaintiffs also contend[ed] that county employees who began their work prior to PEPRA's enactment ha[d] a constitutional right to receive pension benefits calculated according to the law as it existed prior to PEPRA. . . .

Invoking the contract clause [of the California Constitution], plaintiffs argue[d] that persons employed by a county at the time of PEPRA's enactment possessed implied contractual rights in the pre-PEPRA terms of CERL that are protected against impairment. Because PEPRA's amendment has the practical effect of diminishing some employees' pension benefits without granting any comparable new advantages, plaintiffs contend[ed], its application to the pensions of existing employees is precluded by the California Rule. In turn, defendants respond[ed] that (1) PEPRA's amendment did not trigger constitutional scrutiny because its provisions constituted a clarification, rather than a modification of CERL, and, alternatively, (2) any changes met the requirements of the California Rule.

(Alameda, supra, at pp. 1052-1053.)

With regard to the first issue, the Supreme Court held:

[C]ounty employees have no express contractual right to the calculation of their pension benefits in a manner inconsistent with the terms of the PEPRA amendment. Because the county retirement boards are required to implement CERL as enacted by the Legislature, the settlement agreements, which are silent on this issue, must be interpreted to permit the modification of board policies to accommodate statutory changes to CERL. In addition, [the Supreme Court] conclude[d] that plaintiffs . . . failed to demonstrate the elements necessary for the invocation of equitable estoppel. In particular, there [wa]s no evidence that the county boards made any representations regarding the continued enforceability of the terms of the settlement agreements in the

event of inconsistent legislative changes to the controlling statutory provisions.

(*Id.*, at p. 1054.) “With regard to the constitutional question,” the Supreme Court held that a constitutional issue was presented; however, “the challenged provisions added by PEPR me[t] contract clause requirements.” (*Ibid.*)

In deciding the plaintiffs’ contract and estoppel claims, the *Alameda* Court stated that “[a]n understanding of the proper role of county retirement boards under CERL [wa]s critical.” (*Alameda*, at p. 1066.) It stated:

Under CERL, “management of the retirement system is vested” in the county retirement boards. (§ 31520.) This delegation of authority is echoed by article XVI of our Constitution, which grants to public employee retirement boards, including those operating under CERL, the “sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries.” (Cal. Const., art. XVI, §17, subd. (a); see *Flethez v. San Bernardino County Employees Retirement Assn.* (2017) 2 Cal.5th 630, 635–636 [applying art. XVI to a county retirement system].) As a practical matter, the retirement boards’ responsibilities generally involve management of the system’s financial assets [citation] and the processing and payment of claims for benefits under the plan [citations]. In carrying out these responsibilities, the Constitution grants retirement boards “plenary authority and fiduciary responsibility for investment of moneys and administration of the system.” (Cal. Const., art. XVI, §17.) Of necessity, the task of processing claims for retirement benefits requires the county retirement boards to interpret and apply the provisions of CERL, including the sections defining compensation, compensation earnable, and final compensation.

The task of a county retirement board is not to design the county’s pension plan but to implement the design enacted by the Legislature through CERL. As noted, CERL speaks of the retirement boards as “manag[ing]” the retirement system (§ 31520), while the Constitution charges them with “administer[ing]” the system and its assets (Cal. Const., art. XVI, §17, subd. (a)). Although CERL grants to retirement boards the power to make regulations, those regulations must be consistent with the provisions of CERL. (§ 31525 [“The board may make regulations not inconsistent with this chapter”].) The boards do not have the authority to “evade the law” that otherwise applies to their system. [Citation.] “The granting of retirement benefits is a legislative action within the exclusive jurisdiction of the [relevant

legislative body]. ... [¶] It is not within [a board's] authority to expand pension benefits beyond those afforded by the authorizing legislation. ... The scope of the board's power as to benefits is limited to administering the benefits set by the [legislative body]." [Citations.] This conclusion follows from principles governing the authority of administrative bodies generally: "[I]t is well established that the rulemaking power of an administrative agency does not permit the agency to exceed the scope of authority conferred on the agency by the Legislature. [Citation.] 'A ministerial officer may not ... under the guise of a rule or regulation vary or enlarge the terms of a legislative enactment or compel that to be done which lies without the scope of the statute' [Citation.] And, a regulation which impairs the scope of a statute must be declared void." [Citations.]

Accordingly, it is the Legislature that has final authority to establish the provisions governing the award of pension benefits under CERL. Further, it is the judiciary, not individual retirement boards, that has "final responsibility" for the interpretation of the Legislature's terms. [Citation.] For that reason, although county retirement boards have the authority to interpret CERL's provisions as necessary to perform their administrative functions, they have no authority to adopt or act on an interpretation that is inconsistent with those provisions. An administrative action that is unauthorized or inconsistent with governing legislation is invalid. [Citation.]

(*Id.*, at pp. 1066-1067.)

"The doctrine of equitable estoppel is founded on concepts of equity and fair dealing. It provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment. The elements of the doctrine are that (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." [Citation] Although equitable estoppel is a well-accepted remedy among private parties, it has been applied sparingly when the party sought to be estopped is a governmental entity. "The government may be bound by an equitable estoppel in the same manner as a private party" [Citation], but the doctrine is invoked only in "those 'exceptional cases' where 'justice and right require'" [Citation] that is, when "the injustice which would result from a failure to

uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel” [Citation]. In short, “[e]quitable estoppel ‘will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy.’” [Citation]

(*Id.*, at p. 1072.)

Also helpful in understanding the appropriate analysis, is our Supreme Court’s decision in *Cal Fire Local 2881 v. CalPERS* (2019) 6 Cal.5th 965. Only a “vested right” is protected by the constitutional contract clause. (*Id.*, at p. 970.) The terms and conditions of public employment are generally subject to modification at the discretion of the appropriate body, but constitutional protection may arise, “(1) when the statute or ordinance establishing a benefit of employment and the circumstances of its enactment clearly evince an intent by the relevant legislative body to create contractual rights or, (2) when, even in the absence of a manifest legislative intent to create such rights, contractual rights are implied as a result of the nature of the employment benefit, as is the case with pension rights.” (*Ibid.*) “[T]he receipt of pension benefits is granted constitutional protection because the benefits constitute a portion of the compensation awarded by the government to its employees, paid not at the time the services are performed but at a later time.” (*Id.*, at p. 985.)

Pension benefits, the classic example of deferred compensation, flow directly from a public employee’s service, and their magnitude is roughly proportional to the time of that service. Just as each month of public service earns an employee a month’s cash compensation, it also earns him or her a slightly greater benefit upon retirement. In this way, pension benefits are, literally, earned by an employee’s work. Upon retirement, this additional component of his or her compensation is paid to the employee in the form of pension benefits. (*Id.*, at p. 986.)

Not all pension increasing opportunities are vested rights, however, as a “term and condition of public employment that is otherwise not entitled to protection under the contract clause does not become entitled to such protection merely because it affects the amount of an employee’s pension benefit.” (*Id.*, at p. 992.) In the absence of constitutional protection, these opportunities may be altered or eliminated at the agency’s discretion. (*Id.*, at p. 971.)

Thus, the Court must consider whether the categories of compensation (canine handler pay, “incentive pay”, and earning additional credits on the 7/12 schedule) are “vested benefits” such that either through an express or implied contract they obtained constitutional protection. If the answer to this question is “yes”, the Court must then consider whether their elimination was an unconstitutional impairment pursuant to the “California Rule.”

///

D. Canine Handler pay

Petitioner argues Canine Handler pay is not compensation for work outside normal working hours and therefore must be counted as retirement compensation. Petitioner does not provide *any* citations to admissible evidence in support of these factual assertions. A party who fails to support an argument with the necessary citations is deemed to have waived the subject argument. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) The Court will not consider any factual assertions made without citations to evidence.⁴

Section 31461, subdivision (b)(3) excludes from “compensation earnable” any payment for “additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.” Section 7522.34, subdivision (c)(6) excludes from “pensionable compensation” payments for “additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.” Pursuant to *Alameda*, a retirement board has no authority to take action contrary to these provisions. (*Alameda*, supra, 9 Cal.5th at p. 1067.)

Canine Handler pay is given for work that “cannot be performed during regularly scheduled hours” and the parties agree that in practice this work occurs off hours and between regularly-scheduled shifts of duty. The plain language of sections 31461 and 7522.34 excludes as pensionable compensation payment for any services rendered outside of “normal working hours.” Petitioner argues that “regularly scheduled hours” and “normal working hours” mean different things, but provides no authority for this assertion. Our Supreme Court noted in *Alameda* that subdivision (b)(3) serves to reinforce that compensation earnable is to be based on “the same work year for all employees within a particular pay grade.” (*Alameda*, supra 9 Cal.5th at p. 1097.) There is no evidence before the Court that the extra pay for Canine Handlers is part of those employees’ “particular pay grade” rather than payment for time spent outside of normal working hours to compensate them for this additional time.

The Court finds Petitioner has failed to demonstrate SCERS has a mandatory ministerial duty to include Canine Handler pay in “compensation earnable” or “pensionable compensation.” Further, as inclusion of Canine Handler pay in “pensionable compensation” and “compensation earnable” would violate sections 31461 and 7522.34, the Court finds SCERS did not violate the California Constitution or any contractual right, as Petitioners do not have an enforceable contractual right for SCERS to violate its statutory obligations. (*Alameda*, supra, at pp. 1066-1067.)

E. The Compensation Review Policy - Incentive pay

Petitioner argues SCERS had the option, pursuant to section 7522.34, to choose to define pensionable compensation as either (1) the normal monthly rate of pay; or (2) the members’ base pay. Petitioner argues SCERS previously communicated that they would include all pay

⁴ The Court reiterates that Petitioner noticed this matter for a hearing on the merits of its Petition and Complaint. As such, Petitioner has the burden of producing evidence and establishing entitlement to relief in its favor. The Court will not search through the evidence to try to find evidence to support Petitioner’s factual assertions. Petitioner also makes repeated references to “alleging facts sufficient to constitute a claim for relief” which is the standard for evaluating a demurrer, and is *not* the standard for evaluating the merits of a claim.

incentives in determining pensionable compensation, and therefore by adopting the Final Compensation Review Policy, SCERS impaired a vested pension right of Petitioner's members. Again, the only evidence Petitioner cites to support its assertion that SCERS promised, asserted, enticed, or otherwise communicated to Petitioner that it would include incentive pay in pensionable compensation, is a hearsay statement made by Petitioner's president, Mr. Mickelson. Further, in this same deposition when asked if SCERS ever "represented that it included any incentive pay items other than canine handler pay in pensionable compensation after January 1, 2013," Mr. Mickelson responded, "They have not." (Dunning Decl., Exh. A.)

Petitioner also asserts that the deposition testimony of Catherine Mitchell, a County Human Resources Manager who had also worked as a Senior Personnel Analyst establishes that incentive pay is included in base pay. Witness Mitchell indicated "differentials, allowances, or incentive pays" are part of base pay because they are "regular pay and are calculated based on their hourly rate." Thus, Petitioner argues all incentive pay must be included in pensionable compensation calculations, as they are considered "base pay" by their own witness.

SCERS asserts that it has *never* included incentives, differentials, or allowances other than Canine Handler pay in PEPRAs members' "pensionable compensation" since PEPRAs took effect on January 1, 2013, and has never collected contributions on incentives on such pay items from PEPRAs members. In support of this assertion, SCERS has provided numerous documents dating back to 2012 indicating that "pensionable compensation" was to generally include base pay, and excluded incentives.

With regard to the testimony provided by witness Mitchell, SCERS points to her clarifying testimony that incentives such as differentials and premiums were reported separately from base salary, were not reported as pensionable, and have been reported this way since 2013.

Section 7522.34, subdivision (a) provides that "pensionable compensation" means the "normal monthly rate of pay or base pay of the member." Thus, there is no mandatory ministerial duty for SCERS to include anything more than "base pay" in determining "pensionable compensation."

In Petitioner's declaratory relief claim it alleges SCERS is "obligated to include all incentive pays" in pensionable compensation. However, Petitioner has not identified a statute that mandates such an obligation, nor any contractual obligation SCERS made that it would include such pay. There is no MOU, or documentation provided to Petitioner or its members by SCERS, or any other evidence to establish an express or implied contractual obligation to include incentive pay in pensionable compensation.

Petitioner has not established that its members ever obtained a *vested right* to have incentive pay included in pensionable compensation. Petitioner has failed to persuade the Court that a purported communication from SCERS' Executive Officer to Petitioner's President created a vested right in all of Petitioner's members. A statement by an individual about an agency's rule or policy is generally not admissible as evidence of agency intent when it contradicts the plain language of the policy. (See *Rose v. County of San Benito* (2022) 77 Cal.App.5th 688, 717; *Broome v. Regents of University of California* (2022) 80 Cal.App.5th 375,

387-388.) Further, Mr. Mickelson acknowledged that SCERS never represented that incentives other than canine handler pay would be included in pensionable compensation after January 2013. Ms. Mitchell's testimony does not alter the Court's conclusion, as her testimony is, in the light most favorable to Petitioner, a statement of an individual that contradicts the plain language of the policy. Construed in a light most favorable to SCERS, Ms. Mitchell's testimony supports the agency's position that incentive pay is not reported as pensionable compensation, and that SCERS has been consistent in this policy since 2013.

Even if Petitioner had produced evidence that the historical policy was to include incentive pay in pensionable compensation, this alone does not establish an implied contractual right. (See *Sappington v. Orange Unified School Dist.* (2004) 119 Cal.App.4th 949, 954-955; *Broome*, supra, 80 Cal.App.5th at 388.) As such, Petitioner has not demonstrated that its members ever obtained a contractual right to have incentive pay included in pensionable compensation. Because Petitioner has neither identified a mandatory ministerial duty, nor a contractual obligation to include such payments in pensionable compensation, Petitioner has also failed to establish that it is entitled to declaratory relief in its favor as to these issues, nor that Petitioner's contract rights under the Constitution were implicated by the Compensation Review Policy.

F. 7/12 Credit Accrual

As with the prior two policies discussed above, the question before the Court is whether SCERS has a mandatory ministerial duty to allow employees who work a 7/12 schedule to accrue more than one year of service credit in a particular calendar year. Petitioner's constitutional claim is premised on its assertion that SCERS has a contractual obligation to allow 7/12 employees to accrue more than one year of service credit in a particular calendar year. Petitioner's declaratory relief claim is derivative of these claims.

SCERS argues there is no ministerial duty to calculate service credit in a manner that results in the accrual by any of Petitioner's members of more than one year of service for full-time work in a particular calendar year. SCERS argues CERL suggests a year of service should be calculated as such because it indicates that a temporary, seasonal, or intermittent employee shall receive credit for the percentage of time they worked when compared to the "time required to perform the same duties in a full-time position." (Gov. Code § 31640.5.) SCERS also cites to provisions that an employee who returns from a leave of absence due to illness may not receive more than 12 months of credit for this absence. (Gov. Code § 31646.)

SCERS also argues its members "arguably may not accrue more than one year of service credit during a single year if the plan is to retain its federal tax qualification." (MPAs, p. 26.) In support of this assertion, SCERS cites to Federal Regulations concerning "limitations for defined benefit plans." (26 C.F.R. 1.415(b)-1.) This regulation provides calculations based on "years of service" and refers to these as "calendar years." Further, for a member who has less than 10 years of service certain limitations apply, and in determining years of service no more than one year may be credited for any 12-month period. (26 C.F.R. 1.415(b)-1(g)(1)(ii)(D).)⁵

⁵ The Court does not find CERL or federal tax law *clearly* mandates a pension plan to calculate service credit such that the maximum credit an employee may lawfully accrue in a calendar year is one year of service credit. The Court

SCERS further maintains there is no contractual basis to impose such a duty on SCERS, as SCERS never committed to provide this type of credit accrual indefinitely. The only contractual obligation SCERS has is to include all eighty-four bi-weekly hours of work in “compensation earnable.” In support of its arguments SCERS cites to *Cal Fire Local 2881 v. California Public Employees’ Retirement System* (2019) 6 Cal.5th 695. In *Cal Fire*, employees challenged PEPRA’s provision eliminating the opportunity for public employees to purchase additional retirement service credit. (*Id.*, at p. 970.) Prior to PEPRA employees could receive pension benefits calculated on the basis of up to five years’ more public employment than they actually worked by making appropriate payments to their pension fund. PEPRA repealed the opportunity to purchase the credit, but did not alter the rights of employees who had already made the purchase. (*Ibid.*) Our Supreme Court determined the opportunity to purchase the credit was not a right protected by the contract clause as there was no indication the Legislature had intended to create such contractual rights and the opportunity to purchase such credits was not provided as deferred compensation for an employee’s work. (*Id.*, at pp. 970-971.) As such, the court did not need to address whether the elimination of credit purchase opportunity was an unconstitutional impairment of vested rights. (*Id.*, at p. 971.)

Petitioner does not cite to any authority that SCERS has a mandatory ministerial duty to allow 7/12 schedule employees to accrue more than a year of service credit in a particular calendar year. Thus, the Court presumes Petitioner concedes no mandatory ministerial duty exists. Petitioner instead exclusively argues the 1999 decision to allow members working a 7/12 schedule to accrue more than a year of service credit in a calendar year created a vested right to accrue one hour of service credit for every hour of regularly scheduled work. Petitioner maintains changing this policy impaired the vested right. Petitioner argues this alteration of pension rights must bear material relation to the theory of the pension system and its successful operation, and because this change disadvantages employees it must be accompanied by comparable new advantages. (See *Allen v. Board of Administration* (1983) 34 Cal.3d 114, 131; *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 864.)

As previously discussed, the Service Credit Policy does not apply retroactively. Thus, all employees who worked a 7/12 schedule prior to April 28, 2019 maintain their right to have all regularly scheduled hours completed prior to April 28, 2019 included in determining their service credits. The question is whether Petitioner’s members had a vested right to *continue* to accrue additional service credits for the hours worked beyond 2088 in a calendar year, despite SCERS’ modification of the policy.

An employee “does not obtain, prior to retirement, any absolute right to fixed or specific benefits, but only to a substantial or reasonable pension. [Citation.] (*Maffei v. Sacramento County Employees’ Retirement Systems* (2002) 103 Cal.App.4th 993, 999.) In support of its argument that service credit accrual was a vested benefit, Petitioner cites to four cases, which the Court will consider in turn.

finds SCERS has failed to demonstrate it is statutorily barred from allowing members to accrue more than a year of service credit in a calendar year.

In *Betts v. Board of Administration* (1978) 21 Cal.3d 859, prior to the petitioner's retirement but after he left office, the Legislature changed the method of benefit computation from a calculation based on the amount paid to the officer holding the office which the retired member last held, to a calculation based on the amount actually received by the officer while serving in that office. (*Id.*, at p. 862-863.) Our Supreme Court determined the petitioner had a vested contractual right to the benefit computation method that existed during his employment, and that the change was a clear disadvantage with no comparable new advantages as a "fluctuating" system of benefit computation had been replaced with a "fixed" system. (*Id.*, at p. 867-868.) This case is distinguishable from the case before the Court because Petitioner has not proven that a vested contractual right to calculation of retirement credits based on the hours worked in a calendar year exists, and has not demonstrated that retirement credit accrual is synonymous with a "benefit computation method." Here, Respondent is not altering the pension benefits previously accrued by employees under the 7/12 schedule, but is changing the policy going forward, factually distinguishable from the Petitioner in *Betts*.

In *Olson v. Cory* (1980) 27 Cal.3d 532, judicial officers had a vested right to an annual increase in salary equal to the full increase in the consumer price increase. (*Id.*, at p. 538.) In 1976, legislation purported to place a limit on cost-of-living increases, thus impairing the vested interest. (*Ibid.*) Our Supreme Court determined any judge who had been serving office during the term for which she was entitled to the cost-of-living increase was *still* entitled to this increase. However, upon entering a new term, they impliedly agreed to be bound by the newly enacted salary limitations. (*Id.*, at p. 540.) Any individual already receiving a pension was likewise entitled to the increase they would have received prior to the 1976 legislation, but in subsequent years salary increases could be constitutionally limited. (*Id.*, at p. 546.) Indeed, the Court's holding in *Olson* is consistent with the result here in that changes in salary and other benefits can be made prospectively without impairing an employee's contract rights.

In *Allen v. Board of Administration* (1983) 34 Cal.3d 114, legislators who had retired prior to the legislative term commencing 1967 claimed they could not be subjected to constitutional and statutory restrictions adopted in 1966 and which prohibited the use of post-1966 legislative salaries in computing the retirement allowances for legislators who retired before 1967. (*Id.* at p. 118.) Our Supreme Court determined the legislators had no contractual right to retirement allowances on the basis of this significant salary increase intended to redress low legislative salaries, as these gains were not reasonable pension expectations.

In *Legislature v. Eu* (1991) 54 Cal.3d 492, an initiative measure sought to impose limitations on legislators' benefits by providing that after 1990 further pension benefits would not accrue as the result of service in the Legislature. (*Id.*, at p. 502.) Our Supreme Court determined the measure was invalid as applied to incumbent legislators as they had been promised pension benefits as well as the right to continue to earn pension benefits by way of continued service in the Legislature. (*Id.*, at pp. 528-531.) This right to earn additional pension benefits through continued service was a vested right. For nonincumbent legislators, there was "no vested or protectable right to a continuation of the pension system in operation prior to their employment." (*Id.*, at p. 534.) This case is distinguishable from the case before the Court because SCERS is not limiting Petitioner's members' ability to accrue *all* further pension benefits.

Petitioners have also not established its members obtained a contractual or vested right to *continue* to earn service credit for all hours worked pursuant to the 7/12 schedule.

None of these cases address a factual circumstance similar to the one presented by this litigation or support the proposition that an employee has a vested right to inclusion in the calculation of compensation earnable. The only contractual right Petitioner *has* identified with regard to the 7/12 schedule is the right to have the extra hours included in the calculation of the employee's compensation earnable for those employees who have already earned it, but not into the future in perpetuity. This contractual right has not been modified by the Service Credit Policy. The Court also agrees that the cited cases support a finding that 7/12 schedule employees have a vested right to service credits based on all hours they worked their regular schedule prior to April 28, 2019. However, this right has not been modified or otherwise impaired by the Service Credit Policy.

As in *Cal Fire*, Petitioner has not established that SCERS intended to create contractual service accrual rights by way of its 1999 policy, nor that the credit accrual opportunity was granted as a form of deferred compensation.⁶ Thus, elimination of the *opportunity* to continue to accrue more than a year of service credits in a calendar year does not implicate the Constitution.

IV. Conclusion

The petition for writ of mandate is **DENIED**. Petitioner's complaint is also without merit, and judgment shall be entered in favor of Defendants.

B. FINAL RULING

At the hearing on this matter, Petitioner only provided argument concerning canine handler pay and the 7/12 credit accrual policy.

Petitioner argued at the hearing that the 1999 policy provided its members working the 7/12 schedule an implied contractual right to certain retirement credit accrual in perpetuity. Petitioner argued its members have relied on this implied contractual right in planning for retirement, and therefore SCERS' modification of the policy implicates Petitioner's members' constitutional rights. The Court disagrees.

As explained in detail in the Court's tentative ruling, Petitioner has not established those involved in crafting the 1999 policy had an intent to create a vested right such that its credit accrual provisions could *never* be prospectively amended or revoked. Further, as in *Cal Fire*, Petitioner has not established that the opportunity to work the 7/12 schedule and accrue service credit in accordance with hours worked was a policy provided as deferred compensation for an employee's work. All employees who worked a 7/12 schedule prior to April 28, 2019 maintain their right to have all regularly scheduled hours completed prior to April 28, 2019 included in

⁶ The Court notes that the employees working the 7/12 schedule do not even have a contractual right to continuation of this work schedule, as the MOU provides the County may, in its sole discretion, discontinue the 7/12 work schedule. If the opportunity to work the schedule may be eliminated entirely, certainly the opportunity to accrue extra service credits may also be eliminated.

determining their service credits. Petitioner has not identified a vested right to the opportunity to accrue service credit in excess of full-time employment on a traditional 80-hour biweekly schedule.

With regard to Canine Handler pay, Petitioner reiterated the arguments raised in its papers. Petitioners and SCERS agreed the only evidence relevant to the Court's consideration of canine handler pay is the MOU and applicable addendum. The Court understands Petitioner's argument that Canine Handler duties are part of the applicable employee's "normal" work because they consistently undertake these duties, and that it is not relevant that the duties occur outside the applicable employee's regular "shift." However, the evidence establishes that Canine Handler pay "cannot be performed during regularly scheduled hours" and sections 31461 and 7522.34 exclude as pensionable compensation, payment for any services rendered outside of "normal working hours."

The petition for writ of mandate is **DENIED**. Petitioner's complaint is also without merit, and judgment shall be entered in favor of Respondents.

In accordance with Local Rule 1.06, Respondents' counsel is directed to prepare an order denying the petition and dismissing the complaint, incorporating this ruling as an exhibit to the order, and a separate judgment; submit them to Counsel for Petitioner for approval as to form in accordance with CRC 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with CRC 3.1312(b).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D Schaber Courthouse
720 Ninth STREET
Sacramento, CA 95814-1311

SHORT TITLE: Sacramento County Deputy Sheriffs' Association vs. Sacramento County Employees Retirement System

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
34-2019-80003132-CU-WM-GDS

I certify that I am not a party to this cause. I certify that a true copy of Ruling on Submitted Matter was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Sacramento, California, on 04/17/2023.

Clerk of the Court, by: /s/ D. Lashley , Deputy

KRISTA C WHITMAN
COUNTY COUNSEL
700 H STREET # 2650
SACRAMENTO, CA 95814 US

DAVID E MASTAGNI
MASTAGNI HOLSTEDT AMICK MILLER JOHNSEN &
1912 I STREET
SACRAMENTO, CA 95811 US

ASHLEY K DUNNING
NOSSAMAN LLP
50 CALIFORNIA STREET # 34TH FLOOR
SAN FRANCISCO, CA 94111 US

CLERK'S CERTIFICATE OF SERVICE BY MAIL

