

APR 23 2018

Jorge Navarrete Clerk

No. S239958

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

Deputy

CAL FIRE LOCAL 2881 (formerly known as CDF Firefighters), *et al.*

Petitioners and Appellants,

v.

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
(CalPERS)

Defendant and Respondent,

and

THE STATE OF CALIFORNIA,

Intervener and Respondent.

On Review From The Court Of Appeal For the First Appellate District,
Division Three, Civil No. A142793

After An Appeal From the Superior Court For The State of California,
County of Alameda, Case Number RG12661622, Hon. Evelio Grillo,
Presiding Judge

**MOTION FOR JUDICIAL NOTICE; DECLARATION OF YONATAN L.
MOSKOWITZ**

Filed Concurrently with PETITIONERS AND APPELLANTS' CONSOLIDATED
ANSWER TO AMICI CURIAE

MESSING ADAM & JASMINE LLP

Gary M. Messing, Bar No. 75363

gary@majlabor.com

*Gregg McLean Adam, Bar No. 203436

gregg@majlabor.com

Jason H Jasmine, Bar No. 215757

jason@majlabor.com

Yonatan L. Moskowitz, Bar No. 306717

yonatan@majlabor.com

235 Montgomery St., Suite 828

San Francisco, California 94104

Telephone: 415.266.1800

Facsimile: 415.266.1128

Attorneys for Petitioners and Appellants CAL FIRE Local 2881, et al.

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Yonatan L. Moskowitz, Bar No. 306717

yonatan@majlabor.com

235 Montgomery St., Suite 828

San Francisco, California 94104

Telephone: 415.266.1800

Facsimile: 415.266.1128

Attorneys for Petitioners and Appellants CAL FIRE Local 2881, et al.

MOTION FOR JUDICIAL NOTICE

Under California Rule of Court 8.252, subd. (a)(2)(A), (B), and (D) and Evidence Code section 452, subd. (c), (d), (g) and (h) and section 459, Petitioners and Appellants CAL FIRE LOCAL 2881, *et al.* (“Petitioners”) move this Court to take judicial notice of the documents identified below.

The following documents are attached to the Declaration of Yonatan L. Moskowitz pursuant to California Rule of Court Rule 8.252, subd.

(a)(3):

A. A true and correct copy of the CalPERS Publication, called “A Solid Foundation for the Future,” dated December 31, 2017, and available at <<<https://www.calpers.ca.gov/docs/forms-publications/solid-foundation-for-the-future.pdf>>>;

B. A true and correct copy of the Petition for Hearing in the case *Allen v. City of Long Beach* (1955) 45 Cal.2d 128, Civil Nos. 19866 and 19867, filed on February 11, 1955;

C. A true and correct excerpt from a publication of Little Hoover Commission, called “Better Regulation: Improving California’s Rulemaking Process,” dated October 2011, and available at <<<http://www.cbirt.org/wp-content/uploads/2012/04/Report209.pdf>>>;

D. A true and correct copy of section 3.28.710 of the San Jose Municipal Code;

E. A true and correct copy of a publication of the Federal Reserve Bank of Minneapolis called “CPI Calculator Information,” and available at <<<https://www.minneapolisfed.org/community/financial-and-economic-education/cpi-calculator-information>>>;

F. A true and correct copy of a publication by CalPERS called “Miscellaneous Plan of the Metropolitan Water District of Southern California,” dated July 2017, and available at

<<<https://www.calpers.ca.gov/docs/actuarial-reports/2016/metropolitan-water-district-of-southern-california-miscellaneous-2016.pdf>>>;

G. A true and correct copy of a CalPERS publication titled “CalPERS Economic Impacts in California,” dated July 2017;

H. A true and correct copy of a publication of the United States Census Bureau called “*Quick Facts, California*,” and available at <<<https://www.census.gov/quickfacts/CA>>>;

I. A true and correct copy of a document obtained from WKYT News, purporting to be a Verified Complaint from the case *Kentucky ex. rel. Beshear v. Bevin* (Franklin Co., April 11, 2018) No. 18-CI-00379 which is available at <<https://www.scribd.com/document/376109053/Pension-Reform-Lawsuit#from_embed>>;

J. A true and correct copy of the Stipulation to Submit Cause without Oral Argument in the case *Allen v. City of Long Beach* (1955) 45 Cal.2d 128, Civil Nos. 19866 and 19867, and filed on April 27, 1955.

Petitioners’ Motion for Judicial Notice is based on this notice, the attached Memorandum of Points and Authorities, the accompanying Declaration of Yonatan L. Moskowitz, the accompanying exhibits, and the Answer to Amici Curiae.

Respectfully submitted,

DATED: April 23, 2018

MESSING ADAM & JASMINE LLP

By: 

Gary M. Messing
Gregg McLean Adam
Jason H Jasmine
Yonatan L. Moskowitz
Attorneys for Petitioners and Appellants
CAL FIRE Local 2881, *et al.*

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioners move this Court to take judicial notice of the documents identified in the above Request for Judicial Notice which support the Petitioners' request for relief. Judicial notice is the appropriate procedure to bring these documents to the Court's attention. (Cal. Evid. Code § 459, subd. (a); Rules of Court, Rule 8.252, subd. (a)(2).)

All of these documents are necessary for Petitioners to respond to arguments raised by amici in their filings. Amici's briefs raise novel arguments relying on documents, statistics, and facts that were not in the record prior to amicus' filings, and therefore Petitioners have sought out these documents in order to bolster their response.

None of these documents were submitted to the trial court or the court of appeal below.

California Evidence Code section 452, subd. (c) provides that judicial notice may be taken of “. . . Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” It also provides that judicial notice may be taken of any document published, recorded, or filed by any executive department. (*See also Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Wolfe v. State Farm Fire & Casualty Ins. Co.* (1996) 46 Cal. App.4th 554, 567 FN.16; *Hogen v. Valley Hosp.* (1980) 147 Cal.App.3d 119, 125.) “Official acts” include reports, records, files, and notices maintained by local governments, including counties. (*Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134.)

California Evidence Code section 452, subd. (d) provides that judicial notice may be taken of “[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.”

California Evidence Code section 452, subd. (g) provides that judicial notice may be taken of “[f]acts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.”

California Evidence Code section 452, subd. (h) provides that judicial notice may be taken of “[f]acts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.”

Appendices A, F, and G include documents published by Respondent CalPERS as part of its execution of its executive function, and therefore are proper subjects for judicial notice under Evidence Code section 452, subd. (c).

Appendices B, I, and J are filings in court cases before both this Court and a court in the Commonwealth of Kentucky, and therefore are proper subjects for judicial notice under California Evidence Code section 452, subd. (d).

Appendix C is a publication of the Little Hoover Commission of the State Government of California, which is also a proper subject for notice under California Evidence Code section 452, subd. (c) and (d).

Appendix D is an excerpt from the municipal code of the City of San Jose, and therefore is a proper subject for judicial notice under California Evidence Code section 452, subd. (c).

Appendix E is a publication of the Federal Reserve (which is within the United States federal government’s executive branch), and states information that is of a sufficiently general knowledge that it cannot be subject to challenge, and is therefore a proper subject for judicial notice under Evidence Code § 452, subd. (c) and (g).

Appendix H is a publication of the United States Census Bureau (which is within the United States federal government’s executive branch),

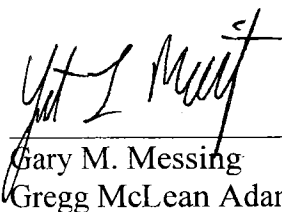
and states information that is not reasonably subject to dispute and which is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. It is therefore a proper subject for judicial notice under Evidence Code § 452, subd. (c) and (h).

Based on the foregoing reasons and authorities, Petitioners respectfully request that the Court grant their Motion for Judicial Notice.

Respectfully submitted,

DATED: April 23, 2018

MESSING ADAM & JASMINE LLP

By: 

Gary M. Messing
Gregg McLean Adam
Jason H Jasmine
Yonatan L. Moskowitz
Attorneys for Petitioners and Appellants
CAL FIRE Local 2881, *et al.*

DECLARATION OF YONATAN L. MOSKOWITZ

I, Yonatan L. Moskowitz, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California. I represent Petitioners and Appellants CAL FIRE LOCAL 2881, *et al.* (“Petitioners”) in this action. I have personal knowledge of the matters set forth below.

2. Exhibit A to this Motion is a true and correct copy of the CalPERS Publication, called “A Solid Foundation for the Future”, dated December 31, 2017, which I accessed at

<<<https://www.calpers.ca.gov/docs/forms-publications/solid-foundation-for-the-future.pdf>>>;

3. Exhibits B and J to this Motion are true and correct copies of the Petition for Hearing in the case *Allen v. City of Long Beach* (1955) 45 Cal.2d 128, Civil Nos. 19866 and 19867, filed on February 11, 1955 and the Stipulation to Submit Cause without Oral Argument in the case *Allen v. City of Long Beach* (1955) 45 Cal.2d 128, Civil Nos. 19866 and 19867, filed on April 27, 1955, which I received from the California State Archives upon my request;

4. Exhibit C to this Motion is a true and correct excerpt from a publication of Little Hoover Commission, called “Better Regulation: Improving California’s Rulemaking Process,” dated October 2011, which I accessed at

<<<http://www.lhc.ca.gov/sites/lhc.ca.gov/files/Reports/209/Report209.pdf>>>;

5. Exhibit D to this Motion is a true and correct copy of section 3.28.710 of the San Jose Municipal Code, which I accessed on April 20, 2018 at

https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeI

d=TIT3PE_IIREPL_CH3.281975FEEMREPL_PT6MECO_3.28.710NOR
ACOET;

6. Exhibit E to this Motion is a true and correct copy of a publication of the Federal Reserve Bank of Minneapolis called “CPI Calculator Information,” which I accessed at <<<https://www.minneapolisfed.org/community/financial-and-economic-education/cpi-calculator-information>>>;

7. Exhibit F to this Motion is a true and correct copy of a publication by CalPERS called “Miscellaneous Plan of the Metropolitan Water District of Southern California,” dated July 2017, which I accessed at <<<https://www.calpers.ca.gov/docs/actuarial-reports/2016/metropolitan-water-district-of-southern-california-miscellaneous-2016.pdf>>>.

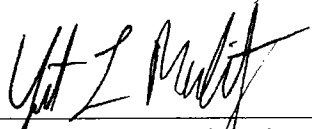
8. Exhibit G to this Motion is a true and correct copy of a publication by CalPERS titled “CalPERS Economic Impacts in California,” dated July 2017, which I requested from CalPERS (web@calpers.ca.gov) and received by e-mail;

9. Exhibit H to this Motion is a true and correct copy of the website *Quick Facts, California*, published by the United States Census Bureau, which I accessed at <https://www.census.gov/quickfacts/CA>.

10. Exhibit I to this Motion is a true and correct copy of a document obtained from WKYT News, purporting to be a Verified Complaint from the case *Kentucky ex. rel. Beshear v. Bevin* (Franklin Co., April 11, 2018) No. 18-CI-00379 which I accessed at <<https://www.scribd.com/document/376109053/Pension-Reform-Lawsuit#from_embed>>.

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

Executed this 23rd day of April 2018 at San Francisco, California



Yonatan L. Moskowitz

00049627-2

EXHIBIT A



A Solid Foundation for the Future

Acting on the discount rate, asset allocation, and amortization, CalPERS has built a solid path forward for the long-term future of the fund.

We have provided retirement security for California's public employees for more than 85 years. Through good times and bad, CalPERS has been a strong, reliable presence in our members' lives. Our \$21 billion in annual benefit payments help fuel economic activity across the Golden State.

How We've Strengthened the Fund

Over the past few years, we've adopted strong measures to ensure the long-term future of the CalPERS fund so that we can pay the benefits our members have earned after a career in public service.

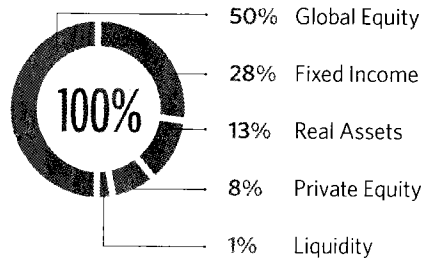
Lower Discount Rate

Lowered the discount rate from 7.5% to 7% over three years
(assumed rate of return)



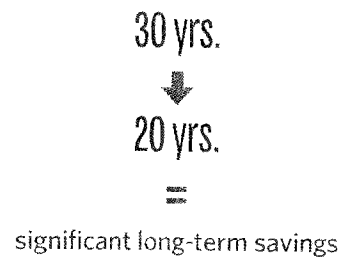
New Asset Allocation

Adopted new strategic asset allocation effective July 1, 2018



Shorter Amortization

Shortened the amortization period for employers to pay their unfunded liability



Our Members Tell Our Story

They depend on us to help them achieve a measure of financial security in retirement after a career dedicated to public service.

We partner with 2,945 employers to provide pension benefits for retirees and their beneficiaries on behalf of the state, public agencies, school districts, and special districts. Our members include public employees from across California, including peace officers, firefighters, secretaries, custodians, bus drivers, and their beneficiaries.



\$21.4 bil. paid in pension benefits annually (FY 2016-17)



\$2,876 average monthly allowance for all retirees



\$3,182 average monthly allowance for members retiring in FY 2016-17



64% of all service retirees receive monthly allowance less than \$3,000



3% only earn pensions greater than \$100,000, typically city leaders, physicians, and university employees

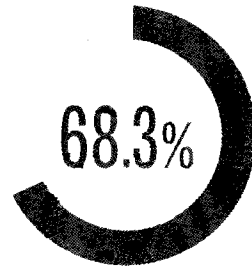


Investing for the Long Term

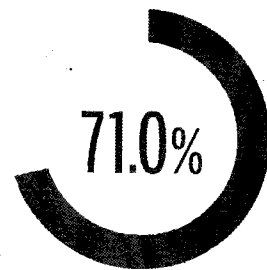
Our bottom line is strong and getting stronger.

The numbers that measure a pension plan's health have been on the rise, and recent investment returns and cash flow improvements only strengthen our position.

Every dollar we save by reducing our operating or investments costs, or by developing simpler, more efficient processes, is another dollar we can invest toward our members' benefits.

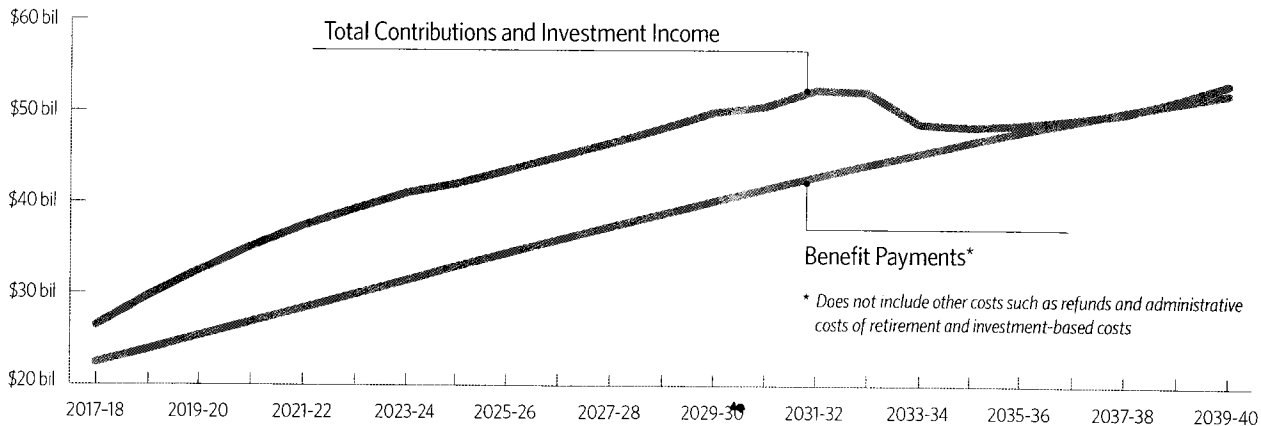


Funded Status
2015-16



Funded Status
December 31, 2017

Total Fund Cash Flows are Improving



\$350 billion

in assets as of December 31, 2017



1.5-2% reduction

in overhead costs each of the next 5 fiscal years



15.7% investment returns

in calendar year 2017; 11.2% in FY 2016-17



300+ → 150 reduction

in external managers



\$47 billion

increase in assets in calendar year 2017



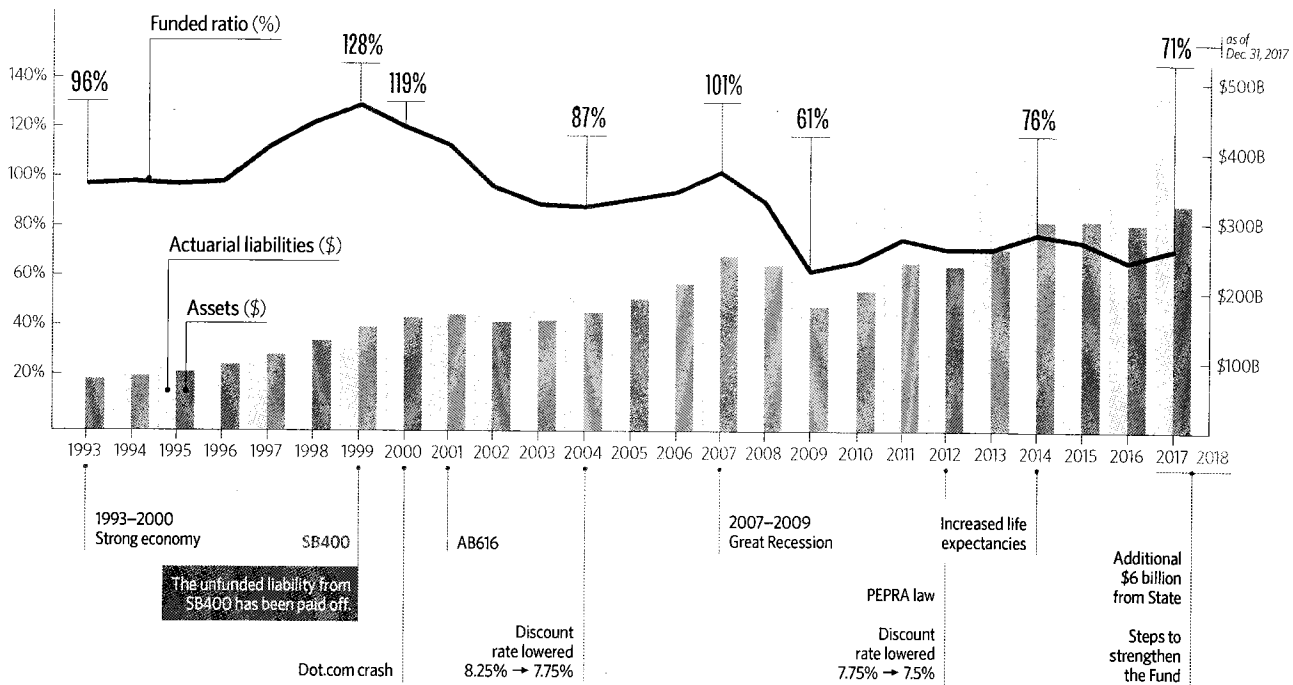
\$170 million savings

in reducing investment expenses in FY 2015-16

Retirement Security Across the Decades

We opened our doors in 1932 in the middle of the Great Depression, after California voters approved creating a plan to provide retirement security to the state's public employees. Over the decades we have faced challenges and made tough decisions in the best interest of our members and the fund.

Historical Factors Impact Funded Status (1993-2018)



It will take time to increase our funded status, but lowering the discount rate, adopting a new strategic asset allocation, and shortening amortization period, as well as improving efficiency and reducing operational costs, will strengthen the sustainability of the CalPERS fund for decades to come.



California Public Employees' Retirement System
 400 Q Street, P.O. Box 942701
 Sacramento, CA 94229-2701
www.calpers.ca.gov

EXHIBIT B

ORIGINAL

L.A. 22894

L.A. 22895

2ND CIVIL NOS.
19866 and 19867

**In the Supreme Court of the
State of California**

2ND CIVIL NOS. 19866 and 19867

2d Civil No. 19866.

MANNING T. ALLEN, *et al.*, *Plaintiffs and Appellants,*

vs.

CITY OF LONG BEACH, a municipal corporation, *et al.*,
Defendants and Respondents.

2d Civil No. 19867.

ELWIN L. ALGER, *et al.*, *Plaintiffs and Appellants,*

vs.

CITY OF LONG BEACH, a municipal corporation, *et al.*,
Defendants and Respondents.

APPEAL FROM SUPERIOR COURT OF LOS ANGELES COUNTY.
HON. PAUL NOURSE, JUDGE.

PETITION FOR HEARING.

FILED

JAN 1 1955

ALBERT D. WHITE,
320 Pine Avenue,
Long Beach 12, California.

Albert D. White

NOWLAND M. REID,
100 East Ocean Boulevard,
Long Beach 2, California.

Attorneys for Plaintiffs and Appellants, Manning T. Allen, et al.

KENNETH SPERRY,
110 Pine Avenue,
Long Beach 2, California.

Attorney for Plaintiffs and Appellants, Elwin L. Alger, et al.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

DECIDED 1-3-55 19__
REAG. DENIED 1-26-55 19__
HEARING DUE 3-4-55 19__

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In the Supreme Court of the State of California

MANNING T. ALLEN, *et al.*,
2d Civil No. 19866.

vs.
CITY OF LONG BEACH, a municipal corporation, *et al.*,
Plaintiffs and Appellants,
Defendants and Respondents.

ELWIN L. ALGER, *et al.*,
2d Civil No. 19867.

vs.
CITY OF LONG BEACH, a municipal corporation, *et al.*,
Plaintiffs and Appellants,
Defendants and Respondents.

PETITION FOR HEARING.

*To the Honorable Chief Justice and Associate Justices
of the Supreme Court:*

Plaintiffs and appellants in the above-entitled causes hereby respectfully petition this Honorable Court for a hearing after the decision of the District Court of Appeal, Second Appellate District, Division 1, upon the ground that such hearing is necessary to secure uniformity of decision, and likewise for the settlement of important questions of law. The decision was filed January 3, 1955, and is reported at 130 A. C. A. 72, 278 P. 2d 466.

Plaintiffs and appellants' petition for rehearing, in which attention was called to the fact that material facts were omitted from and incorrectly stated in the opinion, that the opinion was based upon an apparent misapprehension of one of the principal legal issues presented, and