

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Appeal Regarding Military Service Credit
Purchase and Retirement Benefits of:**

JUDGE MICHAEL J. CARROZZO,

Respondent.

Case No. 2025-1413

OAH No. 2025110637

PROPOSED DECISION

This matter was heard by Administrative Law Judge (ALJ) Eric Sawyer, Office of Administrative Hearings, State of California, by videoconference on February 26, 2026.

Preet Kaur, Senior Attorney, represented California Public Employees' Retirement System (CalPERS).

Michael J. Carrozzo (respondent) represented himself.

Respondent gave a closing argument at the conclusion of the hearing; thereafter, the record was held open for CalPERS to file a closing brief, and for respondent to file a reply brief.

The events that transpired while the record was held open are described in the ALJ's order issued on March 25, 2026. As described in that order, the record closed and the matter was deemed submitted for decision on March 24, 2026.

SUMMARY

Respondent appeals the Judges' Retirement System II denying him the option of purchasing prior military service credit by making monthly installment payments over 180 months, as well as the amount of the last purchase price estimate given.

CalPERS argues respondent was ineligible to make installment payments on such a purchase because either all or almost all of them would have been made after respondent irrevocably resigned from judicial service in resolution of a pending disciplinary matter. CalPERS argues the governing law only allows for installment payments to be made from payroll by a judge in office. CalPERS also argues that the methodology of calculating the last purchase price estimate was sound and in conformity with the method required by statute.

However, respondent met his burden of establishing by a preponderance of the evidence that he was eligible to elect the installment payment plan so long as he was able to make one payment from payroll while in judicial service. That option is required by *Henry v. Board of Administration* (1980) 113 Cal.App.3d 658, but CalPERS never extended it to respondent.

Therefore, respondent's appeal is granted, and CalPERS is ordered to give respondent an updated purchase price estimate, with the option to make installment payments. Because CalPERS properly calculated the last estimated purchase price, it shall use the same approach in calculating its updated estimated purchase price.

FACTUAL FINDINGS

Parties

JUDGES' RETIREMENT SYSTEM II

1. The Judges' Retirement System II (JRS II) administers a defined benefit and monetary credit plan for qualified judges of the State of California. (Exs. 3, 4; Legal Conclusions 4-5.)

2. The Board of Administration (Board) of CalPERS administers JRS II in accordance with the Judges' Retirement System II Law (JRS II Law), Government Code section 75500 et seq. (Subsequent undesignated statutory references are to this code.) (Exs. 3, 4; Legal Conclusions 4-6.)

RESPONDENT

3. On June 23, 2014, respondent was appointed as a judge of the Superior Court of California, County of Santa Barbara. By virtue of this appointment, respondent became a member of JRS II. (Exs. 1, 5.)

4. Prior to his appointment to the bench, respondent had at least four years of military service in the United States Armed Forces. (Testimony [Test.] of Teri Martinez; Ex. 23, p. A159.)

5. On or about April 17, 2025, the Commission on Judicial Performance issued a Decision and Order Imposing Severe Public Censure and Bar upon respondent, pursuant to a stipulation that included respondent's irrevocable resignation from office, effective September 9, 2025, and his agreement never to serve as a judicial officer in the State of California after that date. (Ex. 16.)

JRS II Retirement Options

6. Pursuant to section 75522, JRS II members must be at least age 65 with 20 years of service or age 70 with a minimum of 5 years of service to “service retire,” i.e., begin receiving pension benefits immediately upon retirement from judicial service. (Test. of Martinez; Ex. 3, p. A32.)

7. From January 1, 2024, through December 31, 2028, JRS II members who are not eligible to service retire under section 75522, but are at least age 60 with 15 years of service or age 65 with 10 years of service, may elect to retire under the “deferred retirement” set forth in section 75522.5. JRS II members who elect deferred retirement may choose to start receiving their retirement allowance either on the date they would have first become eligible to service retire under section 75522 or at a later specified date. (Test. of Martinez; Ex. 3, p. A39.)

8. JRS II members who leave judicial office with five or more years of service, but who are not eligible for a service retirement under section 75522 or a deferred retirement under section 75522.5, receive the amount of their monetary credits, as determined under section 75520, under the JRS II monetary credits plan. (Test. of Martinez; Ex. 3, p. A31, Ex. 4, p. A71.)

9. Respondent has a JRS II membership date of June 23, 2014. (Ex. 5.) In order for him to have been eligible for a service retirement, respondent had to remain in judicial service until June 23, 2034, which would give him 20 years of service at the age of 68. (Test. of Martinez.)

10. JRS II members may elect to purchase up to four years of service credit in JRS II for active military service performed prior to entering JRS II, subject to the requirements set forth in section 75506.6. (Test. of Martinez; Ex. 3, p. A30.)

Jurisdiction for Appeal

11. In 2024 and 2025, respondent and JRS II staff had extensive communications concerning respondent purchasing three or more years of military service credit, the cost of such a purchase, and the method of payment, either by lump sum or monthly installments over 180 months. Those communications led to JRS II providing respondent estimates in April 2024 and November 2024 for him to purchase military service credit. The two estimates advised respondent that he could continue to make payments on an installment plan after he left judicial service. By this time, respondent expressed interest in a deferred retirement. (Test. of Martinez; Exs. 6-15.)

12. By email dated May 28, 2025, respondent advised JRS II he would retire on September 9, 2025, and that he would be purchasing up to four years of military service credit to qualify for deferred retirement. Respondent requested JRS II to send him the documents he needed to do so. (Ex. 17.)

13. On June 30, 2025, JRS II staff provided respondent with an updated military service credit purchase estimate, the third issued to respondent. JRS II staff informed respondent that he could only pay by lump sum, as the installment payment option previously discussed was not available because the JRS II Law requires installment payments to be made by payroll deduction while respondent was still on the bench. (Test. of Martinez; Exs. 17-19, Ex. 23, p. A157.)

14. In response, respondent sent various emails to JRS II staff insisting on making monthly installment payments towards the purchase of military service credit. He offered to make payments while still on the bench and, thereafter, out of his Santa Barbara County retirement benefits until he began receiving JRS II deferred retirement

pension benefits, at which time he would consent to the monthly amounts being deducted from his JRS II pension payments. (Test. of Martinez; Ex. 18.)

15. By email dated July 7, 2025, JRS II staff informed respondent that the two prior military service credit purchase estimates it had issued in 2024 had expired, and the pending June 30, 2025 military service credit purchase estimate was the only purchase option then available. Respondent was warned that if he did not complete the election form enclosed in the most recent estimate, and submit the lump sum payment by August 1, 2025, he would not be eligible to elect deferred retirement, and instead he only would be eligible to receive a lump sum payment of his monetary credits. (Test. of Martinez; Ex. 20.)

16. By email dated July 7, 2025, respondent disagreed with JRS II's above described decisions, and stated he would appeal its denial of his request to make monthly installment payments while he was still on the bench and thereafter. (Ex. 20.)

17. On July 14, 2025, CalPERS received respondent's appeal and request for an administrative hearing. In his appeal request, respondent argued he had received numerous written and telephonic communications from JRS II staff advising him that he was entitled to retire on September 9, 2025, and that he could purchase his military service credit by monthly installment payments over 15 years. Respondent advised that he had made retirement decisions in reliance on those past communications, and that CalPERS was estopped from no longer offering the monthly installment payment option as a way to purchase his military service credit. Respondent also challenged the most recent estimated purchase price as a miscalculation. (Ex. 21.)

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18. On November 17, 2025, a Statement of Issues was filed by Kimberlee Pulido, in her official capacity as Chief of CalPERS' Retirement Benefit Services Division, seeking to affirm JRS II's above-described decisions. (Ex. 1.) The pleading identifies six issues to be resolved in this matter. (*Id.*, ¶ XXXI, p. A16.)

Initial Contacts About Purchasing Military Service Credit

19. On July 31, 2014, respondent first contacted JRS II after his appointment to the bench. Among other issues, respondent inquired about purchasing military service credit. After exchanging voicemail messages with JRS II staff, respondent spoke that day with JRS II employee Erinn Conley (then known as Erinn Gonzales), an Associate Governmental Program Analyst. (Ex. 23, p. A162.)

20. The next contact between respondent and JRS II concerning the purchase of military service credit was not until August 23, 2023. On that day, respondent again spoke with Ms. Conley, who informed respondent that, given his amount of service credit at the time, he would not be eligible for a deferred retirement because he would not have the requisite number of years of service (15) until after the statutory sunset date, i.e., December 31, 2028. However, Ms. Conley confirmed that respondent would be eligible for deferred retirement if he purchased the requisite amount of military service credit to give him 15 total years of service before the statutory sunset date. (Test. of Martinez; Ex. 23, p. A160.)

21. On January 5, 2024, respondent contacted JRS II by email to request information regarding the potential commencement date of his retirement benefits. Ms. Conley responded by email on the same date, and provided respondent with the same information she previously provided on August 23, 2024. (Test. of Martinez; Ex. 6, Ex. 23, p. A160.)

The April 2024 Military Service Credit Purchase Letter

22. In an email dated April 8, 2024, respondent requested information regarding the cost to purchase military service credit. In his email, respondent advised he was interested in “the early retirement program” and his goal was to retire on September 9, 2025. He also expressed interest in purchasing four years of military service credit. (Test. of Martinez; Ex. 7, p. A77; Ex. 23, p. A160.)

23. Ms. Conley replied by email advising respondent her records showed he only had three years and one day of military service credit available to use, and that she needed him to confirm if he actually had four years of eligible military service. (Test. of Martinez; Ex. 7, p. A77.)

24. On April 11, 2024, Ms. Conley sent respondent a Military Service Credit Purchase Estimate letter (April 2024 estimate) for his purchase of 3.0 years of service credit, calculated using the present value method pursuant to section 75506.6, subdivision (d). The letter provided an estimated lump sum cost of \$358,713, or an installment payment option of \$3,228.16 per month for 180 months. The letter advised that if respondent left JRS II-covered employment before completing the purchase payment, it would be his responsibility to notify JRS II to continue a direct payment schedule, and that if there was a balance due at the time of his retirement, JRS II would take the remaining deductions from his pension payments. (Test. of Martinez; Ex. 9.)

25. The April 2024 estimate advised respondent that he was first eligible to retire on June 23, 2034, when he would be age 68 with 20 years of service, and would be eligible to receive a pension benefit equivalent to 75 percent of his final compensation at retirement. Respondent also was advised that if he elected to purchase 3.0 years of military service credit, he would be eligible to retire on June 23,

2031, with 20 years of service and would be eligible to receive a pension benefit equivalent to 75 percent of his final compensation. (Test. of Martinez; Ex. 9.)

26. The April 2024 estimate stated it was only valid for 30 days, or through May 10, 2024. (Test. of Martinez; Ex. 9.)

27. In her transmittal email sent along with the April 2024 estimate, Ms. Conley made clear to respondent that the estimate was calculated based on his first eligible date for service retirement only, and that she did not include documents he could use to elect such a purchase because she knew he “was more interested in purchasing the four years of military service.” (Test. of Martinez; Ex. 8, p. A82.)

28. Respondent did not make an election to purchase military service credit based on the April 2024 estimate. Instead, he sent Ms. Conley an email advising her that he “will be considering all my options.” (Test. of Martinez; Ex. 8, p. A82.)

29. During the span of April 10, 2024, through June 17, 2024, respondent submitted documentation to JRS II confirming that he was eligible to purchase up to four years of military service credit. (Ex. 23, p. A159.)

The November 2024 Military Service Credit Purchase Package

30. In an email dated November 8, 2024, respondent advised Ms. Conley he was considering retiring on September 8, 2025, at age 60 and with 15 years of service, including 11 years and 3 months of JRS II service and a military service credit purchase of 3 years and 9 months. Respondent requested guidance on how to begin the process of confirming a retirement date. (Test. of Martinez; Ex. 8, p. A81.)

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31. On November 14, 2024, Ms. Conley mailed to respondent a Military Service Credit Purchase package (November 2024 estimate) for the purchase of 3.814 years of military service credit, calculated using the present value method pursuant to section 75506.6, subdivision (d). The cover letter of the November 2024 estimate provided a lump sum cost of \$532,713, or an installment payment option of \$4,794.041 per month for 180 months. The cover letter advised that if respondent left JRS II-covered employment before completing the purchase payment, it would be his responsibility to notify JRS II to continue a direct payment schedule, and that if there was a balance due at the time of his retirement, JRS II would take the remaining deductions from his pension payments. (Test. of Martinez; Ex. 10; Ex. 23, p. A158.)

32. The November 2024 estimate cover letter notified respondent that he was first eligible to retire on June 23, 2034, when he would be age 68 with 20 years of service and would be eligible to receive a pension benefit equivalent to 75 percent of his final compensation. Respondent also was advised that if he elected to purchase 3.814 years of service credit, he would be eligible to retire on September 8, 2030, with 20 years of service and eligible to receive a pension benefit equivalent to 75 percent of his final compensation. The November 2024 estimate included documents for respondent to elect a purchase. (Test. of Martinez; Ex. 10.)

33. The November 2024 estimate stated it was only valid for 30 days, or through December 12, 2024. (Test. of Martinez; Ex. 10.)

34. The November 2024 estimate purchase amount was based on several assumptions, including that respondent would be eligible to service retire and respondent's age at the time of such service retirement. The present value calculation of the military service to be purchased (\$532,713) was based on the difference between the value of respondent's service retirement without the military service

credit purchase and respondent's service retirement with the military service credit purchase. (Test. of David Clement; Ex. 24, p. A164.)

35. David Clement, a managing actuary at CalPERS, testified that the November 2024 estimate was accurately calculated with the correct assumptions. Mr. Clement testified that, at the time the estimate was issued, JRS II assumed respondent would remain on the bench until he service retired. (Test. of Clement; Ex. 24.)

36. On November 15, 2024, Ms. Conley also mailed to respondent a letter explaining different optional settlements for a deferred retirement, based on a retirement date of September 9, 2025, and a benefit commencement date of September 9, 2030. The estimate assumed respondent would purchase 3.814 years of military service credit to meet the eligibility requirements for a deferred retirement. (Test. of Martinez; Ex. 11; Ex. 23, p. A158.)

37. By emails dated December 11, 2024, December 12, 2024, December 17, 2024, and January 10, 2025, respondent submitted inquiries to Ms. Conley regarding payment options to purchase military service credit, including what would happen if he became unable to continue making monthly payments or if, upon his death, his spouse was unable to continue them. Ms. Conley provided general responses to respondent's questions by email, including that full payment would be required for the military service credit purchase. (Test. of Martinez; Ex. 8; Ex. 23, p. A158.)

38. On January 8, 2025, JRS II provided respondent with a monetary credits retirement benefit estimate letter informing him that he would be eligible for a lump sum payment of his monetary credits, estimated at \$670,975.60, based on a retirement date of September 9, 2025, and 11.215 years of judicial service. (Ex. 13.)

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39. On January 10, 2025, respondent sent an email to Ms. Conley with three additional questions about deferred retirement, which Ms. Conley answered. (Test. of Martinez; Ex. 14; Ex. 23, p. A157.) One of respondent's questions was what would happen if he chose to retire in September 2025 by deferred retirement and to purchase military service credit by installments, but passed away and his wife could not make the remaining payments. Ms. Conley responded, "any payments during the deferral period and any Military service credit payments owed will be deducted from any monthly benefit that is being paid. This includes a payment to your spouse." (Ex. 14, p. A119.)

40. Respondent did not make an election to purchase military service credit pursuant to the November 2024 estimate. (Test. of Martinez.)

The Events of April 2025

41. By email sent on April 4, 2025, respondent informed Ms. Conley that he planned to take a deferred retirement effective on September 9, 2025, with 15 years of service at the age of 60, by buying four years of military service credit, and that he would submit the paperwork 60 days prior to that date. (Ex. 15.)

42. By email sent the same day, Ms. Conley advised respondent that JRS II would need to do an updated cost estimate for such a purchase, which only would be valid for 30 days, and she asked respondent to contact her in July 2025 to start the process. (Ex. 15.)

43. On April 17, 2025, the Commission on Judicial Performance (Commission) issued a press release announcing the Decision and Order Imposing Severe Public Censure and Bar upon respondent, including that he would resign from the bench effective September 9, 2025, and had agreed to never serve thereafter. (Ex. 16.)

44. According to the Commission's press release, the discipline was based on allegations that respondent engaged in misconduct spanning more than two years, during which he drafted correspondence with a letterhead representing that he was an attorney at law, and that falsely stated he represented an individual. It also was alleged that, during the Commission's investigation, respondent made representations to the Commission about the correspondence which he knew or should have known were false. (Ex. 16.)

45. Teri Martinez is a Staff Services Manager II with CalPERS, and she supervises Ms. Conley. She assisted Ms. Conley with respondent's file, answered her questions, and provided guidance. Ms. Martinez testified she did not know of the Commission's investigation of respondent until she was given a copy of the press release by another employee, perhaps Ms. Conley, at or about the time it was issued. Ms. Martinez confirmed the accuracy of the press release on the Commission's website. (Test. of Martinez.)

46. Ms. Martinez consulted CalPERS' legal counsel about the effect of respondent's leaving office without the right of return. In her opinion, respondent's leaving the bench without the ability to change his retirement date changed the way of looking at the cost of his military service credit purchase. This was because, in her experience, judges change their date of prospective retirement as their careers progress, but now respondent could not. (Test. of Martinez.)

The June 2025 Military Service Credit Purchase Package

47. On May 28, 2025, respondent sent an email to Ms. Conley, advising, in part:

I will be retiring on 9/9/25. I will also be buying 4 years of military time. Can you send me the documents I need to submit and let me know when I should submit them.

(Ex. 17, p. A125.)

48. On May 28, 2025, Ms. Conley spoke with respondent in response to his email and confirmed that JRS II would prepare an updated military service credit purchase estimate. However, Ms. Conley informed respondent that an installment payment option could not be offered because the law requires that installment payments be made by payroll deduction. (Test. of Martinez; Ex. 17; Ex. 23, p. A157.)

49. On May 28, 2025, May 29, 2025, and May 30, 2025, respondent sent emails to Ms. Conley insisting on making monthly installment payments towards the purchase of his military service credit. In the May 30, 2025 email, respondent also requested that he be allowed to make payments through an actuarial equivalent reduction (AER). Respondent had seen materials on CalPERS' website discussing the AER payment method. (Ex. 17, pp. A124-126; Ex. 18, pp. A128-129; Ex. 12, pp. A103-104; Ex. 23, pp. A156-157.) AER is an alternative payment method for purchasing service credit where, in lieu of paying a balance in full, a reduction is made from the monthly pension allowance by an actuarial equivalent amount of the lump sum cost. (Test. of Martinez.)

50. In sum, respondent was requesting to purchase the military service credit as follows: he would make monthly installment payments by deduction from his payroll for the few months he had remaining in office; thereafter, he would make direct monthly payments from his Santa Barbara County retirement account until the effective date of his deferred retirement, September 9, 2030, at which time JRS II could

take the remaining payments out of his monthly pension benefit payments. (Exs. 12, 17, 18.)

51. On June 30, 2025, Ms. Conley sent respondent a Military Service Credit Purchase package for 3.814 years of service credit (June 2025 estimate), calculated using the present value method pursuant to section 75506.6, subdivision (d). The cover letter clarified that the April 2024 and November 2024 estimates had expired, and were based on respondent's first eligible date for service retirement pursuant to section 75522, while the current estimate was based on a retirement date of September 9, 2025, and a deferred retirement under section 75522.5. The letter provided a lump sum payment option with a total cost of \$982,436, and an expiration date of August 1, 2025. (Test. of Martinez; Ex. 19.)

52. In her letter, Ms. Conley also advised respondent that payment in full was required, because the installment payment option by payroll was not available. This was because respondent's last day on state payroll would be September 8, 2025, and the JRS II Law did not allow non-payroll installment payments past the date respondent left office. Ms. Conley also advised that an AER was not an authorized payment option under the JRS II Law. (Test. of Martinez; Ex. 19.)

53. Finally, in her letter Ms. Conley informed respondent that, if he elected to purchase 3.814 years of service credit at the cost provided, he would be eligible for deferred retirement on September 9, 2025, at age 60, with 15 years of service credit. That would make him eligible for 51 percent of his final compensation, with benefits commencing on September 9, 2030. (Test. of Martinez; Ex. 19.)

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TESTIMONY OF DAVID CLEMENT

54. Unlike the two prior military service credit purchase estimates provided to respondent, the June 2025 estimate was not based on the assumption that respondent would be eligible to service retire. Mr. Clement testified that, at the time the June 2025 estimate was calculated, he was aware of the Commission's press release advising that respondent could no longer serve as a judge after September 9, 2025. The only retirement option available to respondent at that time was to receive the monetary credits payment, which had a value of \$662,536.96. Respondent only would be eligible for deferred retirement by purchasing the additional service credit; a deferred retirement had a present value of \$1,644,973.00. (Test. of Clement; Ex. 25.)

55. Mr. Clement concluded that the actuarial present value of the increase in benefits due to the purchase of additional service credit was \$982,436, which was the difference between respondent's lump-sum monetary credits and the present value of a deferred retirement benefit with the service credit purchase. (Test. of Clement; Ex. 25.)

56. In this testimony, Mr. Clement explained that, in essence, respondent was attempting to purchase eligibility for a deferred retirement that he otherwise was ineligible to elect. That scenario is significantly different from the two prior estimates, where it had been assumed respondent would be eligible to service retire and was only purchasing additional years of service. Thus, the June 2025 estimate contained different actuarial assumptions than the two prior estimates, and the purchase of eligibility substantially increased the cost of the military service credit. Mr. Clement noted no mistakes with the methodology of the calculation. (Test. of Clement; Exs. 24, 25.)

TESTIMONY OF TERI MARTINEZ

57. Ms. Martinez testified that California Code of Regulations, title 2, section (regulation) 575.1 governs JRS II. Pursuant to that regulation, installment payments for service credit elections under JRS II can only be made by a member who is subject to a state payroll deduction. Because respondent's settlement with the Commission required him to resign effective September 9, 2025, he would have been unable to make installment payments by payroll deductions after that date. Ms. Martinez testified that respondent's contacts in May and June 2025 concerning a retirement effective in September did not leave JRS II with enough time to administer a payment plan before respondent left office. This was because the June 2025 estimate was valid until August 1st, and if respondent made the election and returned the package properly executed, it "could have taken 30 to 60 days" to internally establish payroll deductions through the State Controller's Office. (Test. of Martinez.)

58. Ms. Martinez further testified that the language in the first two military service credit purchase estimates indicating respondent could switch over from paying by payroll to direct payments, in the event he left JRS II-covered employment, was incorrect and mistakenly added. Ms. Martinez testified that such language should not have been included in the prior estimates because regulation 575.1 does not permit a direct payment plan, but only payment by deductions through state payroll. (Test. of Martinez.) It is noted, however, that since this dispute arose in May 2025, this was the first time that a member of CalPERS or JRS II contended the language in question was incorrect or mistaken.

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59. Ms. Martinez could not think of any other JRS II member who had made direct payments. She testified that a service credit purchase for prior military service or other state service is generally uncommon, and she could not remember anyone else in the last five years who has done so. (Test. of Martinez.)

60. Finally, Ms. Martinez testified that the AER payment method is not available for JRS II members because regulation 575.1 provides the exclusive means of repayment through payroll deductions. Thus, while the AER payment method is available to CalPERS members under the PERL, it is not provided by regulation 575.1 and therefore is not available to JRS II members. (Test. of Martinez.)

Subsequent Communications

61. On June 30, 2025, respondent sent an email to Ms. Conley requesting the dollar amount of the value of his pension investment. (Ex. 20, p. A141.)

62. By email dated July 3, 2025, Ms. Conley provided respondent with copies of the previous military service credit purchase estimates and an updated monetary credits retirement benefit estimate letter. Ms. Conley also informed respondent that the only feasible payment option for the military service credit purchase would be a lump sum payment because "there may not be sufficient time" to establish a payroll deduction based on respondent's stated retirement date of September 9, 2025; that payment option would not be available after that date, as payroll deductions cannot be made through non-JRS II-covered employment. (Test. of Martinez; Ex. 20, p. A141.)

63. By email dated July 3, 2025, respondent replied to Ms. Conley as follows:

Thank you for the information. I made my election to have monthly payment withdrawn from my paycheck over a

month ago notifying Calpers in writing. Calpers has no discretion to deny my selection. Any delays are the fault of Calpers intentional failure to act. Calpers cannot speculate on processing times of other agencies or whether I can pay in full on 9/9/25. Calpers has no discretion under the law to deny my selection. The failure to process my election is an illegal intentional violation of the law.

(Ex. 20, p. A140.)

64. Respondent presented no evidence at hearing, i.e., he did not testify or submit any exhibits. The only sources of information from respondent in the record are the emails he sent to Ms. Conley (discussed above) and the summary of his contacts with JRS II contained in its Customer Touch Point Report file for respondent (Ex. 23).

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." (Evid. Code, § 500.) Thus, the party asserting a claim generally has the burden of proof in administrative proceedings. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 [*McCoy*].)

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2. In this matter, respondent is seeking to overturn JRS II's denial of his request to make monthly installments through payroll before leaving judicial office, and thereafter by direct payment, as well as the cost for purchasing military service credit set forth in the June 2025 estimate. Thus, respondent bears the burden of proof.

3. The standard of proof in this matter is a preponderance of the evidence. (*McCoy*, 183 Cal.App.3d at p. 1051, fn. 5.) A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Governing Law

THE JRS II LAW

4. JRS II is the retirement system for judges appointed or elected to the bench after November 9, 1994, and is governed by the JRS II Law. (§ 75500 et seq.) In this case, the parties agree that the JRS II Law applies to respondent.

5. JRS II is a separate retirement system from CalPERS, but it is administered by the CalPERS Board, funded by contributions from judges' payrolls, and has its investments directed by CalPERS. (§§ 75505; 75502, subd. (f); 75607.)

6. Pursuant to section 75505, subdivision (a), JRS II is administered in conformity with the Public Employees' Retirement Law (PERL) to the same extent and with the same effect as if those provisions are contained in the JRS II Law, except for provisions that provide for the payment of an allowance or other benefit, or provisions that conflict with any provision of the JRS II Law.

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TYPES OF RETIREMENTS UNDER JRS II

Early Retirement

7. JRS II judges accrue monthly monetary credits equal to 18 percent of the judge's monthly salary. (§ 75520.) A judge who leaves judicial office before accruing at least five years of service shall be refunded the amount of their member contributions and interest. (§ 75521, subd. (a).)

8. A judge who leaves judicial office after accruing five or more years of service, but who is not eligible to service retire under section 75522 or a deferred retirement under section 75522.5, shall be paid the amount of his or her monetary credits pursuant to section 75520. (§ 75521, subd. (b).)

Service Retirement

9. Pursuant to section 75522, subdivision (a), JRS II members must be at least age 65 with 20 years of service or age 70 with a minimum of 5 years of service to service retire.

10. A judge must elect a service retirement within 30 days of retirement. (§ 75522, subd. (c).)

11. A judge selecting a service retirement has three benefit options. The judge may elect a lifetime monthly retirement allowance equal to the benefit factor multiplied by the judge's final compensation, multiplied by the total years of service credit. (§ 75522, subd. (d).) The retirement allowance may not exceed 75 percent of the judge's final compensation. (*Ibid.*) Or the judge may elect to receive the amount of his or her monetary credits in a single payment. (*Ibid.*) Finally, the judge may elect to have the monetary credits paid on a monthly annuity. (*Ibid.*)

Deferred Retirement

12. From January 1, 2024, through December 31, 2028, JRS II members who are not eligible to service retire under section 75522, and who are at least age 60 with 15 years of service or age 65 with 10 years of service, may elect to retire under a deferred retirement. (§ 75522.5, subds. (a), (b).) JRS II members who retire under deferred retirement may choose to start receiving their retirement allowance either on the date they would have first become eligible to service retire under section 75522 or at a later date. (§ 75522.5; Factual Finding 15.)

PURCHASE OF PRIOR MILITARY SERVICE CREDIT

13. A judge may elect to make contributions and receive service credit in the JRS II system for active military service performed by the judge prior to judicial service, subject to the requirements set forth in section 75506.6.

14. Section 75506.6 provides the following requirements:

(a) A judge may elect, in writing filed with the Judges' Retirement System II, to make contributions and receive service credit in this system for active service, performed prior to entering this system, of not less than one year . . . but may not exceed a total of four years of service credit. . . .

[¶] . . . [¶]

(d) A judge who elects to receive credit for service pursuant to this section shall contribute to the Judges' Retirement Fund II a sum equal to the actuarial present value of the

increase in benefits due to the additional service, as determined by the chief actuary and approved by the board.

(e) An election by a judge to receive credit for service under this section shall be effective only if accompanied by a lump-sum payment or an authorization for payment, other than a lump-sum payment, in accordance with regulations adopted by the board.

15. Regulation 575.1, promulgated by the Board, provides for "Deposit of Contributions" as follows:

Any deposit of contributions for, but not limited to, service credit elections, except those made pursuant to Government Code section 21073.1 [not relevant to this case], to be made in installments, must be made by payroll deduction upon such installment plan as may be elected, subject to the following conditions:

(a) Installments must be uniform for each payroll period;

(b) The installments may not be less than \$15.00 per month (or the semi-monthly, bi-weekly or quadri-weekly equivalent); and

(c) The number of installments may not exceed 180 monthly (or the semi-monthly, bi-weekly or quadri-weekly equivalent) payroll periods.

Respondent's Eligibility for JRS II Retirement

EARLY RETIREMENT

16. Respondent had well more than five years of service credit when he retired effective on September 9, 2025. Therefore, he would be entitled to receive a lump-sum amount of his monetary credits if he was ineligible for service retirement or deferred retirement when he left judicial office. (Factual Findings 3, 8, 54; Legal Conclusions 7, 8.)

SERVICE RETIREMENT

17. In order for respondent to be eligible for a service retirement, he had to remain on the bench until June 23, 2034, which would give him 20 years of service at age 68. However, respondent became ineligible for service retirement because he is barred from judicial service after September 9, 2025. Purchasing the military service credit in question still would not qualify respondent. (Factual Findings 3, 5-6, 25, 43; Legal Conclusions 9-11.)

DEFERRED RETIREMENT

18. Respondent's eligibility for deferred retirement was contingent upon his reaching age 60 with 15 years of judicial service. In order for respondent to be eligible for deferred retirement, he had to remain on the bench until June 23, 2029, which would give him 15 years of service at or after age 60. But that retirement date would be after the statutory sunset date of section 75522.5, and thus was unavailable to respondent. (Factual Findings 3, 7, 20-21; Legal Conclusion 12.)

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19. When respondent left judicial office on September 9, 2025, he was 60 years old but did not have 15 years of judicial service; he only had 11.215 years of service. To become eligible for deferred retirement, respondent needed to purchase an additional 3.814 years of military service credit. (Factual Findings 3, 7, 20, 21, 36; Legal Conclusion 12.)

Respondent's Eligibility to Purchase Military Service Credit

20. CalPERS argues respondent was ineligible to pay for the 3.814 years of military service credit he needed to purchase for deferred retirement because he was unable to establish payments through payroll before leaving office in September 2025. CalPERS argues installment payments can only be made through payroll deductions while serving in JRS II-covered employment. Even if respondent made one or two installment payments through payroll before leaving the bench, the remaining 178 installments could not be made thereafter because such payments would no longer be considered "payroll" payments as dictated by regulation 575.1. CalPERS therefore argues the language in the April 2024 and November 2024 estimates advising respondent that he could continue to make direct payments on an installment plan after he left JRS II-covered employment were mistaken and incorrect.

21. On the other hand, respondent argues CalPERS purposefully prevented him from starting payroll deductions on an installment payment plan before he left office by placing barriers in his way, including speculating how long it would take to internally establish such payments through other agencies. Respondent also argues that once payroll payments were started, he could have continued to make direct payments after he left office by authorizing monthly deductions from his Santa Barbara County retirement benefits; once he reached age 65 for purposes of deferred retirement, the remaining payments could be taken out of his monthly deferred

retirement payments. Respondent argues such an arrangement was consistent with the assurances made in the April 2024 and November 2024 estimates, as well as in several emails sent by Ms. Conley in answer to his various questions.

22. Laws relating to pension and retirement benefits are to be liberally construed in favor of the pensioner. (*Wheeler v. Board of Administration* (1979) 25 Cal.3d 600, 604; 45A Cal.Jur.3d Municipalities, § 410.)

23. The operative language in regulation 575.1 simply states payments “must be made by payroll deduction upon such installment plan as may be elected.” There is no other guidance in the regulation concerning this phrase.

24. However, guidance is provided in the case of *Henry v. Board of Administration* (1980) 113 Cal.App.3d 658 [*Henry*]. That case involved a teacher trying to redeposit funds she had previously withdrawn from CalPERS under rights she had through the PERL. She had made one payment on an installment plan the court deemed to be from payroll before becoming disabled and unable to continue working, and thus unable to fund the continuing payments through payroll. The court relied on a provision of the PERL and a substantially similar version of regulation 575.1 existing at the time to resolve an argument identical to that being made by CalPERS here.

25. Specifically, in *Henry*, 113 Cal.App.3d at page 663, the court observed:

This conclusion brings the respondent within the requirements of Government Code section 20685 and California Administrative Code section 575.1, in that it establishes that she received a salary from which a payroll deduction could be made.

Nonetheless, appellants contend that respondent cannot conform to the requirements of the California Administrative Code [regulation 575.1], in that she cannot authorize deduction of equal, uniform installments, having received only one check of sufficient size from which a redeposit installment could have been deducted. This argument is not persuasive. By authorizing the deduction of one installment payment from her salary, respondent will thus authorize the deduction of the same equal, uniform installment from all future pension checks.

26. The *Henry* court also addressed the issue concerning the lack of full payment of the installment plan before retirement as follows:

The problem we have with appellants' argument is that it requires that some line be drawn at a point where the actuarial probabilities favor the retirement system. Would an employee with five years' anticipated employment prior to retirement be eligible to commence redeposit installments? If so, what of an employee with three years' employment remaining? Would we draw the line at one year or six months? The Legislature not having provided to the contrary, *we must conclude that an employee may authorize payroll deductions for redeposit of contributions at any time prior to retirement.*

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Respondent, who was salaried at the time she received sick leave benefits, may authorize that the first installment be deducted from her sick leave salary warrant *and that all future installments be deducted from any pension or disability benefits to which she is entitled after retirement.* (*Henry*, 113 Cal.App.3d at pp. 664–665. Emphasis added.)

27. It is true *Henry* involved a teacher, not a judge. It also is true that the court was interpreting the interplay between the PERL and regulation 575.1, not the interplay between the JRS II Law and the same regulation. However, these are differences without distinction. As cited above, the JRS II Law is to be administered in conformity with the PERL, except where the JRS II Law provides a different right or there is a conflict between the two laws. The holding in *Henry* is not inconsistent with any provision of the JRS II Law cited by the parties. It cannot be concluded the holding is inconsistent with regulation 575.1, as the court was interpreting a substantially similar version of that very regulation.

28. In this case, the *Henry* decision dictates that if respondent was able to make just one payroll payment before he left the bench, he would have qualified to make monthly payments thereafter. The subsequent payments would have been direct payments made from other pension benefits, and later from his JRS II deferred pension payments, a scenario approved by *Henry*, as well as countless communications from Ms. Conley of JRS II. As noted in *Henry*, such an interpretation is consistent with liberally construing pension statutes in favor of pensioners.

29. CalPERS frustrated respondent's attempts to start installment payments through payroll before he left office. Instead of allowing respondent to attempt to start the process, CalPERS simply told him payment by installments was unavailable.

This peremptory denial was based, in part, on speculation, such as a delay caused by respondent not agreeing to an installment plan until August 1, 2025, or that it “could have taken 30 to 60 days” for CalPERS to internally arrange payroll deductions. Under the circumstances, it is unlikely respondent would have delayed approving a payment plan if given the opportunity; CalPERS provided no clear evidence as to how long it actually would have taken to start the deductions from payroll. It is noted that when respondent requested the first two military service credit purchase estimates in 2024, he received responses within a few days. When respondent requested an estimate after the dispute arose in late May 2025, one was not provided until late June 2025, one month later. Moreover, in April 2025, when respondent advised Ms. Conley that he would retire in September 2025, Ms. Conley told him to contact her in July 2025 for another service credit purchase estimate, only two months before his retirement. That communication indicates Ms. Conley believed a payroll payment could be set up more rapidly than respondent was being advised in the May and June 2025 communications.

30. Respondent no longer has the option of making at least one payroll payment on an installment plan, since he is no longer in office. It would be in violation of *Henry* to not allow respondent that option now simply because CalPERS refused to allow respondent to try to begin payroll deductions before he left office. Thus, the fact respondent was prevented from making at least one payment by payroll before leaving office should not deprive him of the opportunity to do so now.

Estoppel

31. Respondent argues JRS II is estopped from retracting the installment payment plan option offered to him in the April 2024 and November 2024 estimates. While this issue is largely resolved by Legal Conclusions 20 through 30, respondent’s argument is considered for the sake of resolving all issues alleged in the pleadings.

32. Specifically, respondent argues he relied on the language from the April 2024 and November 2024 estimates advising him that he could continue direct payments on an installment payment plan after he left JRS II-covered employment, as well as several similar assurances made by Ms. Conley during their frequent email correspondence. Respondent argues JRS II is estopped from changing its position on the availability of the installment payment plan after he had decided to leave office effective on September 9, 2025, and thereby made unalterable retirement decisions in reliance on those past assurances.

33. A party asserting the doctrine of estoppel must establish the following elements: (1) the party to be estopped was apprised of the facts; (2) the party to be estopped intended or reasonably believed that claimant would act in reliance on its conduct; (3) the claimant was ignorant of the true state of facts; and (4) the claimant actually and reasonably relied on the conduct of the party to be estopped to his detriment. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.)

34. California courts recognize estoppel against public entities when justice requires enforcement. (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority* (2000) 23 Cal.4th 305, 311-312.) Thus, when applied against a governmental entity, courts require a fifth element of estoppel, i.e., when “the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel. [Citations.]” (*Krolkowski v. San Diego City Employees’ Retirement System* (2018) 24 Cal.App.5th 537, 565.)

35. Because estoppel is an affirmative defense, the party asserting it bears the burden of establishing each element. (*McCoy*, 183 Cal.App.3d at p. 1051, fn. 5.) In this case, all five elements must be established: where “one of the elements of an

estoppel is missing there can be no estoppel." (*People ex rel. Franchise Tax Bd. v. Superior Court* (1985) 164 Cal.App.3d 526, 552.)

36. As explained below, respondent failed to meet his burden of establishing several of the elements of estoppel, and therefore the doctrine does not apply here.

37. As for the first element, JRS II was not apprised by respondent that he was relying on the April 2024 and November 2024 estimates in deciding to later irrevocably resign from judicial service in April 2025. JRS II did not know respondent was subject to a pending formal proceeding by the Commission until months later in April 2025, which is when it learned respondent would be permanently foreclosed from judging after September 2025. (Factual Findings 19-46.)

38. As for the second element, there is no evidence that JRS II intended or reasonably believed that respondent would rely on the two 2024 estimates so far beyond their expressly stated 30-day expiration dates.

39. As for the fourth element, it was not established by a preponderance of the evidence that respondent relied on the two 2024 estimates in agreeing to resign from judicial service in April 2025, effective on September 9, 2025. No doubt there were many variables in respondent's decision-making on how to resolve the Commission's proceeding against him. It cannot be assumed respondent included in his calculus the language in question from the two 2024 estimates simply because respondent stated so in his appeal emails. Respondent did not testify to explain this situation.

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Disposition

40. In light of the legal conclusions above, resolution of the six issues identified in the Statement of Issues is not required. (Ex. 1, ¶ XXXI, p. A16.) However, and similar to respondent's estoppel argument, determinations are made herein for the sake of completely resolving the issues raised in the pleadings.

ISSUE 1: RESPONDENT'S EMAIL DATED MAY 28, 2025, WAS NOT AN ELECTION TO PURCHASE MILITARY SERVICE CREDIT OR AN ELECTION FOR RETIREMENT

41. This issue is resolved in CalPERS' favor. There was no valid military service credit estimate pending when respondent sent his May 28, 2025 email. The two prior estimates expired 30 days after they were issued without respondent accepting them. (Factual Findings 26-28, 33, 40; Legal Conclusions 13-15.)

ISSUE 2: THE APRIL 11, 2024, AND NOVEMBER 13, 2024, MILITARY SERVICE CREDIT PURCHASE LETTERS HAD EXPIRED, WITHOUT RESPONDENT MAKING AN ELECTION AND ARE NO LONGER AVAILABLE

42. This issue is resolved in CalPERS' favor. Section 75506.6 allows a judge to file a "writing" with JRS II to elect to purchase military service credit. The election shall be "accompanied by a lump-sum payment or an authorization for payment" by payroll deductions. The two 2024 estimates had express 30-day time limits. Respondent did not elect to purchase the military service credit pursuant to those two estimates within 30 days of their issuance. (Factual Findings 22-40; Legal Conclusions 13-15.)

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ISSUE 3: THE COST IN THE APRIL 11, 2024, AND/OR NOVEMBER 13, 2024, LETTERS WAS CALCULATED BASED ON RESPONDENT'S FIRST ELIGIBLE DATE FOR SERVICE RETIREMENT UNDER SECTION 75522, NOT A DEFERRED RETIREMENT UNDER SECTION 75522.5

43. This issue is resolved in CalPERS' favor. It is clear the two 2024 estimates were for a service retirement under section 75522 only. (Factual Findings 22-40.)

ISSUE 4: THE JUNE 30, 2025, MILITARY SERVICE CREDIT PURCHASE LETTER IS THE ONLY MILITARY SERVICE CREDIT COST PACKAGE AVAILABLE TO PURCHASE MILITARY SERVICE CREDIT TO BECOME ELIGIBLE TO ELECT A DEFERRED RETIREMENT

44. For the reasons explained in Legal Conclusions 20 through 30, this issue is resolved in respondent's favor. As detailed below, respondent will have another 30-day window to elect a military service credit purchase pursuant to an updated estimate amount by either lump sum or by installment payments over 180 months.

ISSUE 5: JRS II CORRECTLY CALCULATED THE COST OF RESPONDENT'S MILITARY SERVICE CREDIT PURCHASE IN ITS JUNE 30, 2025, LETTER

45. This issue is resolved in CalPERS' favor. Section 75506.6, subdivision (d), provides that the cost for a military service credit purchase must be calculated based on the "actuarial present value of the increase in benefits due to the additional service, as determined by the chief actuary and approved by the board."

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46. The June 2025 estimate was based on the actuarial present value of the increase in benefits due to the additional service to be purchased, as required by section 75506.6, subdivision (d). Whereas the two 2024 estimate calculations assumed respondent could service retire, the only retirement option available to respondent in June 2025 was to receive his lump sum monetary credits. Respondent was eligible for deferred retirement only with the purchase of additional service. (Factual Findings 41-60; Legal Conclusions 13-15.)

47. Instead of simply purchasing additional service credit as contemplated in the 2024 estimates, respondent would be purchasing eligibility for deferred retirement in the June 2025 estimate, a much more expensive proposition. Thus, the actuarial present value of the increase in benefits was \$982,436, which was the difference between respondent's lump-sum monetary credits (\$662,536.96) and his deferred retirement benefit with the military service credit purchase (\$1,644,973.00). (Factual Findings 41-60; Legal Conclusions 13-15.)

48. Respondent questions the validity of the June 2025 estimate amount based simply on the fact that the purchase price was nearly double that stated in the November 2024 estimate. As explained above, there were different assumptions and methodologies employed in the two 2024 estimates versus the June 2025 estimate. During the hearing, CalPERS' actuary, Mr. Clement, confirmed the methodology behind the June 2025 estimate was sound. Respondent presented no evidence indicating otherwise. (Factual Findings 41-60; Legal Conclusions 13-15.)

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ISSUE 6: RESPONDENT MUST SUBMIT A LUMP-SUM PAYMENT FOR THE PURCHASE OF MILITARY SERVICE CREDIT BECAUSE INSTALLMENT PAYMENTS OR AN AER ARE UNAVAILABLE

49. For the reasons explained in Legal Conclusions 20 through 30, this issue is resolved in respondent's favor. Respondent will be given a 30-day window to elect a military service credit purchase, pursuant to an updated estimate, by either lump sum payment or by installment payments over 180 months. As approved by the *Henry* court, the installment payment plan will include direct payments by respondent before the effective date of his deferred retirement, followed by deductions taken from respondent's deferred retirement pension payments.

ORDER

Respondent's appeal is granted.

Within 30 days of the effective date of this Decision, JRS II shall issue to respondent a Military Service Credit Purchase package, including acceptance forms, calculating the purchase price of 3.814 years of service credit using the present value method similar to that employed in JRS II's June 30, 2025 Military Service Credit Purchase package.

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Respondent shall have 30 days thereafter to decide whether to elect a military service credit purchase, by either lump sum payment or an installment payment plan over 180 months. If respondent so elects, the installment payment plan will include respondent making direct payments to JRS II by deductions taken from his Santa Barbara County retirement benefits payments and, upon the effective date of his deferred retirement, deductions taken from respondent's deferred retirement pension payments, until the full purchase price is paid.

DATE:

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings