

MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION
OPEN SESSION

ROBERT F. CARLSON AUDITORIUM
LINCOLN PLAZA NORTH
400 P STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 15, 2017

9:00 A.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

A P P E A R A N C E S

BOARD MEMBERS:

Mr. Rob Feckner, President

Mr. Henry Jones, Vice President

Mr. Michael Bilbrey

Mr. John Chiang, represented by Mr. Steve Juarez and Mr. Eric Lawyer

Mr. Richard Costigan

Mr. Richard Gillihan

Ms. Dana Hollinger

Mr. J.J. Jelincic

Mr. Ron Lind

Ms. Priya Mathur

Mr. Bill Slaton

Ms. Theresa Taylor

Ms. Betty Yee, represented by Ms. Lynn Paquin

STAFF:

Ms. Marcie Frost, Chief Executive Officer

Ms. Liana Bailey-Crimmins, Interim Deputy Executive Officer

Mr. Ted Eliopoulos, Chief Investment Officer

Mr. Matthew Jacobs, General Counsel

Mr. Douglas Hoffner, Deputy Executive Officer

Ms. Donna Lum, Deputy Executive Officer

A P P E A R A N C E S C O N T I N U E D

STAFF:

Mr. Brad Pacheco, Deputy Executive Officer

Mr. Scott Terando, Chief Actuary

Ms. Marlene Timberlake D'Adamo, Interim Chief Financial Officer

Ms. Mary Anne Ashley, Chief, Legislative Affairs Division

Ms. Kara Buchanan, Board Secretary

Ms. Marguerite Seabourn, Assistant Chief Counsel

Ms. Elizabeth Yelland, Senior Staff Attorney

ALSO PRESENT:

Mr. James Anderson, Retired Public Employees Association

Mr. Tim Behrens, California State Retirees

Mr. Jeff Rieger, Reed Smith

Mr. H. Lee Horner, representing Judge Paul Mast

Mr. Sheldon Scarber

Mr. Chirag Shah, Shah and Associates

I N D E X

	PAGE
1. Call to Order and Roll Call	1
2. Pledge of Allegiance	2
3. Board President's Report	2
4. Executive Reports	
a. Chief Executive Officer's Report (Oral)	4
b. Chief Investment Officer's Report (Oral)	13
5. Consent Items	14
Action Consent Items:	
a. Approval of the December 21, 2016 Board of Administration Meeting Minutes	
b. Board Travel Approvals	
6. Consent Items	14
Information Consent Items:	
a. Board Agenda Item Calendar 2017	
b. Draft Agenda for the March 15, 2017 Board of Administration Meeting	
c. General Counsel's Report	
d. Communications and Stakeholder Relations	
7. Committee Reports and Actions	
a. Investment Committee (Oral)	16
b. Pension & Health Benefits Committee (Oral)	17
c. Finance & Administration Committee (Oral)	33
d. Performance, Compensation & Talent Management Committee (Oral)	39
e. Risk & Audit Committee (Oral)	42
f. Board Governance Committee (Oral)	44
Action Agenda Items	
8. Proposed Decisions of Administrative Law Judges	44
a. Deschelle Walker	
b. Elvenia Faye Carey, Lorraine Hawley and Aspire Public Schools	
c. Rosemary P. Lopez	
d. Laura Williams	
e. Nadine West	
f. Delisa Rios	
g. Christopher B. Marques	
h. James McIlvain	
i. Adam M. Healy	

I N D E X C O N T I N U E D

PAGE

j.	Edgard Gonzalez	
k.	Eddie L. Johnson	
l.	Gloria Foster	
m.	Mark Whitney	
n.	Audra Dempsey-Nicholson	
o.	Joeseeph Ramey	
p.	Marlon J. Concepcion	
q.	Cher A. Lynch	
r.	Tracy Craig	
s.	Daniel A. Harp	
t.	Carey E. Kelly	
u.	Scott Cotteen	
v.	Lisa A. Hilder	
w.	Terry Morrison	
x.	Rhoda K. McCormick	
y.	Heidi Lagache	
z.	Dina Alexander	
aa.	Scot Legeman	
bb.	Patricia Alamilla	
cc.	Al H. Ghaffari	
dd.	Virgilio Chua	
ee.	Anthony Lee	
ff.	Tadasha Hicks	
gg.	Richard Ayala	
9.	Petitions for Reconsideration	46
a.	Elizabeth Hoffman	
b.	Dawn. M. Brooks	
10.	Full Board Hearing	
a.	Sheldon Scarber	60
	Closed Session	
	Deliberate on Full Board Hearing (Government Code section 11126(c)(3))	
b.	Sheldon Scarber	118
	Open Session	
	Take Action on Full Board Hearing	
c.	Sheldon Scarber	118
11.	Full Board Hearing	
a.	Paul Mast	119

I N D E X C O N T I N U E D

	PAGE
Closed Session	
Deliberate on Full Board Hearing (Government Code section 11126(c)(3))	
b. Paul Mast	150
Open Session	
Take Action on Full Board Hearing	
c. Paul Mast	150
Information Agenda Items	
12. State and Federal Legislation Update	50
13. Summary of Board Direction	59
14. Public Comment	151
Adjournment	151
Reporter's Certificate	152

1 P R O C E E D I N G S

2 PRESIDENT FECKNER: Good morning. Can we all
3 please come together. We'd like to call the Board of
4 Administration meeting to order.

5 Good morning, everyone.

6 First order business will be to call the roll,
7 please.

8 BOARD SECRETARY BUCHANAN: Good morning.

9 PRESIDENT FECKNER: Good morning.

10 BOARD SECRETARY BUCHANAN: Rob Feckner?

11 PRESIDENT FECKNER: Good morning.

12 BOARD SECRETARY BUCHANAN: Henry Jones?

13 VICE PRESIDENT JONES: Here.

14 BOARD SECRETARY BUCHANAN: Michael Bilbrey?

15 BOARD MEMBER BILBREY: Good morning.

16 BOARD SECRETARY BUCHANAN: Steve Juarez for John
17 Chiang?

18 PRESIDENT FECKNER: I'm sure he'll be here.

19 BOARD SECRETARY BUCHANAN: Okay.

20 Richard Costigan?

21 BOARD MEMBER COSTIGAN: Here.

22 BOARD SECRETARY BUCHANAN: Richard Gillihan?

23 BOARD MEMBER GILLIHAN: Here.

24 BOARD SECRETARY BUCHANAN: Dana Hollinger?

25 BOARD MEMBER HOLLINGER: Here.

1 BOARD SECRETARY BUCHANAN: J.J. Jelincic?
2 BOARD MEMBER JELINCIC: Good morning.
3 BOARD SECRETARY BUCHANAN: Ron Lind?
4 BOARD MEMBER LIND: Here.
5 BOARD SECRETARY BUCHANAN: Priya Mathur?
6 PRESIDENT FECKNER: Not here yet.
7 BOARD SECRETARY BUCHANAN: Bill Slaton?
8 BOARD MEMBER SLATON: Here.
9 BOARD SECRETARY BUCHANAN: Theresa Taylor?
10 BOARD MEMBER TAYLOR: Here.
11 BOARD SECRETARY BUCHANAN: And Lynn Paquin for
12 Betty Yee?
13 ACTING BOARD MEMBER PAQUIN: Here.
14 BOARD SECRETARY BUCHANAN: Thank you.
15 PRESIDENT FECKNER: Thank you.
16 The next order of business will be the Pledge of
17 Allegiance. If you'd all please rise.
18 Face the flag.
19 Hand over heart.
20 Begin.
21 (Thereupon the Pledge of Allegiance was
22 recited in unison.)
23 PRESIDENT FECKNER: Thank you.
24 Next up is the Item 3, Board President's Report.
25 Well, good morning, everyone. Thank you for

1 being here.

2 If you had the opportunity to join us for our
3 winter off-site this last month, I think that you'll agree
4 that it was time well spent, talking about our priorities
5 for the coming year. We continued our discussions around
6 the long-term outlooks of the financial markets, and the
7 risks as well as opportunities that face our system in
8 both the retirement and health arenas.

9 I'd like to personally thank my colleagues again
10 for their vote of confidence to lead this Board as the
11 President. I look forward to working with each and every
12 one of our Board members, their representatives, our
13 Committees members, our leadership team, as well as our
14 stakeholders to deliver the pensions that have been
15 promised to California's public employees.

16 For future planning purposes, I want to announce
17 the dates of our July off-site, scheduled for July 17th
18 through the 19th. We'll be back in Monterey at the same
19 location that we have been at the January off-site. So if
20 you've been there in January, I'm sure you'll love it in
21 July. That will be the Monterey Tides Hotel down in
22 Monterey.

23 I'm also happy to announce that we're continuing
24 our tradition of the CalPERS Night at the Sacramento
25 Kings. This year we'll join the Kings in their new home

1 the spectacular Golden One Center, as they take on the
2 Orlando Magic on Monday, March 13th following our
3 Investment Committee meeting.

4 To date, I believe we have a little over 300
5 people signed up and paid to go, so that's a great turn
6 out. We hope for even a few more. The doors will open at
7 5:30, game time is at 7:30. So it will be a fun evening.
8 We hope to encourage you to bring your family and friends
9 and join us for a nice evening away from the office venue.

10 And also, save the date for June 20th, that will
11 be the CalPERS Night at the River Cats. Another great
12 event. We've done this for a number of years now. It's
13 going to be made even more special again by having our
14 CalPERS Patriot Chorus will be singing the National Anthem
15 that night on the field. So if you haven't put that on
16 your calendar, please do. It's another great time.

17 And with that, I'm going to move on to Item 4,
18 Executive Reports, and go to our Chief Executive Officer,
19 Ms. Frost.

20 CHIEF EXECUTIVE OFFICER FROST: Good morning --

21 PRESIDENT FECKNER: Good morning.

22 CHIEF EXECUTIVE OFFICER FROST: -- Mr. President
23 and members of the Board.

24 I'd like to start off today with an update on
25 some of my internally focused efforts. So right after I

1 got here last fall, I attended the Education Forum down in
2 Riverside. I had a chance to visit the San Bernardino
3 office, and then just a couple weeks ago had an
4 opportunity to visit the San Diego location. And I got to
5 see firsthand how our teams out in the regional locations
6 are demonstrating the values that we have, and I get to
7 see more often here within Sacramento, that they have an
8 incredible passion about serving the members and our
9 employers.

10 During my visits, I had a chance to talk with the
11 team. And what I think was really comfortable was that we
12 did this in a very roundtable style, where I got an
13 opportunity to hear a bit about their career. What I also
14 noticed, and I think if any of you have been out to the
15 locations probably have noticed this as well, is that
16 there's a long seniority and longevity in our team who are
17 working in these locations. So their ideas and discussion
18 around the challenges had a lot of depth. And it was an
19 opportunity again for me to listen and think about
20 adjustments that we might need to make to help them to be
21 more successful in their role.

22 I think they have a very keen understanding that
23 every interaction we have with our customer creates this
24 opportunity to demonstrate our respect and our
25 responsiveness to their needs and their expectations.

1 And our team members in these locations, at least
2 the 2 that have visited, and I have confidence that all of
3 them are doing this, they're showing a very strong and
4 true commitment to serving the customer.

5 I'll be visiting the remainder of the regional
6 locations over the next few months, and looking forward to
7 learning and sharing more with the teams in those
8 locations.

9 As you all know, my leadership style is one more
10 of, what I would call, a servant leader. And, you know,
11 that term, I think, is becoming better known within the
12 organization. It's really around being focused on my job
13 is to make sure that all of the team here within CalPERS
14 can be successful in the role and the responsibilities
15 they have.

16 The first step in doing this, of course, is to
17 have very open and transparent communications with our
18 teams. And that's why I'm proud to tell you that starting
19 in March we will be hosting monthly small group
20 gatherings. And this really came from, I think, the
21 regional location visits, where sitting at this roundtable
22 talking about ideas or challenges and extending that here
23 within Sacramento as well. It will be an opportunity for
24 the team members to ask questions, learn more about our
25 goals, our objectives, and most importantly, to give me an

1 opportunity to listen to them and the ideas that they
2 might have.

3 Attendees will come throughout the -- from
4 throughout the organization. So it's also a great
5 opportunity for the teams to get to know one another much
6 better.

7 So moving on now to some recent events to support
8 our members and our employers. Just last week, we had the
9 Sacramento CBEE, which was the largest of the year. And
10 Ms. Lum reported yesterday in her report that although we
11 had over 5,000 registrants, that we had about 3,700
12 attendees. And we think the likely cause or the citable
13 cause of the less-than-expected attendance was likely due
14 to weather. It was a pretty rain-filled day here in
15 Sacramento that day.

16 So I think it's an Incredible showcase of how we
17 help our members to understand their benefits. Being the
18 most complex pension system in the United States, along
19 with being the biggest means that it's very difficult
20 sometimes for the members to understand the benefits that
21 they've earned. So this is an opportunity for our teams
22 to get out in the field, if you will, and have these
23 interactions with our members and our customers to
24 understand how we can help them better understand those
25 benefits. So our next CBEE will be in Millbrae on March

1 3rd and 4th. And the complete list of CBEEs are posted on
2 our website.

3 I also wanted to mention our recent participation
4 in the California Society of Municipal Finance Officers
5 annual conference that was held here in Sacramento last
6 week. Along with Richard Costigan, Board Member Costigan,
7 and Chief Actuary Scott Terando, we presented this group
8 with details about what is driving the risks of our
9 system, why we made recent changes to the discount rate,
10 and how we'll move forward in implementing it.

11 As I emphasized during the presentation, as well
12 as Mr. Costigan and Mr. Terando, all of this work is
13 important. The Board, our stakeholders, and all of our
14 employers should be applauded for taking on this somewhat
15 difficult choice.

16 We are confident. And that was definitely a
17 message we wanted to portray, is that we are confident
18 that we're on the right path to full funding. And the
19 Board's action on the discount rate in December has
20 strengthened our efforts.

21 We also know that this will not be easy and it
22 won't be the last time we address some of the choices, the
23 tough choices, or challenges. We fully expect that we
24 will face similar dynamics and data, as we spend all of
25 this year looking at our assets and our liabilities to

1 determine the right mix of investments for the portfolio.

2 One of the items that we've added is we've
3 typically met with some of our stakeholder groups on a
4 quarterly basis. We're actually moving that up to meet
5 with more of the stakeholders on a monthly basis
6 throughout the ALM process. This work is very important.
7 Some times the complexity of the data takes a little bit
8 more time to explain and give people an opportunity to
9 absorb it. So we will be moving those quarterly meetings
10 into a monthly.

11 In the meantime, we've been focused on giving our
12 employer partners some tools to help them prepare for
13 their budget cycles around the contribution rate
14 increases. We've sent out instructional letters to give
15 broad estimates for calculating the costs until our annual
16 valuation reports would be available to them later this
17 summer.

18 The CalPERS team also hosted a webinar recently
19 last week for employer partners to discuss the recent
20 discount rate changes, the factors that led to the change,
21 and the impacts to the employer contributions. More than
22 900 employer representatives participated in the webinar,
23 representing about 698 unique employers. So that was a
24 very well attended event, and certainly one that indicated
25 to us that there was a high need for additional

1 information. And that webinar is available to replay at
2 your convenience on the website.

3 Turning now to other priorities and initiatives.
4 As a part of the strategic and business plan efforts,
5 yesterday you heard about plans for our new enterprise
6 performance reporting structure. And as you heard, the
7 goal is to expand that framework so that it not only
8 includes the strategic plan initiatives, but the business
9 plan initiatives, as well as, what we call, KPIs, which
10 are the key performance indicators.

11 And those are a collection of measures that would
12 monitor the progress more at the operational levels within
13 the organization. And some of the committees receive this
14 type of data now. But what we want to have is a view
15 across the -- all of the operations. And they will be an
16 important part of how we measure the success of the
17 system.

18 So let's see. So one of the items that we did
19 talk with you about yesterday was that this would create a
20 single system. The system we have today is a little
21 bifurcated. Again, pieces of it coming to committees, and
22 then finally to all of you as the full Board. This will
23 create a single system that is transparent and accountable
24 to whoever they have an interest in finding out the
25 performance of CalPERS.

1 So our next step in this reporting will be to add
2 a risk appetite overlay, which is why that risk appetite
3 workshop was so important that we had at the off-site, is
4 that as this management system matures, what you'll see,
5 along with the performance indicators, is you'll see a
6 risk Appetite overlay to those Performance measures.

7 So we're very excited about being able to move
8 that effort into its next phase. Moving on to the Health
9 Benefits Program, this is the time of year, as you all
10 know, that we begin negotiations with our health plan
11 providers about the premiums for 2018.

12 And as in the past, our focus will be on cost
13 reduction for our members and employers, while we also
14 maintain a high quality plan that's both affordable and
15 provides that high quality health care. In May, we will
16 be presenting an open session, the preliminary 2018 health
17 benefit rates to the Committee with final approval of the
18 new rates plan for June.

19 And turning now to some activities here in
20 Headquarters around recognition. So I'd like to take a
21 moment to thank our team members for the food and the
22 monetary donations they made this season to the Sacramento
23 Food Bank. All donations helped supplement supplies to
24 families and senior citizens in the greater Sacramento
25 area. We sent a remarkable goal, a stretch goal if you

1 will, to collect 50,000 pounds of food, which is about
2 10,000 pounds over last year's efforts.

3 Official totals are still being determined, but
4 early results are very strong, and we are confident that
5 we hit the goal. And so I'll be able to report out the
6 final statistics on that goal in our next Board meeting.
7 So I'm very proud of the team here at CalPERS, and their
8 generosity.

9 And then on a final note, I wanted to express how
10 truly proud we are at CalPERS of our diversity and
11 inclusion efforts. Diversity is something we highly value
12 here at CalPERS. And in light of some of the recent
13 issues that have sparked much debate over the last past
14 weeks, I wanted to end my remarks today with a brief
15 comment about our efforts.

16 CalPERS is about people, and we value and
17 treasure the diversity of those we serve, and the team
18 members who serve them. And I know I speak on behalf of
19 the Board and the executive team when I say that we
20 support all of our team members, and recognize that our
21 differences are our strengths. We are very proud of this.
22 We want people to feel confident and to feel valued as a
23 CalPERS team member.

24 So that concludes my remarks, Mr. President, and
25 I'm happy to answer any questions the Board may have.

1 PRESIDENT FECKNER: Thank very much.

2 Seeing none.

3 Before I go to Item 4b, I just want to note for
4 the record that Ms. Mathur and Mr. Juarez are present on
5 the dais, for the minutes.

6 4b, Chief Investment Officer's report. Mr.
7 Eliopoulos.

8 CHIEF INVESTMENT OFFICER ELIOPOULOS: Good
9 morning, Mr. President and members of the Board.

10 PRESIDENT FECKNER: Good morning.

11 CHIEF INVESTMENT OFFICER ELIOPOULOS: I have a
12 brief summary of the performance of the Public Employees
13 Retirement Fund. As of December 31st, 2016, the total
14 fund performance for the fiscal year to that date is 3.9
15 percent. Of course, we like to look at much longer
16 periods, as they're much more meaningful for measuring our
17 performance.

18 The 3-year return is 4.6 percent; the 5-year
19 return is 8.6 percent; the 10-year return is 4.4 percent;
20 and the 20-year return of the total fund is 6.8 percent.
21 The total fund assets are valued as of that December 31st,
22 2016 date at \$302.8 billion.

23 Mr. President, that is my report.

24 PRESIDENT FECKNER: Very well. Thank you.

25 Seeing no requests to speak, thank you, both.

1 Agenda Item 5 is the action consent items.
2 Seeing no requests to remove any of them, what's the
3 pleasure of the Board?

4 VICE PRESIDENT JONES: Move approval.

5 BOARD MEMBER MATHUR: Second.

6 PRESIDENT FECKNER: It's been moved by Jones,
7 seconded by Mathur.

8 Any discussion on the motion?

9 Seeing none.

10 All in favor say aye?

11 (Ayes.)

12 PRESIDENT FECKNER: Opposed, no?

13 Motion carries.

14 Item 6 is the informational items.

15 Mr. Jelincic. Just a second, sir.

16 Go ahead.

17 BOARD MEMBER JELINCIC: Looking at the March
18 draft agenda, I noticed that my trial is not there. And
19 it probably ought to be, or was it an oversight, or --

20 CHAIRPERSON FECKNER: We're not having a trial,
21 first of all. And second of all, we have not determined a
22 complete process yet, so that's why it's not been
23 agendized.

24 BOARD MEMBER JELINCIC: Okay. But I do want to
25 make it clear that I was publicly slandered. Bill was

1 unwilling to provide any of the details and examples. And
2 for the record, I really want this to be done in open
3 session. I should have an opportunity to defend myself in
4 open session. If there is discipline, it ought to be
5 imposed in open session. And I just want to put that on
6 the record.

7 PRESIDENT FECKNER: Thank you.

8 Anybody else have -- Ms. Mathur.

9 Just a second.

10 BOARD MEMBER MATHUR: Oh, thank you.

11 My comment is on the Committee rolling calendar.
12 For the Investment Committee, at the Investment Committee
13 on Monday, we had a discussion about the Dakota Access
14 Pipeline. And it was directed to bring options back to
15 the Committee expeditiously. And I don't see it on -- in
16 March, but I think it should be in March on this calendar.

17 PRESIDENT FECKNER: All right. That probably
18 will be reflected in the Investment Committee's minutes
19 from Monday's meeting. This calendar was put in the Board
20 packet before Monday's meeting.

21 BOARD MEMBER MATHUR: Sure.

22 PRESIDENT FECKNER: All right.

23 BOARD MEMBER MATHUR: So I would -- I guess I
24 would just ask that that be added.

25 PRESIDENT FECKNER: Very well.

1 BOARD MEMBER MATHUR: Thank you.

2 PRESIDENT FECKNER: It's noted. Thank you.

3 Seeing nothing else.

4 Then we will move on to Item 7, Committee
5 Reports.

6 7a, the Investment Committee. For that, I call
7 on the Chair, Mr. Jones.

8 VICE PRESIDENT JONES: Thank you, Mr. President.

9 The Investment Committee met on February 13,
10 2017. The Committee conducted an election for the Chair
11 and Vice Chair positions. Henry Jones was elected as
12 Chair of the Committee, and Bill Slaton was elected as
13 Vice Chair of the Committee.

14 The Committee approved the following:

15 Agenda Item 6a: To not retain the legislative
16 guidelines with respect to investment matters, and to
17 clarify that the Board has delegated to the CEO primary
18 responsibility for determining CalPERS' positions on
19 federal bills.

20 Agenda Item 8b: To repeal the Statement of
21 Investment Policies for appraisals of CalPERS's real
22 estate interest and real estate accounting.

23 The Committee received reports on the following
24 topics:

25 1, the performance and risk profiles of the

1 Public Employees Retirement Fund, and affiliate funds as
2 of December 31st, 2016;

3 2, a review of CalPERS's divestment activities as
4 of June 30th, 2016 by Wilshire Associates consulting;

5 3, the first reading of the proposed revisions to
6 the Total Fund Investment Policy;

7 4, an overview of the Corporate Governance
8 Program workplan for 2017;

9 And 5, recent developments regarding Assembly
10 Bill 20.

11 The Chair directed staff to review opportunities
12 to engage with the companies involved with the Dakota
13 Access Pipeline and return to the Committee with a report
14 on those options.

15 The Committee heard public comment on the Dakota
16 Access Pipeline, and CalPERS's ESG strategy.

17 At this time, I would like to share some
18 highlights of what to expect at the March Investment
19 Committee meeting. 1, ESG asset class integration; and 2,
20 Global Governance Principles.

21 The next meeting of the Investment Committee is
22 scheduled for March 13, 2017 in Sacramento, California.
23 That concludes my report, Mr. President.

24 PRESIDENT FECKNER: Thank you, Mr. Jones.

25 Item 7b, Pension and Health Committee. For that,

1 I call on the Chair, Ms. Mathur.

2 BOARD MEMBER MATHUR: Thank you, Mr. President.
3 The Pension and Health Benefits Committee, the PHBC, met
4 on February 14th, 2017. The Committee re-elected Priya
5 Mathur as Chair and Michael Bilbrey as Vice Chair of the
6 PHBC.

7 The Committee recommends and I move the Board
8 approve on Agenda Item 6, staff's recommendation to
9 approve the PHBC delegation.

10 PRESIDENT FECKNER: Thank you.

11 Before I go through with the motion, I have 2
12 requests to speak. Mr. Behrens and Mr. Anderson, you just
13 wrote 7b, which item on 7 do you want to speak to.

14 Okay. Thank you. That will be Item 7. Very
15 good.

16 Okay. Motion by Committee.

17 Any discussion on the motion?

18 Seeing none.

19 All in favor say aye?

20 (Ayes.)

21 PRESIDENT FECKNER: Opposed, no?

22 Motion carries.

23 BOARD MEMBER MATHUR: The Committee further
24 recommends and I move the Board approve staff's
25 recommendation on -- for -- of approval for submission to

1 Office of Administrative Law, OAL, the proposed regulation
2 clarifying the rules governing family health benefit plan
3 enrollments, where some family members may enroll only in
4 basic plans, and other members may enroll only in Medicare
5 or supplemental plans, combination enrollments.

6 PRESIDENT FECKNER: On motion by Committee.

7 BOARD MEMBER MATHUR: This is where we have
8 public comment.

9 PRESIDENT FECKNER: Right.

10 Any discussion on the motion?

11 Mr. Jelincic.

12 BOARD MEMBER JELINCIC: Yeah, I will be voting
13 against the motion. It strikes me as just silly to
14 propose a regulation that says this is the rule unless
15 it's not the rule. And if we change our mind, we ought to
16 change the reg then. But a reg is to make things clearer,
17 and I don't think that this does that at all.

18 Thank you.

19 PRESIDENT FECKNER: Thank you.

20 Mr. Jones.

21 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
22 President.

23 First of all, I want to thank staff for providing
24 the clarification of the data that was included in this
25 item yesterday, in terms of verifying the 60 plus thousand

1 members that were referenced in one of our speakers
2 yesterday. And I will be also voting no on this, but for
3 the reason that I think that the -- a task of evaluating
4 and determining what would be needed to allow for family
5 members to have separate plans come before we proceed with
6 this item.

7 PRESIDENT FECKNER: All right. Thank you.
8 Seeing no other requests from the Board, Mr. Behrens and
9 Mr. Anderson, please come forward, identify yourselves for
10 the record, and you have up to 3 minutes, please.

11 MR. BEHRENS: Thank you, Mr. Chair. Tim Behrens,
12 President of the California State Retirees. And, Henry,
13 actually, I provided that document this morning. It was
14 one of the many things that during the course of the
15 conversation yesterday at the Pension and Health Benefits
16 Committee, the Committee members asked the staff
17 questions, and were told they would get that information
18 back to them.

19 I'm not sure that happened, but at least you have
20 that document in front of you. That document came from
21 CalPERS Health Policy Research Division. So the numbers
22 that I used yesterday were accurate. It wasn't 1,500.
23 It's 62 minus the PORAC. Now, we found that out
24 yesterday. That was a difference.

25 I would urge you to vote no on this item. I

1 think the regulation, as it stands, works best for our
2 members and for the stakeholders and CalPERS. And if you
3 have any questions, I would be happy the answer them at
4 this time.

5 PRESIDENT FECKNER: Mr. Costigan, is it a
6 question Mr. Behrens?

7 BOARD MEMBER COSTIGAN: No. It's on this item.

8 PRESIDENT FECKNER: Okay. Well, we'll wait till
9 the next speaker then.

10 Thank you, Mr. Behrens.

11 MR. BEHRENS: Thank you.

12 PRESIDENT FECKNER: Mr

13 MR. ANDERSON: Good morning, Mr. President. I'm
14 James Anderson. I'm the legislative director for the
15 Retired Public Employees Association.

16 I speak not on the substance of the regulation,
17 but believe your hearing was flawed. The Chair of the
18 Committee indicated the hearing would be closed after the
19 second speaker, or after the final speaker.

20 After that point, several Board members asked
21 questions where staff says we'll get back to you with that
22 information. I'm not sure the information was put in the
23 record, or the staff could point to the record as it
24 existed to answer those questions.

25 One of the questions was, what is it going to

1 cost? And there were numbers thrown around. And I heard,
2 in the background, maybe a \$1,000,000. I'm not sure if
3 that's the effect. But the Office of Administrative Law
4 asks that there be a economic impact of the regulations.
5 And I don't believe your hearing provided that information
6 or the impact -- demonstrated the impact. So I would
7 suggest that if you don't vote the action down, at least
8 you postpone it to a rehearing, so you could cover the
9 issues that I've raised.

10 Thank you.

11 PRESIDENT FECKNER: Thank you.

12 Mr. Costigan.

13 BOARD MEMBER COSTIGAN: I just want to ask Mr.
14 Jones if he could expand on his opposition. It concerns
15 me -- I wanted to -- I like the echo effect.

16 Since I don't sit on the Committee, I don't
17 understand the issue as well. And it concerns me when the
18 representative for the retiree group, or the retirees, is
19 speaking to -- in opposition to the motion.

20 So as I was having my sidebar over here with Mr.
21 Juarez, as I understand it, your opposition is you would
22 like to open it so more people can join the plans?

23 Because I -- I never -- I mean, I know staff
24 presented a well argument. I've read it. But the fact
25 that you're -- you've raised opposition is now raising

1 concerns for me as to whether I will support the motion or
2 not.

3 So could you -- Mr. Chair, if it's appropriate
4 for Mr. Jones to further clarify why he's opposed to this
5 motion.

6 VICE PRESIDENT JONES: Yeah. The primary reason
7 is that when you have 2 members in the same family, one
8 working and one is retired, they are required to be in the
9 same plan. So if 2 members were working initially, and
10 one 1 reached the age, I guess, 65, and became part of
11 Medicare, that means that the person who is still working
12 may have to change to become part of the plan that the
13 Medicare person has. And that means that that person who
14 has had a primary care physician for all those years, now
15 would be subjected to have to change.

16 BOARD MEMBER COSTIGAN: So I'll ask the Chair of
17 the Health Committee, is that accurate? So if I'm in
18 Kaiser now -- or, I'm sorry, I'm in a plan that's not in
19 Medicare, and my wife was working with the State, I reach
20 65, I would have to go on the Medicare plan and my wife
21 would have to follow me?

22 BOARD MEMBER MATHUR: So let me clarify, and then
23 maybe the staff might also want to add something to this.
24 Currently, we require that every -- every member who's --
25 every family where there might be -- you know, there might

1 be multiple members of the family, some in the basic plan.
2 There might be some in the Medicare plan.

3 And in -- it's not necessarily retired or active,
4 it's actually more about the basic or the Medicare plan.
5 We, a few years ago, consolidated our HMO offerings in the
6 Medicare space to a single provider, that's
7 UnitedHealthcare, with the exception of Kaiser. So we
8 had, prior to that, required that every health plan offer
9 a commensurate Medicare plan, but that -- what that --
10 what ended up happening -- so we don't -- we don't allow
11 an individual or a family to -- an individual to be
12 enrolled in, let's say, a Blue Shield basic plan and
13 a Unite -- and then have the other member of the family be
14 enrolled in a UnitedHealthcare Medicare plan. That is not
15 currently permitted. And that this -- this legi --

16 BOARD MEMBER COSTIGAN: So we force --

17 BOARD MEMBER MATHUR: And this regulation
18 clarifies that.

19 BOARD MEMBER COSTIGAN: Okay. But we force a
20 retiree to go into one of a pre-set Medicare plan and drag
21 the family with it, even if the family doesn't want to?

22 BOARD MEMBER MATHUR: We did make that decision 2
23 years ago, I believe, because there was several advantages
24 to offering this United Medicare plan.

25 BOARD MEMBER COSTIGAN: Mr. Jones, why 2 years

1 ago was this not a problem?

2 VICE PRESIDENT JONES: I'm not --

3 BOARD MEMBER COSTIGAN: I just want to understand
4 if this wasn't.

5 VICE PRESIDENT JONES: I'm not sure.

6 BOARD MEMBER MATHUR: It was raised in the
7 conversation. We did discuss it that there would -- there
8 could be a potential impact --

9 BOARD MEMBER COSTIGAN: I wasn't on the Committee
10 then either.

11 BOARD MEMBER MATHUR: -- to some -- to some
12 number of members that are in these -- that are in these
13 combo families, but we did -- the Committee and the Board
14 determined that it was in the best interest of the
15 population as a whole to be able to provide this United
16 Medicare offering.

17 BOARD MEMBER COSTIGAN: So just one -- I guess a
18 couple more questions. On the chart that was provided do
19 we know how many families were impacted? I mean, what
20 were the numbers of folks whose --

21 BOARD MEMBER MATHUR: So I think the 1,500 number
22 that was referenced yesterday, which might not be
23 completely precise, and I think we were going to get
24 information back on that, was the number of families
25 who've expressed a desire to split between different

1 plans.

2 So the sixty-one or two thousand members, that is
3 all the members where there is one member of the family in
4 basic and one member of the family in Medicare. Not all
5 of them have expressed a desire to split between different
6 plans. That's my understanding. Is that --

7 BOARD MEMBER COSTIGAN: But this is the current
8 policy, Ms. Donneson? This is the current policy. I'm
9 not quite sure where I'm going to land on this, because
10 Mr. Jones, I follow your lead on retirement issues and
11 you're raising that this is a concern for retirees.

12 VICE PRESIDENT JONES: And what I've requested is
13 that the analysis be done before we move forward to see
14 what the outcome of that analysis and evaluation would
15 dictate. It may cause us to want to have a different rule
16 change. We won't know that until we get the information
17 and make a decision whether or not we want to move in that
18 direction.

19 BOARD MEMBER COSTIGAN: But I don't believe I
20 heard you asked if the item could be put over. You were
21 just going to -- you spoke in opposition.

22 VICE PRESIDENT JONES: Oh, at yesterday's meet --
23 at yesterday's Health Benefits asked.

24 BOARD MEMBER COSTIGAN: Okay, but not today.
25 Okay. All right. Thank you.

1 BOARD MEMBER MATHUR: Now, just to clarify, this
2 regulation does permit the CalPERS Board to change its
3 policy at any time. So it just clarifies that as of
4 today, we do not allow dual enrollments or split
5 enrollments, but that if the Board -- if the Committee and
6 the Board changes its mind, we are still -- we still have
7 the flexibility to do that.

8 BOARD MEMBER COSTIGAN: Okay. Thank you.

9 PRESIDENT FECKNER: Mr. Juarez.

10 ACTING BOARD MEMBER JUAREZ: Yeah, I just want to
11 be clear about the conversation we had yesterday. We
12 asked staff whether this would have -- whether adoption of
13 the policy would have any negative impact on folks that
14 are currently in our plans. And were told no, but that we
15 could come back at a later date when we got better answers
16 regarding the cost and the number. And if -- per Mr.
17 Jones recommendation, we can take up a new policy at that
18 point, once we have a better body of information, if we
19 want to change it, which I would be inclined to support,
20 then we can do so subsequent to that, but that adoption of
21 this policy won't have any bearing on our ability to do
22 that. And so it was with that in mind that we -- I think
23 that the Committee voted favorably to support the motion.

24 BOARD MEMBER MATHUR: That's right. And if I
25 might clarify one other point, Mr. President, the million

1 dollar number was, I believe, the rough estimate from 2
2 years ago of what it might cost to implement the ability
3 to offer split enrollments. It was not the cost to
4 implement this regulation. This regulation has no cost
5 associated with it. And so that does not necessarily need
6 to be part of the formal record.

7 PRESIDENT FECKNER: Mr. Gillihan.

8 BOARD MEMBER GILLIHAN: Thank you, Mr. President.
9 Yeah, I just want to reiterate what's being said up here.
10 This regulation doesn't change current practice. It mere
11 clarifies it, so that staff have something more concrete
12 to point as questions get asked, and it leaves the door
13 open for a future policy change, if it -- if we determine
14 it's practical in the future to offer this.

15 So I'm not sure what all the to do is about on
16 this one. It seems like a non-issue to me, and I'll be
17 supporting the measure -- or the staff recommendation.

18 PRESIDENT FECKNER: Thank you.

19 Mr. Slaton.

20 BOARD MEMBER SLATON: Yes, I want to echo Mr.
21 Gillihan's remarks that I think it's important for us to
22 provide clarity to our members and to retirees, so they
23 understand exactly what the process is at CalPERS. So
24 right now, our practice is you cannot do a split
25 enrollment. We don't have the capability to offer that.

1 So I think it's important that our regulations follow what
2 our practice is. We talked about some other alternatives,
3 some other suggestions on a way to make this happen, to
4 make this capability available. So I think staff is going
5 to work on it. And I'll be supporting this regulation in
6 the interest of making sure we're clear about what our
7 capability is today. And I think there are many of us on
8 this Board who want to figure out a solution to this. And
9 hopefully we'll do that in a timely fashion.

10 PRESIDENT FECKNER: Thank you.

11 Ms. Taylor.

12 BOARD MEMBER TAYLOR: Yes. And I just had one
13 question. Does the staff have -- under this proposed
14 regulation, will the staff have the ability to, say, grant
15 it on a case-by-case basis or is it just a no all the way
16 around unless the Board changes it?

17 BOARD MEMBER MATHUR: Um-hmm.

18 BOARD MEMBER TAYLOR: Okay. That's what I -- I
19 was just trying to figure out.

20 Thank you.

21 PRESIDENT FECKNER: Mr. Lind.

22 BOARD MEMBER LIND: So if there's all this
23 potential work we're going to do about this policy, why
24 doesn't it make sense to go ahead with this regulation
25 today? Or I guess the other way to ask it is, is there a

1 risk on not moving forward with the regulation today?

2 CHIEF EXECUTIVE OFFICER FROST: So I think the
3 only risk, if you want to categorize it that way, is that
4 this regulation does document the current practice of the
5 system. And as Mr. Slaton pointed out, any operational
6 process we have, in effect, that impacts a member should
7 be supported by the regulation.

8 PRESIDENT FECKNER: Well, before we go any
9 further, I assume our court reporter was having trouble
10 actually catching the nods on Ms. Taylor's question. So
11 you are correct that we cannot do it on a case-by-case
12 basis.

13 BOARD MEMBER TAYLOR: Right.

14 BOARD MEMBER MATHUR: And if I could just note
15 that we have already -- that I already directed the team
16 to bring back to the Committee the potential cost
17 implications to accommodate separate carriers in
18 combination enrollments, so that -- that will be agendized
19 for consideration by the Committee.

20 PRESIDENT FECKNER: Thank you.

21 Motion before you.

22 No other requests to speak.

23 All in favor of the motion say aye?

24 (Ayes.)

25 PRESIDENT FECKNER: Opposed, no?

1 (Noes.)

2 PRESIDENT FECKNER: All right. Let's have a roll
3 call, please.

4 (Thereupon an electronic vote was taken.)

5 PRESIDENT FECKNER: Well...

6 (Laughter.)

7 VICE PRESIDENT JONES: Sorry about that, Mr.
8 President.

9 PRESIDENT FECKNER: Isn't that a conundrum.

10 (Laughter.)

11 BOARD MEMBER LIND: Well, once in a while you've
12 got to vote.

13 BOARD MEMBER SLATON: You could abstain.

14 PRESIDENT FECKNER: That's true.

15 All right. The vote passes.

16 Motion carries. But again, we will be bringing
17 this back. And as you've heard, the Board can change
18 their regulation at any time moving forward --

19 BOARD MEMBER MATHUR: We can change the policy.

20 PRESIDENT FECKNER: -- when we have information
21 that gives us more leeway to move forward.

22 So thank you.

23 Ms. Mathur

24 BOARD MEMBER MATHUR: Thank you.

25 PRESIDENT FECKNER: I believe you need to go back

1 to Item 7. Did we do 7? I think we only did 6.

2 BOARD MEMBER MATHUR: No, that was -- that was 7.

3 PRESIDENT FECKNER: No, that was 8 on our form.

4 Item 7 would have been the retirement guidelines
5 and health care guidelines.

6 BOARD MEMBER MATHUR: Oh, I'm sorry. I did skip
7 7. Forgive me.

8 So the Committee further recommends and I move
9 the Board approve staff's recommendation to seek adoption
10 of proposed updates to the retirement guidelines and
11 health care guidelines section of the guidelines, along
12 with conforming changes to the introduction and general
13 guidelines section.

14 PRESIDENT FECKNER: On motion by Committee.

15 Any discussion on the motion?

16 Seeing none.

17 All in favor say aye?

18 (Ayes.)

19 PRESIDENT FECKNER: Opposed, no?

20 Motion carries.

21 BOARD MEMBER MATHUR: The Committee received
22 reports on the following topics:

23 On retired members cost of living report, Peace
24 Officers Research Association of California 2018 regional
25 rates, and health open enrollment results.

1 The Chair directed staff to develop a Health Care
2 Beliefs set to be set as a future agenda item (Legislative
3 and policy engagement guidelines); and to review and bring
4 back to the Committee potential cost implications to
5 accommodate separate carriers in combo enrollments.

6 The Committee received public comment from Tim
7 Behrens of CSR and Kent McKinney, CalPERS member,
8 regarding the regulation and clarification of combination
9 enrollments, which was Agenda Item 8, and a public
10 hearing.

11 The Committee also received public comment from
12 Al Darby, RPEA, regarding the retired members costs of
13 living report, Agenda Item 5e.

14 At this time, let me share some highlights of
15 what to expect in March. The Committee will review the
16 proposed regulations on pensionable compensation. The
17 Committee will also hear information on health care cost
18 trends, the Long-Term Care Program semiannual report, and
19 the 2017 to 2022 health initiatives.

20 The next meeting of the PHBC is scheduled for
21 March 14th, 2017 in Sacramento, California. That
22 concludes my report, Mr. President.

23 PRESIDENT FECKNER: Thank you. Item 7c, Finance
24 and Administration Committee. For that I call on the
25 Chair, Mr. Costigan.

1 BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner.
2 The Finance and Administration Committee met on February
3 14th, 2017. The Committee held an election for the
4 Finance and Administration Committee Chair and Vice Chair.
5 Richard Costigan was reelected as Chair, and Theresa
6 Taylor was elected as Vice Chair of the Committee.

7 The Committee recommends and I move the Board
8 approve the following:

9 Agenda Item 4b, the California Actuarial Advisory
10 Committee. Approve the appointment of Scott Terando,
11 Chief Actuary, as the CalPERS representative to the
12 California Actuarial Advisory Panel for the remainder of
13 the 3-year term ending December 31st, 2017.

14 PRESIDENT FECKNER: On motion by Committee.

15 Any discussion on the motion?

16 Seeing none.

17 All in favor say aye?

18 (Ayes.)

19 PRESIDENT FECKNER: Opposed, no?

20 Motion carries.

21 BOARD MEMBER COSTIGAN: Item Agenda 4c, The
22 Long-Term Care Valuation Report. Approve the staff
23 recommendation that the Board approve the results of the
24 long-term care valuation report ending June 30th, 2016.

25 PRESIDENT FECKNER: On motion by Committee.

1 Any discussion on the motion?

2 Seeing none.

3 All in favor say aye?

4 (Ayes.)

5 PRESIDENT FECKNER: Opposed, no?

6 Motion carries.

7 BOARD MEMBER COSTIGAN: Agenda Item 6a, the
8 CalPERS 2017-22 Strategic Plan and 2017-18 Business Plan,
9 and approve the CalPERS strategic plan and business plan
10 initiatives that will commence on July 1, 2017.

11 PRESIDENT FECKNER: On motion by Committee.

12 Any discussion on the motion?

13 Seeing none.

14 All in favor say aye?

15 (Ayes.)

16 PRESIDENT FECKNER: Opposed, no?

17 Motion carries.

18 BOARD MEMBER COSTIGAN: Agenda Item 7a, the 2017
19 CalPERS Board of Administration Member-At-Large Election -
20 Notice of Election, and approve the staff recommendation
21 that the Board approve the notice of election for the 2017
22 CalPERS Board of Administration member-at-large as
23 modified to change the word "retiree" to "candidate".

24 PRESIDENT FECKNER: On motion by Committee.

25 Any discussion on the motion?

1 Mr. Jelincic.

2 BOARD MEMBER JELINCIC: Yeah. I just want to
3 make sure, because the motion isn't clear, that that
4 substitution of candidate for retiree applies to the
5 eligibility section. It does not apply to every place
6 elsewhere we're "retiree" is used, is that correct or not
7 correct?

8 BOARD MEMBER COSTIGAN: I believe that is
9 correct.

10 PRESIDENT FECKNER: Yes.

11 BOARD MEMBER COSTIGAN: Do you want further
12 clarification?

13 BOARD MEMBER COSTIGAN: I believe that is the
14 correct reading.

15 BOARD MEMBER JELINCIC: Okay. So the record is
16 clear that's what we intended?

17 BOARD MEMBER COSTIGAN: Yes, sir.

18 BOARD MEMBER JELINCIC: And thank you.

19 PRESIDENT FECKNER: Thank you.

20 On motion by Committee.

21 Any other discussion on the motion?

22 Seeing none.

23 All in favor say aye?

24 (Ayes.)

25 PRESIDENT FECKNER: Opposed, no?

1 Motion carries.

2 BOARD MEMBER COSTIGAN: Agenda Item 8a, The
3 Actuarial Contribution Allocation Policy(Second Reading).
4 Approve the adoption of the consolidated actuarial
5 contribution allocation policy and rescind policies
6 previously a approved by the Board.

7 PRESIDENT FECKNER: On motion by Committee.

8 Any discussion on the motion

9 Seeing none.

10 All in favor say aye?

11 (Ayes.)

12 PRESIDENT FECKNER: Opposed, no?

13 Motion carries.

14 BOARD MEMBER COSTIGAN: Agenda Item 9a, the
15 Funding Risk Policy -- I'm sorry, Funding Risk Mitigation
16 Policy. Approve the staff recommendation that the Board
17 adopt the revised Funding Risk Mitigation Policy.

18 PRESIDENT FECKNER: On motion by Committee.

19 Any discussion on the motion?

20 Seeing none.

21 All in favor say aye?

22 (Ayes.)

23 PRESIDENT FECKNER: Opposed say no?

24 Motion carries.

25 BOARD MEMBER COSTIGAN: The Committee received

1 reports on the following topics:

2 The employer partner financial health, update on
3 voting options for the new Board of Administration
4 election process, background information and application
5 of the Responsible Contractor Program, and the first
6 reading of the Asset Liability Management Policy.

7 The Chair directed staff to do the following:

8 To bring back to the Committee additional
9 information on the nature of all IT projects; have the
10 Finance and Administration Committee review the
11 Committee's Delegation and Policy for approval of
12 reimbursement to State school and public agency employers
13 of elected Board members in April; have the Board
14 Governance Committee review the proposed changes to the
15 Governance Policy following the Finance and Administration
16 Committee in April; provide to the Committee a process for
17 escalating delinquent employers after 90 days, and
18 consider including elected officials on delinquency
19 notices; and, bring back to the Committee further
20 discussion of the Responsible Contractor Policy.

21 The Committee heard public comment on the
22 following topics:

23 The notice of election for the members-at-large
24 election, and the Responsible Contractor Policy to all
25 CalPERS contracts.

1 At this time, I'd like to share some highlights
2 of what to expect at the April Finance and Administration
3 Committee meeting. We'll have an update for the
4 employer/employee contribution rates for Judges,
5 Legislators, schools, State and valuation report for the
6 1950 Survivor Benefit Program, as well as a first reading
7 of the 2017-18 annual budget proposal, and annual review
8 of the Board member employer reimbursements, and a second
9 reading of the Asset Liability Management Policy.

10 The next meeting of the Finance and
11 Administration Committee is scheduled for April 18th 2017
12 in Sacramento, California. Thank you, Mr. President.
13 That's my report.

14 PRESIDENT FECKNER: Thank you, Mr. Costigan.

15 That brings us to Item 7d, Performance,
16 Compensation and Talent Management Committee. For that, I
17 call on the Chair, Mr. Bilbrey.

18 BOARD MEMBER BILBREY: Thank you, Mr. President.

19 The Performance, Compensation and Talent
20 Management Committee met on February 14, 2017.

21 The Committee held an election of the
22 Performance, Compensation and Talent Management Committee
23 Chair and Vice Chair. Michael Bilbrey was elected Chair
24 and Richard Costigan was elected Vice Chair.

25 The Committee recommends and I move that the

1 Board approve the following items:

2 Agenda Item 6, Semiannual Status Report on
3 Performance Plans of the Chief Executive Officer and Chief
4 Investment Officer. Approve the 2016-17 plans of the CEO
5 CIO and propose changes to the CIO's plans as amended by
6 the Committee as shown in Attachment 1.

7 PRESIDENT FECKNER: On motion by Committee.

8 Any discussion on the motion?

9 Seeing none.

10 All in favor say aye?

11 (Ayes.)

12 PRESIDENT FECKNER: Opposed, no?

13 Motion carries.

14 Please note Mr. Jelincic abstaining on Items 6,
15 7, 8, and 9, please.

16 BOARD MEMBER BILBREY: Agenda Item 7, Biennial
17 Salary Survey. Approve staff conducting a biennial salary
18 survey for positions covered under the Board's
19 compensation setting authority, and bring forward an
20 information item regarding compensation for selected
21 positions not currently covered at a future Committee
22 meeting.

23 PRESIDENT FECKNER: On motion by Committee.

24 Any discussion on the motion?

25 Seeing none.

1 All in favor say aye?

2 (Ayes.)

3 PRESIDENT FECKNER: Opposed, no?

4 (No.)

5 PRESIDENT FECKNER: Motion carries.

6 BOARD MEMBER BILBREY: Agenda Item 8, Review of
7 the Performance, Compensation and Talent Management
8 Committee Delegation. The Committee reviewed the
9 delegation from the Board to the Committee, and recommends
10 that the delegation remain as is with no changes, and this
11 recommendation will be brought to the Board in April for
12 consideration along with other Committee delegations.

13 PRESIDENT FECKNER: On motion by Committee.

14 Any discussion on the motion?

15 Seeing none.

16 All in favor say aye?

17 (Ayes.)

18 PRESIDENT FECKNER: Opposed, no?

19 Motion carries.

20 BOARD MEMBER BILBREY: Agenda Item 9, 2016-17
21 Enterprise Operational Effectiveness Metric. Approve the
22 implementation methodology and revise incentive payout
23 ratio as Presented.

24 PRESIDENT FECKNER: On motion by Committee.

25 Any discussion on the motion?

1 Seeing none.

2 All in favor say aye?

3 (Ayes.)

4 PRESIDENT FECKNER: Opposed, no?

5 (No.)

6 PRESIDENT FECKNER: Motion carries.

7 BOARD MEMBER BILBREY: The Committee received a
8 report on the following topic: A review of the 2016-17
9 Investment Management Plan Design.

10 The Committee also heard public comment on the
11 following topics: From Neal Johnson, SEIU 1000, spoke
12 regarding the biennial salary survey agenda item.

13 At this time, I'd like to share some highlights
14 of the next Performance, Compensation and Talent
15 Management Committee meeting which will be in June. The
16 Committee will receive the 2017-18 incentive plans of the
17 CEO and CIO.

18 The next meeting of the Performance, Compensation
19 and Talent Management Committee is scheduled for June
20 20th, 2017 here in Sacramento.

21 Thank you, Mr. President.

22 PRESIDENT FECKNER: Thank you, Mr. Bilbrey.

23 That brings us to Agenda Item 7e, Risk and Audit.
24 For that, I call on the chair, Ms. Hollinger.

25 Ms. Hollinger --

1 BOARD MEMBER HOLLINGER: Thank you, Mr.
2 President.

3 PRESIDENT FECKNER: Push your button first,
4 please, so I can recognize you.

5 There you go.

6 BOARD MEMBER HOLLINGER: Thank you, Mr.
7 President. The Risk and Audit Committee met on February
8 13th, 2017.

9 The Committee held an election for the Risk and
10 Audit Committee Chair and Vice Chair. Dana Hollinger was
11 elected as Chair and Ron Lind was elected as Vice Chair of
12 the Committee.

13 The recommends and I move the Board approve the
14 following:

15 Agenda Item 6, Review of the Risk and Audit
16 Committee Delegation. The Committee reviewed the
17 delegation from the Board to the Committee and recommended
18 changes that will be brought to the Board in April for
19 approval, along with the other Committee delegations.

20 PRESIDENT FECKNER: On motion by Committee.

21 Any discussion on the motion?

22 Seeing none. All in favor say aye?

23 (Ayes.)

24 PRESIDENT FECKNER: Opposed, no?

25 Motion carries.

1 BOARD MEMBER HOLLINGER: The Committee received
2 reports on the following topics:

3 An independent review by Buck Consultants of the
4 actuarial valuations of the State and school plans; an
5 external quality assessment of the Office of Audit
6 Services; and, 2016-17 mid-year updates for Enterprise
7 Risk Management and Enterprise Compliance.

8 At this time, I would like to share some
9 highlights of what to expect at the June Risk and Audit
10 Committee meeting:

11 2017 to 2019 plans for Enterprise Compliance,
12 Enterprise Risk Management, and the Office of Audit
13 Services; the independent auditor's 2017 annual plan; and,
14 the Semiannual Risk Reports.

15 The next meeting of the Risk and Audit Committee
16 is scheduled for June 20th, 2017 in Sacramento,
17 California.

18 Thank you, Mr. President. That is my report.

19 PRESIDENT FECKNER: Thank you.

20 Before we move forward, I have to ask a question.

21 We're going to take a quick recess to allow a
22 Board member to switch places here quickly. So if we
23 could just wait a second before we move on.

24 Okay. We're on Item 8, Proposed Decisions of
25 Administrative Law Judges.

1 Before I call on Mr. Jones, I do want to note
2 that Chirag Shah, the Board's independent counsel for ALJ
3 decisions is here with us today.

4 Good morning, Mr. Shah

5 MR. SHAH: Good morning, Mr. President.

6 PRESIDENT FECKNER: Mr. Jones, please.

7 VICE PRESIDENT JONES: Thank you Mr. President.

8 I move to adopt the proposed decisions at Agenda
9 Items 8a through 8gg as the Board's own decisions, with
10 the minor clarification/modifications argued by staff.

11 BOARD MEMBER COSTIGAN: I'll second.

12 PRESIDENT FECKNER: It's been moved by Jones,
13 seconded by Costigan.

14 BOARD MEMBER MATHUR: Turn your microphone back
15 on.

16 PRESIDENT FECKNER: It's been moved by Jones,
17 seconded by Costigan still.

18 Any discussion on the motion?

19 Seeing none.

20 All in favor say aye?

21 (Ayes.)

22 PRESIDENT FECKNER: Opposed say no?

23 Motion carries.

24 Mr. Jones.

25 VICE PRESIDENT JONES: Yeah. Thank you, Mr.

1 President. I move to deny the petitions for
2 reconsideration at a Agenda Items 9a and 9b.

3 BOARD MEMBER COSTIGAN: Second.

4 PRESIDENT FECKNER: It's been moved by Jones,
5 seconded by Costigan.

6 Any discussion on the motion?

7 Seeing none.

8 All in favor say aye?

9 (Ayes.)

10 PRESIDENT FECKNER: Opposed say no?

11 Motion carries. Thank you.

12 Now, before we go any further, we're going to
13 move Items 10 and 11 to the end of the open session
14 agenda. We're also going to go back to the item - let me
15 go back a page - 7b, Pension and Health Committee. There
16 was an error on one of the motions, so I'm going to call
17 on Ms. Mathur to -- please push your button, Ms. Mathur.

18 BOARD MEMBER MATHUR: I'm sorry.

19 PRESIDENT FECKNER: Thank you.

20 BOARD MEMBER MATHUR: Thank you, Mr. President.
21 And I think I need to ask the General Counsel how to do
22 this. There was an error in one of the motions, so if I
23 need to re -- if I need to restate the motion and retake
24 the vote just in the way the motion was stated, how would
25 we do that?

1 GENERAL COUNSEL JACOBS: You would just restate
2 it and have the Board vote on it.

3 BOARD MEMBER MATHUR: Okay. So I'm going to
4 restate the motion on --

5 PRESIDENT FECKNER: Everybody have your agenda
6 item back for Item 7b?

7 BOARD MEMBER JELINCIC: Do we need to rescind the
8 previous motion?

9 BOARD MEMBER MATHUR: Do we need to rescind the
10 previous motion on the -- for -- with respect to Agenda
11 Item 7 on the Pension and Health Benefits Committee
12 agenda? I mean, that we took earlier -- we took -- we
13 took an action earlier.

14 So why don't I re -- why don't I state the new
15 motion, which is on Agenda Item 7 from the Pension and
16 Health Benefits Committee. That the Board approve the
17 staff's recommendation to rescind the retirement
18 guidelines, and approve the proposed updates to the health
19 care guidelines section of the guidelines, along with
20 conforming changes to the introduction and general
21 guidelines section; and, to clarify that the Board has
22 delegated to the CEO primary responsibility for
23 determining CalPERS position on federal bills.

24 That is the correct statement of the Committee's
25 intention.

1 GENERAL COUNSEL JACOBS: Right, and I think
2 that's better worded than the first one.

3 So, yeah, just for formality sake, I would say
4 let's rescind the first one and --

5 BOARD MEMBER MATHUR: So do I need to make a
6 motion to rescind -- do I make a motion to rescind it?

7 GENERAL COUNSEL JACOBS: Yes.

8 BOARD MEMBER MATHUR: So I move that we rescind
9 the prior vote on Agenda Item 7 on 7b.

10 BOARD MEMBER HOLLINGER: Second.

11 PRESIDENT FECKNER: On motion by Committee.

12 Any discussion on the motion?

13 Seeing none.

14 All in favor say aye?

15 (Ayes.)

16 PRESIDENT FECKNER: Opposed say no?

17 Motion carries.

18 Now back on the original.

19 BOARD MEMBER MATHUR: And then shall I restate
20 the new motion?

21 PRESIDENT FECKNER: Please.

22 BOARD MEMBER MATHUR: I will restate the new
23 motion.

24 That the Board approve the staff's recommendation
25 to rescind the retirement guidelines and improve -- and

1 approve the proposed updates to the health care guidelines
2 section of the guidelines, along with conforming changes
3 to the introduction and general guidelines section; and,
4 to clarify that the Board has delegated the CEO -- to the
5 CEO primary responsibility for determining CalPERS
6 position on federal bills.

7 PRESIDENT FECKNER: Is there a second?

8 BOARD MEMBER MATHUR: That's a motion of the
9 Committee

10 PRESIDENT FECKNER: Okay. So was the last one,
11 so --

12 BOARD MEMBER MATHUR: Oh, does it need a second?

13 PRESIDENT FECKNER: All right. No, we'll just
14 go.

15 Motion by Committee.

16 Any discussion on the motion?

17 Mr. Jelincic

18 BOARD MEMBER JELINCIC: Yes. Since it's not the
19 original motion, it probably does need a second, in which
20 case I'll be happy to second it.

21 But my question is will the corrections show up
22 on the website relatively promptly so people can see it?

23 GENERAL COUNSEL JACOBS: Yes.

24 BOARD MEMBER JELINCIC: Thank you.

25 BOARD MEMBER MATHUR: Thank you.

1 PRESIDENT FECKNER: Did you get that?

2 THE COURT REPORTER: Yes.

3 BOARD MEMBER MATHUR: And does it require -- is
4 that a motion that requires a second if --

5 GENERAL COUNSEL JACOBS: Probably.

6 PRESIDENT FECKNER: Mr. Jelincic seconded it, so
7 we're good.

8 BOARD MEMBER MATHUR: Thank you.

9 PRESIDENT FECKNER: All right. Any other
10 discussion on the motion?

11 Seeing none.

12 All in favor say aye?

13 (Ayes.)

14 PRESIDENT FECKNER: Opposed, no?

15 Motion carries.

16 BOARD MEMBER MATHUR: Thank you, Mr. President.

17 PRESIDENT FECKNER: Thank you.

18 So that brings us to Item 12, State and Federal
19 Legislation Update. Ms. Ashley.

20 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY:

21 Hello. Good morning --

22 PRESIDENT FECKNER: Good morning.

23 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: --

24 President Feckner and members of the Committee. Mary Anne
25 Ashley, CalPERS team member.

1 I will be presenting Agenda Item 12, which is the
2 State and Federal Legislative Update. This is an
3 informational item. The legislative summary is included
4 in your Board materials for your reference.

5 There hasn't been a lot of change since the last
6 update, but I would like to highlight a couple of bills
7 that have been added to the summary.

8 AB 161 by Assembly Member Levine is a repeat of
9 last year's AB 2348, which was also authored by Assembly
10 Member Levine. And the bill proposed to authorize the
11 Department of Finance to identify infrastructure projects
12 in California for which the Department will guaranty a
13 rate of return for investments made by CalPERS subject to
14 monies deposited into a newly established fund.

15 The Board ultimately adopted a neutral position
16 on last year's bill. This year's version is identical so
17 far to last year's. So the Legislative Affairs team will
18 continue to monitor the bill as it moves forward, and will
19 keep the Board updated as appropriate.

20 And then SB 172 by Senator Portantino was
21 introduced on January 23rd, and would require an
22 individual or group health care service plan, contract, or
23 insurance policy issued, amended, or renewed on and after
24 January 1st, 2018 that covers hospital, medical, or
25 surgical expenses to provide coverage for the standard

1 fertility preservation services according to circumstances
2 as specified in the measure.

3 A similar bill was introduced in 2013 by Assembly
4 Member Quirk-Silva, and the Board adopted an
5 oppose-unless-amended position on the bill to have CalPERS
6 exempt -- CalPERS health plans exempt from the bill. So
7 we will continue monitoring and engage with the author's
8 office on that and keep the Board updated. And we're
9 currently working with CalPERS Health Program areas to
10 identify the impact currently under the new bill.

11 The deadline for bill introduction is this
12 Friday, February 17th. And we anticipate that there will
13 be the usual flurry of bills introduced. The Legislative
14 Affairs team will be monitoring all the bills introduced,
15 and we'll identify those that will or potentially will
16 have an impact to CalPERS. And we will update the Board
17 on those.

18 I'm very happy to report that we have legislators
19 that have committed to being the authors for our sponsored
20 bills. Assembly Member Cooley will be authoring the
21 securities lending collateral bill, and also the reporting
22 fee bill. Assembly Member Medina will be authoring the
23 right of election bill. And Senator Pan will be the
24 author for our annual housekeeping bill. We will be able
25 to identify the bill numbers by the next update.

1 Yesterday, the Assembly Health Committee held an
2 informational hearing on the impact of rising drug costs
3 on public and private payors. And Dr. Donneson and Dr.
4 Sun represented CalPERS on a panel that discussed the
5 impact to public programs.

6 The Chair of the Committee is very interested in
7 having a series of hearings on prescription drug costs and
8 in forwarding legislation that would increase
9 transparency.

10 And one final note, I would like to share that
11 the Legislative Affairs team has developed legislative
12 district profiles for all California and federal
13 legislators. And the profiles are available on our
14 website. And we have actually changed from approximately
15 a 10-page document to a 1-page front-and-back document.
16 And these briefing -- or these profiles will be used when
17 we do our meet and greets and briefings with our
18 legislators.

19 And that concludes my update, and I'm happy to
20 answer any questions.

21 PRESIDENT FECKNER: Thank you.

22 Mr. Lawyer.

23 ACTING BOARD MEMBER LAWYER: It was curious what
24 you're hearing from federal representatives regarding
25 House Joint Resolution 66 and 67. If I'm getting the

1 title right, it's the motions to disapprove the Labor
2 Department rule regarding State and municipal savings
3 arrangements for private sector workers.

4 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY:

5 Right, right. Our --

6 ACTING BOARD MEMBER LAWYER: One of the reasons
7 the Treasurer isn't here this week is he's in Washington
8 D.C. meeting with other State Treasurers from across the
9 country, as part of that effort, meeting with members of
10 Congress and others to educate them on the importance of
11 that rule and State plans in general to address issues of
12 retirement security.

13 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Our
14 representatives are very well aware of those resolutions.
15 They did bring it to our attention, and our federal
16 legislative affairs team has been in contact with the
17 Controller's office. So we will be following that, and
18 we're made aware of the Treasurer's desire to stay
19 informed.

20 ACTING BOARD MEMBER LAWYER: Good. Thank you.

21 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Thank
22 you.

23 PRESIDENT FECKNER: Mr. Jelincic.

24 BOARD MEMBER JELINCIC: Two questions. You
25 mentioned our fee reporting bill.

1 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY:

2 Um-hmm.

3 BOARD MEMBER JELINCIC: Can -- I'm drawing a
4 blank. Can you remind what that is?

5 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: So
6 employers are required to enroll and report information
7 regarding retired annuitants. And audits have shown that
8 this information isn't always being reported, and so we
9 are proposing to give CalPERS the authority to assess a
10 \$200 a month per member per month fee until that
11 information is reported.

12 BOARD MEMBER JELINCIC: And now that you -- now
13 that you repeated that, I remember.

14 The other question was on page 2 of 3. It's the
15 Pan bill. It also shows up further down. For annuitants
16 and their family members, I'm not clear what I'm reading.
17 Eighty percent of the weighted average premium of active
18 State employees enrolled multi-basic plan, or 80 percent
19 of the weighted average of the premium for State
20 annuitants enrolled in Medicare plans, is that the lessor
21 of, or --

22 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: We're
23 currently trying to get --

24 BOARD MEMBER JELINCIC: And maybe DPA can answer
25 the question.

1 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Okay.
2 Thank you.

3 BOARD MEMBER JELINCIC: I just don't understand
4 what it says.

5 PRESIDENT FECKNER: Mr. Gillihan.

6 BOARD MEMBER GILLIHAN: Thank you, Mr. President.
7 And for the record it's CalHR not DPA.

8 (Laughter.)

9 BOARD MEMBER GILLIHAN: That's a companion bill
10 to our MOU ratification bill. It's part of -- all the
11 contracts we've agreed to, the tentative agreements have
12 included retiree health reforms proposed by the Governor a
13 few years ago. I'm happy to report all of our deals
14 include those provisions. And one of those provisions --
15 two of those provisions are increasing the vesting period
16 from the 10/20 vesting currently to 15/25, and then
17 changing the 100/90 formula in retirement to the 80/80
18 formula, which is more consistent with what most of our
19 active employees receive.

20 BOARD MEMBER JELINCIC: Okay. So it's really
21 just a substitute of the 80/80 formula. And so the
22 distinction is a distinction without a difference.

23 BOARD MEMBER GILLIHAN: I'm sorry. I'm not
24 tracking your question.

25 BOARD MEMBER JELINCIC: It -- we're eliminate the

1 100/90 and we're going to 80/80.

2 BOARD MEMBER GILLIHAN: By contract as we reach
3 that agreement with our labor representatives.

4 BOARD MEMBER JELINCIC: Right, for employees
5 hired after the 17th.

6 BOARD MEMBER GILLIHAN: Correct.

7 BOARD MEMBER JELINCIC: But the other thing that
8 was -- and -- okay -- but -- so that this is just not
9 worded so that I understood it. Let me put it that way.

10 BOARD MEMBER GILLIHAN: Ah, got it.

11 BOARD MEMBER JELINCIC: Thank you.

12 PRESIDENT FECKNER: Okay. Mr. Costigan.

13 BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner.
14 Just a few questions to follow up on the Treasurer's
15 Office. So you do have SCA 1 on here. So under the new
16 policies that we adopted coming out of the Pension
17 Committee on those 2 House resolutions, it will be up to
18 the CEO to take a position whether or not we take a
19 position?

20 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY:

21 That's correct, whether we take a position,
22 whether we weigh in via sending letters of support.

23 BOARD MEMBER COSTIGAN: Okay. And I note that
24 the Administration, that the Governor, this morning sent a
25 letter opposing the rule change. Is this something that,

1 at some point, CalPERS would weigh in, not weigh in on?
2 What are our federal representatives -- what is K&L Gates
3 recommending?

4 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: In
5 working with the Treasurer's Office, the Treasurer's
6 Office requested that we just let them take the lead on
7 this. So, however, we're, you know, offering to help as
8 needed.

9 BOARD MEMBER COSTIGAN: All right. And then I
10 just note as well, I appreciate -- I managed to catch a
11 little bit last night of the CalPERS testimony at the PBM
12 hearing. One, are those remarks going to be made
13 available to the Committee or to the Board?

14 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: The
15 talking points from the --

16 BOARD MEMBER COSTIGAN: I'm sorry, the
17 presentation. Was there a PowerPoint done? I couldn't
18 tell.

19 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: It
20 was just a handout. It wasn't a PowerPoint. There was
21 a -- there was a 2- or 3-page handout that was provided.

22 BOARD MEMBER COSTIGAN: Because then, as you
23 know, drug transparency and PBMs are going to be a major
24 topic of the California legislature this year. So I would
25 certainly hope back on SCA 1 that you do keep us informed,

1 because I do note in the last 24 hours, the Pro Tem, the
2 Speaker, and the Governor have all taken positions and
3 weighed in. And I also believe that the House Majority
4 Leader made a statement yesterday related to it. And so
5 maybe you can give us or have K&L Gates gives us an update
6 next month as to actually what's going on --

7 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Sure.

8 BOARD MEMBER COSTIGAN: -- because when Mr.
9 McCarthy weighs in -- and I understand it was difficult to
10 see where he was at from the statement, and that there was
11 further clarification, but it clearly got Governor Brown,
12 Pro Tem de León, and Mr. Rendon in a responsive mood
13 yesterday and this morning.

14 So, thank you.

15 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Thank
16 you.

17 PRESIDENT FECKNER: All right. Seeing no other
18 requests. Thank you.

19 Item 13, Summary of Board direction.

20 Ms. Frost, do you have anything today?

21 CHIEF EXECUTIVE OFFICER FROST: I'm writing down
22 the third one.

23 I attempted to capture items that were asked for
24 in Committee, but became discussion as the part of a
25 motion. I thought that would be a good -- those are good

1 items to document.

2 So one is updating the rolling calendar for the
3 request that came out of Committee regarding engagement
4 options, and that would be on the March Investment
5 Committee regarding the Dakota Access Pipeline;

6 Bringing additional analysis on combination
7 enrollments both from a policy implication and fiscal
8 impacts to implement;

9 And then the third is having the Legislative team
10 provide an update on federal actions that may have an
11 impact on Secure Choice.

12 PRESIDENT FECKNER: All right. Thank you very
13 much.

14 Seeing nothing else.

15 This -- we're going to take a 10 minute recess
16 before we move on to Item 10 the first full Board hearing.
17 So we'll reconvene at 10:15.

18 (Off record: 10:03 a.m.)

19 (Thereupon a recess was taken.)

20 (On record: 10:14 a.m.)

21 PRESIDENT FECKNER: I'm going to call the
22 Committee back -- the Board meeting back to order, please.

23 If everybody could please take their seats.

24 All right. We need to get the rest of the Board
25 members in here before we begin. So who are we missing?

1 Mr. Costigan and Mr. Jelincic.

2 Okay. There he is. Very good.

3 Okay. So the first order of business. Let's
4 see, we're now on Agenda Item 10. I open the record for
5 the full Board hearing on the appeal of Sheldon Kyle
6 Scarber, CalPERS case number 2015-0243.

7 First order of business will be to please take
8 the roll.

9 BOARD SECRETARY BUCHANAN: Rob Feckner?

10 PRESIDENT FECKNER: Good morning.

11 BOARD SECRETARY BUCHANAN: Henry Jones?

12 VICE PRESIDENT JONES: Here.

13 BOARD SECRETARY BUCHANAN: Michael Bilbrey?

14 BOARD MEMBER BILBREY: Good morning.

15 BOARD SECRETARY BUCHANAN: Eric Lawyer for John
16 Chiang?

17 ACTING BOARD MEMBER LAWYER: Good morning.

18 BOARD SECRETARY BUCHANAN: Richard Costigan?

19 BOARD MEMBER COSTIGAN: Here.

20 BOARD SECRETARY BUCHANAN: Richard Gillihan?

21 BOARD MEMBER GILLIHAN: Here.

22 BOARD SECRETARY BUCHANAN: Dana Hollinger?

23 BOARD MEMBER HOLLINGER: Here.

24 BOARD SECRETARY BUCHANAN: J.J. Jelincic?

25 BOARD MEMBER JELINCIC: Here.

1 BOARD SECRETARY BUCHANAN: Ron Lind?

2 BOARD MEMBER LIND: Here.

3 BOARD SECRETARY BUCHANAN: Priya Mathur?

4 BOARD MEMBER MATHUR: Good morning.

5 BOARD SECRETARY BUCHANAN: Good morning.

6 Bill Slaton?

7 BOARD MEMBER SLATON: Here.

8 BOARD SECRETARY BUCHANAN: Theresa Taylor?

9 BOARD MEMBER TAYLOR: Here.

10 BOARD SECRETARY BUCHANAN: Lynn Paquin for Betty

11 Yee?

12 ACTING BOARD MEMBER PAQUIN: Here.

13 PRESIDENT FECKNER: Thank you.

14 The proposed decision in this case was originally
15 considered by the Board at the December 2016 Board
16 meeting. At that meeting, the Board rejected the proposed
17 decision and scheduled this matter for a full Board
18 hearing. I note for the record that all parties have
19 received notice of this full Board hearing, along with
20 copies of the Statement of Policy and Procedures for Full
21 Board Hearings before the Board.

22 In addition, all parties have been informed in
23 writing that oral argument will be limited to 10 minutes
24 for each position, and rebuttal will be limited to 3
25 minutes for each position.

1 Would counsel please take a moment to introduce
2 themselves starting with staff counsel and then Mr.
3 Scarber or Mr. Scarber's counsel.

4 ASSISTANT CHIEF COUNSEL SEABOURN: Good morning.
5 I'm Marguerite Seabourn Assistant Chief Counsel at
6 CalPERS.

7 SENIOR STAFF ATTORNEY YELLAND: Good morning.
8 Elizabeth Yelland, Senior Staff Counsel for CalPERS.

9 PRESIDENT FECKNER: Thank you.

10 MR. SCARBER: Good morning, sir. My name is
11 Sheldon Kyle Scarber, self-represented.

12 PRESIDENT FECKNER: Thank you.

13 MR. SCARBER: Thank you.

14 PRESIDENT FECKNER: So let the record reflect
15 that Chirag Shah from the Los Angeles based law firm of
16 Shah and Associates, the Board's independent counsel on
17 full board hearings and proposed decisions from the Office
18 of Administrative Hearings is here now and will be
19 advising members of the Board on procedural as well as
20 substantive issues that arise in this proceeding should
21 Board members have questions. Mr. Shah will also provide
22 a brief summary of the case before we begin oral
23 arguments.

24 As stated previously, each position will have 10
25 minutes for oral argument. Ms. Yelland will have the

1 first 10 minutes to present staff's argument. After that,
2 Mr. Scarber will have 10 minutes to present his argument.
3 Neither side is compelled to use the full 10 minutes.
4 However, if a party concludes argument in less than the
5 time allotted, they will not be permitted to carry-over
6 any remaining time to any other portion of this
7 proceeding.

8 After both sides have presented oral argument,
9 each side will be given 3 minutes for rebuttal argument in
10 the same order as the original presentation. First, Ms.
11 Yelland, then Mr. Scarber. Here, too, the parties may,
12 but do not have to, use the entire time allocated for
13 their rebuttal. But if a party decides to use less time,
14 there will not be another opportunity to use the remaining
15 time.

16 There is a timer in this room which will be set
17 for 10 minutes for initial argument, and 3 minutes for
18 rebuttals. The timer will begin when you start to speak.
19 Please pay close attention to the timer as you make your
20 presentations in order to avoid going over your allotted
21 time.

22 When the timer turns red, your time will have
23 expired. After all sides' arguments and rebuttals are
24 concluded, the Board may ask questions of any of the
25 parties to this proceeding, as well as our independent

1 counsel.

2 The alternatives available to the Board are set
3 forth in Agenda Item 10. Are there any questions so far?
4 Do all parties understand the procedures?

5 Ms. Yelland?

6 SENIOR STAFF ATTORNEY YELLAND: Yes.

7 PRESIDENT FECKNER: Mr. Scarber?

8 MR. SCARBER: Yes, your Honor. Can I make a
9 request?

10 PRESIDENT FECKNER: Thank you.

11 Now, then, Mr. Shah, please provide a brief
12 summary of the case.

13 MR. SHAH: Good morning, Mr. President. Thank
14 you, members of the Board. Good morning to you. As you
15 said, my name is Chirag Shah. I'm the Board's independent
16 counsel on full Board hearings.

17 The case that the Board will hear now involves a
18 very narrow question of whether Mr. Scarber, who is a
19 former Assistant Chief with the California Highway Patrol,
20 is eligible to file an application for an industrial
21 disability retirement.

22 Let's start with some important dates relevant to
23 the case. On February 27, 2013, Mr. Scarber filed his
24 disability retirement application, his IDR application.

25 A few months later, on July 9, 2013, Mr. Scarber

1 also submitted a service retirement application, which has
2 been approved. On July 22nd, 2013, which is about 5
3 months after he filed his IDR application, the CHP issued
4 a Notice of Adverse Action, which we'll call an NOAA to
5 Mr. Scarber informing him that he would be dismissed from
6 his position as Assistant Chief effective August 29, 2013.

7 Now, this was almost 6 months after he submitted
8 his IDR Application at the end of February. According to
9 the NOAA at Attachment F, CalPERS Exhibit 10, in July 2007
10 Mr. Scarber inappropriately used for private gain or
11 advantage his prestige and influence as a member of the
12 CHP when he requested and was allowed extra visitation
13 privileges and physical contact to visit his son, who was
14 arrested and incarcerated in Fresno County Jail facing
15 felony and -- felony rape and burglary charges.

16 According to the NOAA, in September 2012, Mr.
17 Scarber sent and received unauthorized emails of police
18 reports regarding his son's arrest. Further, according to
19 the NOAA, in November 2012, Mr. Scarber directed a
20 subordinate employee to unlawfully access California law
21 enforcement telecommunications system in order to run an
22 unauthorized driver's history check.

23 The NOAA also stated that in December 2012, Mr.
24 Scarber willfully disobeyed a direct order given to him by
25 a CHP supervisor after his police powers were suspended,

1 and he also saved and stored pornographic images and other
2 adult-related content on his Departmentally issued laptop
3 computer.

4 Finally, in December 2012, according to the NOAA,
5 Mr. Scarber aided and conspired to assist his son to evade
6 prosecution, filed a false missing persons report, and
7 made dishonest statements to law enforcement, when he
8 attempted to smuggle his son from Fresno County Jail to
9 Mexico.

10 Mr. Scarber appealed the termination with the
11 State Personnel Board, which resulted in a stipulated
12 settlement reached on December 12, 2013, in which Mr.
13 Scarber agreed to resign for personal reasons effective
14 August 29, 2013, and waived all reinstatement rights. In
15 exchange for that, his employer withdrew the NOAA.

16 That settlement was approved by the State
17 Personnel Board on January 9, 2014. After that, on April
18 14th, 2014, CalPERS staff notified the member that his IDR
19 application was being canceled due to the operation of a
20 number of precedential cases and Board precedential
21 designations, including the case of Haywood versus
22 American River Fire Protection District, Smith versus
23 Napa, and the Vandergoot Board precedential designation.

24 And that, Mr. President, brings us to the main
25 issue before the Board today -- before the Board today,

1 did CalPERS staff properly cancel the member's application
2 or should it have accepted it -- just accepted it as it --
3 as found by the administrative law judge in the proposed
4 decision.

5 Staff argues that the Board should reject the
6 proposed decision and instead find that CalPERS correctly
7 canceled the application. Member, on the other hand, Mr.
8 Scarber rather -- on the other hand argues that the Board
9 should adopt the proposed decision in order to determine
10 whether his situation qualifies for 1 of the 2 equitable
11 exceptions announced in the relevant cases and Board
12 precedential decisions.

13 The merits of the parties' arguments are before
14 the -- along with the entire administrative record are
15 before the Board at Agenda Item 10.

16 With that, Mr. President, I conclude my brief
17 summary of the case.

18 PRESIDENT FECKNER: Thank you. Before I go any
19 further, Mr. Costigan.

20 BOARD MEMBER COSTIGAN: Thank you. I just want
21 to ask you, you have no cases pending before the State
22 Personnel Board at this time, is that accurate?

23 MR. SCARBER: No, sir.

24 BOARD MEMBER COSTIGAN: Okay. Because we entered
25 into our final order in 2014, and -- okay, just wanted to

1 assure that.

2 Thank you.

3 MR. SCARBUR: Thank you, sir.

4 PRESIDENT FECKNER: Thank you.

5 So let us now turn to the preliminary evidentiary
6 issues. As all parties are aware, we are not here to
7 relitigate factual issues or resubmit evidence into the
8 administrative record. However, in rare circumstances, in
9 the interests of achieving a just result, may require
10 consideration of newly discovered, relevant documentary
11 evidence which could not, with reasonable diligence, have
12 been discovered and produced at the hearing before the
13 administrative law judge, and which therefore is not a
14 part of the administrative record.

15 The Board's procedure made it clear that under no
16 circumstance may the Board accept new testimonial
17 evidence, witness testimony, or any kind of examination or
18 cross-examination of anyone, including Board members in
19 today's proceeding.

20 Under the proposed -- under the Board's
21 procedure, requests to introduce newly discovered
22 documentary evidence must be submitted in writing to the
23 Board's secretary no later than the due date for written
24 argument, which in this case was February 3rd, 2017.

25 In order to avoid interruptions during each

1 party's respective time today, please let us know now if
2 either party has any relevant, newly discovered evidence,
3 which could not have been discovered and produced at the
4 hearing, that it seeks to be admitted into the
5 administrative record today, as to which a timely written
6 request was submitted to the Board.

7 Ms. Yelland?

8 SENIOR STAFF ATTORNEY YELLAND: No, Mr.
9 President.

10 PRESIDENT FECKNER: Thank you.

11 Mr. Scarber?

12 MR. SCARBER: No, sir.

13 PRESIDENT FECKNER: Thank you.

14 Seeing there are no requests to submit newly
15 discovered evidence, let us begin oral arguments. Ms.
16 Yelland, please present staff's argument. Your time will
17 start for 10 minutes when you begin to speak.

18 SENIOR STAFF ATTORNEY YELLAND: Thank you.

19 Good morning, Mr. President, members of the Board
20 and executive staff. Staff argues that the proposed
21 decision flies in the face of existing precedent,
22 specifically Haywood, Smith, and Vandergoot.

23 CalPERS staff argues the proposed decision is
24 wrong for the following reasons:

25 Number 1, the proposed decision improperly

1 applies principles of equity; and number 2, the proposed
2 decision erroneously declines to apply prior case law,
3 Haywood and Smith, as well as the precedential decision
4 Vandergoot, to the facts.

5 First, the proposed decision improperly applies
6 principles of equity. CalPERS is a statutory entity.
7 Payment of benefits is authorized by the PERL. This case
8 impacts the Board's fiduciary duties over the
9 administration of the fund, including the Board's duty to
10 pay only those benefits that are authorized by law. That
11 principle is always critical to this Board's mission, but
12 it is particularly critical when one member receives
13 benefits that no other member receives.

14 This Board cannot fulfill its mandate, unless it
15 investigates retirement applications and pays benefits
16 only to those members who are eligible for them. The
17 Board's fiduciary obligations do not permit the payment of
18 benefits not authorized, rather the PERL governs the scope
19 of benefits earned. Thus, while pension provisions should
20 be broadly construed in favor of those who were intended
21 to be benefited thereby, they cannot be construed so as to
22 confer benefits on persons not entitled to them.

23 Here, the timeline of events reveals that the
24 administrative law judge incorrectly calculated a 13-month
25 delay in order to grant equity. However, the elapsed time

1 is actually 3 months. When CalPERS receives any
2 disability application, it investigates all the underlying
3 facts, including the member's employment status. When
4 CalPERS contacted respondent's employer, the CHP, CalPERS
5 found out for the first time that respondent was served
6 with a notice of adverse action on July 29, 2013.

7 Once CalPERS had notice of the NOAA, it had to
8 wait until all disciplinary proceedings were final. Since
9 respondent appealed his termination, his appeal was
10 referred to the State Personnel Board. His appeal had to
11 be finalized through exhaustion of remedies at SPB before
12 CalPERS could act on its application.

13 Respondent's appeal was final only when he and
14 the CHP executed a stipulated settlement, which was
15 approved by the SPB on January 9, 2014. It was only after
16 January 9, 2014 that his termination proceedings were
17 final. And it was only after January 9, 2014 that CalPERS
18 could act on his disability application.

19 Just 3 months later on April 14, 2014, CalPERS
20 notified respondent that his disability application was
21 canceled due to operation of Haywood. That 3-month window
22 falls within a permissible delay for CalPERS to review and
23 evaluate his application. Equity cannot be used to
24 provide this respondent a benefit not otherwise available
25 to him. And it cannot be used for matters that are plain

1 and fully covered by statute.

2 Further, for equity to survive, an important
3 element must be met, which the ALJ fails to address at all
4 in the proposed decision. The interests of the private
5 party must outweigh the effect on the public interest and
6 policies. Here, respondent's interest in obtaining a
7 disability retirement cannot possibly outweigh strong
8 public interest in maintaining and administering the fund
9 equally for all members and employers, particularly when
10 respondent's appeal directly conflicts with case law and
11 prior precedent.

12 The proposed decision enlarges CalPERS' statutory
13 authority, because it grants respondent the ability to
14 file for disability retirement when not authorized by law.
15 Such a result would be detrimental to the public policy
16 behind the creation of CalPERS. CalPERS must pay
17 respondent only that which it is statutorily authorized to
18 pay.

19 The Board owes a fiduciary duty of trustee to the
20 Trust Fund and all its beneficiaries, members, and
21 employers. To find equity here would be adverse to public
22 interest and policy. The Board has a primary obligation
23 to protect the fund for the benefit of all beneficiaries
24 and to minimize employer's costs of providing these
25 benefits.

1 To allow respondent to have a lifetime allowance
2 not permitted by law would have a direct, adverse,
3 financial impact on the CHP, his former employer, against
4 whose reserves his allowance will be drawn. That would be
5 a windfall to the respondent, or in equivalent legal
6 terms, unjust enrichment.

7 Second, the proposed decision erroneously fails
8 to apply prior case law, Haywood and Smith, and the
9 precedential decision, Vandergoot, to the facts.

10 In Haywood, the court of appeals held that an
11 employee's termination for cause renders him ineligible
12 for disability retirement. The court explained, while
13 termination of an unwilling employee for cause results in
14 a complete termination of the employer/employee
15 relationship, disability retirement laws contemplate the
16 potential reinstatement of that relationship, if the
17 employee recovers and is no longer disabled.

18 The same court of appeals reiterated Haywood in
19 Smith, explaining if a disability claim had matured before
20 an event extinguishing the right to a disability
21 retirement, the employee could not be deprived of a
22 disability pension during the duration of the disability.

23 This maturation did not occur at the time of the
24 injury, but when the Board determines the employee was no
25 longer capable of performing his duties. And finally, in

1 Vandergoot, this Board extended the Haywood/Smith rule to
2 an employee's voluntary resignation and irrevocable waiver
3 of any rights to reinstate to his former position.

4 The facts in this case mirror the facts in
5 Vandergoot. In both, stipulated settlements provided that
6 respondents would voluntarily resign for personal reasons.
7 In both, but for the pendency of the disciplinary action,
8 respondents would never have entered into the stipulated
9 settlements resigning from their positions. In both,
10 stipulated settlements contain language where the
11 respondents agreed not to seek, transfer to, apply for, or
12 accept any employment in any capacity with their employers
13 at any time in the future.

14 In both, respondents employment relationships
15 with their employers were completely severed as a result
16 of the fully executed settlement agreements. And in both,
17 the complete severance of the employment relationship
18 serves as a bar to applying for disability retirement.

19 Vandergoot states Haywood makes it clear that a
20 necessary requisite for disability retirement is the
21 potential reinstatement of the employment relationship, if
22 it ultimately is determined that respondent is no longer
23 disabled. Such is not possible here.

24 Respondent's employment relationship with CHP has
25 not only been severed, but the terms of the stipulated

1 settlement expressly lock him out from ever being
2 reinstated. Such a circumstance must be viewed as wholly
3 inconsistent with the policy behind and rationale for
4 disability retirement.

5 Just like Vandergoot, were respondent here to
6 receive a disability retirement allowance, he would have
7 no employer who could require him to undergo a medical
8 exam under Government Code 21192, nor could he be
9 reinstated under Government Code 21193.

10 These necessary pre-requisites for receiving a
11 disability retirement allowance are simply not present
12 here. For those reasons alone, just like in Vandergoot,
13 CalPERS should considered the terms of the stipulated
14 settlement as being tantamount to a dismissal for the
15 purposes of applying Haywood.

16 Haywood states the pension roll is a roll of
17 honor, a reward of merit, not a refuge from disgrace. And
18 it would be an absurd construction of the language
19 creating it to hold that the intention of the legislature
20 was to give a lifetime allowance to a person who, on their
21 merits, as distinguished from mere time of service, might
22 be dismissed from the force for misbehavior.

23 Thank you.

24 PRESIDENT FECKNER: Thank you.

25 At this point, Mr. -- please set the clock for 10

1 minutes. Mr. Scarber, the clock will begin when you start
2 talking.

3 MR. SCARBER: I'd to make a request.

4 PRESIDENT FECKNER: Your microphone, please.

5 MR. SCARBER: I'd like to make a request before
6 the time starts. Occasionally, I have to stand up,
7 because of injuries. And I just want the Board to know
8 that if I stand, I'm not leaving, or rushing the Board.
9 It's just --

10 PRESIDENT FECKNER: You'll just have to speak
11 louder if you do, so the microphone can pick you up.

12 MR. SCARBER: Yes, sir. I'll project it.

13 Well, good morning, Mr. President and the Board.
14 First and foremost, let me thank each and every one of you
15 on the Board for your commitment to the approximately 1.8
16 plus million retirees, active, inactive CalPERS members
17 throughout California. You have represented us well.

18 At this hearing, I'd like the Board to strongly
19 consider the detailed finding of the Honorable Judge Wong
20 of the administrative law judge during our hearing and
21 evaluate the failure of due process, the lack of
22 investigation, and the Machiavellian approach used during
23 this case, or my case, in claim and application.

24 The first issue I would like to address is
25 contained in the December the 15th, 2016 agenda presented

1 to the Board at its meeting on December the 21st. It's
2 reference number 2015-0243.

3 Ms. Yelland representing CalPERS states in item
4 number 1 -- number 1, it says, "Equity does not apply to
5 CalPERS compliance with the California Public Employees
6 Retirement Law." Well, principles of equity and
7 principles of fairness are synonymous in the legal world,
8 whether it's civil or whether it's criminal. And it was
9 used by the Honorable Judge Wong to assist him in
10 determining my eligibility for industrial disability
11 requirement.

12 My question before the Board today is, based on
13 the statement, which is verbatim by Ms. Yelland, is this a
14 true and accurate statement?

15 If any of the 1.8 plus million CalPERS members
16 submits a disability claim or an application, is it true
17 that they are not to be entitled to equitable and/or
18 fairness during the process, because equity does not apply
19 to CalPERS?

20 That is a pretty strong statement. And I, along
21 with the members of CalPERS, are entitled to an
22 explanation and a response on behalf of the Board.

23 The legal section, as representative of CalPERS,
24 has already spoken on behalf of the CalPERS. Principles
25 of equity and fairness, I don't believe that I was treated

1 fairly throughout this.

2 It all began in 19 -- I mean -- yeah 1990 --
3 '80 -- 1990 when I suffered my first major patrol car
4 crash. It culminated into sitting in a center divider
5 with an infant child of a year and a half old that was
6 killed. And I had to sit in the center divider with this
7 small baby for several hours waiting for the corner.

8 It culminates into and altercation can a gang
9 banger, who ultimately won when I was struck in the head
10 with a metal object resulting in a skull lesion. The
11 claims -- and on December the 20th -- I'm sorry -- yeah,
12 December 20th, 2012, I had an appointment with a -- my
13 primary care medical physician, and they immediately put
14 me off duty for cardio hypertension and other reasons.

15 In that doctor's report, they stated I will never
16 return to law enforcement, never. And I took that as a
17 shocker, because the CHP was not a job for me. It was a
18 career. I loved it. I admired it, and I was appalled by
19 it, but I have to follow the doctor's order.

20 In Ms. Yelland's response, she cited a case law
21 to the Board, Barrett versus Stanislaus County Employees
22 Retirement Association. And she stated that the case law
23 is -- I mean, this case law is about 21 individuals that
24 were working as program supervisors, and they wanted to be
25 classified as members.

1 And they took a small -- she took a small excerpt
2 from that, and cited that, and it should be -- and the
3 Board should have that. But when you read a little bit
4 further into this case law, it states, "Pension
5 legislation should be liberally construed resolving all
6 ambiguities in favor of the applicant."

7 And Ms. Yelland goes into detail about laches,
8 and their argument. I never raised the issue of laches.
9 They raised the issue of laches. And laches, the legal
10 term for that is basically a Hail Mary. We have nothing
11 else against Mr. Scarber, so let's send everybody down
12 field and punt this thing or throw this thing and see if
13 it catches.

14 So what it interprets to from my understanding,
15 my layperson's understanding, is that when I first told
16 about -- was involved in a patrol car crash in a pursuit
17 that I should have retired -- submitted for medical -- or
18 disability retirement then. But I didn't. When I was
19 sitting in the center Divider with the infant, I should
20 have did it then. I didn't, which began my year-long -- I
21 mean, life-long stress, which causes shingles till this
22 day.

23 The -- she quoted the case law of Smith, and how
24 this is not applicable, Haywood, Smith, et cetera, et
25 cetera. But what she -- what the Board has not been

1 presented or told is when you talk about the Haywood case,
2 and it went to the court of appeals, and the Smith versus
3 Napa, there's a statement in there by the appellate court
4 that says, "...but the appellate court also recognized an
5 equitable exemption where there is an impending ruling on
6 an application for disability retirement that is delayed
7 through no fault of the applicant."

8 When I filed my application in February of 2013,
9 it was at the direction of my doctor. I did not want to,
10 but I did. I submitted everything that CalPERS required
11 me to submit. CalPERS requested information from the
12 Highway Patrol. They requested, I believe, 8 documents
13 and they only received maybe 2 or 3 derogatories[sic].
14 What they didn't -- what they asked for was a Skelly
15 hearing, and the pre-disciplinary hearing, which I -- my
16 doctors told me not to participate in, but I partici --
17 got a waiver and participated in it anyway, because I had
18 a story to tell.

19 And I felt like I was being prejudiced, and I had
20 a story to tell, and I wanted to tell that story against
21 the allegations that were mentioned earlier. That report
22 was never sent to CalPERS in their valuation. They never
23 followed up and requested that and, said, hey, we
24 requested 8 items. You sent us 2 maybe 3, so where are
25 the rest of the items? And I think that would have

1 allowed a lot of clarification in this.

2 But the Machiavellian -- instead of approaching
3 with the rules of equity or fairness, we -- they were
4 blindsided and focused on the Machiavellian approach,
5 which was not fair.

6 My claim goes way back before all of this. And
7 it's all cumulative. And in statement in the transcripts,
8 which the Board should have, is Ms. Yelland stated that
9 the -- they have not reviewed any medical information
10 because it's irrelevant. Medical evidence is irrelevant.
11 This is only whether or not CalPERS properly canceled the
12 disability application.

13 But when you read the website, you read anything
14 with respect to CalPERS and disability ratings or
15 industrial disability retirement, it says once the
16 application is submitted they review all information and
17 evidence, including medical documentation. There is
18 significant medical documentation on my behalf. I've
19 submitted to Qualified Medical Examiners. I submitted to
20 Agreed Medical Examiners at the behalf of the State. They
21 weren't my choosing. I followed the State's direction.

22 Everyone of those Qualified Medical Examiners
23 from my head injury, from my back, for psychological, and
24 exposed myself to a 7-hour psychiatric evaluation,
25 everyone of those ruled in my favor. And in my closing

1 arguments, the percentage rated is documented on that.

2 So I have done everything. I've played by the
3 rules. I believe in playing by the rules. I believe in
4 fairness, and I believe in honesty. And for -- to attack
5 credibility is uncall -- I mean, inappropriate, and I
6 definitely disagree with it.

7 The laches issue I can't say enough on that.
8 It's just -- I don't know where they came from that, but
9 then they chose to introduce laches as a defense, as a
10 Hail Mary defense.

11 I would request the Board to please, you know,
12 consider what the administrative law judge's -- I respect
13 this decision, instead of the slanderous comments -- I
14 think that he took his time, the Honorable Mr. Wong and he
15 evaluated the case. And they say that he misquoted Smith.
16 He did not misquote Smith. It's verbatim, and it's
17 applicable to my case.

18 And I respect him and honor him for taking the
19 time and reviewing that case, and rendering his decision.
20 It's been a difficult road, and a difficult process. I
21 thought I was doing the right thing, and it was actually
22 CalPERS that recommended that, hey, due to the delay of
23 all of this thing that it's their recommend -- it was
24 their recommendation for -- to file for service retirement
25 with industry disability retirement. It wasn't my call.

1 I filed for disability retirement, but they lost it. They
2 delayed it.

3 And I don't -- we don't know why. I made several
4 calls and contacts with them. And they're like, well, we
5 don't know. We don't know. We don't know. So at this
6 point file for industrial disability retirement.

7 But thank you for your time. I can see that I'm
8 done. So I'd please ask the Board to please consider the
9 recommendation of the Honorable Mr. Wong at the
10 administrative hearing and his recommendations and orders.
11 And I thank you very, very much for your time.

12 PRESIDENT FECKNER: Thank you, Mr. Scarber.

13 MR. SCARBER: And I'm open for any questions.

14 PRESIDENT FECKNER: Ms. Yelland, would you like
15 to offer rebuttal?

16 SENIOR STAFF ATTORNEY YELLAND: Thank you, Mr.
17 President.

18 PRESIDENT FECKNER: Please set the clock.

19 SENIOR STAFF ATTORNEY YELLAND: Specifically
20 speaking to the proposed decision in this case, the
21 administrative law judge did find that respondent was
22 permanently terminated from his employment relationship
23 with the CHP when he entered into the stipulated
24 settlement, and respondent's termination of the employment
25 relationship was wholly unrelated to his disability.

1 The ALJ also found termination was not the
2 ultimate result of a disabling medical condition nor did
3 the termination preempt and otherwise valid claim for
4 disability retirement.

5 The ALJ did improperly rely on Smith to grant
6 respondent's application based on equity. Again, this is
7 not a case where equitable principles apply. Respondent
8 did not have an impended -- impending ruling on a claim
9 for disability pension that was delayed through no fault
10 of his own.

11 Here, he did not even initiate the process for
12 receiving disability retirement until after the
13 investigation for the NOAA was conducted, and well after
14 he engaged in the improper underlying actions, which are
15 enumerated in the NOAA beginning in 2012.

16 There is no undisputed evidence that respondent
17 is eligible for a disability retirement, such that a
18 favorable decision on his claim would be a foregone
19 conclusion, such as, for example, the loss of a limb. For
20 those reasons, respondent's claim had not matured prior to
21 submitting his application.

22 I would also note that Mr. Scarber is receiving a
23 service retirement. This whole issue is very, very
24 narrow. It concerns his application for disability
25 retirement, and this is not the time or place to talk

1 about his medical issues.

2 He cannot apply for disability retirement as a
3 matter of law because his employment relationship is
4 severed, and that became final on January 9th, 2014.

5 He was dismissed from the force for misbehavior.
6 His dismissal was not the ultimate result of a disabling
7 medical condition, nor preemptive of an otherwise valid
8 claim for disability retirement. This complete severance
9 of his employment relationship precludes him, as a matter
10 of law, from being eligible to apply for disability
11 retirement. CalPERS was correct to cancel his disability
12 application.

13 Thank you.

14 PRESIDENT FECKNER: Thank you.

15 Mr. Scarber, would you like rebuttal?

16 MR. SCARBBER: Yes, sir I would.

17 Correct, I am receiving a service retirement, but
18 this is not about money to me. It's not. It's about
19 principles and doing the right thing. Courage, doing the
20 right thing despite the threat of adversity. And if I
21 were wrong, I would not be sitting here today. Like I
22 said, I don't enjoy taking 12 medications a day, and
23 having a heart monitor planted in me. I don't like that.

24 And it's not about the money. And if CalPERS,
25 when I first submitted my -- on December the 12th -- 20th

1 of 2012, when I submitted my 14 critical tasks to the
2 California Highway Patrol, the medical -- significant
3 medical documentations to the California Highway Patrol,
4 in addition to CalPERS, that said you are not going back
5 to work in the mean job of law enforcement. You can't.

6 This was well before I knew of any internal
7 investigation or any initiation of any internal
8 investigation. And once I found out, I wasn't worried,
9 because in my heart of hearts, I did nothing wrong, and
10 I'm going to stand by that.

11 If -- and if CalPERS, when I first submitted
12 that, if they do what they -- what CalPERS promises to its
13 State members that they will review medical information in
14 addition to, they failed. They didn't do that. And that
15 medical information was readily available to them. And I
16 asked for discovery from its inception. I talked to the
17 lead counsel -- I forget her -- Jainsworth[sic], I
18 believe, and -- from its inception. And I continuously
19 followed up with them, and I requested discovery in
20 writing twice and verbally.

21 At no time would they provide me any information.
22 They said this was determined based on your file our
23 decision. What file? I would like -- and I'm entitled
24 under the Constitution, in the discovery, to that file. I
25 have never been provided a file, never. Until the hearing

1 when I was produced 13 -- a binder with 13 exhibits,
2 that's the first time I've seen anything from CalPERS.

3 They rejected any requests that I have, which is
4 unfair. And that is -- that's a bad faith tactic. I
5 mean, it's not acceptable in criminal proceedings, and I
6 don't see it being definitely acceptable in the civil
7 arena. And that's per the California Code of Civil
8 Procedure.

9 She talks about his termination, the California
10 Highway Patrol makes a recommendation. That's it, a
11 recommendation. It's up to the State Personnel Board to
12 review the facts of the case, and review things from the
13 attorneys and Attorney General's office before they render
14 a decision. And that's when it becomes final.

15 The State Personnel Board's decision was not
16 termination. It was to seal the file and a resignation
17 for personal reasons. That was their finding.

18 But Ms. Yelland wants to translate that into a
19 termination, and I object to that. Thank you for your
20 time.

21 I made it.

22 PRESIDENT FECKNER: Thank you.

23 So now that we've exhausted our time on our
24 rebuttals, it's now time for Board member questions. Any
25 Board members have questions at this time?

1 Mr. Costigan.

2 BOARD MEMBER COSTIGAN: Thank you, Mr. President.
3 Let me make it clear about the State Personnel Board. We
4 didn't have a finding. You entered into a stipulation
5 agreement that was signed off by staff. So don't impute
6 that as a finding. As a Board member, I didn't hear your
7 case. So we're going to talk about your finding, because
8 you didn't come in front of our Board. You entered into a
9 settlement agreement with CHP.

10 MR. SCARBER: Correct.

11 BOARD MEMBER COSTIGAN: You were allowed to
12 voluntarily resign. That's what your stipulation
13 agreement says, correct?

14 MR. SCARBER: Yes, sir, but --

15 BOARD MEMBER COSTIGAN: Okay. And I just want to
16 say, I have read the underlying issues of your case, and
17 I'm very disturbed as to what the allegations were.

18 And I have a lot of faith in the Patrol, and in
19 CHP. And you are right, it's a career, and it's a higher
20 calling. Your case was not heard by us. You entered into
21 a settlement agreement. So I just want the record to be
22 very clear, because what you stated is not accurate.

23 MR. SCARBER: But isn't it correct that it's --
24 the State Personnel Board --

25 BOARD MEMBER COSTIGAN: We don't question

1 settlement agreements between departments and employees.
2 That is between the appointing authority and the employee.
3 I actually have issues with settlement agreements, but it
4 is not in the authority or jurisdiction of the State
5 Personnel Board to make a determination.

6 In fact, 4 years ago, I -- the reason it was
7 signed by your staff is I won't sign off on a settlement
8 agreement. So let's just be clear about the record on
9 that, so --

10 MR. SCARBER: Okay.

11 BOARD MEMBER COSTIGAN: So the other issue I
12 have, which unfortunately creates a technicality for me.
13 There is no finding of terminable offense. It was a
14 voluntary retirement. And the California Highway Patrol
15 withdrew its adverse action, is that accurate?

16 MR. SCARBER: Yes, sir.

17 SENIOR STAFF ATTORNEY YELLAND: Yes, Mr.
18 Costigan.

19 BOARD MEMBER COSTIGAN: So at this point, it's
20 interesting, unfortunately, the prior activities, but what
21 we actually have in front of us is a voluntary termination
22 and a settlement agreement with the Patrol with no
23 underlying facts of a disciplinary action. He just -- he
24 was just able to retire, is that correct?

25 SENIOR STAFF ATTORNEY YELLAND: Yes.

1 BOARD MEMBER COSTIGAN: Okay. So he filed for
2 disability prior to the term -- to the retirement date, is
3 that correct?

4 SENIOR STAFF ATTORNEY YELLAND: Say that again?

5 BOARD MEMBER COSTIGAN: I'm trying to get my
6 dates right. So when he filed for the disability
7 retirement, it was prior to the adoption of the voluntary
8 settlement agreement. It was prior --

9 SENIOR STAFF ATTORNEY YELLAND: Yes.

10 BOARD MEMBER COSTIGAN: --to August 29th, 2013.

11 SENIOR STAFF ATTORNEY YELLAND: Yes.

12 BOARD MEMBER COSTIGAN: So we actually can't take
13 into consideration anything related to -- I mean, correct
14 me if I'm wrong, on the Notice of Adverse Action, because
15 what the settlement agreement says is that respondent
16 agrees to withdraw from the appellant's official personnel
17 file the Notice of Adverse Action?

18 SENIOR STAFF ATTORNEY YELLAND: That's correct.
19 That's what the settlement says, but --

20 BOARD MEMBER COSTIGAN: So how does laches and
21 all these other theories apply when, on paper, this is
22 just a voluntary termination?

23 SENIOR STAFF ATTORNEY YELLAND: Well, at that
24 point, you look at this court's precedential decision in
25 Vandergoot, which had the identical facts. He, too, Mr.

1 Vandergoot, also voluntarily resigned pursuant to a
2 settlement agreement, and his NOAA was withdrawn from his
3 OPF.

4 At that point, the judge who wrote Vandergoot
5 said that respondent's employment relationship has not
6 only been severed by the settlement agreement, but also
7 the terms of the settlement agreement expressly lock him
8 out from being reinstated. Since 2 of the pillars for
9 disability retirement are to be reinstated, if the member
10 does improve, and in these -- both these cases the
11 member -- even if he did improve, would -- could not be
12 reinstated --

13 BOARD MEMBER COSTIGAN: So I -- in the --

14 SENIOR STAFF ATTORNEY YELLAND: -- the 2 pillars
15 could not be met. Therefore, Vandergoot says it's
16 tantamount to a dismissal.

17 BOARD MEMBER COSTIGAN: And that's the point you
18 hit on.

19 SENIOR STAFF ATTORNEY YELLAND: Yes.

20 BOARD MEMBER COSTIGAN: Yeah. I can't express my
21 outrage on the underlying facts, but they're not before
22 us. I mean, this is -- it's not before this Board.

23 What's before this Board is that he entered into
24 a voluntary settlement agreement allowing him to resign,
25 but also saying he would not come back into State service.

1 And because that condition of not being able to come back
2 into State service, regardless of the underlying actions,
3 that's the second pillar, it is that -- it's not -- it's
4 not -- I mean, the problem is we spend a lot of time
5 talking about the facts, and what he did and didn't do in
6 the allegations.

7 What this really turns on to is he voluntarily
8 separated from the State of California and signed an
9 agreement he'd never come back. As a result of signing
10 that document saying he couldn't come back, he can't apply
11 for disability because he's ineligible to retire based
12 upon a voluntary document he signed.

13 SENIOR STAFF ATTORNEY YELLAND: Right, he's
14 ineligible for reinstatement.

15 BOARD MEMBER COSTIGAN: That's -- I mean -- thank
16 you. Thank you.

17 PRESIDENT FECKNER: Ms. Taylor.

18 BOARD MEMBER TAYLOR: So I was going to ask
19 before -- let me get the dates up real quick, because my
20 iPad went dead. Before you filed your disability
21 retirement, you didn't receive a Notice of Adverse Action
22 till after that. But before that, you had an
23 investigatory hearing, is that correct?

24 MR. SCARBER: No.

25 BOARD MEMBER TAYLOR: So you were just notified

1 ahead of time that you lost your powers as a peace
2 officer?

3 MR. SCARBER: That came after the fact.

4 BOARD MEMBER TAYLOR: Not, it didn't, not
5 according to this.

6 MR. SCARBER: Well, when I visited my doctor on
7 December the 20th, I actually had an employment --

8 BOARD MEMBER TAYLOR: On what date?

9 MR. SCARBER: December the 20th, 2012, and that's
10 when they put me on no duty, and stated I would never
11 return to law enforcement.

12 BOARD MEMBER TAYLOR: So were you on sick leave?

13 MR. SCARBER: I was required to use sick leave
14 from that point forward, yes, ma'am.

15 BOARD MEMBER TAYLOR: Okay.

16 MR. SCARBER: Or exhaust all my leave credits.

17 BOARD MEMBER TAYLOR: So -- and you received, I
18 believe it was, in December a notification that you lost
19 your peace officer standing, correct?

20 MR. SCARBER: Yes.

21 BOARD MEMBER TAYLOR: In the same month?

22 MR. SCARBER: It's the latter -- I think it was
23 the last day of the month, I believe. So yes, ma'am.

24 BOARD MEMBER TAYLOR: So hold on a second.

25 Okay. So -- and you never received any

1 investigatory hearing. You just -- they just did this and
2 they didn't put you on administrative leave?

3 MR. SCARBER: No, ma'am.

4 BOARD MEMBER TAYLOR: Okay. And once they did
5 this, did you contact your union?

6 MR. SCARBER: Yes, ma'am.

7 BOARD MEMBER TAYLOR: Okay. And what did your
8 union recommend?

9 MR. SCARBER: The union recommended, because I
10 had spoken to counsel who misled me and said that he had
11 dealt with this before. And they said since I had
12 represented it, that they could not assist me.

13 BOARD MEMBER TAYLOR: Okay. I'm sorry. So the
14 union said they couldn't represent you, not the Council.

15 MR. SCARBER: Correct.

16 BOARD MEMBER TAYLOR: Okay. I'm sorry. Outside
17 counsel said the union couldn't represent you on this?

18 MR. SCARBER: No, ma'am, the union did. When I
19 contacted the CHP and explained my predicament to them,
20 they asked if I was represented by counsel.

21 BOARD MEMBER TAYLOR: Okay.

22 MR. SCARBER: And I said yes,

23 BOARD MEMBER TAYLOR: Okay. And that is correct,
24 because -- so were you represented by counsel at any time
25 to fight any of this?

1 MR. SCARBER: Yes, ma'am. For the State
2 Personnel Board, yes, ma'am.

3 BOARD MEMBER TAYLOR: Not the State Personnel
4 Board. I'm talking about your underlying stuff that was
5 going on, the investigation.

6 MR. SCARBER: The investigation by the California
7 Highway Patrol?

8 BOARD MEMBER TAYLOR: Yeah.

9 MR. SCARBER: No, ma'am.

10 BOARD MEMBER TAYLOR: Okay. Okay. And the dates
11 I'm seeing here show that it -- you're telling me
12 something different, that you were on sick leave, and we
13 don't have that information, but what I'm seeing here is
14 that you were notified that you lost your peace officer
15 power. And then you went on -- and tried to file for
16 retirement disability. And that's what I'm seeing on the
17 file. So I'm not seeing that you were on sick leave.

18 But it sounds to me like what we've got is pretty
19 much a set deal, in terms of not meeting the requirements
20 for disability anyway, because you cannot be reemployed.
21 My point was that it -- that the appearance -- and I'll
22 have to tell you, because I've -- I've looked at cases
23 like this before, the appearance is you got in trouble,
24 and you decided to try to retire.

25 MR. SCARBER: I disagree.

1 PRESIDENT FECKNER: Mr. Jelincic.

2 BOARD MEMBER JELINCIC: Yeah, I -- the issue
3 before us is not whether he is eligible for disability
4 retirement. The -- and the charges that are included in
5 the adverse action are really very appalling. And I have
6 significant confidence in the CHP, but they have never
7 been proved.

8 But that's not the issue. The issue is did
9 he -- the judge said that any discussion of his underlying
10 medical condition was not the issue at the hearing. The
11 issue was did he have a chance to apply?

12 So what -- when he applied in February, what did
13 CalPERS do? Did they schedule a medical exam?

14 SENIOR STAFF ATTORNEY YELLAND: No.

15 BOARD MEMBER JELINCIC: Okay. And you'd said
16 that when you contacted the CHP, you found out about the
17 adverse action.

18 SENIOR STAFF ATTORNEY YELLAND: Correct.

19 BOARD MEMBER JELINCIC: So you did not contact
20 the CHP for 5 months after he applied. What did you do in
21 those 5 months?

22 SENIOR STAFF ATTORNEY YELLAND: Well, what
23 CalPERS does on any application is contact the member,
24 contact the employer, find out the member's employment
25 status. And in this case, we found out about the NOAA.

1 Then we found out that was up on appeal with SPB, so we
2 had to wait for the SPB to make its determination. It
3 never did. Mr. Costigan's correct. In that interim of
4 time, there was a settlement.

5 BOARD MEMBER JELINCIC: So what you are telling
6 me is that for the first 5 months after he applied, the
7 folder sat on somebody's desk?

8 SENIOR STAFF ATTORNEY YELLAND: No, I'm not
9 telling you that. I'm telling you that once we found out
10 that there were termination proceedings that are generated
11 against Mr. Scarber, the medical part is not evaluated.
12 It's not reviewed. We don't ask for the doctor reports.
13 We don't ask for the other information, because the first
14 step, if you will, the preliminary hurdle, is whether or
15 not he can even file for disability.

16 And if we cannot even file, then -- then the
17 medicals -- the cost for an IME, the IME Report can --
18 which can be thousands of dollars in any disability
19 application. So staff takes the position that let's see
20 what happens on the first step, before we evaluate the
21 medicals. And in this case, we found the medicals did not
22 need to be evaluated.

23 BOARD MEMBER JELINCIC: And in this case, it took
24 you 5 months to ask the employer if there was -- if there
25 was still an employment relationship?

1 SENIOR STAFF ATTORNEY YELLAND: I'd have to look
2 at the facts to give you the exact number of months. But
3 that's sounds right.

4 BOARD MEMBER JELINCIC: So for 5 months you did
5 nothing. And the issue before us is does he have the
6 right to apply?

7 If he had -- if he met the qualifications before
8 you had found out about the adverse action, you would have
9 approved it. But for 5 months you did not do anything is
10 what I'm hearing.

11 SENIOR STAFF ATTORNEY YELLAND: Well, I'm not
12 sure we would have approved it. I think that we would
13 have evaluated the medical evidence to see what it said.

14 BOARD MEMBER JELINCIC: Okay. So you would --
15 if -- so you would have evaluated the medical evidence,
16 and seeing if it was justified, but you didn't do that.
17 You did nothing for 5 months, is what you're telling me,
18 or had you contacted the CHP, and they said, well,
19 something is pending, and so hold off. What --

20 SENIOR STAFF ATTORNEY YELLAND: The delay
21 is -- how do I say it? The delay is associated with what
22 we got back from the CHP and when we got it, because when
23 the investigation is going forward, the CHP is not at
24 liberty to disclose to us what the investigation is or
25 what they're even doing.

1 BOARD MEMBER JELINCIC: Okay. So it was 5 months
2 before you got any information from the CHP.

3 SENIOR STAFF ATTORNEY YELLAND: Yes.

4 BOARD MEMBER JELINCIC: And it strikes me that if
5 somebody has filed a appeal -- a medical -- a disability
6 retirement, sometime within the first 5 months you would
7 contact the employer and you would start looking at the
8 documentation and decide. In this case, you did not do
9 that. Is --

10 SENIOR STAFF ATTORNEY YELLAND: Well, in this
11 case, we did contact the CHP. But because of the ongoing
12 investigation, we didn't get the NOAA until sometime after
13 July 22nd, 2013.

14 BOARD MEMBER JELINCIC: So when you contact --
15 you said when you contacted the CHP, you found out about
16 the adverse action. But now you're saying that, well, you
17 had contacted CHP, and they said something is going on.
18 Sit on it. Is that what I'm hearing?

19 SENIOR STAFF ATTORNEY YELLAND: I think you're
20 putting words into my mouth. What happened was in
21 February, we received a disability Application. During
22 that interim 5-month period, until July 2013, we did
23 contact the CHP. The NOAA was not issued until the end of
24 July 2013. And in that interim, there were
25 investigations, there was various actions going on by CHP.

1 We did not receive any information from CHP until the
2 actual NOAA was final and issued.

3 BOARD MEMBER JELINCIC: Okay. So for 5 months
4 you didn't do any investigation because you're waiting to
5 hear what the CHP may say at some future point?

6 SENIOR STAFF ATTORNEY YELLAND: Correct.

7 BOARD MEMBER JELINCIC: Okay. The -- I think our
8 members -- I think he will have a really tough time
9 proving that he actually is eligible to receive disability
10 retirement, but that's not the issue that's before us.
11 The issue is does he have a right to apply? And given
12 that we sat on it for 5 months and didn't process it, we
13 did not give him a chance to show that any of the
14 exceptions applied.

15 When you look at the transcript, and maybe I'm
16 misreading that, every time he raised the issue of his
17 medical qualification for disability, the administrative
18 law judge said that is not the issue that is before me.
19 The issue is do you have a right to apply, not do you have
20 a right to get one, but do you have a right to apply. Am
21 I misreading?

22 SENIOR STAFF ATTORNEY YELLAND: No, I think
23 that's what happened.

24 BOARD MEMBER JELINCIC: Okay. I -- let's see if
25 that -- other points I wanted.

1 And rein -- reinstatement is not -- correct me if
2 I'm wrong. Let me rephrase it. Is reinstatement a -- the
3 ability to be reinstated a necessary condition of a
4 disability?

5 SENIOR STAFF ATTORNEY YELLAND: Yes.

6 BOARD MEMBER JELINCIC: So if a Highway Patrolman
7 were in an accident and lost both legs, you know, they're
8 clearly not going to get reinstated, would that make them
9 ineligible, because they're not going to get reinstated?

10 SENIOR STAFF ATTORNEY YELLAND: No. That's
11 actually what Smith talked about, the foregone conclusion,
12 such as the loss of a limb.

13 BOARD MEMBER JELINCIC: Okay. So it's not --

14 SENIOR STAFF ATTORNEY YELLAND: That's a Smith --
15 in Smith versus City of Napa.

16 BOARD MEMBER JELINCIC: Okay. So it's not --
17 reinstatability is not essential to granting it? I mean,
18 there are --

19 SENIOR STAFF ATTORNEY YELLAND: Unless it's a
20 foregone conclusion, such as a loss of a limb. But if
21 it's -- in this case say, for example, where it's cardio
22 sand high blood pressure and that kind of thing,
23 presumably, at some point, maybe Mr. Scarber can heal from
24 those issues. We don't know. But in that case, one of
25 the columns that disability is predicated on is the right

1 of reinstatement.

2 BOARD MEMBER JELINCIC: Okay. I appreciate the
3 distinction.

4 Thank you.

5 PRESIDENT FECKNER: Thank you.

6 Ms. Mathur.

7 BOARD MEMBER MATHUR: Thank you.

8 Ms. Yelland, could you just clarify for me on
9 what date staff contacted -- first contacted CHP after
10 receiving the disability application?

11 SENIOR STAFF ATTORNEY YELLAND: I'm not sure I
12 can. I don't have those dates in front of me. I could
13 certainly get them for you, but I don't know them off the
14 top of my head.

15 BOARD MEMBER MATHUR: Okay. But it certainly was
16 not -- it was not -- they did not wait until July 22nd of
17 2013 when the CHP issued a Notice of Adverse Action. It
18 was sometime before that.

19 SENIOR STAFF ATTORNEY YELLAND: Yes, ma'am.

20 BOARD MEMBER MATHUR: Do you -- in your
21 recollection, was it within a month of receiving the
22 disability application or --

23 SENIOR STAFF ATTORNEY YELLAND: The way I would
24 answer that is generally when I have seen disability
25 applications come through the system, it's within a month,

1 because those are the first steps towards reviewing and
2 evaluating any disability application. I would think it
3 would have been within the first month, but I can't swear
4 to it. I don't have those dates in front of me.

5 BOARD MEMBER MATHUR: Okay. And at that time,
6 staff received some information from CHP that there was a
7 proceeding. Were they told that it was an investigation
8 or they were just told there was a -- something was --
9 there was a proceeding, and that that would not be
10 concluded for some period of time.

11 SENIOR STAFF ATTORNEY YELLAND: Correct.

12 BOARD MEMBER MATHUR: Okay. Thank you.

13 I have a question for you, Mr. Scarber.

14 MR. SCARBER: Yes, ma'am.

15 BOARD MEMBER MATHUR: So when you signed the
16 voluntary separation agreement -- is that what it's
17 called, separation -- settlement agreement. I'm sorry,
18 settlement agreement --

19 MR. SCARBER: Yes, ma'am.

20 BOARD MEMBER MATHUR: -- you were aware that it
21 terminated all of your rights to return to State service,
22 is that correct?

23 Presumably you read the settlement agreement
24 before signing it?

25 MR. SCARBER: Oh, yes, but I wasn't worried about

1 the termination. I was not approached with a -- I mean, I
2 did not initiate a settlement statement. They did, which
3 is neither here nor there. I signed the settlement
4 agreement.

5 BOARD MEMBER MATHUR: You agreed to the
6 settlement agreement.

7 MR. SCARBBER: Yes, ma'am. So it's neither here
8 nor there, but yes, if I were terminated, but I was
9 willing to fight it, because it was -- and I agree and
10 disagree with Mr. Costigan that -- yeah, the allegations
11 were appalling. I asked for administrative interrogation
12 to explain my side and was told no.

13 BOARD MEMBER MATHUR: But if you were willing to
14 fight it, you wouldn't -- presumably you wouldn't have
15 signed the settlement agreement. You would have actually
16 fought it?

17 MR. SCARBBER: Not necessarily. I had too many
18 things on, and so you've got, I guess, cut your losses for
19 lack of better terms.

20 BOARD MEMBER MATHUR: Okay. But you -- as you
21 stated, you read the settlement agreement. You were aware
22 that it terminated all of your rights of return to State
23 service?

24 MR. SCARBBER: Yes, it says I would not apply for
25 CHP. And I didn't want to.

1 BOARD MEMBER MATHUR: And did you include in the
2 settlement agreement any language that preserved your
3 right to receive, if awarded, an industrial disability
4 retirement?

5 MR. SCARBER: I didn't know anything about that.

6 BOARD MEMBER MATHUR: You didn't know that you
7 had an application pending?

8 MR. SCARBER: Well, yeah, I filed the
9 application, and then I filed for services retirement on
10 industrial disability retirement. And then I --

11 BOARD MEMBER MATHUR: You filed -- I'm sorry,
12 restate that. You filed a --

13 MR. SCARBER: A service retirement at the
14 direction of CalPERS, because this has taken too long.
15 And that was their words, this has taken too long. We
16 strongly encourage you to file for a service retirement,
17 with an industrial disability retirement attached to it.
18 And I said, okay. And so that's what I did is I filed
19 that.

20 And still several months go by and with respect
21 to hearings, I was notified via email that they were
22 scheduling a hearing. And my response back was what
23 hearing? And they said for your industrial disability
24 retirement. And I thought this was resolved a long time
25 ago. And they said, no. Do you want to not go further.

1 And I said no. You know, I'm not -- I don't -- I only
2 fight and argue for what I believe in, and if I'm right.
3 And if I'm wrong, I wouldn't even be here today.

4 And so -- and I'm appalled that -- with respect
5 to the allegations, I'm just as appalled as you are, and
6 Mr. Costigan is. I mean, I am -- I mean, it was -- it
7 was --

8 BOARD MEMBER MATHUR: Okay. That's not -- that's
9 not what I'm asking.

10 MR. SCARBER: But did I read? Yes, ma'am, I did
11 read it.

12 BOARD MEMBER MATHUR: You did read it.

13 MR. SCARBER: Yes, ma'am. I signed it.

14 BOARD MEMBER MATHUR: And you were aware that it
15 terminated all of your rights to return to State service,
16 which was included in the separation agreement -- the
17 settlement agreement rather.

18 MR. SCARBER: That I would not apply -- be
19 employed by the California Highway Patrol, or apply for
20 them in the future, correct.

21 BOARD MEMBER MATHUR: Okay. Thank you.

22 MR. SCARBER: You're welcome.

23 PRESIDENT FECKNER: Ms. Hollinger.

24 BOARD MEMBER HOLLINGER: Yes. Just further
25 clarification from our counsel. Going on Mr. Costigan,

1 Ms. Mathur's point, entering in this full settlement
2 agreement, doesn't that, being as it was voluntary --
3 voluntarily done, and even says he waives rights to
4 disability, wouldn't that, in and of itself, preclude him
5 from coming back?

6 SENIOR STAFF ATTORNEY YELLAND: If the settlement
7 agreement said he waived his right?

8 BOARD MEMBER HOLLINGER: Well, it -- it says it's
9 a -- not waive his rights, but that it's a general release
10 of disability -- let's see. I had the -- he acknowledges
11 the civil rights and the American's With Disability Acts.
12 I think I have it on page 225.

13 PRESIDENT FECKNER: If you can save your
14 response, we're going to take a very brief recess.

15 Just save your response, please.

16 (Off record: 11:14 a.m.)

17 (Thereupon a recess was taken.)

18 (On record: 11:16 a.m.)

19 PRESIDENT FECKNER: All right. We're back on the
20 record.

21 BOARD MEMBER HOLLINGER: Do you have the page?

22 SENIOR STAFF ATTORNEY YELLAND: I do. The break
23 was very advantageous. I found it.

24 (Laughter.)

25 VICE PRESIDENT JONES: Maybe that's the real

1 reason.

2 (Laughter.)

3 SENIOR STAFF ATTORNEY YELLAND: Okay. So you're
4 looking at Paragraph 7, I presume, right, the complete
5 general release?

6 BOARD MEMBER HOLLINGER: Correct.

7 BOARD MEMBER HOLLINGER: Wait.

8 PRESIDENT FECKNER: Just for the record, Mr. Lind
9 is leaving. He has transportation issues. So he will not
10 be participating the rest of the hearing, not voting.

11 BOARD MEMBER HOLLINGER: Okay.

12 SENIOR STAFF ATTORNEY YELLAND: So this
13 settlement agreement was entered into between Mr. Scarber
14 and the California Highway Patrol. CalPERS had no
15 knowledge of it, was not a party to it, had nothing to do
16 with it when it was executed, and, in fact, didn't even
17 find out about it until after January 2014.

18 If you look at Paragraph 11, the parties that are
19 involved here are the California State Transportation
20 Agency, CHP and their predecessors and successors.
21 CalPERS is not mentioned at all in this settlement
22 agreement. So unfortunately in answer to your question,
23 that paragraph would not preclude it.

24 BOARD MEMBER HOLLINGER: Got it.

25 SENIOR STAFF ATTORNEY YELLAND: I wish it did.

1 BOARD MEMBER HOLLINGER: Okay. I just wanted
2 clarification there.

3 Okay. Thank you.

4 PRESIDENT FECKNER: Mr. Gillihan.

5 BOARD MEMBER GILLIHAN: Thank you, Mr. President.

6 I just want to clarify a question. When Mr.
7 Scarber's settlement agreement with the Highway Patrol
8 precludes him from seeking employment with the CHP, but
9 not with the broader State of California.

10 SENIOR STAFF ATTORNEY YELLAND: Correct.

11 BOARD MEMBER GILLIHAN: So given that he could,
12 through a competitive process, potentially regain
13 employment with the State of California, does that not
14 change the determination that because he can't be
15 reinstated, he's not longer eligible for a disability?

16 SENIOR STAFF ATTORNEY YELLAND: No, because it
17 doesn't resurrect his ability to be employed with the CHP.
18 It is the terminating employer that is at issue here, and
19 that's CHP. He can never go back there.

20 BOARD MEMBER GILLIHAN: So it's linked to the
21 hiring authority, which in this case was also in theory
22 going to be the terminating authority?

23 SENIOR STAFF ATTORNEY YELLAND: Correct.

24 BOARD MEMBER GILLIHAN: All right. Thank you.

25 PRESIDENT FECKNER: Thank you.

1 Mr. Costigan.

2 BOARD MEMBER COSTIGAN: And that was the
3 clarifying question, because he could not go work for CDCR
4 as a peace officer boot strap that employment to achieve
5 the result he's seeking, at least that's your position?

6 SENIOR STAFF ATTORNEY YELLAND: That's correct.

7 BOARD MEMBER COSTIGAN: Because it's the
8 appointing authority of CHP. So again, you've got the
9 voluntary withdrawal, you've got the general release, and
10 you have the inability to come back in to service with
11 CHP.

12 And now we're just back -- not to harp on this
13 point, but my struggle is the NOA is -- becomes irrelevant
14 upon the signing of the voluntary settlement agreement.
15 So when you back up on the date, is the -- it's as though
16 the NOA -- NOAA never existed. This is the struggle I'm
17 having, because I know it's there in the record, but it's
18 not -- the settlement agreement is not based on any
19 action. It's just a voluntary termination.

20 So how do you reconcile the calendar, because why
21 are you saying the NOAA is not knocked out?

22 SENIOR STAFF ATTORNEY YELLAND: The settlement
23 agreement is predicated on the disciplinary proceedings.
24 If not for the disciplinary proceedings, he never would
25 have entered into any settlement agreement.

1 Take -- please refer yourself to Paragraph 1,
2 withdrawal and dismissal of action.

3 PRESIDENT FECKNER: The exhibit number, please?

4 SENIOR STAFF ATTORNEY YELLAND: It is the
5 settlement agreement. I have it as Exhibit 11.

6 BOARD MEMBER COSTIGAN: It says, "Respondent was
7 an Assistant Chief in the Central Division of the
8 California Highway Patrol until his dismissal effective
9 August 29, 2013." Is that the one you're referring to?

10 SENIOR STAFF ATTORNEY YELLAND: No. Withdrawal
11 and Dismissal of Action. Page 2 of the settlement
12 agreement, at the top, line 4.

13 MR. SCARBER: Attachment F as presented to the
14 Board.

15 BOARD MEMBER COSTIGAN: Well, I under -- and so
16 but it -- but what it says in there is the effective
17 date -- so it says, "Appellant withdraws prejudice his
18 appeal from the Notice of Adverse Action that was
19 effective on the close of business August 29th...and which
20 is Currently pending before the State Personnel Board..."
21 And then you go down to 2 is that he withdraws his appeal,
22 and resigns for personal reasons. And then CHP accepts
23 it. I'm just trying to get the dates here.

24 I mean the NO -- you're saying the NOAA, the
25 adverse action, still exists. Even though he wasn't

1 terminated for it, we're supposed to take notice of the
2 action, so that starts the date. I'm going -- we're just
3 trying to pick dates here at this point. This is --
4 calendars are very important. The date set in stone is
5 August 29th, which we know he no longer is employed with
6 California Highway Patrol.

7 So you back up to when the Notice of Adverse
8 Action. And you're saying that the clock -- the date ran,
9 regardless of the -- if the settlement was for cause or
10 not cause, you take notice of the Notice of Adverse
11 Action, and that's the date that after that he was no
12 longer available -- or he was no longer eligible to apply
13 for a disability retirement.

14 SENIOR STAFF ATTORNEY YELLAND: Well, I'm saying
15 that the --

16 BOARD MEMBER COSTIGAN: He's got to have a
17 starting date. What's the starting date?

18 SENIOR STAFF ATTORNEY YELLAND: I'm saying that
19 as of the time the NOAA was issued on July 29th, that gave
20 CalPERS notice that disciplinary proceedings were pending
21 against Mr. Scarber. However, those weren't finalized
22 until January 2014. There was an appeal that -- as you
23 know, I mean, we've talked about this now. It went to
24 SPB, but the final, final disposition with disciplinary
25 proceedings pending against him was January 9th, 2014.

1 But --

2 BOARD MEMBER COSTIGAN: But they were dis -- I
3 know it's on semantics. There was never a finding that he
4 actually violated a policy. There was a Notice of Adverse
5 Action. Ms. Taylor raised the question. There was
6 not -- it didn't sound like there was the hearing. It's a
7 date. I mean, again, I don't like these settlement
8 agreements. They don't contain -- I mean, these are the
9 unintended consequences of them.

10 And so from this settlement, what we turn on is
11 you're asking us to take notice as a date, the Notice of
12 the Adverse Action for which was withdrawn.

13 SENIOR STAFF ATTORNEY YELLAND: That's just an
14 explanation of why it took so long for CalPERS to render a
15 decision in this case. The NOAA was issued back in July
16 of 2013.

17 BOARD MEMBER COSTIGAN: All right. I'm sorry. I
18 have one last question. I'll rephrase it.

19 SENIOR STAFF ATTORNEY YELLAND: Okay.

20 BOARD MEMBER COSTIGAN: If there was Notice of
21 Adverse Action and he just voluntarily resigned on August
22 29th, 2013, and had filed his application prior to that
23 date for disability retirement, we would have processed
24 the claim. Not that he would have been entitled to it,
25 but we would have processed it, if it had been filed prior

1 to the retirement date -- or the separation date, the
2 separation date?

3 SENIOR STAFF ATTORNEY YELLAND: No, I'm not sure
4 that's true. I think that on occasion when that has
5 happened, we've taken those cases to hearing as well.

6 BOARD MEMBER COSTIGAN: Is there a precedential
7 decision on that anywhere?

8 SENIOR STAFF ATTORNEY YELLAND: No, there is not.

9 BOARD MEMBER COSTIGAN: Okay. Thank you.

10 PRESIDENT FECKNER: Thank you.

11 Ms. Mathur.

12 BOARD MEMBER MATHUR: Thank you. On page 2 of
13 the settlement agreement, number 2, entitled,
14 "Resignation", it states, "Appellant hereby agrees to
15 resign voluntarily for personal reasons from his position
16 as...", et cetera, et cetera. "Appellant receives service
17 retirement effect October 31, 2013."

18 To me, that is pretty clear that the individual
19 has terminated his claim on an industrial disability.
20 Indeed, he signed this agreement, which states that he's
21 resigning voluntarily for personal reasons not for
22 industrial disability reasons.

23 PRESIDENT FECKNER: Mr. Slaton.

24 BOARD MEMBER SLATON: Thank you, Mr. President.

25 On the same page, under number 4, "Future

1 Employment", there's words here I don't quite understand
2 why it's in this document, because staff has asserted that
3 he cannot go back under any circumstances. However, the
4 end of number 4 says, "...and if he should obtain
5 employment in contravention of this provision, he may be
6 immediately dismissed...", and then it goes on.

7 So I'm not sure I understand. I mean, that
8 clause seems to imply that even though this document says
9 you won't seek it, he could violate this document, seek
10 employment, gain employment, at which point he's subject
11 to immediate dismissal with no other rights.

12 MR. SCARBBER: Thank you, Mr. Slaton.

13 BOARD MEMBER SLATON: So why is that clause --
14 how do you interpret that clause then, as you say, he has
15 no ability to come back if this clause is in here?

16 SENIOR STAFF ATTORNEY YELLAND: Well, again,
17 because he voluntarily resigned, and he was removed by
18 process of the settlement agreement, he was removed. Now,
19 in the future, 10 years from now, he may reapply. He may.
20 I don't know if he will or not. I -- he has free will.
21 And if he does, then that's a breach of this agreement,
22 and he may be immediately dismissed.

23 The CHP doesn't want him back. If somehow he
24 gets through the application process with CHP, and they
25 find out, and they look at the settlement agreement and

1 say, hey, isn't this the guy that signed a settlement
2 agreement back in January 2014, they can immediately
3 remove him without his rights as a State employee being
4 impinged.

5 BOARD MEMBER SLATON: So there's just -- there's
6 2 things though, the words, "If he should obtain
7 employment" -- and I understand it's a big bureaucracy.
8 People aren't aware. You know they do something maybe
9 that they didn't check, but then it says, "May be
10 immediately...". It doesn't say "shall be". It says "May
11 be immediately dismissed." So again, the choice of words,
12 all I have is -- to go by is the words that are sitting
13 here. So do you discern a difference between "shall be"
14 versus "May be immediately dismissed"?

15 SENIOR STAFF ATTORNEY YELLAND: I believe that
16 paragraph 4 gives the CHP power to remove him from future
17 employment should he manage to get through. It gives them
18 the power to do that.

19 BOARD MEMBER SLATON: Okay. All right. Thank
20 you.

21 PRESIDENT FECKNER: All right. Seeing no other
22 requests to speak. This Board is going to recess and go
23 into the chambers for a closed session. We will be back
24 out to take action in open session shortly.

25 MR. SCARBER: Thank you, Board.

1 (Off record: 11:27 a.m.)

2 (Thereupon the meeting recessed
3 into closed session.)

4 (Thereupon the meeting reconvened
5 open session.)

6 (On record: 11:56 a.m.)

7 PRESIDENT FECKNER: Okay. We going to reconvene
8 the Board meeting.

9 Mr. Jelincic is on his way to the dais.

10 Mr. Jones, please.

11 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
12 President. I move to adopt the proposed decision as the
13 Board's own decision with a minor modification to delete
14 any and all references to the word "equity" therein.

15 BOARD MEMBER JELINCIC: I'll second it.

16 PRESIDENT FECKNER: So it's been moved and
17 seconded. We're going to have a roll call vote, please.
18 Please turn on the machine.

19 (Thereupon an electronic vote was taken.)

20 PRESIDENT FECKNER: All right. Motion carries.
21 This part of the Item 10 is now over.

22 We'll move on to Item 11. We're going to take a
23 quick 5-minute recess to get everything situated before we
24 go into the next full Board hearing.

25 (Off record: 11:57 a.m.)

1 (Thereupon a recess was taken.)

2 (On record: 12:03 p.m.)

3 PRESIDENT FECKNER: All right. We are going to
4 reconvene the Board meeting. Next up will be Agenda Item
5 11.

6 So let's open the record for the full Board
7 hearing in the appeal of the Honorable Paul G. Mast,
8 CalPERS case number 2010-0825. First order of business
9 will be to please call the roll.

10 BOARD SECRETARY BUCHANAN: Rob Feckner?

11 PRESIDENT FECKNER: Good morn -- afternoon.

12 BOARD SECRETARY BUCHANAN: Henry Jones?

13 VICE PRESIDENT JONES: Here.

14 BOARD SECRETARY BUCHANAN: Michael Bilbrey?

15 BOARD MEMBER BILBREY: Here.

16 BOARD SECRETARY BUCHANAN: Eric Lawyer for John
17 Chiang?

18 ACTING BOARD MEMBER LAWYER: Here.

19 BOARD SECRETARY BUCHANAN: Richard Costigan?

20 BOARD MEMBER COSTIGAN: Here.

21 BOARD SECRETARY BUCHANAN: Richard Gillihan?

22 BOARD MEMBER GILLIHAN: Here.

23 BOARD SECRETARY BUCHANAN: Dana Hollinger?

24 BOARD MEMBER HOLLINGER: Here.

25 BOARD SECRETARY BUCHANAN: J.J. Jelincic?

1 BOARD MEMBER JELINCIC: Yes.

2 BOARD SECRETARY BUCHANAN: Ron Lind?

3 PRESIDENT FECKNER: Excused.

4 BOARD SECRETARY BUCHANAN: Priya Mathur?

5 BOARD MEMBER MATHUR: Here.

6 BOARD SECRETARY BUCHANAN: Bill Slaton?

7 BOARD MEMBER SLATON: Here.

8 BOARD SECRETARY BUCHANAN: Theresa Taylor?

9 BOARD MEMBER TAYLOR: Here.

10 BOARD SECRETARY BUCHANAN: And Lynn Paquin for
11 Betty Yee?

12 ACTING BOARD MEMBER PAQUIN: Here.

13 PRESIDENT FECKNER: Thank you.

14 The proposed decision was originally considered
15 by the Board on April 20th, 2016 when the Board declined
16 to adopt the proposed decision and remanded the case back
17 to the Office of Administrative Hearings for the taking of
18 additional evidence. In December of 2016, the Board
19 considered a proposed decision after remand. At that
20 meeting, the Board again rejected the proposed decision
21 this time after remand, and scheduled this matter for a
22 full Board hearing.

23 I note for the record that all parties have
24 received notice of this full Board hearing, along with
25 copies of the Statement of Policy and Procedures for Full

1 Board Hearings before this Board.

2 In addition, all parties have been informed in
3 writing that oral argument will be limited to 10 minutes
4 for each position, and rebuttal will be limited to 3
5 minutes for each position.

6 Would counsel for each party please take a moment
7 to introduce themselves, starting with staff's counsel and
8 then Judge Mast's counsel.

9 MR. RIEGER: Jeffrey Ryan Rieger --

10 PRESIDENT FECKNER: Please turn on your
11 microphone.

12 MR. RIEGER: Sorry about that. Jeffrey Ryan
13 Rieger of the law firm Reed Smith for staff.

14 ASSISTANT CHIEF COUNSEL SEABOURN: Marguerite
15 Seabourn, Assistant Chief Counsel for CalPERS Legal.

16 MR. HORNER: Lee Horner from Gladstein Legal Team
17 representing Judge Mast. Good day, sir.

18 PRESIDENT FECKNER: Thank you. Good morning.
19 Good afternoon.

20 So thank you. Let the record also reflect that
21 Chirag Shah from the Los Angeles based law firm of Shah &
22 Associates, the Board's independent counsel on full Board
23 hearings and proposed decisions from the Office of
24 Administrative hearings is here now, and will be advising
25 members of the Board on procedural, as well as substantive

1 issues that arise in this proceeding should Board members
2 have questions.

3 Mr. Shah will also provide a brief summary of the
4 case before we begin oral arguments.

5 As stated previously, each position will have 10
6 minutes for oral argument. Mr. Rieger will first have 10
7 minutes to present staff's argument. After that, Mr.
8 Horner will have 10 minutes to present Judge Mast's
9 argument. Neither side is compelled to use the full 10
10 minutes. However, if a party concludes their argument in
11 less than the time allotted, they will not be permitted to
12 carry-over any remaining time to any other portion of this
13 proceeding.

14 After both sides have presented oral argument,
15 each side will be given 3 minutes for rebuttal argument,
16 in the same order as the original presentation, first Mr.
17 Rieger, then Mr. Horner. Here, too, the parties may, but
18 do not have to, use the entire time allocated to them for
19 the rebuttal. But if a party decides to use less time,
20 they will again not be -- have another opportunity to use
21 any remaining time.

22 There's a timer in this room, which will be set
23 for 10 minutes for initial argument and 3 minutes for
24 rebuttals. The timer will begin when you first start to
25 speak. Please pay close attention to the timer as you

1 make your presentations, in order to avoid going over your
2 allotted time. When the timer's light turns red, your
3 time will have expired.

4 After all sides' arguments and rebuttals are
5 concluded, the Board may ask questions of any of the
6 parties to this proceeding, as well as our independent
7 counsel. The alternatives available to the Board are set
8 forth in Agenda Item 11.

9 Any questions so far? Do all parties understand
10 the procedure?

11 Mr. Rieger?

12 MR. RIEGER: Yes.

13 MR. HORNER: Yes, for Mr. Mast -- Judge Mast.

14 PRESIDENT FECKNER: Thank you.

15 Now the, Mr. Shah, please provide us a brief
16 summary of the case.

17 MR. SHAH: Good afternoon, Mr. President and
18 members of the Board. As you said, my name is Chirag
19 Shah, and I will provide a very quick summary of the case,
20 essentially an outline.

21 This case involves the Honorable Paul G. Mast, as
22 you said, a retired judge jurist with the State of
23 California. Judge Mast seeks to be paid retirement
24 benefits pursuant to a 1996 settlement agreement between
25 him and the Judges' Retirement System, which can be found

1 at Attachment G, JRS Exhibit 1.

2 The settlement agreement was reached in order to
3 resolve Judge Mast's first case before the Office of
4 Administrative Hearings. The Statement of Issues in that
5 case can be found at Attachment H, Respondent's Exhibit N.
6 In addition to seeking to enforce the settlement
7 agreement, Judge Mast also asserts that staff
8 impermissibly failed to allow him to retire at age 60.

9 The relevant legal issues in the matter are
10 naturally governed by the Judges' Retirement Law,
11 particularly section 68203 and 75033.5 of the Government
12 Code.

13 Now, for some background, Mr. President. Judge
14 Mast became a member of the JRS on November 8, 1965,
15 following his appointment to the Municipal Court of the
16 State of California in Orange County. Judge Mast took his
17 last oath of office on January 6th, 1975.

18 Judge Mast retired from his last judicial office
19 in January 1979 with approximately 13.2 years of service
20 credit.

21 Section 75033.5 of the Judges' Retirement Law
22 provides the formula for providing judicial pensions, and
23 essentially ties the allowance of judges -- the retirement
24 allowance of judges to salaries of active judges.

25 In 1969, when Judge Mast was still on the bench,

1 Section 68203 of the Judges' Retirement Law provided for
2 judicial salaries to include annual cost of living
3 increases as determined by the California Consumer Price
4 Index.

5 However, in 1976, Section 68203 was amended
6 effective January 1, 1977 to cap Judges' COLAs at 5
7 percent. So this was the maximum that could be provided.

8 Several judges challenged the constitutionality
9 of the 5 percent cap, and actually won the case in the
10 case of Olson versus Cory. That -- the Cory Court did
11 hold, however, that the 5 percent cap could be applied to
12 judges who began new terms after, what they'd called, the
13 protected period.

14 As discussed in the parties' arguments, the
15 settlement agreement provided that Judge Mast's annual
16 retirement allowance would be based on a hypothetical
17 salary for the last position that he held with uncapped
18 COLA increase -- adjustment. In essence, the settlement
19 agreement purported to comply with Judge Mast's reading of
20 the Corey decision.

21 According to the proposed decision on remand,
22 Judge Mast was paid pursuant to the settlement agreement
23 until February 2000 or 2002, at some point in time. It's
24 really not clear from the administrative record.

25 In any event, in 2002 when there were some staff

1 changes in the JRS Unit, JRS began rejecting the
2 settlement agreement as being prohibited by Corey, and the
3 Judges' Retirement Law. So Judge Mast began corresponding
4 back and forth with staff over the years, until May 4th,
5 2011 when he was informed that his benefits needed to be
6 adjusted, pursuant to the mistake statute, which is
7 section 20160, to correct a mistake whereby a staff member
8 inadvertently applied a 9 percent COLA to his retirement
9 allowance during 1 year when it should have been 1.9
10 percent.

11 Judge Mast was also informed that in May 2011
12 that he would continue to receive his retirement
13 allowance, in accordance with the formula set forth in the
14 1996 settlement agreement.

15 As stated in the proposed decision on remand,
16 however, staff offered no evidence at the hearing
17 substantiating that such an error occurred. On or about
18 May 31st, 2011, Judge Mast filed the appeal that the Board
19 is hearing today.

20 In the meantime, while this appeal was going
21 through the administrative process, Judge Mast, along with
22 several other judges had filed and lost a case in the
23 Superior court, and a subsequent appeal in the California
24 Court of Appeals, based on a theory identical to Judge
25 Mast's reading of the Corey case, as articulated in the

1 settlement agreement.

2 That case was Standiforth versus Judges'
3 Retirement System and resulted in a 2014 California Court
4 of Appeals Decision, which invalidated Judge Mast's theory
5 of the Corey case. Judge Mast, however, has consistently
6 objected to JRS staff's reading Standiforth as applied to
7 his situation.

8 Staff basically takes the position that
9 Standiforth decision rendered the settlement a document
10 which was quote, "void against public policy", 20 years
11 after its execution, or at least effective 2014 when the
12 Standiforth decision was issued. In the proposed decision
13 before the Board today, the ALJ agrees with staff. Just
14 Mast strongly Disagrees with this finding, as well as
15 related findings, and urges the Board to decline to adopt
16 the proposed decision, and instead issue its own decision
17 in which the Board declares the settlement agreement to be
18 valid and enforceable.

19 The details of the parties arguments, as well as
20 the entire administrative record, are before the Board at
21 Agenda Item 11.

22 With that, Mr. President, I conclude my brief
23 summary of the case.

24 PRESIDENT FECKNER: Thank you, Mr. Shah.

25 Let us now turn to preliminary evidentiary

1 issues. As all parties are aware, we are not here to
2 relitigate factual issues or resubmit evidence into the
3 administrative record.

4 However, in rare circumstance, in the interests
5 of achieving a just result, may require consideration of
6 newly discovered, relevant documentary evidence, which
7 could not, with reasonable diligence, have been discovered
8 and produced at the hearing before the administrative law
9 judge, and which therefore is not a part of the
10 administrative record.

11 The Board's procedure makes it clear that under
12 no circumstance may the Board accept new testimonial
13 evidence, witness testimony or any kind of examination or
14 cross-examination of anyone, including Board members in
15 today's proceeding.

16 Under the Board's procedure, requests to
17 introduce newly discovered documentary evidence must be
18 submitted in writing to the Board's secretary no later
19 than the due date for written argument, which in this case
20 was February 3, 2017.

21 In order to avoid interruptions during each
22 party's respective time today, please let us know now if
23 either party has any relevant, newly discovered evidence
24 which could not have been discovered and produced at the
25 hearing that it seeks to be admitted into the

1 administrative record today, as to which a timely written
2 request was submitted to the Board.

3 Mr. Rieger?

4 MR. RIEGER: I have no additional evidence, Mr.
5 President

6 PRESIDENT FECKNER: Mr. Horner?

7 MR. HORNER: I have nothing either, your Honor.

8 PRESIDENT FECKNER: Thank you.

9 Seeing that there are no requests to submit newly
10 discovered evidence, let us begin oral arguments.

11 Mr. Rieger, please present staff's argument.
12 Please start the clock for 10 minutes upon his starting to
13 speak.

14 MR. RIEGER: Thank you, Mr. President.

15 I'd like to talk a little bit about the history
16 of Olson V Corey, because I think it's important to
17 understand in this case.

18 First of all, the theory that Mr. Mast has been
19 proposing was actually litigated in Olson v. Corey. It
20 was actually asserted by the judges and justices across
21 the State against the State. They won part of their case.
22 They lost this part.

23 The California -- this was years of litigation up
24 and down the California courts. The California Supreme
25 Court rejected their theory, and it rejected it in spirit

1 throughout the opinion and it rejected it in letter
2 throughout the opinion. There are several instances
3 throughout the opinion that can only be read as direct
4 refutations of the theory.

5 The larger picture of Olson v. Corey was that --
6 from the retirement perspective, was that the retired
7 judges had a vested right to have their pensions tied to
8 active judges salaries. So when the California Supreme
9 Court said that active judges are entitled to have their
10 salaries stay up at that higher level for existing terms,
11 but they would go down to the lower level for the later
12 terms, the same rule applied for the retirees.

13 So as go the actives, so go the retirees, because
14 that's their vested right. They don't have a vested right
15 to unlimited COLAs from here to eternity. They have a
16 vested right to be tied to the active members.

17 That's -- in a nutshell, that's what Olson v.
18 Corey decided. But there is also direct statements in
19 Olson v. Corey that specifically say that retirees are not
20 entitled to a COLA, that they are directly tied to the
21 active members.

22 I raise this, because I think it's important for
23 the -- it's important for everything else in this case.
24 This was litigation that went up and down to the Supreme
25 Court twice actually. It went to the Supreme Court twice,

1 because it also went there on interest.

2 And what Mast is claiming is that none -- this
3 was a class action of all judges and justices across the
4 State of California. None of those judges and justices
5 noticed that the State was failing to comply with the
6 court judgment as he read it.

7 Their contingency fee counsel, who made money
8 based on how much recovery they got, never bothered to
9 enforce the judgment. His claim is that they won this
10 theory, but never received satisfaction of it, and nobody
11 did anything about it, and Mr. Mast was the only person
12 that ever figured this out. That is his theory.

13 More recently, when he came -- when this -- when
14 the Standiforth litigation began -- first of all, I
15 want -- I want to clarify one thing you heard from your
16 Board counsel. It is not my position that Standiforth
17 rendered the settlement agreed void. It is my position
18 that the settlement agreement was always void, I want to
19 make that clear. I think Standiforth just confirms that,
20 but I believe it was always void.

21 Mr. -- when Mr. Mast felt like he wasn't getting
22 paid enough under this agreement, he started -- keep in
23 mind when he signed this settlement agreement, he said I'm
24 going to keep this confidential. And then he thought he
25 wasn't getting paid enough, so then he started threatening

1 the system saying, well, I'm going to make this a billion
2 dollar issue, if you don't pay me off. That's what the --
3 that's what he did. And they said we're not going to do
4 that.

5 So then we ended up with Standiforth litigation.
6 In the Standiforth litigation, we have a Superior court
7 judge that granted our demurrer. That's a -- a demurrer
8 is right on the face of the pleadings, the case is no
9 good. It doesn't have to go any further. We won in the
10 San Diego Superior Court. It was upheld unanimously by 3
11 appellate court justices. The same ruling was followed by
12 the ALJ in this case.

13 And actually, Mr. Horner himself is counsel to
14 his wife, who is the beneficiary of deceased judge, who
15 has also pursued this same theory, which was rejected by
16 another ALJ in a proposed decision that was adopted by
17 this Board a couple years ago.

18 So any -- every person, every neutral judicial
19 officer that has looked at this has come to the same
20 conclusion. You'll see arguments throughout Mr. Mast's
21 papers that -- essentially that I tricked somebody, that
22 I -- somehow I tricked the court of appeal and got them to
23 focus on one sentence, and not understand the context of
24 the opinion.

25 I don't know whether to be flattered or insulted,

1 but I can tell you it's insulting for the justices,
2 because this whole case turns on the interpretation of one
3 California Supreme Court case. The Honorable Justices of
4 the 4th District Court of Appeal now how to read a case,
5 and they are not so easily fooled by someone like me.
6 It's -- they reach the decision, because it was the right
7 decision.

8 So the settlement -- I raise all of this -- I
9 wanted to go through some of that history, because I think
10 that's important for understanding the settlement
11 agreement.

12 Surely, this System has the ability to settle
13 disputed claims. Surely, there are times when it makes
14 sense to settle disputed claims. And surely, when a claim
15 is properly settled, it will be binding on this System.

16 But this is not a -- this was not a good faith
17 claim. This was not within the realm of reason. Like I
18 said, it was -- the theory was literally rejected in the
19 very Supreme Court opinion that Mr. Mast claimed adopted
20 it. And it's not something like a disability, where there
21 might be some open question about whether somebody
22 actually is disabled. This is just a simple question of
23 law. Are you entitled to X?

24 And what they ended up doing in the settlement
25 agreement, it says we're going to give you X, as long as

1 you don't tell anybody else about it. So Mr. Mast said
2 I'm going to -- to be clear, for the last several decades,
3 Mr. Mast was receiving benefits that no other JRS member
4 received. Now, he later tried to get it for a hundred
5 more by initiating the Standiforth litigation, which was
6 lost, confirming what we -- what should have been obvious
7 from the beginning, which is that this was not a
8 reasonable theory.

9 I also want to point out that in the settlement
10 agreement itself, it says that his -- that his benefit is
11 going to be calculated pursuant to Olson v. Corey. So --
12 and it wasn't. Now, I'm -- we have to acknowledge that
13 over the years, staff did apply his reading, but that
14 reading was clearly wrong.

15 So I think what's important to think about here
16 is -- one important thing I think for this Board to think
17 about is what kind of precedent do you want to set? Is
18 this the kind of behavior that you want to encourage in
19 your membership? That they can come in and say -- I mean,
20 somebody can come in and say, well, I know my formula says
21 3 at 50, but I think it means 4 at 50. And if you don't
22 settle with me, I'm going to initiate class action
23 litigation, and cause you, you know, all this expense. So
24 settle with me, pay me 4 at 50, and I won't bother you
25 with it.

1 Now, I know that sounds a little cartoon-ish,
2 because it's a little bit more direct, but I have to tell
3 you if you read Olson v. Corey, it's not that much more
4 direct. This was not a close call.

5 And this goes to the Board's -- the core of the
6 Board's mission. I mean, this is -- and you heard it in
7 the last appeal, you have to pay benefits that are due,
8 but no more. You have a fiduciary duty to all the other
9 plan members not to pay one plan member more than he's
10 entitled to. This is not the kind of precedent that the
11 Board would want to set.

12 Very briefly with the 3-year issue, he's claiming
13 here, under 75033.5, many years ago when he retired at age
14 63, he's saying he should have been able to retire at age
15 60, and that he was misled, and therefore the JRS owes him
16 for 3 years of retirement payments, plus accrued interest
17 over the years.

18 And he's -- he is making that argument, not
19 withstanding the fact that 75033.5 says, "No judge shall
20 be eligible to receive an allowance pursuant to this
21 section until the attainment of at least age 63, unless
22 the judge is credited with 20 years of judicial service,
23 and has attained the age of age 60". He did not have 20
24 years of judicial service. So under the -- obviously,
25 under the plain meaning, I'm interested to hear the

1 argument today as to how -- why -- why Mr. Mast thinks
2 that he's entitled to retire 3 years earlier than every
3 other judge who is a member of the JRS.

4 And then the last point I'd like to make here
5 today is just about the recovery of benefits. And I want
6 to be very clear here. This is very much under -- as a
7 matter of law, this is -- whether to recover benefits and
8 how much to recover is very much within the Board's
9 discretion.

10 I'm not here today to tell you that there is a
11 right answer, or a wrong answer, or to say that I
12 absolutely believe you have to take one action. There is
13 very recent case law from the California courts that say
14 it is this Board's responsibility to take in all the
15 information of this unique situation, and come up with
16 what it believes is the best -- exercise its discretion to
17 come up with what it believes is the best solution here.

18 Now, staff has presented to this Board the -- a
19 recommendation that we recover the overpayments that go
20 back to when Mr. Mast was notified we would be trying to
21 undue all of this. And I just want to very briefly tell
22 you why I think that's important.

23 The only reason that his benefits were not
24 corrected back then was because we had to fight this
25 frivolous litigation in Standiforth, and we had -- we

1 didn't want to fight a multi-front battle, and we were
2 waiting the Standiforth litigation to move forward. Keep
3 in mind, that was a billion dollar case. This is one
4 member. So we put it on hold for a few years.

5 Now, after he received that letter, he certainly
6 knew what our position was. So --

7 PRESIDENT FECKNER: Your time is up, Mr. Rieger.

8 MR. RIEGER: Yeah. Okay. Thank you.

9 PRESIDENT FECKNER: Please set the clock. Mr.
10 Horner, your time will begin when start speaking.

11 MR. HORNER: Mr. Rieger and I agree on one thing
12 oddly enough, the retirement age is 60 -- I'm sorry 63,
13 not 60. And that -- to the extent that that is made as an
14 accusation here, it is withdrawn. Judge Mast is seeking
15 benefits only as of a 63-year old retired jurist.

16 Now, we also agree on the fact that the Olson
17 cases are Supreme Court cases. And I think it's implicit
18 that the district court of appeal, however much they
19 disagree with the Supreme Court cannot overrule the
20 Supreme Court. They have to follow the Supreme Court's
21 mandate, agree or disagree.

22 So this issue of Standiforth is interesting, but
23 it's really not pertinent here. Now, 21 years after this
24 settlement agreement with PERS was formed, it was formed
25 in 1996. Now, Mr. Rieger is arguing that it's void, but

1 you don't hear any factual support and there's none in the
2 record.

3 The contract itself is quite clear. First off,
4 it came up when, as in the record it shows, Judge Mast
5 asked the Judges Retirement System, or PERS, which
6 administers, how much am I going to get? I'm going to
7 retire here pretty soon, and they -- they gave him a
8 figure, which did not include applying any cost of living
9 increases to what he last earned as a municipal court
10 judge when he left the bench.

11 The proper way to calculate that under Olson
12 versus Corey would be to apply unlimited cost of living
13 increases to that salary.

14 Now, we agree that he had 13 years, 2 months
15 service. We agree that the proper percentage of the last
16 salary he received is 49.4752. That's in the record. And
17 at the time he retired, judges made 4,266 a month. It is
18 to that figure, not anything else, that the unlimited cost
19 of living increases should be applied. There's nothing
20 hypothetical about that. The record is replete with
21 hypothetical judges, hypothetical this, hypothetical that.
22 That is not hypothetical. This is plain old ordinary
23 contract law.

24 So -- but that wasn't done. Over the years,
25 sometimes PERS paid a cost of living adjustment, sometimes

1 they didn't. They didn't explain it. And as we've heard,
2 there was request to correct this, to get justification.
3 And finally I -- and I can say here a complaint was filed
4 in Statement of Issues in 2011, which brings us here
5 today.

6 Now, when you look at a contract like this, you
7 have to determine if it's void as of the time it was
8 entered into. It says we, PERS, and Judge Mast are going
9 to abide by the Supreme Court decision in Olson versus
10 Corey, and it spells it right out. It also says PERS must
11 pay the unlimited COLAs required, because all of Judge
12 Mast's service basically was in the protected period.

13 Well, why should that be a big secret? What's
14 going on here? Is this a carve-out for Mast, because he
15 shook down the PERS, and they said, gee, you know, you put
16 a gun to our head, we better give you money?

17 No, it's not that at all. What happened was it
18 was acknowledged in the record that PERS has not been
19 paying retired judges in the same positions as Judge Mast
20 COLA adjustments. They haven't done it. And we don't
21 want you to go blabbing about how we should have, but
22 didn't, so we'll pay you what you got coming. We'll pay
23 you what the law says you got coming, but keep it quiet.

24 And that's -- and this agreement that's in the
25 record, the settlement agreement is -- which is Exhibit A,

1 says just that. It was prepared by the PERS staff. It
2 was signed by Mike Priebe, the manager of the Judges'
3 Retirement System, and all parties are bound by it.

4 There was no wrong doing admitted. It just said,
5 look, we're going to follow the law. We'll just pay you.
6 You know, so let's just all move on. But then they
7 didn't, and that's why we're here today.

8 It's interesting to note, as we look at the
9 spreadsheet that Judge Mast has in the record, which is
10 Exhibit K, King, you should be aware that in 1998 the
11 voters gave the counties an option to merge the Superior
12 and Municipal courts. And two years later, I think it was
13 2001, that became a reality, which jumped up the municipal
14 court judges' salaries by about 9 and a half percent.

15 But if you look at the spreadsheet, there's no 9
16 and a half percent bump anywhere in here. Judge Mast has
17 only applied the cost of living adjustments, which he
18 should have received starting with his original salary,
19 which he could not receive until he turned age 63.
20 That's -- that's what this is all about.

21 It is just basic contract law. There was a valid
22 contract formed. The Olson case was incorporated into it,
23 not that it had to be, but it was. Olson was not
24 followed. JRS admits not paying the unlimited cost of
25 living adjustments, as Olson requires. There's no need

1 for a hypothetical judge in the mix. It's just look at
2 what his old salary was, and what are the cost of living
3 increases.

4 Because keep in mind, his receipt of the
5 retirement was deferred until he turned age 63. He
6 couldn't receive it when he retired, because he wasn't old
7 enough. He was only 49. So -- but at that point, he
8 was -- had a vested right to those benefits. Retirement
9 benefits are vested. They can not be changed, and that's
10 what Olson says.

11 Now, however, judges get reelected periodically.
12 An if you get reelected, then you agree to take on
13 whatever the current arrangement is. And after the
14 protected period was up, that would be a 5 percent cap.
15 There's no doubt about that. They might be a different
16 salary. No doubt about that either. No argument. But
17 here, all of his service was within this protected period.
18 And all of that service generated retirement benefits
19 subject to the unlimited COLAs.

20 Now, as far as Standiforth voiding the agreement,
21 twenty some years after it was formed, that just -- it
22 doesn't happen. As a matter of law, that just can't
23 happen.

24 The situation here is rather easy, because we
25 don't have protected and unprotected service, as there are

1 in other cases. What do you do with a judge that serve
2 part protected, then got re-elected, and then gets the
3 cap? Well you apportion. It's really ease. But we don't
4 have to worry about that. It's all protected service.

5 So the point is should it be corrected? Answer,
6 yes, it should. Now, the reason why this recovery of
7 benefits is bandied about here is not before you today,
8 because there's been no accusation filed. If PERS has
9 overpaid somebody, and the somebody won't give them a
10 check back, then we have to file an accusation, and the
11 Statement of Issues, and give them procedural due process
12 to come before this Board, if it comes to that, and
13 explain why they don't owe them money.

14 Well, that didn't happen. How the administrative
15 law judge got off on this goose chase of recovering
16 benefits and hypothetical judges is a complete mystery.
17 But the administrative procedure is what it is. If they
18 wanted the money back, they should have filed an
19 accusation. So that's not before you.

20 The only thing before this Board today is do you
21 Judge Mast money? If so, how much? And that's on the
22 spreadsheet that we've provided.

23 The Supreme Court has never reversed the Olson
24 versus Corey line of cases. There's nothing in the record
25 that says otherwise. And so it's just important to

1 understand what is vested for retirement purposes. Olson
2 says you do have vesting. That can't be take away. And
3 what can be adjusted later and can be taken away is your
4 right to unlimited COLAs, if you continue to serve after
5 the protected period. Well, it didn't happen here. Those
6 retirement vested -- benefits are vested, the unlimited
7 COLA were vested, and that's what we're talking about
8 here, not the right to get money from whatever a new judge
9 gets which might be up or down. That's only if he
10 continues to be employed.

11 His salary was -- his retirement benefit was
12 based on his last salary, as a municipal court judge to be
13 enhanced by the unlimited cost of living increases
14 required by Olson. It's just that simple.

15 There's nothing, other than getting out a
16 calculator and figuring it up. And for some reason, PERS
17 has had a great deal of trouble with that over the years.
18 I don't know why. You've got some very capable people
19 here. There's been staff changes, and all sorts of
20 things. But it's just a basic concept. And Judge Mast in
21 the record shows many, many requests back and forth, phone
22 calls, and letters, will you please do the right thing.
23 And when he got ignored, he finally filed his claim, and
24 that brings us to where we are today.

25 So I think I have pretty well brought the record

1 up to where it needs to be. The spreadsheet is Exhibit K.
2 The contract is Exhibit A, alpha. And I think you've got
3 enough to decide how to proceed.

4 PRESIDENT FECKNER: Thank you.

5 Mr. Rieger, do you wish to have rebuttal?

6 MR. RIEGER: Yes, please.

7 PRESIDENT FECKNER: Please set the clock for 3
8 minutes.

9 MR. RIEGER: First of all, I just want to agree
10 wholeheartedly that the Supreme Court absolutely does rule
11 here. When the Supreme Court speaks, we have to follow
12 it. We're not asking this Board to do anything else other
13 than that.

14 The point is, is that the Supreme Court rejected
15 this theory in Olson v. Corey. And if there was ever any
16 doubt about that, all we need to do is go to the
17 Standiforth opinion, which also binds this Board, because
18 the Standiforth court was the 4th District Court of
19 Appeal. They issued a published opinion that entities in
20 California have to follow. All the courts have to follow
21 it, unless there's contrary authority out there. And
22 there is none.

23 And they specifically said in Standiforth that
24 Olson v. Corey does not say what Mr. Horner just told you
25 it said. The Supreme Court said that in Olson v. Corey

1 itself, and the court, in Standiforth, responding to Mr.
2 Mast's himself arguments said that.

3 So that's what we're following. That's what
4 needs to be followed here today. Now, I'm not going to
5 get into the weeds of the factual record of the
6 mid-nineties. I will tell you, from my experience with
7 it, it is not as it has been presented to you by Mr.
8 Horner. This was much more Mr. Mast pressing staff than
9 staff somehow looking for a way to sweep something under
10 the rug.

11 This -- nobody ever thought of this theory. A
12 horrible mistake was made by somebody in the -- in JRS.
13 Okay. It just happened. And the question is, are you
14 going to be bound to it? This was -- this settlement
15 agreement was never approved by this Board.

16 Assume the worst of your staff. I mean, assume
17 that they -- they -- it was all their idea, and it was
18 always -- all they wanted to do was cheat people out of
19 benefits. Of course, that's not the case. That never
20 happened. But if that did happen, do you want to allow
21 that to happen? Would you allows that to stand up? Would
22 you allow to approve it, even though the settlement
23 agreement never came to you?

24 And then lastly, there's no -- accusations are
25 not necessary here. That's truly a Red Herring.

1 Remembers are entitled to administrative due process
2 before CalPERS starts cutting back their benefits. Case
3 law is very clear that administrative due process is
4 flexible and expanding.

5 In this particular case, nobody touched his
6 benefits until after a full-blown evidentiary hearing
7 before an administrative law judge. He had due process.
8 All this business about accusations, it's -- there's
9 nothing there.

10 But having said that, again as I mentioned
11 before, the question of how much -- whether and how much
12 to collect from Mr. Mast is entirely within this Board's
13 purview. And I'm not telling the Board that it needs to
14 do it one way or the other.

15 But with that, I'm done. Thank you.

16 PRESIDENT FECKNER: Thank you. Please set the
17 clock for 3 minutes.

18 Mr. Horner, whenever you're ready.

19 MR. HORNER: If somebody comes to the Board and
20 says I'm going to shake you people down, if you don't pay
21 me money, you better do this or else, or I'm going to take
22 you to court, the response is you'd say go to court
23 already. Come on. That is not what happened here.
24 That's the way it's being spun.

25 This was not a horrible mistake. It was not a

1 shakedown. And the upside is the parties agreed that the
2 law would be followed, and it just has not been.

3 Now, accusation. We've just heard once again
4 there is no accusation in play, not from me, but from Mr.
5 Rieger. He says you don't need to bother with that. If
6 you won't get the money back, just void out this 20-year
7 old contract. Just go ahead and do it. But that's not
8 how it works. Procedural due process and the
9 administrative law, procedure requires that an accusation
10 be filed, Statement of Issues be filed, and the parties
11 have an opportunity to be heard. But that's just basic
12 constitutional law.

13 So the paying back is just not in play at all. I
14 think that we've presented the case. We obviously
15 disagree on how you read Olson, which is nothing new.
16 Lawyers disagree all the time, but we contend that it says
17 what it says. You're suppose to apply unlimited cost of
18 living adjustments to the vested retirement benefits.
19 Those cannot be taken away. That's what Olson says.

20 I believe that is enough on our end. And I'll be
21 delighted to answer any questions then that the Board
22 members have.

23 PRESIDENT FECKNER: Thank you. So that exhausts
24 the time. And it's now time for Board members to ask
25 questions, if they any. And questions coming from the

1 Board at this point?

2 Seeing none.

3 Then we will go into recess. The Board will go
4 into closed session.

5 BOARD MEMBER JELINCIC: Mr. President.

6 PRESIDENT FECKNER: Yes.

7 BOARD MEMBER JELINCIC: I have a question.

8 PRESIDENT FECKNER: Oh, my lights aren't on.
9 There you go. Sorry. Mr. Jelincic.

10 BOARD MEMBER JELINCIC: Okay. When was Judge
11 Mast last elected?

12 MR. HORNER: I believe, sir, that was 1976 -- no,
13 I'm sorry. No -- yes, I think it was, but he did not
14 serve out his full new term. It expired in '79.

15 BOARD MEMBER JELINCIC: Okay. And this is for
16 our staff. When is a settlement, a settlement, and when
17 is it not a settlement?

18 MR. RIEGER: We have -- you know, I would
19 encourage you to read the -- I didn't go through all of
20 these in my oral presentation. If you go into the written
21 presentation, there are a lot of cases here that we
22 provide to give you some direction on that question.

23 But what I would say here is that there was --
24 first of all, I think it's against public policy. The
25 whole idea of keeping this settlement agreement

1 confidential is really offensive to the whole concept of
2 CalPERS and JRS's mission. The idea that you would pay
3 one member under a formula that nobody else gets, and then
4 keep that confidential from the world, that's -- I believe
5 that is against public policy and void from the start.

6 But beyond that, I will acknowledge, you make a
7 good point, that how do you draw that line? And I think
8 in this case, we apply the cases that we provided in our
9 background material, and then look at the facts of this
10 case. And the facts of this case is that they're just --
11 he came in and said that black is white, and settle with
12 me or else I'll tell every other judge that black is
13 white. And that can't possibly be a binding contract.

14 BOARD MEMBER JELINCIC: And if a settlement
15 agreement is not a settlement agreement because something
16 changed or the understanding changed, are we not actually
17 discouraging settlements? And doesn't the law, in fact,
18 favor seeking settlements?

19 MR. RIEGER: I think you do want to discourage
20 settlement agreements like this. I think when somebody
21 comes in and says that I have a legal theory. I want you
22 to pay me under that legal theory, provided I tell nobody
23 else about my theory, I think you should discourage that
24 absolutely. And, yes, I think a ruling in favor of staff
25 here would do that.

1 BOARD MEMBER JELINCIC: Thank you.

2 PRESIDENT FECKNER: All right.

3 Anyone else?

4 Seeing no other requests, then this Board is
5 going to go into recess and have -- discuss with our
6 independent counsel, and we will be back out to reconvene
7 shortly.

8 MR. HORNER: Thank you for the hearing.

9 (Off record: 12:40 p.m.)

10 (Thereupon the meeting recessed
11 into closed session.)

12 (Thereupon the meeting reconvened
13 open session)

14 (On record: 12:58 p.m.)

15 PRESIDENT FECKNER: We're now going to reconvene
16 the Board Meeting.

17 Mr. Jones.

18 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
19 President.

20 I move that the Board reject the proposed
21 decision on remand's ruling, that the settlement agreement
22 is unenforceable, and adopt the proposed decision on
23 remand's ruling, that the member was not entitled to
24 retire until he reached age 63.

25 PRESIDENT FECKNER: Is there a second?

1 BOARD MEMBER JELINCIC: Second.

2 PRESIDENT FECKNER: It's been moved by Jones,
3 seconded by Jelincic.

4 Please turn on the machine for a roll call vote.

5 (Thereupon an electronic vote was taken.)

6 PRESIDENT FECKNER: All right. The motion
7 passes. Agenda Item 11 is done. Thank you very much for
8 everybody that participated.

9 That brings us to Agenda Item 14, Public Comment.
10 Is there anybody left from the public that wishes to
11 address the Board at this time?

12 (Laughter.)

13 PRESIDENT FECKNER: It would appear not.

14 So at this point, we are going to close the open
15 session, and go quickly into closed session, which
16 hopefully will only be about 15 minutes.

17 So we are adjourning the open session.

18 (Thereupon the California Public Employees'
19 Retirement System, Board of Administration
20 open session meeting adjourned at 12:59 p.m.)

21

22

23

24

25

1 C E R T I F I C A T E O F R E P O R T E R

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that the
5 foregoing California Public Employees' Retirement System,
6 Board of Administration open session meeting was reported
7 in shorthand by me, James F. Peters, a Certified Shorthand
8 Reporter of the State of California.

9 That the said proceedings was taken before me, in
10 shorthand writing, and was thereafter transcribed, under
11 my direction, by computer-assisted transcription.

12 I further certify that I am not of counsel or
13 attorney for any of the parties to said meeting nor in any
14 way interested in the outcome of said meeting.

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 22nd day of February, 2017.

17
18
19
20 

21
22
23 JAMES F. PETERS, CSR
24 Certified Shorthand Reporter
25 License No. 10063