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6 **Attorneys for Appellant Desi Alvarez**

7 **BEFORE THE BOARD OF ADMINISTRATION**  
8 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**  
9

10  
11 **In the Matter of the Appeal of the Denial of**  
12 **Pension Benefits to**

13 **DESI ALVAREZ and CHINO BASIN**  
14 **WATERMASTER,**

15 **Appellants.**

**CALPERS CASE NO. TBD**

**DESI ALVAREZ'S APPEAL OF**  
**CALPERS' FEBRUARY 20, 2013, DENIAL**  
**OF PENSION BENEFITS**

**EXHIBITS 1 THROUGH 10**

16  
17 **Desi Alvarez hereby submits this Appeal of the California Public Employees' Retirement**  
18 **System's ("CalPERS") denial of pension rights and benefits concerning his employment with**  
19 **Chino Basin Watermaster ("Watermaster").**

20 **CalPERS formally denied pension rights and benefits to Mr. Alvarez pursuant to its**  
21 **February 20, 2013 letter from Tomi Jimenez, Manager of the Compensation and Employer**  
22 **Review section of CalPERS' Customer Account Services Division, addressed to Mr. Alvarez.**

23 **CalPERS' February 20, 2013 letter instructed Mr. Alvarez to submit any Appeal of the**  
24 **denial within 30 days of the date of the letter pursuant to *Government Code* section 20134 and**  
25 ***California Code of Regulations* sections 555-555.4. Mr. Alvarez then contacted Nicole Horning**  
26 **of CalPERS' Compensation and Employer Review section to request an extension of time to file**  
27 **his appeal and was verbally granted an additional 30 days by Ms. Horning. On April 1, 2013,**  
28 **newly-retained counsel for Mr. Alvarez sent a letter to Ms. Horning asking for formal**

1 confirmation of the 30-day extension and advising that unless she advised otherwise, her failure  
2 to respond would be considered acknowledgement that Mr. Alvarez had until Monday, April 22,  
3 2013, to file his Appeal.

4 No response has been received from Ms. Horning. This Appeal is therefore being  
5 submitted by the April 22, 2013 deadline.

6 Mr. Alvarez reserves the right to amend, augment, and add to this appeal. He is currently  
7 seeking additional information, including from CalPERS.

8 Mr. Alvarez appeals all factual and legal bases for CalPERS' decision in this matter,  
9 including but not limited to:

- 10 (i) CalPERS' refusal to accept the salary earned by Mr. Alvarez at Watermaster for  
11 purposes of calculating his pension benefit is without merit or legal foundation;
- 12 (ii) CalPERS applied rules and regulations to this matter that do not apply;
- 13 (iii) CalPERS violates Mr. Alvarez' due process, equal protection and other  
14 constitutional rights;
- 15 (iv) CalPERS' denial of a monthly pension allowance payable to Mr. Alvarez is  
16 inappropriate;
- 17 (v) CalPERS' denial of a monthly pension calculated based upon the \$228,000  
18 annual salary earned by Mr. Alvarez while employed by Watermaster is  
19 inappropriate;
- 20 (vi) CalPERS unlawfully applies its regulations, public meeting law, and other law  
21 to Watermaster and Mr. Alvarez when those laws or regulations do not apply  
22 and are trumped by the Watermaster settlement judgment document;
- 23 (vii) CalPERS wrongly determines that Mr. Alvarez's salary was not paid pursuant to  
24 a "publicly available pay schedule" and therefore disqualifies the salary from use  
25 in determining his "final compensation" to be used in calculating his pension  
26 allowance;
- 27 (viii) CalPERS improperly fails to seek the County of San Bernardino Superior  
28 Court's jurisdiction;

- 1 (ix) CalPERS seeks to apply notice, records, or other law that contradicts the specific  
2 notice, meeting, and procedures required by Watermaster's rules and regulations.
- 3 (x) CalPERS wrongly fails to submit to the jurisdiction of and seek approval from  
4 the San Bernardino County Superior Court before challenging or disqualifying  
5 Mr. Alvarez's Watermaster salary from use in calculating his pension benefits,  
6 acknowledging that
- 7 a) Watermaster is a creation of the San Bernardino County Superior Court in  
8 Case No. SCV 164327 (since renumbered as RCV 51010);
- 9 b) the San Bernardino County Superior Court retains full oversight authority  
10 over Watermaster and its operations and administrative procedures,  
11 including its authority to hire and compensate employees;
- 12 c) the San Bernardino County Superior Court has determined that public  
13 meeting laws do not apply or regulate the actions of the Watermaster Board,  
14 including the retention, compensation and terms of employment of  
15 Watermaster employees; and
- 16 d) CalPERS has no authority or jurisdiction to challenge the decisions of  
17 Watermaster (especially in the administrative process), such as the  
18 establishment of the salary to be earned by Mr. Alvarez and used in  
19 calculating his pension allowance, other than through the mechanisms  
20 established in San Bernardino County Superior Court Case No. RCV 51010;
- 21 e) Mr. Alvarez does not consent or submit to CalPERS jurisdiction in this  
22 matter. He files his appeal under protest.
- 23 (xi) CalPERS wrongly interprets the term "publicly available pay schedule" as it  
24 applies to the employment contract of Mr. Alvarez, when said contract was  
25 approved and carried out pursuant to the authority of the San Bernardino County  
26 Superior Court;
- 27 (xii) CalPERS unlawfully and in excess of jurisdiction applies public meeting laws  
28 directly or indirectly to Watermaster, its processes, or its decisions;

- 1 (xiii) Review by Court of Watermaster Actions. All actions, decisions or rules of  
2 Watermaster shall be subject to review by the Court on its own motion or on  
3 timely motion by any party, the Watermaster (in case of mandated action), the  
4 Advisory Committee, or pool committee. (Watermaster's Rules and Regulations,  
5 Section 31);
- 6 (xiv) As CalPERS is not a party or other person with standing under the Judgment,  
7 CalPERS cannot challenge the compensation of Watermaster employees, even  
8 before the Court. CalPERS must accept Watermaster's determination and pay  
9 the higher pension. CalPERS can increase the contributions required by  
10 Watermaster, but may not intercede in Watermaster's decisions or jurisdiction;
- 11 (xv) CalPERS wrongly and retroactively attempts to apply *California Code of*  
12 *Regulations* section 570.5, to its evaluation of whether Mr. Alvarez's  
13 Watermaster salary was PERSible when Section 570.5 did not take effect until  
14 August 10, 2011, long after Mr. Alvarez's employment contract was approved  
15 by the Watermaster Board and long after he began his employment with  
16 Watermaster;
- 17 (xvi) CalPERS' reasoning in reaching its conclusions lacks merit and legal foundation;
- 18 (xvii) CalPERS wrongly finds or utilizes various matters or facts underlying CalPERS'  
19 determination, that are taken out of context, wrongly applied, or without bases;  
20 and
- 21 (xviii) Mr. Alvarez challenges all other legal issues involving CalPERS' determinations,  
22 Mr. Alvarez's employment at Watermaster, the legal rights and statutory scheme  
23 involved, and all matters associated with his CalPERS pension rights and benefits.
- 24 In addition, Mr. Alvarez asserts all affirmative defenses, including:
- 25 (xix) CalPERS has failed to exhaust the administrative and other remedies of  
26 Watermaster in the Superior Court, as per the Judgment;
- 27 (xx) CalPERS' acts in excess of its jurisdiction and its acts to challenge the  
28 Watermaster salary are void and without effect;

- 1 (xxi) CalPERS cannot subvert or change the Watermaster Judgment terms;
- 2 (xxii) Mr. Alvarez asserts that CalPERS is equitably estopped from denying its prior
- 3 representation to him that CalPERS would utilize the highest salary earned in
- 4 CalPERS contracting employment (and CalPERS' representations that it would
- 5 utilize the Watermaster salary) in calculating Mr. Alvarez's CalPERS pension;
- 6 (xxiii) Mr. Alvarez asserts estoppel claims against CalPERS as a result of its
- 7 acceptance of the compensation reported to CalPERS and the contributions
- 8 accepted by CalPERS concerning Mr. Alvarez's employment at Watermaster;
- 9 (xxiv) Mr. Alvarez asserts estoppel claims against CalPERS in that it has utilized the
- 10 Watermaster salary earned by other Watermaster employees to calculate their
- 11 pension benefits, thereby explicitly or implicitly advising Mr. Alvarez that it
- 12 would do the same for him by utilizing his Watermaster salary in calculating his
- 13 pension benefits;
- 14 (xxv) Mr. Alvarez asserts denial of equal protection and estoppel claims against
- 15 CalPERS based upon its acceptance and use of Watermaster pay rates in
- 16 calculating the pensions of other Watermaster employees who were paid
- 17 pursuant to employment contracts and/or pay schedules or matrices that were
- 18 approved in confidential sessions of the Watermaster Board, in the same manner
- 19 as Mr. Alvarez's Employment Agreement and other indices of his salary were
- 20 approved;
- 21 (xxvi) Mr. Alvarez asserts unconstitutional denial of due process claims against
- 22 CalPERS based on the fact that CalPERS is seeking to apply regulatory
- 23 provisions (e.g., *California Code of Regulations*, §570.5) that were not in
- 24 existence at the time Mr. Alvarez contracted for and began his employment at
- 25 Watermaster and was therefore vested in CalPERS pursuant to the pension terms
- 26 in existence at the time;
- 27 (xxvii) Mr. Alvarez asserts unconstitutional denial of equal protection claims against
- 28 CalPERS based on the fact that CalPERS has approved pension calculations

utilizing Watermaster salaries for other CalPERS retirees who were employed by Watermaster but has denied similar treatment to Mr. Alvarez in the calculation of his pension allowance;

(xxviii) Mr. Alvarez asserts denial of claims for unjust enrichment against CalPERS based on the fact that it accepted contributions from Watermaster on Mr. Alvarez's behalf and would accrue a windfall if the pension benefits paid to Mr. Alvarez are reduced as CalPERS has done;

(xxix) Laches; and

(xxx) All other affirmative defenses.

Mr. Alvarez broadly reserves all rights of any kind and nature to assert legal or factual bases in this matter.

At this time, Mr. Alvarez has not been supplied with sufficient information to determine the full nature of the dispute. Mr. Alvarez has made documents requests on CalPERS. CalPERS has not yet fully responded.

Mr. Alvarez asserts all rights to amend, correct, supplement or otherwise file new and additional pleadings and assert additional defenses, facts and new matter once the nature of the dispute has been determined.

Attached and incorporated into this Appeal are Exhibits 1 through 10. We reserve the right to amend, correct and augment this Appeal and the Exhibits at any time.

Dated: April 19, 2013

By:

  
John Michael Jensen,  
Attorney for Desi Alvarez