

1 MARK S. RENNER - 121008
WYLIE, McBRIDE, PLATTEN & RENNER
2 2125 Canoas Garden Avenue, Suite 120
San Jose, California 95125
3 Telephone: (408) 979-2920
Facsimile: (408) 979-2934

4 Attorneys for Respondent
5 Kathleen King

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8 BOARD OF ADMINISTRATION
9 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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11 In the Matter of the Appeal Regarding
Membership Exclusion of Foundation
12 Employees by:

CASE NO. 2014-1087

OAH NO. 2015030359

13 SANTA CLARA COUNTY HEALTH
AUTHORITY,

**CONDITIONAL MOTION FOR LEAVE
TO SUPPLEMENT THE
ADMINISTRATIVE RECORD**

14 Respondent,

15 and

Hearing Date: April 20, 2016

16 KATHLEEN KING,

17 Respondent.
18 _____ /

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20 Respondent KATHLEEN KING and Respondent SANTA CLARA COUNTY HEALTH
21 AUTHORITY jointly and *conditionally* hereby request from the Board of Administration for leave
22 to supplement the record in this matter under Government Code §§20120 and 11517.

23 This motion is supported by the Declaration of Mark Renner filed herewith.

24 The material with which the moving party requests to supplement the record is a copy of an
25 Order issued by the Santa Clara County Superior Court.

26 This request is made to the Board of Administration on a *conditional* basis; that is, only if
27 the Board decides to admit certain evidence requested by CalPERS in a motion provided to the
28

1 Board two days ago on April 13, 2016, does Respondent King request that the record be
2 supplemented with the court Order that is the subject of this motion.

3 Argument

4 On April 13, 2016 at 3:48 p.m., an e-mail was transmitted by CalPERS' counsel to counsel
5 for Respondent Kathleen King, attaching a motion requesting this Board to add additional material
6 to the record. The motion itself admits that it was submitted to the Board five days after the last
7 possible date to submit such a motion. Nevertheless, now that the motion has been placed before the
8 Board, Respondent King is forced to file the instant motion in response, as the material proffered by
9 CalPERS' counsel, if admitted into the record of this case, would present a grossly incomplete
10 picture. Thus, this motion is presented to the Board conditionally in the event that the Board is
11 inclined to grant CalPERS' motion; if the Board is disinclined to do so, then this motion is
12 unnecessary and will be withdrawn.

13 The material that this motion conditionally seeks to have admitted is the Order reflecting the
14 outcome of the proceedings which were initiated by a civil writ petition which CalPERS has
15 sought-----it admits, on an untimely basis, and at the last possible minute at that-----to have placed
16 before the Board. That petition in essence sought to restrain co-respondent Santa Clara County
17 Health Authority from releasing certain records in response to a request made by a private party
18 under the California Public Records Act. The Order that Respondent King conditionally requests
19 now be added to the record in this matter finds that petitioner in that civil action "failed to establish
20 that the subject records in the possession of Respondent [a reference to the Santa Clara Family
21 Health Foundation] are not public records within the meaning of the Public Records Act". In other
22 words, the outcome of the civil action was that Petitioner was wrong, and that the records of the
23 Health Foundation were considered records of a public agency within the meaning of the California
24 Public Records Act.

25 Respondent King and Respondent Santa Clara County Health Authority jointly request that
26 if the Board grants CalPERS' leave to supplement the record with the evidence it has very recently

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1 proffered, then the Board should also supplement the record with a copy of this Order reflecting the
2 outcome of that civil proceeding.

3 Dated: April 15, 2016

Respectfully submitted,

4 WYLIE, McBRIDE, PLATTEN,
5 & RENNER

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7 _____
MARK S. RENNER

8 Attorneys for Respondent
9 Kathleen King

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PROOF OF SERVICE
(C.C.P. 1013(3) & 1011)
(Revised 1/1/88)

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I, the undersigned, say:
That I am now and at all times herein mentioned a citizen of the United States and a resident of Santa Clara County, California. I am over the age of eighteen years and not a party to the within action. My address is 2125 Canoas Garden Ave., Suite 120, San Jose, CA 95125. On this date I served

CONDITIONAL NOTICE OF MOTION FOR LEAVE TO SUPPLEMENT THE ADMINISTRATIVE RECORD;

DECLARATION OF MARK RENNER IN SUPPORT OF *CONDITIONAL* NOTICE OF MOTION FOR LEAVE TO SUPPLEMENT THE ADMINISTRATIVE RECORD

X by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail at San Jose, Santa Clara County, California, addressed as set forth below. I am readily familiar with my 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 a party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

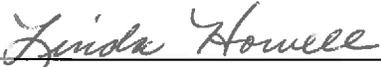
X by e-mail: I personally sent to the addressee's e-mail address a true copy of the above-described document(s).

Christopher Phillips
CalPERS
P.O. Box 942707
Sacramento, CA 94229-2707
E-Mail: Christopher.Phillips@calpers.ca.gov

Alison S. Hightower
Littler Mendelson, PC
650 California Street, 20th Floor
San Francisco, CA 94108-2693
E-Mail: AHightower@littler.com

Chirag Shah
Shah and Associates
A Professional Law Corporation
1055 West 7th Street, Suite 1940
Los Angeles, California 90017
Email: cs@shahlawyers.com

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 15th day of April, 2016 at San Jose, California.



Linda Howell