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SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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13 EMPLOYEES' RETIREMENT SYSTEM

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SACRAMENTO

17 CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM,
18 Plaintiff,
19
20 v.
21 GLORIA NAJERA, an individual, and DOES
1 through 20, inclusive,
22 Defendants.

Case No.
COMPLAINT FOR:
(1) Conversion;
(2) Breach of Fiduciary Duty;
(3) Fraud;
(4) Preliminary and Permanent Injunctive
Relief; and
(5) Accounting of Defendant's
Unauthorized Uses and Attempted Uses of
Information

BY FAX

24 Plaintiff CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM ("Plaintiff" or
25 "CalPERS") complains and alleges as follows:

26 **INTRODUCTION**

27 1. The California Public Employees Retirement System ("CalPERS") provides
28 retirement and health benefits to approximately 2.1 million members. The organization has a

1 fiduciary duty to protect member assets and ensure that benefits are provided efficiently by a team
2 acting with the highest degrees of professionalism, integrity, and accountability.

3 2. A small fraction of the 2.1 million accounts are considered dormant, meaning that
4 retiree benefit payments have been returned as undeliverable. CalPERS repeatedly attempts to
5 locate these members and beneficiaries.

6 3. Recently, CalPERS discovered that a 25-year employee, Defendant GLORIA
7 NAJERA (“Defendant” or “Najera”), had illegally accessed a retiree account. During its
8 investigation of Defendant’s conduct, CalPERS identified that, between approximately July 2017
9 and January 2021, Defendant had breached nine additional dormant retiree accounts. Defendant
10 fraudulently redirected a total of approximately \$685,692 to bank accounts she controlled or had
11 access to, or debts associated with her or her relatives. CalPERS will make all breached member
12 accounts whole, and, as a part of the investigative process, is performing a forensic audit.

13 4. Defendant is no longer employed by CalPERS. She abused her access, breached
14 her fiduciary responsibility, and betrayed the public’s trust. To recover the stolen funds, CalPERS
15 has filed the instant suit against Defendant.

16 5. CalPERS investigators are working with law enforcement to ensure a full and
17 thorough investigation and prosecution of the Defendant’s alleged criminal behavior. CalPERS
18 will exhaust all legal recourse to recover the money stolen from Defendant’s victims.

19 **PARTIES**

20 6. Plaintiff CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM is an
21 agency of the State of California, headquartered in the City of Sacramento, in Sacramento County.

22 7. Defendant GLORIA NAJERA is an individual who was employed by CalPERS
23 from approximately January 1995 through March 2021. Plaintiff is informed and believes and
24 thereon alleges that Defendant is currently residing in Sacramento County, California.

25 8. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
26 DOES 1 through 20, inclusive, and therefore sues them by such fictitious names. Plaintiff will
27 amend this complaint to allege their true names and capacities when ascertained. Plaintiff is
28 informed and believes, and thereon alleges, that each of the fictitiously named defendants herein

1 are in some manner liable to Plaintiff. Each reference in this complaint to "Defendant,"
2 "Defendants," or any other specifically named Defendant refers also to all Defendants sued under
3 fictitious names.

4 9. At all times relevant to this action, each Defendant was the agent, servant,
5 employee, partner, member, joint venture or surety of the other Defendants and was acting within
6 the scope of said agency, employment, partnership, membership, venture or suretyship with the
7 knowledge and consent or ratification of each of the other Defendants.

8 JURISDICTION AND VENUE

9 10. The Court has subject matter jurisdiction over this action and personal jurisdiction
10 over Defendant.

11 11. Venue is proper in this Court pursuant to California Code of Civil Procedure
12 section 395(a), because CalPERS is informed and believes that Defendant currently resides in
13 Sacramento County, California.

14 GENERAL ALLEGATIONS

15 12. At all times relevant to the allegations contained in the Complaint, Defendant was
16 employed as an Associate Governmental Program Analyst in the Warrant Administration unit of
17 CalPERS' Retirement Benefit Services Division. As part of her job duties, Defendant was required
18 to update CalPERS members' address and direct deposit banking information in Plaintiff's
19 member database, myCalPERS.

20 13. The myCalPERS database includes information necessary for Plaintiff to
21 administer its members' retirement benefits, including their address and direct deposit information
22 (e.g., bank account name, bank routing number, and bank account number).

23 14. Recently, CalPERS discovered that Defendant had accessed a CalPERS member's
24 ("Victim No. 1") bank account and used it to pay Defendant's debts and the debts of her family
25 members. Victim No. 1 lives outside of the United States and is under a conservatorship.

26 15. CalPERS investigated the incident and determined that Defendant had accessed
27 Victim No. 1's myCalPERS account, through which she obtained Victim No. 1's date of birth,
28 address, and the last four digits of Victim No. 1's social security number.

1 16. The investigation also revealed that Defendant was able to access portions of
2 Victim No. 1's myCalPERS account in a manner which revealed Victim No. 1's financial
3 institution and banking information.

4 17. Additionally, the investigation revealed that Defendant had contacted Victim
5 No. 1's financial institution, both through an online chat program and by contacting the financial
6 institution by phone from Defendant's desk at CalPERS.

7 18. The investigation ultimately concluded that, based on documentary evidence,
8 Victim No. 1 lacked legal capacity and, as part of Defendant's job duties, Defendant had been
9 responsible for processing a direct deposit form, which would have allowed Victim No. 1's
10 CalPERS benefits to be deposited into an account authorized by and known to Victim No. 1's
11 conservator. Plaintiff is informed and believes and based thereon alleges that Defendant did not
12 process the direct deposit form, which meant that Victim No. 1's benefits would continue to be
13 deposited to the financial institution that was unknown to Victim No. 1's conservator rather than
14 the account to which the conservator had access. Plaintiff further alleges that Defendant
15 improperly gained access to Victim No. 1's social security number, date of birth, and financial
16 institution information.

17 19. The investigation revealed that Defendant withdrew funds from Victim No. 1's
18 financial institution to make payments on credit accounts in Defendant's name, as well as her
19 married name, her husband's name, her daughter's name, and the name of another family member.
20 Defendant's unlawful withdrawals identified to date from Victim No. 1's account total
21 approximately \$68,594.79.

22 20. During the course of the investigation, CalPERS also found that Defendant had
23 improperly accessed and utilized nine additional members' account information to fraudulently
24 redirect a total of approximately \$617,097 (identified to date) to bank accounts she controlled or
25 debts associated with her or her relatives, using stolen, private identifying information of the
26 owners of the accounts, as set forth below.

27 21. CalPERS is informed and believes and based thereon alleges that Victim No. 2 was
28 or is homeless. "Warrants" (i.e., orders to pay) were being held on Victim No. 2's account, but

1 Defendant changed the direct deposit information on Victim No. 2's dormant account to
2 Defendant's account at one of the financial institutions with which she has a banking relationship,
3 and two other accounts at financial institutions to which Defendant has access. Funds deposited
4 from Victim No. 2's dormant account into Defendant's bank account and/or an account to which
5 Defendant has access identified to date total approximately \$12,925.84.

6 22. CalPERS is informed and believes and based thereon alleges that Victim No. 3 was
7 or is under a conservatorship. Warrants were being held on Victim No. 3's account, but
8 Defendant changed the direct deposit information on Victim No. 3's account to an account at
9 another financial institution to which Defendant has access. Funds deposited from Victim No. 3's
10 dormant account into an account to which Defendant has access identified to date total
11 approximately \$14,400.19.

12 23. CalPERS is informed and believes and based thereon alleges that Victim No. 4 was
13 or is under a conservatorship. CalPERS is informed and believes and based thereon alleges that
14 Defendant changed the direct deposit information for Victim No. 4's account to an account at
15 another financial institution to which Defendant has access. Funds deposited from Victim No. 4's
16 account into an account to which Defendant has access identified to date total approximately
17 \$5,584.02.

18 24. CalPERS is informed and believes and based thereon alleges that payments were
19 being held on Victim No. 5's dormant account at the request of the individual that held Victim No.
20 5's power of attorney. Defendant changed the direct deposit on Victim No. 5's account to an
21 account at another financial institution to which Defendant has access. Funds deposited from
22 Victim No. 5's dormant account to an account to which Defendant has access identified to date
23 total approximately \$52,873.31.

24 25. CalPERS is informed and believes and based thereon alleges that Victim No. 6 was
25 or is under a power of attorney held by a relative of Victim No. 6. Defendant used Victim No. 6's
26 account at Victim No. 6's financial institution to make payments on Defendant's credit card debts.
27 The total amount of these credit card payments identified to date total approximately \$32,992.30.
28 Defendant also changed the direct deposit on Victim No. 6's account to an account at another

1 financial institution to which Defendant has access. Funds deposited from Victim No. 6's
2 dormant account to an account to which Defendant has access identified to date total
3 approximately \$38,009.07.

4 26. CalPERS is informed and believes and based thereon alleges that Victim No. 7 had
5 asked CalPERS to place their member benefits on hold because of possible fraud. Despite this
6 directive, Defendant changed the direct deposit on Victim No. 7's account to Defendant's account
7 at another financial institution with which she has a relationship. Funds deposited from Victim
8 No. 7's dormant account into Defendant's bank account identified to date total approximately
9 \$15,170.43.

10 27. CalPERS is informed and believes and based thereon alleges that Victim No. 8 was
11 or is under a power of attorney held by a relative of Victim No. 8. Defendant changed the direct
12 deposit on Victim No. 8's account to Defendant's account at another financial institution with
13 which she has a relationship. Funds deposited from Victim No. 8's dormant account into
14 Defendant's bank account identified to date total approximately \$90,681.89.

15 28. CalPERS is informed and believes and based thereon alleges that Victim No. 9
16 lives in a care facility and was or is under a power of attorney held by a relative of Victim No. 9.
17 Defendant changed the direct deposit on Victim No. 9's account to an account at another financial
18 institution to which Defendant has access. Funds deposited from Victim No. 9's dormant account
19 into an account to which Defendant has access identified to date total approximately \$208,606.30.

20 29. CalPERS is informed and believes and based thereon alleges that Defendant
21 changed the direct deposit on Victim No. 10's account to an account at another financial
22 institution to which Defendant has access. Funds were deposited from Victim No. 10's dormant
23 account into an account to which Defendant has access identified to date total approximately
24 \$145,854.38.

25 30. CalPERS discovered the foregoing information during an investigation of
26 Defendant that began in approximately January 2021.

27 31. Since discovering Defendant's activity, CalPERS has taken steps to protect all
28 member accounts to which Defendant had access during her employment at CalPERS.

1 32. Notices have been sent to all of Defendant's victims informing them of
2 Defendant's actions and access to their accounts. Of the approximately 9,400 dormant CalPERS
3 member accounts, only those identified in this Complaint, including the accounts belonging to
4 Victims 1-10, have been identified as having been impacted by Defendant's conduct. If a
5 CalPERS member has not received notice of Defendant's conduct, CalPERS is informed and
6 believes the member's account was not impacted by Defendant's conduct.

7 33. CalPERS investigators are working with law enforcement to ensure a full and
8 thorough investigation and prosecution of Defendant's alleged criminal behavior.

9 34. Defendant is no longer employed by CalPERS.

10 35. CalPERS brings this action against Defendant to recover the stolen funds.

11 36. As a direct and proximate result of Defendant's scheme and actions, CalPERS and
12 its members were injured and continue to be injured. More specifically, CalPERS has suffered
13 direct financial losses, including the reimbursements that CalPERS will make to its members for
14 the funds stolen from their accounts by Defendant and the personnel time and expense associated
15 with the extensive investigation CalPERS conducted after learning of Defendant's actions.
16 Because of its duties to protect its members and their assets, CalPERS has also retained counsel to
17 pursue relief via this lawsuit.

FIRST CAUSE OF ACTION

(Conversion)

20 37. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 36,
21 inclusive, of this Complaint and by reference thereto incorporates the same herein as though set
22 forth in full.

23 38. Defendant misappropriated and stole confidential and proprietary business
24 information and records belonging to CalPERS, misappropriated and stole private identifying
25 information of CalPERS members, and misappropriated and stole money from CalPERS members
26 located in accounts maintained by CalPERS or its members in an amount identified to date
27 totaling approximately \$685,692.

28 ///

1 39. CalPERS obviously never consented to Defendant's misappropriation of its
2 business records, and CalPERS is informed and believes, and based thereon alleges, that its
3 members never consented to Defendant's misappropriation of their private identifying information
4 and money.

5 40. As a direct and proximate result of Defendant's conduct, CalPERS and its affected
6 members will continue to suffer damages in an amount according to proof. CalPERS also seeks
7 punitive damages for Defendant's intentional, malicious, oppressive, and fraudulent conduct. At
8 the time Defendant converted the information and money described above, Defendant was guilty
9 of malice, fraud, oppression, and a willful, despicable, and conscious disregard of the possession
10 rights of CalPERS and its members in and to their property.

11 41. Defendant must immediately transfer to CalPERS any and all of the information
12 and property they converted, and must also provide CalPERS with fair compensation for the time
13 and money CalPERS expended in pursuit of the converted property.

14 42. WHEREFORE, CalPERS seeks relief as set forth in the Prayer below.

15 **SECOND CAUSE OF ACTION**

16 **(Breach of Fiduciary Duty)**

17 43. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 42,
18 inclusive, of this Complaint and by reference thereto incorporates the same herein as though set
19 forth in full.

20 44. As an employee of CalPERS, Defendant owed fiduciary duties to both CalPERS
21 and its members. The California Constitution and state law impose upon CalPERS and its
22 employees a fiduciary duty to provide benefits to its members and their beneficiaries and to
23 minimize the risk of loss and maximize the rate of return to its members and their beneficiaries.
24 Likewise, California statutory law provides that an employee of CalPERS shall not use CalPERS
25 funds or deposits in any manner except to make current and necessary payments authorized by
26 CalPERS. Moreover, California statutory law requires that CalPERS and its employees shall
27 discharge their duties with respect to the retirement system solely in the interest of CalPERS'
28 participants and beneficiaries. As an employee of CalPERS with access to participants'

1 confidential identifying and financial information, Defendant owed these duties to CalPERS
2 members and to CalPERS itself.

3 45. In the alternative, CalPERS is subrogated to the fiduciary duties owed by
4 Defendant to her CalPERS member victims. CalPERS will be reimbursing Defendant's victims to
5 compensate Defendant's victims for her conversion, breaches of fiduciary duty, and fraud;
6 CalPERS is not reimbursing Defendant's victims as a volunteer; CalPERS is not primarily liable
7 for the debt owed by Defendant to her victims as a result of Defendant's conversion, breaches of
8 fiduciary duty, and fraud; the entire amount owed to Defendant's victims will be reimbursed by
9 CalPERS; and subrogation will not work an injustice to the rights of others. Thus, CalPERS is a
10 subrogee with the same rights as an assignee of Defendant's victims' claims for breach of
11 fiduciary duty against Defendant.

12 46. Defendant breached her fiduciary duties as described above by inappropriately
13 accessing CalPERS members' confidential identifying and financial information; by using
14 CalPERS members' funds or deposits to make payments to herself and her relatives instead of
15 using the funds only to make current and necessary payments authorized by CalPERS; and by
16 discharging her employment duties in a manner wholly inconsistent with the interest of CalPERS
17 and CalPERS' participants and beneficiaries.

18 47. Defendant's conduct has injured CalPERS and its members by depriving
19 Defendant's victims of funds to which they are entitled, by depriving CalPERS of its funds
20 expended on investigating and addressing Defendant's conduct, and by causing CalPERS to
21 expend funds to reimburse Defendant's victims for the funds converted and fraudulently stolen by
22 Defendant.

23 48. As a direct and proximate result of Defendant's conduct, CalPERS and its affected
24 members will continue to suffer damages in an amount according to proof. CalPERS also seeks
25 punitive damages for Defendant's intentional, malicious, oppressive, and fraudulent conduct. At
26 the time Defendant breached her fiduciary duties, Defendant was guilty of malice, fraud,
27 oppression, and a willful, despicable, and conscious disregard of the possession rights of CalPERS
28 and its members in and to their property.

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49. WHEREFORE, CalPERS seeks relief as set forth in the Prayer below.

THIRD CAUSE OF ACTION

(Fraud)

50. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 49, inclusive, of this Complaint and by reference thereto incorporates the same herein as though set forth in full.

51. As described above, Defendant owed duties to CalPERS and its members to: provide benefits to its members and their beneficiaries and to minimize the risk of loss and maximize the rate of return to its members and their beneficiaries; not use CalPERS funds or deposits in any manner except to make current and necessary payments authorized by CalPERS; and to discharge her employment duties with respect to the retirement system solely in the interest of CalPERS' participants and beneficiaries. Thus, Defendant had a duty to disclose to CalPERS all material facts relating to her employment with CalPERS and her actions as an employee that involved her access to the confidential identifying and financial information of CalPERS members.

52. CalPERS is informed and believes and based thereon alleges that, beginning as early as July 2017 and continuing through at least January 2021, Defendant intentionally failed to disclose and concealed from CalPERS that she was accessing the confidential identifying and financial information of the victims identified above to either: (1) use the accounts at the victim's financial institutions to make payments on Defendant's or Defendant's relative's credit accounts; or (2) use her access to the victim's confidential identifying and financial information to change the direct deposit information on the victim's dormant accounts to Defendant's accounts at other financial institutions and thereby transfer the victim's funds to Defendant's own accounts or accounts to which Defendant had access.

53. Defendant intentionally failed to disclose and concealed this information from CalPERS when the facts discussed immediately above were known only to Defendant and there was no way for CalPERS to discover those facts.

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1 54. CalPERS was not aware of Defendant's concealment until approximately January
2 2021, when an investigation into Defendant's conduct and employment was commenced.

3 55. Defendant intended to deceive CalPERS by concealing these facts, knowing that
4 the revelation of these facts would lead to termination of her employment and possible criminal
5 liability. Moreover, CalPERS investigation has revealed that, at least as to Victim No. 1,
6 Defendant did not enter certain participant notes in Victim No. 1's myCalPERS account and failed
7 to scan certain documents received by CalPERS related to Victim No. 1 into Victim No. 1's
8 myCalPERS account. CalPERS is informed and believes and based thereon alleges that
9 Defendant did not comply with her normal duties as an employee so as to conceal her actions from
10 CalPERS.

11 56. Had the concealed facts regarding Defendant's actions been revealed to CalPERS
12 as they should have been, CalPERS would have taken immediate action to terminate Defendant
13 and protect Defendant's victims and potential victims. CalPERS could have thus avoided the
14 damage to its members and itself caused by Defendant's unlawful use of CalPERS members'
15 funds.

16 57. Defendant's conduct therefore harmed CalPERS by necessitating the
17 reimbursement to Defendant's victims of the funds stolen by Defendant and by causing CalPERS
18 to incur the personnel time and expense associated with the extensive investigation CalPERS
19 conducted after learning of Defendant's actions. Defendant's conduct was thus a substantial factor
20 in causing harm to CalPERS.

21 58. As a direct and proximate result of Defendant's conduct, CalPERS and its
22 affected members will continue to suffer damages in an amount according to proof. CalPERS also
23 seeks punitive damages for Defendant's intentional, malicious, oppressive, and fraudulent
24 conduct. At the time Defendant engaged in the conduct described above, Defendant was guilty of
25 malice, fraud, oppression, and a willful, despicable, and conscious disregard of the possession
26 rights of CalPERS and its members in and to their property.

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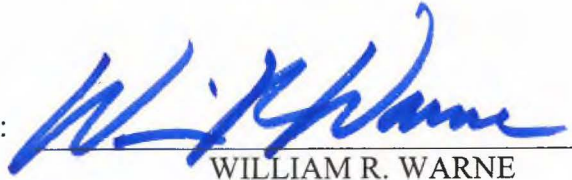
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- 8. For costs of suit incurred herein;
- 9. For such other relief as the Court deems just and proper.

DATED: April 16, 2021

DOWNEY BRAND LLP

By: 

WILLIAM R. WARNE
BRADLEY C. CARROLL
PAUL H. TRACY
Attorneys for Plaintiff
CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

DOWNEY BRAND LLP