

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION WITH MODIFICATIONS

Respondent Paul Mast (Respondent) became a member of the Judges' Retirement System (JRS) on November 8, 1965. On January 15, 1979, he resigned from his last judicial office and elected a deferred retirement from the JRS under Government Code section 75033.5. Respondent became entitled to receive a monthly allowance from the JRS on May 28, 1995, and the JRS began paying him an allowance in compliance with Government Code section 75033.5.

Around the time Respondent became entitled to receive his retirement allowance, he began asserting that, pursuant to the California Supreme Court case *Olson v. Cory* (1980) 27 Cal.3d 532, the JRS was required to pay him more than he was actually entitled to receive under Government Code section 75033.5. In reality, *Olson v. Cory* rejected the exact same theory that Respondent claims *Olson v. Cory* accepted.

Respondent first tried to convince the JRS that he was the only judicial pensioner who was entitled to additional amounts under *Olson v. Cory*, based on his "unique set of circumstances." When that did not work, he then claimed that his theory applied broadly to many other retired judges and justices and he threatened to widely publicize his theory if the JRS did not settle with him, alone.

In an August 5, 1996, letter to counsel for the JRS, Respondent wrote:

What then can I give as an inducement to resolve the claim?  
What I can give is complete and total confidentiality. At the present time, except for my wife, no one knows that I have made this claim. I have not discussed it with friends, judges, former judges, or anyone else. As part of a settlement, I would commit to never discuss or disclose the claim or settlement with anyone.

At the end of the letter he wrote:

The window of opportunity to resolve the claim is ... very short and is now. In resolving the claim, CalPers (sic) is not acceding to my position and is not agreeing that my claim is valid. What CalPers (sic) is doing is recognizing the economic facts of the case and the possibility that they could lose. In effect it is like resolving a \$100,000 lawsuit for \$100. This is something that no reasonable litigator could turn down regardless of how strong he or she thought their position to be.

He explained in another letter that he sent on the same day: "[M]y proposed resolution will save PERS and the State of California between 200 million and 400 million dollars..."

Respondent's "inducements" achieved their intended result. An October 1996 settlement agreement provided that the JRS would pay Respondent the additional amounts that he sought for himself and "each party [would] keep the terms of this agreement confidential."

Years later, even though Respondent was receiving amounts that no other judge received, he claimed that the JRS was paying him too *little* under the settlement agreement. After writing

several letters and emails to the JRS, Respondent ratcheted up his efforts to convince the JRS to pay him more money. On September 1, 2010, he wrote letters to the JRS, the CalPERS Board members, the state Controller and the state Attorney General, explaining that he would continue to honor the confidentiality provision in the settlement agreement, but only if the JRS paid him over \$140,000 and an increased retirement allowance.

The JRS did not give in to Respondent's demands, so he teamed up with another attorney and solicited dozens of retired judges and justices (and heirs of deceased retired judges and justices) to pursue claims against the JRS based on the same frivolous legal theory Respondent had settled for himself years earlier.

The San Diego Superior Court dismissed Respondent's frivolous case early in the proceedings. The Fourth District Court of Appeal unanimously affirmed the trial court's judgment in *Staniforth v. Judges' Retirement System* (2014) 226 Cal.App.4th 978.

Even after the *Staniforth* decision was published, Respondent continued with his appeal of JRS' denial of his claims that he had been underpaid during his retirement. The matter was heard before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH) on November 30, 2015. A Proposed Decision was issued on February 10, 2016, holding that the JRS/Respondent settlement agreement was invalid and void from its inception, is not binding on the parties, and should not be followed prospectively. The ALJ also recommended that JRS abandon recovering any of the overpayments made pursuant to the settlement agreement

At the Board's April 2016 meeting, the Board agreed that Respondent's benefit should be adjusted prospectively. The JRS adjusted Respondent's monthly benefit effective April 2016, but beginning with the June 30, 2016 dated warrant. Also at the April 2016 meeting, the Board remanded the question of whether the JRS should recover any past overpayments back to the same ALJ.

Government Code section 20160(b) provides: "[T]he board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system."

Further, the law authorizes the JRS to recover amounts that have been overpaid through offsets to the JRS' ongoing benefit payments to Respondent. Government Code section 20163 provides in pertinent part: "Adjustments to correct overpayment of a retirement allowance may also be made by adjusting the allowance so that the retired person or the retired person and his or her beneficiary, as the case may be, will receive the actuarial equivalent of the allowance to which the member is entitled."

In *City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, the court explained: "[W]e believe that the Board has discretion to decide whether, how and to what extent any overpayments made to [ ] retirees should be repayable to [the retirement system]." *Id.* at 244-45.

A remand proceeding was held following the April 2016 Board Meeting, and the same ALJ, after considering further briefing/argument on the issue, continues to recommend in the Proposed Decision after Remand that the JRS not recover any of the overpayments.

Although staff does not agree with the Proposed Decision's recommendation to abandon the recovery of all overpayments, staff believes that further proceedings in this matter are not

warranted. Accordingly, staff's position is that the Board should adopt the Proposed Decision after Remand with modifications, as discussed below.

All recommendations of the Proposed Decision after Remand are within the Board's discretion to adopt, but staff believes that some passages of the Proposed Decision after Remand are incorrect or unnecessary. Thus, staff believes that the Board should adopt the Proposed Decision after Remand with the following modifications, pursuant to Government Code section 11517(c)(2)(C), which authorizes the Board to "makes technical or other minor changes in the proposed decision": (1) in Legal Conclusion 5 on page 24, delete the last sentence of the paragraph; (2) in Legal Conclusion 6a on page 24, delete the third sentence; (3) in Legal Conclusion 11b on page 29, delete the phrase "(Legal Conclusion 13)", and replace the phrase "from the date of this decision" with the phrase "effective April 2016"; (4) in Legal Conclusion 13c on page 30, delete the last four sentences of that paragraph; (5) delete paragraphs 13d-g; (6) in Legal Conclusion 14, delete the phrase, "Even if JRS were not limited in its recovery (as set forth in Legal Conclusion 13)"; and (7) correct Order No. 2 on page 35, by replacing the phrase "from the effective date of this order" with "effective April 2016."

Because the Proposed Decision applies the law to the salient facts of this case (except for the portions that staff is recommending the Board modify), and the Board has broad discretion with regard to the collection of overpayments, the risks of adopting the Proposed Decision, with modifications, are minimal. Respondent may file a Writ Petition in Superior Court seeking to overturn the final Decision of the Board.

December 21, 2016

  
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