Case No. S247095 No Fee (Gov. Code § 6103)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ALAMEDA COUNTY DEPUTY SHERIFFS' ASSOCIATION, et al.,
Plaintiffs and Appellants,

v.

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSN. AND BD. OF THE ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSN., et al.,
Defendants and Respondents,

STATE OF CALIFORNIA
Intervenor,

CENTRAL CONTRA COSTA SANITARY DISTRICT,
Real Party in Interest.

AFTER A DECISION BY THE COURT OF APPEAL FIRST APPELLATE DISTRICT, DIVISION FOUR, CASE NO. A141913, CONTRA COSTA COUNTY SUPERIOR CT. CASE NO. MSN12-1870 (COORDINATED WITH ALAMEDA SUPERIOR CT. CASE NO. RG12658890 AND MERCED SUPERIOR CT. CASE NO. CV003073)

ANSWERING BRIEF OF CENTRAL CONTRA COSTA SANITARY DISTRICT IN RESPONSE TO OPENING BRIEF FILED BY ALAMEDA COUNTY DEPUTY SHERIFFS' ASSN. ET AL.

MEYERS, NAVE, RIBACK, SILVER & WILSON
KENTON L. ALM (SBN 59017)
555 12th Street, Suite 1500
Oakland, California 94607
Telephone: (510) 808-2000
Facsimile: (510) 444-1108

RENNE PUBLIC LAW GROUP®
*LINDA M. ROSS (SBN 133874)
RANDY RIDDLE (SBN 121788)
350 Sansome Street, Suite 300
San Francisco, California 94104
Telephone: (415) 848-7200
Facsimile: (415) 848-7230

Attorneys for Real Party in Interest
CENTRAL CONTRA COSTA SANITARY DISTRICT

Case No. S247095 No Fee (Gov. Code § 6103)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ALAMEDA COUNTY DEPUTY SHERIFFS' ASSOCIATION, et al.,
Plaintiffs and Appellants,

v.

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSN. AND BD. OF THE ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSN., et al.,
Defendants and Respondents,

STATE OF CALIFORNIA
Intervenor,

CENTRAL CONTRA COSTA SANITARY DISTRICT,
Real Party in Interest.

AFTER A DECISION BY THE COURT OF APPEAL FIRST APPELLATE DISTRICT, DIVISION FOUR, CASE NO. A141913, CONTRA COSTA COUNTY SUPERIOR CT. CASE NO. MSN12-1870 (COORDINATED WITH ALAMEDA SUPERIOR CT. CASE NO. RG12658890 AND MERCED SUPERIOR CT. CASE NO. CV003073)

ANSWERING BRIEF OF CENTRAL CONTRA COSTA SANITARY DISTRICT IN RESPONSE TO OPENING BRIEF FILED BY ALAMEDA COUNTY DEPUTY SHERIFFS' ASSN. ET AL.

MEYERS, NAVE, RIBACK, SILVER & WILSON
KENTON L. ALM (SBN 59017)
555 12th Street, Suite 1500
Oakland, California 94607
Telephone: (510) 808-2000
Facsimile: (510) 444-1108

RENNE PUBLIC LAW GROUP®
*LINDA M. ROSS (SBN 133874)
RANDY RIDDLE (SBN 121788)
350 Sansome Street, Suite 300
San Francisco, California 94104
Telephone: (415) 848-7200
Facsimile: (415) 848-7230

Attorneys for Real Party in Interest
CENTRAL CONTRA COSTA SANITARY DISTRICT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

The Central Contra Costa Sanitary District ("District") files this brief in response to the opening brief on the merits filed by Petitioners Alameda County Deputy Sheriffs' Association, et al., Plaintiffs and Appellants in the courts below.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners Alameda County Deputy Sheriffs' Association et al. ("Alameda Sheriffs" or "Plaintiffs") filed a Petition For Review on a single issue:

> Does the Contracts Clause of the California Constitution require that any modification to public employees' pension benefits resulting in a disadvantage to the employees be accompanied by an offsetting new advantage?

Despite the limited scope of this issue, the Alameda Sheriffs have filed a brief that mostly makes other arguments, including that: (1) CERL granted the retirement boards the discretion to make the disputed pay items pensionable; (2) the appellate court erred in "finding no vested right to the inclusion of terminal pay and the other disputed pay items;" and (3) the appellate court "compounded its error by failing to follow this Court's precedent and creating a framework to impair vested rights to obtain financial savings." (Alameda Sheriffs' Br. at p. 22.) None of these arguments has merit.

The Alameda Sheriffs represent employee members of the Alameda County Employees' Retirement Association ("ACERA"), whereas the District is an employer member of the Contra Costa County Employees' Retirement Association ("CCCERA"), also a party in these consolidated actions. Accordingly, in this answering brief, the District addresses the legal issues common to both systems.

First, contrary to the Alameda Sheriffs' argument, the County Employees Retirement Law ("CERL") never permitted the disputed pay items to be pensionable. The Alameda Sheriffs argue that CERL permitted the retirement boards to exercise discretion over which pay items were pensionable, which is simply incorrect. The appellate court properly ruled that the Legislature, not retirement boards, determines what is pensionable, and thus retirement boards do not have the authority to create vested rights.

Here, as established in the District's opening brief, the disputed pay items were never pensionable. The definition of "compensation earnable" never "clearly" and "unequivocally" included leave cash outs, on call pay or pension enhancements. Accordingly, under this Court's decision in *Retired Employees Assn. of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171 ("*REAOC*"), there can be no vested right to inclusion of these pay items. In enacting AB 197, the state Legislature did not change the law, but rather clarified that inclusion of these pay items had always been a prohibited abuse.

But even if the Legislature did more than clarify the law, the changes made were not a substantial impairment of vested rights. In amending CERL, the Legislature was acting in a purely regulatory capacity. The Legislature created CERL to serve counties and their employees; the state is not a member. Accordingly, the state's own funds are not involved. That the challenged changes affected only future and not past service confirms the conclusion that no vested rights are at issue here.

Second, contrary to the Deputy Sheriffs' argument, the appellate court correctly ruled that there is no requirement of a comparable new advantage for any disadvantage involved in modification of pensions. There are now four appellate courts that have so ruled, with the decision in *Hipsher v. Los Angeles County. Employees' Retirement Assn.* (2018) 234 Cal.Rptr.3d 564 being the most recent. All have adopted the analysis on this issue conducted

by the appellate court in *Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn.* (2016) 2 Cal.App.5th 674, 695.

Third, economic necessity is not the only basis for modification of pensions. When the Legislature acts in a regulatory capacity, as it did here, a broad array of justifications, not limited to financial distress, justify modification of vested rights. Here the Legislature acted to "rein in pension spiking" which had resulted in retirees receiving pensions unrelated to their actual earnings, created a disparity among employees of different retirement systems, and caused the public to lose confidence in system integrity. Moreover, even when the Legislature acts for financial reasons, there is no requirement, as argued by the Alameda Sheriffs, that bankruptcy is the only option.

II. ARGUMENT

A. Plaintiffs Did Not Prove A Vested Right To Inclusion Of Any Of The Disputed Pay Items In Compensation Earnable.

1. The Retirement Systems Did Not Have The Discretion To Include Pay Items In Compensation Earnable Unless They Were Authorized By Statute.

The Alameda Sheriffs argue that ACERA had the discretion to include the disputed pay items as "compensation earnable" and thus make them pensionable. Although the District disagrees with much of the appellate court's ruling in this case, on this issue the appellate court was correct, ruling that retirement boards have no such discretion:

> For all of these reasons, we reject appellants' argument that the Boards possess *Guelfi* discretion—that is, the ability to include additional pay items in compensation earnable, unmoored by the language of CERL. An item of compensation is either includable in compensation, compensation earnable, and final compensation under the CERL statutes, or it is not. If it fails to satisfy any one of these statutory litmus tests, it may not be included in a member's pensionable compensation under CERL.

(*Alameda County Deputy Sheriffs' Assn. v. Alameda County Employees' Retirement Assn.* (2018) 19 Cal.App.5th 61, 96.)

CERL only gives the retirement boards the authority to establish regulations "not inconsistent" with CERL (Gov. Code 31525 ["The board may make regulations not inconsistent with this chapter."]) Case law confirms that retirement boards, through adoption of administrative policies, have no independent power to expand benefits. (See *City of San Diego v. Haas* (2012) 207 Cal.App.4th 472, 495 [applying *REAOC*, "only the City Council has the power to grant employee benefits, and [the retirement board] exceeds its authority when it attempts to 'expand pension benefits' beyond those the City Council has granted"]); *City of San Diego v. San Diego City Employees' Retirement System* (2010) 186 Cal.App.4th 69, 79-80 ("The scope of the board's power as to benefits is limited to administering the benefits set by the City"); *Oden v. Bd. of Admin.* (1994) 23 Cal.App.4th 194, 201 [Under PERL, "public agencies are not free to define their employee contributions as compensation or not compensation ... the Legislature makes those determinations"].)

Because the Legislature and not the retirement boards, determines pension benefits, unauthorized board policies do not create vested rights. "The contract clause does not protect expectations that are based upon contracts that are invalid, illegal, unenforceable, or which arise without the giving of consideration." (*Medina v. Bd. of Retirement* (2003) 112 Cal.App.4th 864, 871.) As stated in *Medina*: "Any purported contract to give appellants the pension benefits of safety members was invalid, and thus the vested rights doctrine does not apply." (*Id.*; see also *San Diego City Firefighters v. Bd. of Admin.* (2012) 206 Cal.App.4th 594, 609 [resolution granting retirement benefit was void because it conflicted with City charter requirement that pension benefits be enacted by ordinance.]

This Court reiterated this principle in *REAOC*, explaining that "the law does not recognize implied contract terms that are at variance with the terms of the contract as expressly agreed or as prescribed by statute." (*REAOC*, *supra*, 52 Cal.4th at p. 1181.) As explained in *In re Retirement Cases* (2003) 110 Cal.App.4th 426, 453, under CERL, counties and other participating employers have agreed only to provide "a pension to be calculated as mandated by CERL."

For these reasons, retirement boards do not have the authority to define what is "compensation earnable" under CERL. Accordingly, retirement board policies do not create vested rights.

2. Plaintiffs Cannot Prove That The State Legislature Clearly And Unequivocally Authorized Retirement Boards To Include The Disputed Pay Items In Compensation Earnable.

This Court has held that the legislative intent to create private rights of a contractual nature against the governmental body must be "clearly and unequivocally expressed." (*REAOC*, 52 Cal.4th 1171, 1185, 1187 [quoting *National R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co.* (1985) 470 U.S. 451, 466].) As demonstrated in the District's opening brief (District Opening Br. at pp. 28-29), this requirement is known as the "unmistakability" doctrine. (*United States v. Winstar* (1996) 518 U.S. 839, 860.) It is not satisfied here.

Hipsher v. Los Angeles County. Employees Retirement Assn. (2018) 234 Cal.Rptr.3d 564 recently applied these principles to PEPRA pension reform, upholding an amendment under which an employee "forfeits a portion of his or her retirement benefits following a conviction of a felony offense that occurred in the performance of his or her official duties." (*Id.* at p. 568.) The Court stated that "[a]n appellant who claims the calculation of his retirement benefits violates his vested contractual rights under the state contract clause has the burden of 'mak[ing] out a clear case, free from all

reasonable ambiguity,' a constitutional violation occurred." [Citation.]" (*Id.* at p. 571, quoting *Deputy Sheriffs' Assn. of San Diego County v. County of San Diego* (2015) 233 Cal.App.4th 573, 578.) Applying these principles, the Court concluded that *Hipsher* had failed to meet this test. (*Id.* at p. 573.). The same is true here.

The Alameda Sheriffs rely on various legislative changes to CERL to argue that the Legislature in fact "did not intend to limit 37 Act retirement systems' power to include pay items in employees' pension calculations." (Alameda Sheriffs' Opening Br. at pp. 28-30.) The Sheriffs use the example of the Legislature's adoption in 1990 of Government Code section 31460.1, which initially excluded employer payments towards flexible spending programs from compensation earnable if the board of supervisors so approved, but later repealed the exclusion because it was being misinterpreted. (Alameda Sheriffs' Opening Br. at p. 28)

There is nothing, however, "clear" or "unequivocal" about this legislative history. Rather, the Alameda Sheriffs attempt to infer legislative intent based on a strained interpretation of historical events. The examples they cite in fact show that the Legislature, acting in a regulatory fashion, retained control.

In sum, Plaintiffs cannot show that the Legislature ever clearly and unequivocally granted discretion to the retirement boards to define "compensation earnable." Nor, as demonstrated in the District's opening brief, can they show that the Legislature ever approved the type of spiking practice at issue here.[1]

---

[1]As shown in the District's opening brief (pp. 28-46), the definition of "compensation earnable" makes no mention of leave cash outs, on call pay, or pension enhancements – the disputed pay items here. There is certainly no "clear" and "unequivocal" statement that they are part of "compensation earnable" as required by REAOC.

B. AB 197 Did Not Substantially Impair Vested Pension Rights.

1. There Was No Substantial Impairment Because The State Legislature Was Acting In A Regulatory Capacity, With No Economic Self-Interest at Stake.

Even if the Legislature did not simply clarify the law, any modifications to CERL did not constitute a substantial impairment of vested rights. The Legislature created CERL, but CERL governs only county retirement systems. The state and its employees are not members and the state's own fiscal interests are not at stake. Accordingly, when the state Legislature amends CERL, it acts in a regulatory capacity pursuant to its police power, and amendments to that regulated system do not constitute a substantial impairment of vested rights.

As demonstrated in the District's opening brief, in enacting AB 197, the Legislature acted in a regulatory capacity to address specific abuses that had arisen under CERL. This type of law, which imposes generally applicable rules of conduct designed to advance a broad societal interest is of limited constitutional concern under the Contracts Clause. (See *United States Trust Co. v. New Jersey* (1971) 431 U.S. 1, 22-24; *Energy Reserves Group. Inc. v. Kansas Power & Light Co.* (1983) 459 U.S. 400, 412, n. 13; *Exxon Corp. v. Eagerton* (1983) 462 U.S. 176, 190.)

In order to weigh the substantiality of a contract impairment, courts look at the reasonable expectations of the parties. In this inquiry, it is especially important whether the parties operated in a regulated industry. (*Houlton Citizens' Coalition v. Town of Houlton* (1st Cir. 1999) 175 F.3d 178, 190 [rejecting Contract Clause challenge and emphasizing that in examining parties' expectations "it is especially important whether the parties operated in a regulated industry"]; *Mercado-Boneta v. Administraction del Fondo de Compensaction Al Paciente* (1997) 125 F.3d

9, 13 [in rejecting Contract Clause challenge, court explained that "[a] key factor in determining the parties' expectations is whether the parties were operating in a heavily regulated industry"].)

California courts also follow this approach. *(Calfarm Ins. Co. v. Deukmejian,* (1989) 48 Cal.3d 805, 830-831 [in determining that degree of contract impairment was "relatively low" based on parties' expectations, the Court explained that ["[i]nsurance, moreover, is a highly regulated industry, and one in which further regulation can reasonably be anticipated"]; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 557.)

In *Hermosa Beach*, the court considered a Contract Clause challenge to an initiative measure that extended a prohibition on oil and gas exploration, drilling and production to sites leased from, and permitted by, the city before the passage of the initiative. In analyzing the degree of impairment of the lease – and ultimately rejecting the Contract Clause challenge – the court emphasized "the backdrop of pervasive governmental regulation to which the oil exploration industry has in the past been subjected (including, most particularly, by the City itself)." (86 Cal.App.4th at p. 557, citing *Energy Reserves, supra,* 459 U.S. 400 at p. 411.)

The California Constitution grants the Legislature the authority to determine the powers to be exercised by counties, which are subdivisions of the state. (Cal. Const., art. XI, sections 1(a)-(b).) Here, the Legislature created CERL, and heavily regulates the system.

Under the Government Code, a county establishes a retirement system under CERL – "accepting this chapter" – through adoption of an ordinance by a majority vote of the electors or four-fifths vote of the board of supervisors. (Gov. Code §31500.) CERL includes 18 separate Articles, spans Government Code sections 31450 to 31899.9, and covers 363 pages.

Over the years, the Legislature has made numerous amendments to CERL, which defeat any claim that employees had an expectation that CERL was a static system. For example, in 1937 and 1947, the Legislature refined the definition of "compensation earnable." *(Ventura County Deputy Sheriffs' Assn. v. Bd. of Retirement* (1997) 16 Cal.4th 483, 502-503; see also Gov. Code sec. 31461.5 [enacted in 1998 to clarify that "salary bonuses and any other compensation payment" were not pensionable]; Gov. Code sec. 31461.6 [enacted in 2000 to clarify when overtime pay is pensionable].) The Deputy Sheriffs' brief itself points to a history of the Legislature modifying various sections of CERL, including enacting section 31460.1 in 1990 but then repealing it. (Deputy Sheriffs' Br. at p. 28.)

The Legislature's exercise of its authority to establish and alter the provisions of CERL demonstrates that the Legislature is acting in a regulatory capacity. Counties and special districts, not the state, are the employer members of CERL. Accordingly, here the state is not acting to protect its own financial interests, as argued by the Deputy Sheriffs. Rather, the Legislature acts to ensure that CERL properly reflects sound pension policy and does not result in consequences not intended by the state Legislature. Accordingly, to the extent AB 197 impaired employees' contract rights, that impairment is not substantial.

2. There Was No Substantial Impairment Because The Changes Applied Only To Future Work.

There was no substantial impairment of vested rights for the additional reason that AB 197 operated only prospectively. It did not affect the pension of anyone who retired before its effective date. Accordingly, under a "deferred compensation" theory, properly applied, there was no substantial impairment.

The doctrine of vested rights rests upon a theory of "deferred compensation" – that as employees work, they earn pension benefits to be

paid at some future date. (*Marin, supra,* 2 Cal.App.5th at p. 695 ["[A] pension is treated as a form of deferred salary that the employee earns prior to it being paid following retirement."].) Under this theory, a number of judicial decisions, described below, recognize that Contract Clause protection does not extend to benefits for periods not yet worked. "A rule that only protected accrued benefits would be consistent with the theory of pensions as deferred compensation; whereas a rule that protected future accruals . . . would be a significant, unprecedented change that goes beyond any known theory of deferred compensation." (Amy B. Monahan, *Statutes As Contracts? The "California Rule" and Its Impact on Public Pension Reform* (2012) 97 Iowa L. Rev. 1029, 1061.)

Both *Marin* and *Cal Fire* rested, in part, on the prospective nature of the changes at issue in those cases. (*Marin, supra,* 2 Cal.App.5th at p. 708 ["The Legislature's change to the definition of compensation earnable was expressly made purely prospective by the Pension Reform Act. MCERA's responsive implementation was also explicitly made prospective only."]; *Cal Fire Local 2881 v. Cal. Public Employees Retirement System* (2016) 7 Cal.App.5th 115, 131 ("*Cal Fire*") ["[N]othing in the revised statutory scheme immediately destroyed plaintiffs' right to purchase the airtime service credit; rather, the revised scheme set forth a deadline by which plaintiffs had to exercise this right in order to avoid losing it."].)

A number of other jurisdictions recognize the distinction between services already performed, and services yet to be performed, and find vesting only as to benefits attached to services already performed.

For example, Florida's "preservation of rights" statute states that "rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights

and shall not be abridged in any way." (See *Scott v. Williams* (Fla. 2013) 107 So.3d 379, 383.)

Yet the Florida Supreme Court held that the legislature has authority "to amend a retirement plan prospectively, so long as any benefits tied to service performed prior to the amendment date are not lost or impaired." (*Id.* at pp. 388-389.) The Florida Court explained:

> We stress that the rights provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service. To hold otherwise would mean that no future legislature could in any way alter future benefits of active employees for future services, except in a manner favorable to the employee. *This view would, in effect, impose on the state the permanent responsibility of maintaining a retirement plan which could never be amended or repealed irrespective of the fiscal condition of this state.* Such a decision could lead to fiscal irresponsibility.... [We] *conclude that the legislature has the authority to modify or alter prospectively the mandatory, noncontributory retirement plan for active state employees.*

(*Id.* at p. 388, emphasis in original.)

(See also *AFT Michigan v. Michigan* (Mich. 2014) 846 N.W.2d 583, 594 [under the Michigan constitution, "the Legislature cannot diminish or impair accrued financial benefits, but we think it may properly attach new conditions for earning financial benefits which have not yet accrued"]; *Everson v. State* (Haw. 2010) 228 P.3d 282, 288, 290 ["By adding the word 'accrued' before 'benefits,' . . . 'the delegates only sought to indicate that there 'can be no impairment of past benefits, but that [the] future benefits can be changed by the legislature[.].'"]; *Professional Fire Fighters of New Hampshire v. State* (N.H. 2014) 107 A.3d 1229, 1236 ["We hold that there is no indication that in enacting . . . [the statute] the legislature unmistakably intended to bind itself from prospectively changing the rate of NHRS member contributions to the retirement system."]; *Moro v. State* (Or. 2015)

351 P.3d 1, 39 ["Although we conclude that the legislature cannot change the COLA retrospectively, for PERS benefits already earned, it can change the COLA prospectively, for benefits earned by PERS members on or after the effective date of the amendments."].)

The District recognizes that *Legislature v. Eu* (1991) 54 Cal.3d 492, 530-531, included statements concerning the vested nature of benefits tied to future work. But *Eu* in fact involved *the destruction of already earned benefits*, because "the statutory change threatened to divest the legislators of what they had already earned." (*Monahan, supra,* 97 Iowa L. Rev. at p. 1068.) Accordingly, *Eu* does not create a barrier to the District's position here – that already earned benefits and prospective benefits are to be treated in a distinct manner.

In summary, a standard that distinguishes benefits tied to completed work from benefits tied to future work is consistent with the theory of deferred compensation. The changes here were prospective only and thus did not constitute a substantial impairment of contract rights.

C. Even If There Were A Substantial Impairment, There Is No Requirement To Provide A Comparable New Advantage For Every Disadvantage.

The Alameda Sheriffs argue that AB 197's changes to the definition of "compensation earnable" were not "reasonable" because they did not offer a "comparable new advantage" for every disadvantage. (Alameda Sheriffs' Br. at pp. 39-44.) But that argument has been rejected by the Courts of Appeal as an inaccurate reading of this Court's Contracts Clause jurisprudence.

1. Four Appellate Courts Have Rejected The Requirement Of A "Comparable New Advantage" For Every Disadvantage.

Four appellate courts of this state agree that there need not be a "comparable new advantage" for every disadvantage involved in a pension

modification: *Hipsher, supra,* 234 Cal.Rptr.3d 564; *Alameda County Deputy Sheriff's Assn., supra,* 19 Cal.App.5th 61; *Marin, supra,* 2 Cal.App.5th 674; *Cal Fire, supra,* 7 Cal.App.5th 115.

Here, in *Alameda*, the Court of Appeal agreed with the *Marin* Court that a modification "should" but not "must" include a comparable new advantage. According to the *Alameda* Court:

> After tracing the origin of the "must" language to a 1969 appellate court decision and establishing that it has never again been reiterated by the Supreme Court, *Marin* makes, we feel, a convincing argument that the use of "must" in *Allen II* was not "intended to herald a fundamental doctrinal shift." Thus, according to *Marin*, the high court's vested rights jurisprudence generally requires only that detrimental pension modifications *should* (i.e., ought) to be accompanied by comparative new advantages – in effect, "'a recommendation, not . . . a mandate.'"

(19 Cal.App.5th at p. 120 [citations omitted].)

The *Marin* Court conducted a scholarly review of this Court's prior rulings on the standard that governs modification of pension benefits for public employees, concluding that "since 1983, the 'must' formulation has never been reiterated by the Supreme Court, which has instead uniformly employed the 'should' language from the 1955 *Allen* decision." (2 Cal.App.5th at pp. 697-699.) And the Court noted that this Court's 1983 decision in *Allen* actually found "the reduction was not constitutionally improper," without evaluating any comparable advantage (*id.* at p. 699), making the term "must" dicta. The *Marin* Court stated, "we cannot conclude that *Allen v. Board of Administration* in 1983 was meant to introduce an inflexible hardening of the traditional formula for public employee pension modification." (*Id.* at p. 699.)

The most recent decision to reject the requirement of a comparable new advantage is *Hipsher, supra,* 234 Cal. Rptr. 3d 564, which rejected a vested rights challenge to a new law that required pension forfeiture upon

conviction of a felony tied to public employment. Relying on *Marin*, the Court stated: "Thus, a modification of vested pension rights need not invariably be accompanied by a comparable new advantage." (*Id.* at p. 573.)

2. This Court Has Continuously Stated That Employees Have Only The Right To A Substantial and Reasonable Pension.

There need be no new comparable advantage because this Court has repeatedly stated that public pensions may be modified so long as a "substantial or reasonable pension" remains. Where the Court has found modifications to be unwarranted, the modification did not satisfy this standard. Rather, the modification either drastically reduced or destroyed the pension or no sufficient rationale was offered.

- *Kern v. City of Long Beach* (1947) 29 Cal.2d 848 ("*Kern*"). As originally stated in *Kern*: "the employee does not have any right to any fixed or definite benefits, but only to a *substantial or reasonable pension*. There is no inconsistency therefore in holding that he has a vested right to a pension but that the amount, terms and conditions of the benefits may be altered." (*Id.* at pp. 854-855 [emphasis added].) In *Kern*, the modification did not meet this standard because it essentially abolished the pension system on the eve of the plaintiff's retirement. (*Id.* at pp. 855-856.)
- *Packer v. Board of Retirement* (1950) 35 Cal.2d 212 ("*Packer*"): "any one or more of the various benefits offered ... may be wholly eliminated prior to the time they become payable, provided ... the employee retains the right to a *substantial pension*." (*Id.* at p. 218 [emphasis added].) The Court held: "It is reasonably clear from the foregoing, however, that the employees, including Packer, retained rights

to substantial pension benefits and, accordingly, that the 1941 revision did not exceed the scope of permissible modification." (*Id.* at p. 219.)

- *Allen v. City of Long Beach* (1955) 45 Cal.2d 128 ("*Allen*"): "[M]odifications *must be reasonable*, and it is for the courts to determine upon the facts of each case what constitutes a permissible change." (*Id.* at p. 131.) The Court disapproved the modification from a fluctuating to a fixed pension because the amendment not only "substantially decreases plaintiffs' pension rights without offering any commensurate advantages" but also "there is no evidence or claim that the changes enacted bear any material relation to the integrity or successful operation of the pension system established by section 187 of the charter." (*Ibid.*)
- *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438. Relying on *Allen*, the Court stated that modifications must be "reasonable" and disapproved the modification from a fluctuating to a fixed pension for the same reasons in *Allen*. (*Id.* at p. 449.)
- *Miller v. State of California* (1977) 18 Cal.3d 808: "a public pension system is subject to the implied qualification that the governing body may make reasonable modifications and changes before the pension becomes payable and that until that time the employee does not have a right to any fixed or definite benefits but only to a *substantial or reasonable pension*." (*Id.* at p. 816 [emphasis added].) In *Miller*, this Court held that it was not a violation of the Contracts Clause to lower the age of retirement. (*Id.* at pp. 817-818.)

- *Betts v. Bd. of Admin.* (1978) 21 Cal.3d 859, 863 ("*Betts*"): "The employee does not obtain, prior to retirement, any absolute right to fixed or specific benefits, but only to a '*substantial or reasonable' pension.*" (emphasis added.) *Betts* stated only that "changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages." (*Id.* at p. 864.) Although *Betts* disapproved of a change from a "fluctuating" to a "fixed" method of computing benefits, the defendant in that case offered no justification for the change. (*Id.* at pp. 867-868.)
- *Allen v. Bd. of Admin.* (1983) 34 Cal.3d 114, 120 ("*Allen II*"). "With respect to active employees, we have held that any modification of vested pension rights must be reasonable, must bear a material relation to the theory and successful operation of a pension system, and, when resulting in disadvantage to employees, must be accompanied by comparable new advantages." Although *Allen II* used the term "must," the holding of the case actually turns on the threshold determination of whether the plaintiffs had a contractual right to the benefits they sought, which the court held they did not. (*Id.* at pp.124-125.)
- *Legislature v. Eu* (1991) 54 Cal.3d 492 ("*Eu*"): "[M]odifications must be reasonable and any `changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages.'" (*Id.* at p. 529 [citations omitted].) In *Eu*, this Court did not use the term "must" but rather used the term "should" and based its decision on the fact that the future benefit had been destroyed. The changes did not "merely modify the LRS pension system;

rather they terminate that system entirely as to additional benefits accruing for future services." (*Id.* At p. 530.)

In sum, this Court has repeatedly made clear that public pensions may be modified so long as a "substantial or reasonable pension" remains.

3. The Comparative New Advantage Requirement Must Be Rejected Because It Would Nullify The General Rule That Reasonable Modifications May Be Made So Long As There Remains A Substantial Or Reasonable Pension.

The requirement of a comparable new advantage for every disadvantage must be rejected for an additional reason. The requirement would eliminate the general rule that pensions may be modified so long as a "substantial" or "reasonable" pension remains. Under the Alameda Sheriffs' approach, the state is handcuffed from making any meaningful modifications.

The Sheriffs' position is untenable because it nullifies the state's sovereign powers and is thus contrary to Contracts Clause jurisprudence. A limitation on the government's reserved power cannot be "construed to destroy the reserved power in its essential aspects." (*City of El Paso v. Simmons* (1965) 379 U.S. 497, 509; see also *U.S. Trust Co. of N.Y. v. New Jersey* (1977) 431 U.S. 1, 23, fn. 20 ["[A] state is without power to enter into binding contracts not to exercise its police power in the future."].)

This Court has long held that a statute may not be interpreted in this manner; a general rule may not be eliminated by a proviso to that rule. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735-736 [rejecting petitioner's interpretation because it "ascribes an unreasonably expansive meaning to the second sentence the proviso" which "virtually read the first sentence out of the section"].) For the same reason, this Court should not permit the elimination of the "substantial or reasonable pension" standard to

be obliterated by a proviso that requires a comparable new advantage for every disadvantage.

In fact, applying the equivalent benefit test often makes no sense. As recently explained in *Hipsher*: "Indeed, it would be anomalous to suggest that the Legislature must reward an employee for conviction of a job-related felony by providing a new comparable advantage in the context of a section 7522.72 forfeiture." (*Hipsher, supra*, 234 Cal.Rptr.3d at p. 571.) Similarly, the changes at issue here eliminated the unearned windfalls that resulted from pension spiking. It makes no sense to grant an "equivalent" benefit once it became clear that the premises relied upon in granting the original benefit were flawed. It also makes no sense when the need to change a benefit arises out of economic concerns. Granting an equivalent benefit in either case would merely perpetuate the problem the Legislature is seeking to address.

4. AB 197 Preserved A Substantial And Reasonable Pension.

The modifications made by AB 197 satisfy Contracts Clause requirements because they more than preserved a "substantial or reasonable" pension.

As an initial matter, an "alteration of contractual obligations" that is "minimal" does not constitute an unconstitutional impairment of contract, "end[ing] the inquiry at its first stage." (*Allen II, supra*, 34 Cal.3d at p. 119.) In assessing the extent of the modification, courts look to whether the benefit was central to a party's agreement to enter into a contract. (See *City of El Paso, supra,* 379 U.S. at p. 514 ["We do not believe that it can seriously be contended that the buyer was substantially induced to enter into these contracts on the basis of a defeasible right to reinstatement...."]; *Allied Structural Steel v. Spannaus* (1978) 438 U.S. 234, 243, fn. 14 [noting that *El Paso* Court concluded that the "'measure taken ... was a mild one indeed'" because it did not affect term that induced contract].)

Here, the pension modification was "minimal" because the basic pension benefit was not affected. Even if not considered "minimal," it can hardly be argued that the availability of pension spiking induced an employee to enter public employment. For example, in *Marin*, the Court found that a "substantial or reasonable" pension remained, even after the elimination, from the pension calculation, of standby pay, administrative response pay, call back pay and other "premium" pays. (*Marin, supra*, 2 Cal.App.5th at p. 704.) In *Cal Fire*, a "substantial or reasonable" pension remained after the withdrawal of the option to purchase "airtime." (*Cal Fire, supra*, 7 Cal.App.5th at p. 132 ["Plaintiffs have made no showing that, following the elimination of their right to purchase airtime service credit, their right to a reasonable pension has been lost."). Similarly, here, the elimination of the various spiking practices at issue – inclusion in "compensation earnable" of leave cash outs, terminal pay and on call pay – does not deprive employees of a pension benefit based on actual earnings.

In summary, for prospective benefits, yet to be earned, modifications must be permitted so long as a substantial or reasonable pension remains. Here the modification was "minimal" and left a "reasonable or substantial" pension.

D. Even If A Challenged Law Substantially Impairs A Contract, The Law Is Valid If It Is Justified by A Legitimate Public Purpose, Not Limited To Economic Emergency.

The Alameda Sheriffs essentially contend that only a fiscal emergency or bankruptcy may justify modifications that create a substantial impairment. To the contrary, the law permits modifications based on a variety of policy concerns. Based on long-standing instructions from this Court, the law must permit pension modifications that protect against "advantages or burdens" that were "unforeseen" at the time a benefit was granted.

1. Modifications Must Be Permitted To Address Unforeseen Advantages Or Burdens.

This Court has stated that: "Constitutional decisions `have never given a law which imposes unforeseen advantages or burdens on a contracting party constitutional immunity against change.'" (Allen II, *supra*, 34 Cal. 3d at p. 120 [quotations and citations omitted].)

Based on this doctrine, *Lyon v. Flournoy* (1969) 271 Cal.App.2d 774, found no constitutional impairment in a law that severed the tie between retired legislators' pensions and current legislators' salaries (which had increased three-fold), and instead gave retirees an annual cost of living increase. The court explained that: "To pay them allowances based upon the new . . . salary would hand them a bonanza far outstripping their expectations for cost-of-living increases, dwarfing their relatively modest contributions and demanding enlarged appropriations of general tax funds to maintain the retirement system's solvency." (*Id.* at p. 786.)

Here, the Legislature acted to end abuses that had created "unforseen advantages or burdens." As set forth in the *Marin* case, California's public pension systems had been "tainted" by employees who had "taken advantage of the system," in part due to CERL's "very broad and general definition of 'compensation earnable.'" (*Marin*, *supra*, 2 Cal.App.5th at p. 682, fn. 2, quoting AB 340 legislative history.) AB 340 was intended to "address these abusive practices" by "eliminat[ing]" the "ability for employees to manipulate their final compensation calculations." (*Ibid.*) AB 197, in turn, was passed soon after AB 340 to "rein in pension spiking by current members of the system to the extent allowable by court cases that have governed compensation earnable in that system since 2003." (Supplemental Clerk's Transcript, pp. 114-116.)

In sum, the law permits modifications that address "unforeseen advantages or burdens" such as those encountered here.

2. The Court Should Defer to The Legislature's Reasonable Determination that the Amendments Were Necessary to Further the Important Public Purpose of Reforming the CERL System.

As the *Hipsher* court recently confirmed, in analyzing a Contract Clause challenge, "legislative deference is broad, as even a substantial [contractual] impairment may be constitutional if it is reasonable and necessary to serve an important public purpose." (*Hipsher*, supra, 234 Cal. Rptr. 3d at p. 571 [internal quotations and citations omitted].)

Substantial deference is particularly appropriate here. Because AB 197 applies to County, not state employees, the state's self-interest in its own fiscal concerns is absent. Rather, in choosing to reform the CERL system, the Legislature was acting in its regulatory capacity, pursuant to its broad police power. As one court has explained, "[u]nless the State itself is a contracting party, 'as is customary in reviewing economic and social regulation, ... courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." (*RUI One Corp. v. City of Berkeley* (9th Cir. 2004) 371 F.3d 1137, 1147, quoting *United States Trust Co.*, 431 U.S. at 22–23, 97 S.Ct. 1505.)

Other courts also have emphasized this factor:

> We believe the real issue in determining the level of deference given to a legislative determination of reasonableness and necessity is not so much whether the state is arguably a nominal party to the contract, but whether the state is acting in its own pecuniary or self-interested capacity by impairing a contractual obligation it has undertaken. [citations and quotations omitted] If the state has in fact altered none of its own financial obligations, then the legislative decision deserves significant deference because the state is essentially acting not according to its economic interests, but pursuant to

its police powers.

(*Mercado-Boneta, supra*, 125 F.3d at p. 16.)

California courts also apply this deferential standard in cases such as this one. (*In re Marriage of Carpenter* (1986) 188 Cal. App. 3d 604, 612 ["Unless the state itself is a contracting party, courts should defer to legislative judgment as to the necessity and reasonableness of legislation."]; *Hellinger v. Farmers Group., Inc.* (2001) 91 Cal. App. 4th 1049, 1064 [same].) Indeed, even where a government agency *is* a party to the contract, California courts apply a more deferential standard where, as here, "the legislation has been enacted pursuant to the state's reserved police powers, rather than its taxing and spending powers." (*Hermosa Beach Stop Oil Coal. v. City of Hermosa Beach, supra,* 86 Cal. App. 4th at p. 561.)

In summary, in enacting AB 197, the state Legislature was acting in a regulatory capacity. Neither the state nor its employees are members of a county retirement system. Accordingly, the state Legislature must be given broad deference in making the changes at issue here.

3. Modifications Need Not Be Justified By An Economic Emergency.

The Alameda Sheriffs suggest that only an economic emergency, or bankruptcy, can justify pension modifications and that "financial savings are never legitimate or reasonable grounds for impairment of a contract." (Alameda Sheriffs' Br. at p. 46.)

Here, as explained above, the case arises under CERL, and the state's own funds are not involved. But in any event, the Deputy Sheriffs misstate the law. A contract modification will pass constitutional muster if it is "reasonable and necessary to serve an important public purpose." (*U.S. Trust Co. of N.Y., supra*, 431 U.S. at p. 25.) In making this determination, courts look to see whether there is a "significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or

economic problem." (*Energy Reserves Group, Inc. v. Kan. Power & Light Co.* (1983) 459 U.S. 400, 411-412 [citations omitted].) "[T]he public purpose need not be addressed to an emergency or temporary situation." (*Id.* at p. 412; see also *Campanelli v. Allstate Life Ins. Co.* (9th Cir. 2003) 322 F.3d 1086, 1088 [no need for emergency or temporary situation.].

Accordingly, the Alameda Sheriffs are incorrect in suggesting that this standard can be satisfied only if AB 197 was enacted in response to an economic emergency. On at least three occasions, California courts, in rejecting Contract Clause challenges, have cited the *Energy Reserves* language. (*Hall v. Butte Home Health, Inc.* (1997) 60 Cal. App. 4th 308, 321 [concluding that challenged law was justified by policy of ending discrimination in restrictive covenants]; *Hellinger v. Farmers Group, Inc.* (2001) 91 Cal.App.4th 1049, 1064 [quoting language and concluding that protecting citizens from improper handling of earthquake insurance claims "satisfies the public purpose portion of the constitutional test"]; *Rue-Ell Enterprises, Inc. v. City of Berkeley* (1983) 147 Cal. App. 3d 81, 87 [quoting *Energy Reserves* language but declining to reach state justification after finding no substantial impairment].).

Recently the *Hipsher* Court upheld a Contracts Clause challenge to PEPRA, where there was no showing of economic necessity, much less one that constituted an emergency. While recognizing that the employee challenging the law had a vested right in his pension, the court concluded that the challenged PEPRA provision was justified based on the state's interest in "ensuring the integrity of public pension systems." (234 Cal.Rptr.3d at p. 571.)

The Deputy Sheriffs would supplant the responsibility of the state Legislature. They argue that bankruptcy court is the only forum for pension modification. But this contention is contrary to all contracts clause jurisprudence, state and federal, and invites havoc, requiring that public

services be brought to the brink of destruction before any action can be taken. Accordingly, the Court should defer to the Legislature's reasonable determination that AB 197 was a necessary legislative reform to end abuses to within the CERL system.

III. CONCLUSION

The Alameda Sheriffs have returned to the arguments they originally made in the Court of Appeal, but were rightfully rejected there. They contend that CERL grants retirement boards the authority to expand retirement benefits, but as found by the Court of Appeal, this is not the law. They contend that any disadvantage from a pension modification must be accompanied by a comparable new advantage, but four Court of Appeal decisions disagree. They contend that only economic emergency, or bankruptcy, can justify modification of pension benefits, but that is not the case.

As established in the District's opening brief, only the Legislature has the authority to grant retirement benefits. In enacting AB 197, the Legislature clarified that it had never intended to permit the manipulation of "compensation earnable" that had led to rampant pension spiking. However, even if AB 197 is considered a modification of the law, there was no substantial impairment of vested rights. Contrary to the Alameda Sheriffs' arguments, the Legislature was not acting out of fiscal self-interest, but in a regulatory capacity, because the state's own funds are not involved. And the changes applied only prospectively to those who had not yet retired, leaving a substantial or reasonable pension. Finally, even if vested rights were substantially impaired (which did not occur), the Court must give great deference to the Legislature's policy choices, given that the Legislature was acting in a regulatory capacity.

For these reasons, the Alameda Sheriffs' contentions must be rejected.

Respectfully submitted,

Dated: July 19, 2018

RENNE PUBLIC LAW GROUP

By: _____

LINDA M. ROSS (SBN 133874)
RENNE PUBLIC LAW GROUP®
350 Sansome Street, Suite 300
San Francisco, California 94104
Telephone: (415) 848-7200

Attorneys for Real Party in Interest
CENTRAL CONTRA COSTA SANITARY DISTRICT

CERTIFICATION OF WORD COUNT

(California Rules of Court, Rule 8.204(c)(1))

The foregoing brief contains 7032 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word processing program used to generate the brief.

Respectfully submitted,

Dated: July 19, 2018

RENNE PUBLIC LAW GROUP

By: _____

LINDA M. ROSS (SBN 133874)
RENNE PUBLIC LAW GROUP®
350 Sansome Street, Suite 300
San Francisco, California 94104
Telephone: (415) 848-7200

Attorneys for Real Party in Interest
CENTRAL CONTRA COSTA SANITARY DISTRICT

PROOF OF SERVICE

Case Name: *Alameda Co. DSA, et al. v. ACERA, et al. - Case No. S247095*
Court of Appeal Case No.: A141913
Lower Court Case No. MSN12-1870

I am not a party to the within action, am over 18 years of age. My business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On July 19, 2018, I served the following document(s):

ANSWERING BRIEF OF CENTRAL CONTRA COSTA SANITARY DISTRICT IN RESPONSE TO OPENING BRIEF FILED BY ALAMEDA COUNTY DEPUTY SHERIFFS' ASSN. ET AL.

✓	By electronic service via TRUEFILING to all registered participants on the attached service list

And

✓	One Unbound copy hand delivered to the California Court of Appeal, First Appellate District, 350 McAllister Street, San Francisco, CA 94102

✓	By United States Mail, enclosed in a postpaid properly addressed wrapper in a Post Office Mail Depository, under the exclusive custody and care of the United States Postal Service, within the State of California to the below courts:

Clerk of the Superior Court Contra Costa County Superior Court 725 Court Street, Room 103 Martinez, CA 94553	Clerk of the Superior Court Merced County Superior Court 2260 N Street Merced, CA 95340-3744
Clerk of the Superior Court Alameda County Superior Court Rene C. Davidson Courthouse 1225 Fallon Street Oakland, CA 94612	

I declare, under penalty of perjury that the foregoing is true and correct. Executed on July 19, 2018, in San Francisco, California.

Julie M. Hokanson

Julie M. Hokanson

SERVICE LIST	
Party	**Attorney**
Alameda County Deputy Sheriff's Association, Jon Rudolph, James D. Nelson, Darlene Hornsby, Robert Brock, Rocky Medeiros: Plaintiffs and Appellants	David E. Mastagni Isaac Sean Stevens Mastagni Holstedt, APC 1912 I Street Sacramento, CA 95811 davidm@mastagni.com istevens@mastagni.com
Alameda County Employees' Retirement Assn. and Bd. of the Alameda County Employees Retirement Assn.: Defendant and Respondent	Harvey Lewis Leiderman Reed Smith 101 Second Street - Suite 1800 San Francisco, CA 94105-3659 hleiderman@reedsmith.com Robert Lee Gaumer Alameda City Employees' Retirement Association 475 14th Street, Suite 1000 Oakland, CA 94612-1916 rgaumer@acera.org
Service Employees International Union, Local 1021, Amy Dooha, Building Trades Council of Alameda County, Mike Harteau: Interveners and Appellants	Anne I. Yen Weinberg, Roger & Rosenfeld 1001 Marina Village Parkway - Suite 200 Alameda, CA 94501-1091 ayen@unioncounsel.net
Alameda County Management Employees' Association, Kurt Von Savoye, International Federation of Professional and Technical Engineers, Local 21: Interveners and Appellants	Peter Warren Saltzman Leonard Carder LLP 1330 Broadway - Suite 1450 Oakland, CA 94612 psaltzman@leonardcarder.com
Teamsters Local 856, Hasani Tabari, Daniel Lister: Interveners and Appellants	Katwyn T. DeLaRosa Bennett & Sharpe, Inc. 2444 Main Street, Suite 110 Fresno, CA 93721 ktdelarosa@bennettsharpe.com Robert Bonsall Beeson Tayer Silbert & Bodine 250 Capitol Mall, Suite 300 Sacramento, CA 95814 rbonsall@beesontayer.com

SERVICE LIST	
Party	**Attorney**
Contra Costa County Deputy Sheriff's Association, Ken Westermann, Sean Fawell: Plaintiff and Appellant	Rockne Anthony Lucia Timothy Keith Talbot Rains Lucia Stern St. Phalle & Silver PC 2300 Contra Costa Blvd., Suite 500 Pleasant Hill, CA 94523 rlucia@rlslawyers.com ttalbot@rlslawyers.com
United Professional Fire Fighters of Contra Costa County, Local 1230: Plaintiff and Appellant	W. David Holsberry McCracken, Stemerman & Holsberry 595 Market Street, Suite 800 San Francisco, CA 94105 wdh@dcbsf.com
Physicians' and Dentists' Organization of Contra Costa: Intervener and Appellant	William Ira Corman Bogatin Corman & Gold 1330 Broadway, Suite 800 Oakland, CA 94612 wcorman@bcgattorneys.com
Contra Costa County Employees' Retirement Association, Board of Retirement of the Contra Costa County Employees' Retirement Association: Defendants and Respondents	Harvey Lewis Leiderman Reed Smith 101 Second Street - Suite 1800 San Francisco, CA 94105-3659 hleiderman@reedsmith.com
International Association of Fire Fighters Local 3546, Michael Mohun, David Atkins, Contra Costa County Deputy District Attorneys Association, Paul Graves, Gary Koppel: Interveners and Appellants	Christopher E. Platten Wylie, McBride, Platten & Renner 2125 Canoas Garden Avenue - Suite 120 San Jose, CA 95125 cplatten@wmprlaw.com
Probation Peace Officers Association of Contra Costa County: Intervener and Appellant	Paul Quentin Goyette Goyette & Associates 2366 Gold Meadow Way - Suite 200 Gold River, CA 95670 goyettep@goyette-assoc.com Rockne Anthony Lucia Rains, Lucia & Wilinson 2300 Contra Costa Blvd., Suite 230 Pleasant Hill, CA 94523 rlucia@rlslawyers.com

SERVICE LIST	
Party	**Attorney**
Service Employees International Union, Local 1021, Peter Barta: Interveners and Appellants	Vincent A. Harrington, Jr. Weinberg Roger & Rosenfeld 1001 Marina Village Parkway - Suite 200 Alameda, CA 94501-1091 vharrington@unioncounsel.net
Public Employees Union, Local No. 1, International Federation of Professional and Technical Engineers, Local 21, David M. Rolley, Peter J. Ellis, Susan Guest: Interveners and Appellants	Arthur Wei-Wei Liou Leonard Carder 1330 Broadway - Suite 1450 Oakland, CA 94612 aliou@leonardcarder.com
Locals 512 and 2700 of the American Federation of State, County and Municipal Employees AFL-CIO : Intervener and Appellant	Andrew Harold Baker Beeson Tayer & Bodine 483 Ninth Street, 2nd Floor Oakland, CA 94607 abaker@beesontayer.com Robert Bonsall Beeson Tayer Silbert & Bodine 250 Capitol Mall, Suite 300 Sacramento, CA 95814 rbonsall@beesontayer.com
United Chief Officers Association: Intervener and Appellant	Robert James Bezemek 1611 Telegraph Avenue - Suite 936 Oakland, CA 94612 rjbezemek@bezemeklaw.com
Alameda County Medical Center: Interested Entity/Party	Wright Lassiter, III, CEO Alameda County Medical Center, 1411 East 31st St. Oakland, CA 94602 wlassiter@acmedctr.com In Pro Per
First 5, Alameda County Children & Families Commission: Intervener and Appellant	Mark Friedman, CEO First 5 1115 Atlantic Avenue Alameda, CA 94501 mark.friedman@first5ecc.org In Pro Per

SERVICE LIST	
Party	**Attorney**
Housing Authority of County of Alameda: Intervener and Appellant	Brian Edward Washington Office of County Counsel 1221 Oak Street - Suite 450 Oakland, CA 94612-4296 brian.washington@acgov.org
Livermore Area Recreation and Park District: Intervener and Appellant	Rod A. Attebery Neumiller & Beardslee 509 West Weber Avenue, 5th Floor P. O. Box 20 Stockton, CA 95201-3020 rattebery@neumiller.com
Alameda County Office of Education: Intervener and Appellant	Sheila Jordan, Superintendent of Schools 313 W. Winton Avenue Hayward, CA 94544 sjordan@acoe.org In Pro Per
Superior Court of California: Intervener and Appellant	Patricia Sweeten, Court Executive Officer 1225 Fallon Street, Room 209 Oakland, CA 94612 psweeten@alameda.courts.ca.gov In Pro Per
County of Alameda: Intervener and Appellant	Andrea Lynne Weddle Office of the County Counsel Alameda County 1221 Oak Street, Suite 450 Oakland, CA 94612 andrea.weddle@acgov.org

SERVICE LIST	
Party	**Attorney**
State of California, Dominic Ciotola: Interveners, Appellants and Respondents	Anthony Paul O'Brien Office of the Attorney General 1300 "I" Street - Suite 125 Sacramento, CA 95814 anthony.obrien@doj.ca.gov Rei R. Onishi Office of Governor Edmund G. Brown Jr. State Capitol, Suite 1173 Sacramento, CA 95814 rei.onishi@doj.ca.gov
Rodeo-Hercules Fire Protection District: Intervener and Appellant	Richard Delmendo PioRoda Meyers, Nave, Riback, Silver & Wilson 555 12th Street, Suite 1500 Oakland, CA 94607 rpioroda@meyersnave.com
Bethel Island Municipal Improvement District: Intervener and Appellant	David Jeffry Larsen Law Office of David J. Larsen 5179 Lone Tree Way Antioch, CA 94531 dlarsen@dlarsenlaw.com
Contra Costa County, Contra Costa County Fire Protection District, Housing Authority of the County of Contra Costa, In-Home Supportive Services Public Authority, Contra Costa Local Agency Formation Commission, Children and Families First Commission: Intervener and Appellant	Thomas Lawrence Geiger Contra Costa County Counsel 651 Pine Street, 9th Floor Martinez, CA 94553-1229 thomas.geiger@cc.cccounty.us
Central Contra Costa Sanitary District: Real Party in Interest and Respondent	Kenton Alm Meyers, Nave, Riback, Silver & Wilson 555 12th Street, Suite 1500 Oakland, CA 94607 kalm@meyersnave.com Linda M. Ross Renne Sloan Holtzman Sakai LLP 350 Sansome Street, Suite 300 San Francisco, CA 94104 lross@publiclawgroup.com

SERVICE LIST	
Party	**Attorney**
Superior Court of California County of Contra Costa: Intervener and Appellant	Lyle R. Nishimi Judicial Council of California 455 Golden Gate Avenue San Francisco, CA 94102 lyle.nishimi@jud.ca.gov
East Contra Costa County Fire Protection District: Intervener and Appellant	Diane Marie Hanson Hanson Bridgett LLP 425 Market Street, 26th Floor San Francisco, CA 94105 domalley@hansonbridgett.com
Byron, Brentwood, Knightsen Union Cemetery District: Intervener and Appellant	Barbara Fee P.O. Box 551 Brentwood, CA 94513 ucemetery@yahoo.com In Pro Per
Rodeo Sanitary District: Intervener and Appellant	Carl P. Nelson Bold, Polisner, Maddow, Nelson & Judson, PC 500 Ygnacio Valley Road, Suite 325 Walnut Creek, CA 94596-3840 cpanelson@bpmnj.com
San Ramon Valley Fire Protection District: Intervener and Appellant	Robert Leete 1500 Bollinger Canyon Road San Ramon, CA 94583 William Dale Ross 400 Lambert Ave. Palo Alto, CA 94306-2219 wross@lawross.com
Contra Costa Mosquito & Vector Control District: Intervener and Appellant	Craig Downs 155 Mason Circle Concord, CA 94520 Martin Thomas Snyder Snyder, Cornelius & Hunter 399 Taylor Blvd., Suite 102 Pleasant Hill, CA 94523 mtsnyder@schlawfirm.net

SERVICE LIST	
Party	**Attorney**
Moraga/Orinda Fire Protection District: Intervener and Appellant	Sue Casey 33 Orinda Way Orinda, CA 94563 scasey@mofd.org In Pro Per
American Federation of State, County and Municipal Employees Local 2703, AFL-CIO, Jeffrey Miller, Sandra Gonzalez-Diaz, Merced County Sheriff's Assoc., an Affiliate of International Brotherhood of Teamsters, Local 856: Plaintiffs, Appellants and Respondents	Barry Jay Bennett Katwyn T. DeLaRosa Bennett, Sharpe, Delarosa, Bennett & Licalsi 2444 Main Street, Suite 150 Fresno, CA 93721 ktdelarosa@bennettsharpe.com
Merced County Employees' Retirement Association, Board of Retirement of the Merced County Employees' Retirement Association: Defendant and Respondent	Ashley K. Dunning Nossaman LLP 50 California Street 34th Floor San Francisco, CA 94111 adunning@nossaman.com