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By: Kdaarden Date: 05/08/15 4:38

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10 BOARD OF ADMINISTRATION
11 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

12 In the Matter of the Calculation of Final
13 Compensation

) CASE NO. 2014-0256
) OAH NO. 2014040945

14 RICHARD LEWIS,

15 Respondent,

) **RESPONSE TO RESPONDENT
) RICHARD LEWIS' PURPORTED
) MOTION TO STRIKE CALPERS'
) REQUEST FOR OFFICIAL NOTICE**

16 and

17 CITY OF SAN BERNARDINO,

18 Respondent.

19 INTRODUCTION

20 Respondent Lewis (Respondent) purports to request an order striking CalPERS
21 Request for Official Notice submitted pursuant to Government Code section 11515.¹

22 Respondent's motion is ostensibly based on section 11506, subdivision (a)(2) and
23 Code of Civil Procedure sections 435 through 437.

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25 ¹ Unless stated otherwise, all statutory references are to the Government Code.

EXHIBIT
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II

DISCUSSION

Respondent request is improper. Section 11506 provides authority to file a Notice of Defense and not a motion to strike. There is in fact, no procedure under the California Administrative Procedure Act providing for a motion to strike. Nor are Code of Civil Procedure sections 435 and 437 applicable to these proceedings.

(1) CalPERS Request for Official Notice was Proper

Official notice may properly be requested "either before or after submission of the case for decision, of .. any fact which may be judicially noticed by the courts of this State." (§11515.) The record in this case has not even closed. Respondent is not prejudiced by a request made prior to the time for filing of his reply brief.

(2) CalPERS' Request Pertain to Documents Subject to Judicial Notice.

Courts of this state may take official notice of the official acts of a public entity² and of facts not reasonably subject to dispute as well as those facts capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code § 452(g),(h); See Also, *Clark v. Patterson* (1977) 68 Cal.App.3d 329, 335, at fn. 5 [judicial notice of language from City Charter proper *even where not set forth in the record.*]; *Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Cal. App. 4th 1014, 1027 [courts may take judicial notice of local ordinances, and the official resolutions, reports and other official acts of a city].)³

CalPERS has requested notice of official acts of the City of San Bernardino, including its City Charter, City Civil Service Rules and Resolutions adopting the

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² Evidence Code § 200 defines a public entity as including "...a city,...district, public authority, public agency, or any other political subdivision or public corporation...."

1 memorandum of understanding for its Management and Confidential.

2 (See, Exhibit B, C and D to Request for Official Notice.)⁴

3 CalPERS has also properly requested official notice of an unpublished decision
4 as evidence of the Board's administrative interpretation of governing statutes. The
5 decision also constitutes an official act of a state agency. (See, *City of Oakland v.*
6 *Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 57; *Styne v.*
7 *Stevens* (2001) 26 Cal. 4th 42, 53, footnote 4.) Further, the existence and genuineness
8 of the materials, as well as their significance, constitutes facts that are of common
9 knowledge not reasonably subject to dispute under Evidence Code section 452,
10 subdivision (g).

11 (3) The Documents Are Relevant.

12 The requested material is plainly relevant to the discussion in this case and
13 they are referenced in both CalPERS and Respondents filing and briefs in this matter.
14 The decision in *In Re Adams* directly relates to an issue Respondent has raised
15 regarding publicly available salary schedule. The City Charter, Civil Service Rules
16 and Resolutions setting forth the City of San Bernardino's Management of
17 Confidential MOU were repeatedly addressed in Respondent's testimony as well as
18 that of his own witnesses and the subjects of Respondent's cross-examination of
19 CalPERS witness. Understandably, Respondent would prefer to have this court rely
20 only on the anecdotal and hearsay testimony as to what these documents provide.
21 (See e.g., Resp. Closing at p. 7, civil service commission; p. 33, management and
22 confidential MOU; pp. 42-44.)

23 ³ Disapproved on other grounds.

24 ⁴ Respondent is correct as to one point, references to items 15 and 16 in memorandum of points and
25 authorities attached to the request, was an errata. Exhibits A - D are the entire documents subject to
the request.

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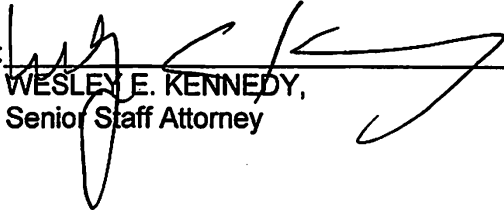
III

CONCLUSION

Based on the above, Respondent's putative motion should be denied, not only because a motion to strike is procedurally not available, but even if more properly couched as an objection to CalPERS request for official notice, it lacks any substantive basis.

BOARD OF ADMINISTRATION, CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Dated: June 8, 2015

BY: 
WESLEY E. KENNEDY,
Senior Staff Attorney

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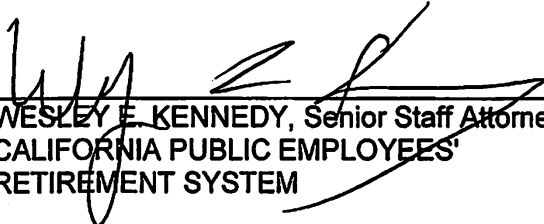
DECLARATION OF WESLEY E. KENNEDY

I, WESLEY KENNEDY, DECLARE:

1. I am an attorney at law, duly licensed to practice law before all the courts of the State of California. I am a Senior Staff Attorney for the California Public Employees' Retirement System, and am one of the attorneys of record in the above-captioned case. If called upon to testify as a witness, I could and would testify competently, of my own personal knowledge, as to the matters stated in this declaration.

2. Submitted with CalPERS request for Official Notice on June 1, 2015, are CalPERS Exhibits A through D. These are true and correct copies of the documents identified and described in CalPERS Request for Official Notice, to which this declaration is a part.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and was executed on June 8, 2015, in Sacramento California.



WESLEY E. KENNEDY, Senior Staff Attorney
CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On June 8, 2015, I served the foregoing document described as:

RESPONSE TO RESPONDENT RICHARD LEWIS' PURPORTED MOTION TO STRIKE CALPERS' REQUEST FOR OFFICIAL NOTICE; DECLARATION OF WESLEY E. KENNEDY- In the Matter of the Final Compensation Calculation of RICHARD LEWIS, Respondent, and CITY OF SAN BERNARDINO, Respondent.; Case No. 2014-0256; OAH No. 2014040945.

on interested parties in this action by placing ___ the original XX a true copy thereof enclosed in sealed envelopes addressed and/or e-filed as follows:

John M. Jensen
Law Offices of John Michael Jensen
11500 W. Olympic Blvd., Suite 550
Los Angeles, CA 90064
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Office of Administrative Hearings
1350 Front Street, Suite 3005
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Jolena Grider
City of San Bernardino
Office of the City Attorney
300 North "D" St., 6th Fl.
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City of San Bernardino
300 North "D" Street
San Bernardino, CA 92418-0001

[XX] BY MAIL -- As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, 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 the date of deposit for mailing an affidavit.

[XX] BY ELECTRONIC TRANSMISSION: I caused such document(s) to be sent to the addressee(es) at the electronic notification address(es) above. I did not receive within a reasonable time of transmission, any electronic message, or other indication that the transmission was unsuccessful.

Executed on June 8, 2015, at Sacramento, California.

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

Adriana Reagin

NAME



SIGNATURE