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7 BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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|----|--|---|----------------------------------|
| 8 | In the Matter of the Application for Final |) | CASE NO. 2013-1113 |
| 9 | Compensation |) | |
| 10 | DESI ALVAREZ, |) | OAH NO. 2014080757 |
| 11 | Respondent, |) | CALPERS' RESPONSE TO |
| 12 | and |) | ALVAREZ'S OBJECTION TO |
| 13 | CHINO BASIN WATERMASTER, |) | CALPERS' REQUEST FOR |
| 14 | Respondent. |) | OFFICIAL NOTICE |
| 15 | |) | Hearing Date: April 11, 2016 at |
| 16 | |) | 9:00 am |
| 17 | |) | Hearing Location: Glendale |
| 18 | |) | Prehearing Conf.: None Scheduled |
| 19 | |) | Settlement Conf.: None Scheduled |
| 20 | |) | |
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17 I INTRODUCTION

18 The legislative history of Government Code section 20636¹ was provided to the
19 Court by CalPERS to guide the Court with discerning the Legislative intent.
20 Respondent Desi Alvarez (Respondent Alvarez) objects to CalPERS' Request for
21 Official Notice (CRON) on the basis that CRON is "improper" and irrelevant.
22 Respondent Alvarez; however, fails to provide any basis for such claims as the CRON,
23 of section 20636, is properly noticed and directly relevant to the issues in this case.

25 ¹ Except as indicated all statutory references will be to the California Government Code.



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II ARGUMENT

A. The Court May Review The Legislative History To Discern The Legislature's Intent

Courts regularly review the legislative history of the statute when discerning the intent of the Legislature. The California Supreme Court has stated:

To construe [a statutory] definition, we apply the well-established rules of statutory construction and seek to ascertain the intent of the Legislature so as to effectuate the purpose of the law. As always, we begin with the words of the statute and give these words their ordinary meaning. If the statutory language is clear and unambiguous, then we need to go no further. If, however, the language is susceptible to more than one reasonable interpretation, then we look to extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. (*Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal. 4th 508, 519 (internal citations and marks omitted.))

The well settled law is that the court may look at the legislative history when the statute has more than one reasonable interpretation. Considering the courts in California routinely consider legislative history to determine legislative intent, Alvarez's "relevance" objection is misplaced. The materials cited by CalPERS are relevant to demonstrate the Legislature's intent and what it meant by "publicly available." The legislative committee bill analyses that CalPERS cited in its Hearing brief are exactly the kind of materials the courts have approved as appropriate legislative history. (See *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1133, court using a legislative committee bill analysis to help construe provisions of the PERL.) Therefore, if the Court finds the phrase "publicly available," in section 20636 is susceptible to more than one reasonable interpretation, then the documents cited by CalPERS will assist the Court in its construction of the phrase.

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1 B. The Legislative History Helps The Court Understand the Meaning Of A Key Phrase,
2 "Publicly Available," In Section 20636

3 Here, the parties have offered different interpretations of the phrase "publicly
4 available" in section 20636. Alvarez takes the position that his pay schedule was
5 "publicly available" because his "contract, pay schedule, and salary were always
6 available to the public." (Alvarez's Closing Brief, pp. 18, 21.) To the contrary, CalPERS
7 argues that "publicly available" refers to a pay schedule that is publicly noticed by the
8 government entity and adopted pursuant to public action or consent. (CalPERS Brief,
9 pp. 12-15.)

10 CalPERS position, that "publicly available" pay schedule must be vetted through
11 the public process, is supported by the statutory background and legislative history of
12 section 20636, which states that a pay schedule must be "publicly noticed by the
13 government entity." (CalPERS Brief p. 12; CRON (1)(C), Senate Floor Analysis, SB 53,
14 5/1/93, attach. p 6.) Furthermore, the *Adams* court also held 'Publicly' means "in a
15 public or open manner or place' and 'in the name of the community' and 'by public
16 action or consent.' [Citations omitted]. (*In re the Matter of Randy Adams*, OAH
17 2012030095 (*Adams*), p. 20.)

18 Therefore, based on relevant case law and legislative history of section 20636,
19 the only reasonable interpretation of the phrase "publicly available" is that the pay
20 schedule must be adopted or approved by the governing body pursuant to public
21 action or consent.

22 III CONCLUSION

23 Alvarez's Objections to the CRON are conclusory and meritless. Courts in
24 California routinely review legislative history to discern the legislative intent. If this court
25 believes the phrase "publicly available" is susceptible to more than one reasonable

1 interpretation, then there is no reason why this court should not consider the legislative
2 history of section 20636, which demonstrates the Legislature's intent to prevent
3 pension spiking by ensuring pay schedules are adopted pursuant to public action or
4 consent.

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6 Respectfully submitted,

7 Dated:

7/19/16

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PREET KAUR, SENIOR STAFF ATTORNEY
Attorney for California Public Employees'
Retirement System

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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 July 19, 2016, I served the foregoing document described as:

CALPERS' RESPONSE TO ALVAREZ'S OBJECTION TO CALPERS' REQUEST FOR OFFICIAL NOTICE - In the Matter of the Calculation of the Final Compensation of DESI ALVAREZ, Respondent, and CHINO BASIN WATERMASTER, Respondent. ; Case No. 2013-1113; OAH No. 2014080757.

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:

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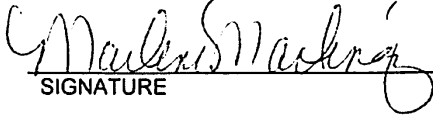
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Executed on July 19, 2016, at Sacramento, California.

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

Marlene Martinez
NAME


SIGNATURE