

# VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

## BOARD OF RETIREMENT

### DISABILITY MEETING

March 7, 2016

#### AGENDA

**PLACE:** Ventura County Government Center  
Hall of Administration- 3<sup>rd</sup> Floor Multipurpose Room  
800 S. Victoria Ave.  
Ventura, CA 93009

**TIME:** 9:00 a.m.

*Members of the public may comment on any item under the Board's jurisdiction by filling out a speaker form and presenting it to the Clerk. Unless otherwise directed by the Chair, comments related to items on the agenda will be heard when the Board considers that item. Comments related to items not on the agenda will generally be heard at the time designated for Public Comment.*

#### **ITEM:**

- |      |   |                    |
|------|---|--------------------|
| I.   | <b><u>CALL TO ORDER</u></b>   | Master<br>Page No. |
| II.  | <b><u>APPROVAL OF AGENDA</u></b>  | 1 – 3              |
| III. | <b><u>APPROVAL OF MINUTES</u></b>   |                    |
|      | A. Business Meeting of February 22, 2016.   | 4 – 12             |
| IV.  | <b><u>RECEIVE AND FILE PENDING DISABILITY APPLICATION<br/>STATUS REPORT</u></b>                 | 13 – 46            |
| V.   | <b><u>APPLICATIONS FOR DISABILITY RETIREMENT</u></b>  |                    |
|      | A. Application for Service Connected Disability Retirement, Nadon,<br>David J.; Case No. 11-008 | 47 – 66            |
|      | 1. Memo from County Counsel, dated March 7, 2016  |                    |
|      | 2. Ruling on Petition for Writ of Mandate   |                    |

**V. APPLICATIONS FOR DISABILITY RETIREMENT (continued)**

- A. 3. Notice of Entry of Judgement-Granting Peremptory Writ of Mandamus
- 4. Minute Order-Attorney's fees
- 5. Hearing Notice served on February 4, 2016.
  
- B. Application for Service Connected Disability Retirement, 67 – 224  
Zaslove, Scott; Case No. 14-022
  - 1. Application for Service Connected Disability Retirement
  - 2. Medical Analysis and Recommendation by County of Ventura, Risk Management, to grant Application for Service Connected Disability Retirement and supporting documentation.
  - 3. Hearing Notice served on February 5, 2016.
  
- C. Application for Non-Service Connected Disability Retirement, 225 – 314  
Mora, Arthur R.; Case No. 15-021
  - 1. Application for Non-Service Connected Disability Retirement
  - 2. Medical Analysis and Recommendation by County of Ventura, Risk Management to grant Application for Non-Service Connected Disability Retirement and supporting documentation.
  - 3. Hearing Notice served on February 23, 2016.
  
- D. Application for Non-Service Connected Disability Retirement, 315 – 348  
Regalado, Roseann R.; Case No. 15-017
  - 1. Application for Non-Service Connected Disability Retirement
  - 2. Medical Analysis and Recommendation by County of Ventura, Risk Management to grant Application for Non-Service Connected Disability Retirement and supporting documentation.
  - 3. Hearing Notice served on February 23, 2016.

**VI. NEW BUSINESS**

- A. SACRS Board of Directors 2016-17 Elections Recommended Ballot 349 – 350

**VII. OLD BUSINESS**

- A. AB 1291 Position Update

**VIII. INFORMATIONAL**

- A. Letter to Court of Appeal, Joining in OCERS' Request for Publication of Astorga v. Board of Retirement of the Santa Barbara County Employees Retirement System; Case No. B263325; Santa Barbara County Superior Court Case No. 1468905 351 – 359
1. Published Opinion 360 – 368
- B. Save the Date - NEPC's 21<sup>st</sup> Annual Investment Conference, May 10 – 11, 2016, Boston, MA 369 – 371

**IX. PUBLIC COMMENT**

**X. STAFF COMMENT**

**XI. BOARD MEMBER COMMENT**

**XII. ADJOURNMENT**

# VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

## BOARD OF RETIREMENT

### BUSINESS MEETING

February 22, 2016

### MINUTES

**DIRECTORS** Tracy Towner, Chair, Alternate Safety Employee Member  
**PRESENT:** William W. Wilson, Vice Chair, Public Member  
Steven Hintz, Treasurer-Tax Collector  
Peter C. Foy, Public Member  
Mike Sedell, Public Member  
Joseph Henderson, Public Member  
Deanna McCormick, General Employee Member  
Craig Winter, General Employee Member  
Chris Johnston, Safety Employee Member  
Arthur E. Goulet, Retiree Member  
Will Hoag, Alternate Retiree Member

**DIRECTORS** None.  
**ABSENT:**

**STAFF** Linda Webb, Retirement Administrator  
**PRESENT:** Lori Nemiroff, Assistant County Counsel  
Dan Gallagher, Chief Investment Officer  
Chantell Garcia, Retirement Benefits Specialist  
Stephanie Caiazza, Program Assistant

**PLACE:** Ventura County Government Center  
Hall of Administration- 3<sup>rd</sup> Floor Multipurpose Room  
800 S. Victoria Ave.  
Ventura, CA 93009

**TIME:** 9:00 a.m.

**ITEM:**

**I. CALL TO ORDER**

Chair Towner called the Business Meeting of February 22, 2016, to order at 9:00 a.m.

**II. APPROVAL OF AGENDA**

**MOTION:** Approve.

Moved by Henderson, seconded by Wilson.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Johnston, Henderson, Sedell, Winter, Wilson

No: -

Absent: Foy

**III. APPROVAL OF MINUTES**

A. Disability Meeting of February 22, 2016.

Staff confirmed that the minutes would be corrected to list Trustee Sedell's name in each vote.

**MOTION:** Approve, as amended.

Moved by Henderson, seconded by Johnston.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Johnston, Henderson, Sedell, Winter, Wilson

No: -

Absent: Foy

**IV. CONSENT AGENDA**

A. Approve Regular and Deferred Retirements and Survivors Continuances for the Month of January 2016.

B. Receive and File Report of Checks Disbursed in January 2016.

- C. Receive and File Statement of Fiduciary Net Position, Statement of Changes in Fiduciary Net Position, Schedule of Investments and Cash Equivalents, and Schedule of Investment Management Fees for the Period Ending December 31, 2015.
- D. Receive and File Budget Summary for FY 2015-16 Month Ending January 31, 2016.

MOTION: Approve the Consent Agenda.

Moved by Henderson, seconded by Johnston.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Johnston, Henderson, Sedell, Winter, Wilson

No: -

Absent: Foy

**V. INVESTMENT MANAGER PRESENTATIONS**

- A. Receive Annual Investment Presentation, Prudential Real Estate Investors – PRISA, Mark A. Oczkus, Executive Director, and Jeremy S. Keenan, Vice President.

Mark A. Oczkus and Jeremy S. Keenan were present on behalf of Prudential Real Estate Investors – PRISA to provide an organizational and investment performance update.

Trustee Foy arrived at 9:11 a.m.

- B. Receive Annual Investment Presentation, UBS Asset Management, Thomas C. Klugherz, Executive Director.

Thomas C. Klugherz and Megan Burroughs were present on behalf of UBS Asset Management to provide an organizational and investment performance update.

MOTION: Receive and file items V.A. and V.B.

Moved by Wilson, seconded by Hintz.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Foy, Johnston, Henderson, Sedell, Winter, Wilson

No: -

VI. INVESTMENT INFORMATION

- A. NEPC – Dan LeBeau, Consultant  
Dan Gallagher, VCERA Chief Investment Officer

1. Presentation of Investment Performance Report Quarter Ending December 31, 2015.

After discussion by the Board, staff, and consultant, the following motion was made:

MOTION: Receive and file.

Moved by Wilson, seconded by Goulet.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Foy, Johnston, Henderson, Sedell,  
Winter, Wilson

No: -

2. Preliminary Performance Report Month Ending January 31, 2016

The Board discussed possible changes to VCERA's international exposure. Chair Towner proposed that the Board review the new capital market assumptions and consider the implications at the March 21, 2016 business meeting, and continue the discussion of international exposure at the April 18, 2016 business meeting, if needed.

MOTION: Receive and file.

Moved by McCormick, seconded by Winter.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Foy, Johnston, Henderson, Sedell,  
Winter, Wilson

No: -

3. Prudential Fee Structure Change

a. Memo from Staff

b. Memo from NEPC

c. Letter and Executive Summary from Prudential

After discussion by the Board and representatives from Prudential, the following motion was made:

MOTION: Receive and file.

Moved by Wilson, seconded by Henderson.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Foy, Henderson, Sedell,  
Winter, Wilson

No: Johnston

After further discussion, the following motion was made:

MOTION: Direct Prudential to bring the fee structure change back before the Board if it is not instituted globally.

Moved by Sedell, seconded by Goulet.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Foy, Johnston, Henderson,  
Sedell, Winter, Wilson

No: -

4. Report on PIMCO Institute  
Submitted by Chair Towner and CIO Dan Gallagher

MOTION: Receive and file.

Moved by Henderson, seconded by Wilson.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Foy, Johnston, Henderson,  
Sedell, Winter, Wilson

No: -

## **VII. OLD BUSINESS**

- A. AB1291 Update by Chair Towner

Chair Towner provided an update on the implementation of AB1291, stating that the vendors were in the process of updating their contracts with Ventura County HR to include VCERA's employees.



**VIII. NEW BUSINESS**

A. Review of 2015 Board Member Education Compliance

1. Board Education Compliance Report for 2015

Ms. Webb requested that the trustees provide any necessary additions or corrections by the end of the week before the report is posted to the VCERA website.

The following motion was made:

MOTION: Receive and file the compliance report for 2015, and authorize staff to make any necessary corrections and post in compliance with Government Code Section 31522.8.

Moved by Sedell, seconded by Winter.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Foy, Johnston, Henderson, Sedell,  
Winter, Wilson

No: -

B. Mid-Year Budget Update for FY 2015-16

After discussion by the Board, the following motion was made:

MOTION: Receive and file.

Moved by Goulet, seconded by Sedell.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Foy, Johnston, Henderson, Sedell,  
Winter, Wilson

No: -

C. VCERA Cost-of-Living Adjustments (COLA) as of April 1, 2016.

Ms. Webb said that the pending consideration of CPI methodology as it relates to retiree COLAs for future years would likely be brought back to the Board in April. Staff was coordinating a communication to potentially impacted members and retirees explaining the two methods being considered to allow them an opportunity to provide comment or input.

MOTION: Approve.

Moved by Henderson, seconded by Wilson.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Foy, Johnston, Henderson,  
Sedell, Winter, Wilson

No: -

- D. Recommendation to Approve Chair Towner's Attendance at the IFEBP Wharton School International and Emerging Market Investing, July 25 – 27, 2016, San Francisco, CA

Trustee Goulet and Trustee Johnston stated that they would also like to obtain Board approval to register for the course.

MOTION: Approve Chair Towner, Trustee Goulet, and Trustee Johnston's attendance at the IFEBP Wharton School course on International and Emerging Market Investing.

Moved by Sedell, seconded by Foy.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Foy, Johnston, Henderson, Sedell,  
Winter, Wilson

No: -

- E. Recommendation to Approve Trustee Goulet's Attendance at the 2016 Pension Bridge Annual Conference, April 6 – 7, 2016, San Francisco, CA

MOTION: Approve.

Moved by Henderson, seconded by Winter.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Foy, Johnston, Henderson, Sedell,  
Winter, Wilson

No: -

- F. Ventura County Employees' Retirement Information System (VCERIS) Pension Administration Project Monthly Status Update- January 2016

After discussion by the Board, the following motion was made:

MOTION: Receive and file.

Moved by Henderson, seconded by Winter.

Vote: Motion carried

Yes: Goulet, Hintz, McCormick, Foy, Johnston, Henderson, Sedell,  
Winter, Wilson

No: -

**IX. PUBLIC COMMENT**

None.

**X. STAFF COMMENT**

Ms. Webb stated that the discussion of meal reimbursements that was tabled on February 1, 2016 will be continued at the April 4, 2016 disability meeting during the review of the Education and Travel Policy.

Ms. Webb informed the Board that Ventura County CFO Catherine Rodriguez requested to meet with John Monroe of Segal Consulting in order to review VCERA's 2015 Actuarial Valuation in more detail. Ms. Webb stated that the meeting was scheduled for February 24, 2016, and that both she and Ms. Nemiroff will be in attendance, as well as several Ventura County staff invited by Ms. Rodriguez.

Ms. Webb informed the Board that she will not be present at the March 7, 2016 Disability Meeting because she will be attending the CALAPRS General Assembly on that date.

Mr. Gallagher distributed a handout displaying 50 years of investment returns and volatility over rolling 1, 2, 3, and 4 year periods.

**XIII. BOARD MEMBER COMMENT**

Staff distributed Trustee Goulet's report on the CALAPRS Trustees' Roundtable that took place in Burbank on February 5, 2016. Trustee Goulet noted that the report was submitted on time for inclusion in the Board's agenda materials.

**XIV. ADJOURNMENT**

The Chairman adjourned the meeting at 11:29 a.m.

Respectfully submitted,



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LINDA WEBB, Retirement Administrator

Approved,

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TRACY TOWNER, Chairman

February 22, 2016

To: SACRS Trustees & SACRS Administrators/CEO's  
 From: Ray McCray, SACRS Immediate Past President, Nominating Committee Chair  
 SACRS Nominating Committee  
 Re: SACRS Board of Director Elections – Recommended Ballot - 2016-2017 BOD  
 Elections

SACRS BOD 2016-2017 election process began January 2016. Please review the following timeline and distribute the recommended ballot to your Board of Trustees, per the bylaws:

DEADLINE	DESCRIPTION
February 1, 2016	Nominating Committee receives nominations from SACRS membership
March 1, 2016	Nominating Committee submits its recommended ballot to each 1937 Act Board
March 25, 2016	Nominating Committee receives nominations from any 1937 Act Board
April 1, 2016	Nominating Committee submits final ballot to each 1937 Act Board – ballot consists of recommended ballot plus anybody else who is nominated but not recommended by the NC
May 13, 2016	Conduct elections during the SACRS Business Meeting (at end of the May 2016 conference)
May 13, 2016	Board of Directors take office for 1 year

Per SACRS Bylaws, Article VI ~ Section 2 – Election, Qualification and Term of Office

“The officers of SACRS shall be regular members of SACRS. The officers shall be elected by majority vote of the quorum of delegates and alternate delegates present at the first meeting in each calendar year and shall hold office for one (1) year and until a successor is elected.”

Per SACRS Bylaws, Article VI ~Section 4 - Officer Elections

“...The Board of any regular member County Retirement System may submit write-in candidates to be included in the Nominating Committee’s final ballot provided the Nominating Committee receives those write-in candidates prior to March 25th. The Nominating Committee will report a final ballot to each regular member County Retirement System prior to April 1.

The Administrator of each regular member County Retirement System shall be responsible for communicating the Nominating Committee’s recommended ballot and final ballot to each trustee and placing the election of SACRS Officers on his or her Board agenda. The Administrator shall acknowledge the completion of these responsibilities with the Nominating Committee...”

Below is the recommended ballot, as in the past, a voting delegate may entertain a motion to vote by individual officer positions or by complete ballot. Please be sure to authorize your voting delegate to vote either way.

The elections will be held at the SACRS Spring Conference May 10-13, 2016, at the Westin South Coast Plaza Hotel in Costa Mesa. Elections will be held during the Annual Business meeting on Friday, May 13, 2016.

Please distribute the recommended ballot to all standing/eligible board members for approval and authorization for your voting delegate. As stated above, Administrators are required to send acknowledgement of completion to our office at [sulema@sacrs.org](mailto:sulema@sacrs.org).

SACRS Nominating Committee recommended ballot for SACRS BOD 2016-2017 elections:

<b>President</b>	Dan McAllister, San Diego CERA
<b>Vice President</b>	Gabe Rodrigues, Contra Costa CERA
<b>Treasurer</b>	Larry Walker, San Bernardino CERA
<b>Secretary</b>	Art Goulet, Ventura CERA

If you have any questions or require assistance, please contact me directly at (209) 468-2163 or [rayml@sbcglobal.net](mailto:rayml@sbcglobal.net). Thank you for your prompt attention to this timely matter.

Sincerely,

*Raymond McCray*

Raymond McCray, San Joaquin County  
SACRS Nominating Committee Chair

CC: SACRS Board of Directors  
SACRS Nominating Committee Members  
Sulema H. Peterson, SACRS Administrator

**MEMORANDUM  
COUNTY OF VENTURA  
COUNTY COUNSEL'S OFFICE**

March 7, 2016

TO: Members, Board of Retirement

FROM: Lori A. Nemiroff, Assistant County Counsel *LAN*

RE: *ASTORGA v. BOARD OF RETIREMENT OF THE SANTA BARBARA COUNTY EMPLOYEES RETIREMENT SYSTEM*; Case No. B263325; Santa Barbara County Superior Court Case No. 1468905

**EXECUTIVE SUMMARY**

The purpose of this memorandum is to notify your Board that the Ventura County Employees' Retirement Association ("VCERA") submitted a letter to the Court of Appeal for Division 6 of the Second Appellate District, joining with the Orange County Employees' Retirement System ("OCERS") in a request that the court publish its recent decision in the case of *Astorga v. Board of Retirement of the Santa Barbara County Employees Retirement System* ("*Astorga*"). The *Astorga* decision clarifies the rules for determining the effective date of a disability retirement under Government Code section 31724, contained in the County Employees Retirement Law of 1937 ("CERL"). Pursuant to section 31724, the effective date of a disability retirement is the date following the day the member last received "regular compensation." In *Astorga*, the court ruled that "regular compensation" includes compensation paid to the employee during time off, in the form of sick leave or vacation pay, even when paid in increments over a period of time. On March 2, 2016, we received notice that the court has decided to publish the *Astorga* decision.

**DISCUSSION**

On February 2, 2016, the Court of Appeal for Division 6, Second Appellate District, issued an unpublished decision in the *Astorga* case, concerning the determination of the effective date of disability retirement under Government Code section 31724. Several CERL systems expressed interest in requesting publication of *Astorga* so that the case may serve as precedent and support for the manner in which the systems currently treat vacation and sick leave in the determination of the effective date of a disability retirement. The deadline for requesting publication of this case was February 22, 2016.

***ASTORGA V. BOARD OF RETIREMENT***

MASTER PAGE NO. 351

Upon recommendation by Board Counsel, VCERA's Retirement Administrator and Board Chair authorized the submission of a letter to request publication. In a coordinated effort, VCERA submitted a letter to the court, joining in the letter submitted by OCERS. The Sonoma County Employees' Retirement Association ("SCERA") and the Tulare County Employees' Retirement Association ("TCERA") also joined in OCERS's letter. Copies of OCERS's letter and the accompanying joinder letters by VCERA, SCERA and TCERA are attached. Separate letters requesting publication have been filed by the Santa Barbara County Employees' Retirement System ("SBCERS"), the Los Angeles County Employees' Retirement Association and the Alameda County Employees' Retirement Association.

In *Astorga*, the applicant elected to remain on payroll during the time her disability retirement application was pending, in order to receive increments of sick leave and vacation pay so that together with State Disability Insurance, she could receive 80 percent of her pre-injury compensation. This also allowed her to remain on the county's health insurance and continue to accrue leave time. When the SBCERS Board granted her application, it determined the effective date to be the date after she received her last sick leave, vacation or holiday payment. *Astorga* contended that the effective date should be calculated based on the day her sick leave, vacation and holiday pay balances would have been exhausted had she taken them in full rather than in smaller increments.

The trial court denied *Astorga's* petition for writ of mandate, finding that the SBCERS Board had correctly determined the effective date of retirement. The Court of Appeal affirmed the trial court's decision, but designated the opinion as unpublished. Pursuant to the California Rules of Court, any person may request publication by showing that the decision meets a standard for certification. (Cal. Rules of Court, rule 8.1120.) Seven CERL systems submitted letters, requesting publication, on the grounds that the decision (1) applies existing law to a set of facts significantly different from those stated in published decisions; (2) advances clarification of a statute; and (3) involves a legal issue of continuing public interest. (See Cal. Rules of Court, rule 8.1105(c).)

In sum, the *Astorga* decision clarifies that CERL systems are not obligated to "compress" leave time taken in small increments into full pay periods for purposes of calculating the effective date of a disability retirement. VCERA's practice for



Members, Board of Retirement  
March 7, 2016  
Page 3

determining the effective date of disability retirement is consistent with the decision in *Astorga*, and publication of the decision will prove to be beneficial.

LAN:pt  
Attachments  
pc: Linda Webb, Retirement Administrator

Direct Line: (714) 569-4885  
Facsimile: (714) 569-4883

February 18, 2016

*Serving the Active and  
Retired Members of:*

CITY OF SAN JUAN  
CAPISTRANO

COUNTY OF ORANGE

ORANGE COUNTY  
CEMETERY DISTRICT

ORANGE COUNTY  
CHILDREN & FAMILIES  
COMMISSION

ORANGE COUNTY  
DEPARTMENT OF  
EDUCATION (CLOSED TO  
NEW MEMBERS)

ORANGE COUNTY  
EMPLOYEES  
RETIREMENT SYSTEM

ORANGE COUNTY FIRE  
AUTHORITY

ORANGE COUNTY IN-HOME  
SUPPORTIVE SERVICES  
PUBLIC AUTHORITY

ORANGE COUNTY LOCAL  
AGENCY FORMATION  
COMMISSION

ORANGE COUNTY PUBLIC  
LAW LIBRARY

ORANGE COUNTY  
SANITATION DISTRICT

ORANGE COUNTY  
TRANSPORTATION  
AUTHORITY

SUPERIOR COURT OF  
CALIFORNIA, COUNTY  
OF ORANGE

TRANSPORTATION  
CORRIDOR AGENCY

UCI MEDICAL CENTER  
(CLOSED TO NEW  
MEMBERS)

California Court of Appeal  
Second Appellate District, Division Six  
Court Place  
200 East Santa Clara Street  
Ventura, CA 93001

Re: Request for Publication  
Case Name: *Astorga v. Retirement Board of the Santa Barbara County  
Employees Retirement System*  
Case No.: B263325  
Sup. Ct. Case No.: 1468905 (Santa Barbara County)

Dear Court:

The Board of Retirement of the Orange County Employees Retirement System ("OCERS") respectfully requests publication of the Opinion in the above-referenced case, which the court issued on February 2, 2016. This request is being made pursuant to Cal. Rules of Court, rule 8.1120.

OCERS requests publication of the Opinion because the Opinion meets the criteria for publication set forth in Cal. Rules of Court, rule 8.1105 (c). Specifically, the Opinion should be published for the following reasons:

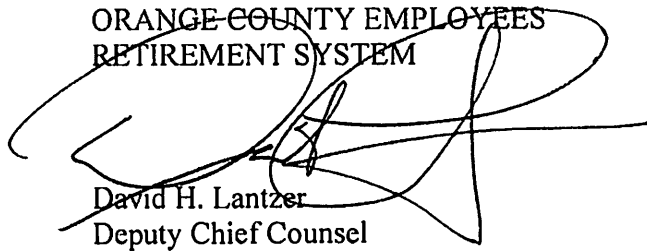
- The Opinion applies existing law to a set of facts significantly different than those stated in published opinions. The Opinion clarifies the holding of *Katosh v. Sonoma County Employees' Retirement Assn.* (2008) 163 Cal.App.4th 56 by refining the definition of "regular compensation" in Gov. Code § 31724 and applying that definition to a circumstance not presented in *Katosh*, the use of paid leave in small regular increments over multiple pay periods.
- The Opinion advances the clarification of a statute. Government Code § 31724 has been the subject of multiple litigation throughout the state. OCERS and other county retirement systems operating under the County Employees Retirement Law of 1937 ("CERL") will benefit from this court's clarification of the statute. Specifically, the ruling clarifies that CERL systems are not obligated to "compress" leave time taken in small increments into full pay periods for purposes of calculating the effective date of disability retirement.

- The Opinion involves a legal issue of continuing public interest. Retirement systems that operate under the CERL have been established in 20 counties in California – including Los Angeles County, Orange County, San Bernardino County, San Diego County, Ventura County, Alameda County, Sacramento County, and Marin County. CERL system membership totals more than 400,000 active and retired employees. Issues regarding the calculation of the effective date of disability retirement arise in those systems frequently. Therefore, publication of the Opinion will have an impact on a sizeable number of people throughout the state.

For the foregoing reasons, respondent OCERS respectfully requests that the court order the publication of its Opinion. Thank for your consideration of this matter.

Sincerely,

ORANGE COUNTY EMPLOYEES  
RETIREMENT SYSTEM

A large, stylized handwritten signature in black ink, overlapping the typed name and title below it.

David H. Lantzer  
Deputy Chief Counsel



## SONOMA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

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433 Aviation Boulevard, Suite 100, Santa Rosa, CA 95403  
Tel: (707) 565-8100 / Fax: (707) 565-8102 / [www.scretire.org](http://www.scretire.org)

February 17, 2016

California Court of Appeal  
Second Appellate District, Division Six  
200 East Santa Clara Street  
Ventura, CA 93001

RE: Publication request for *Astorga v. Retirement Board of the Santa Barbara Employees Retirement System*; Court of Appeal of California, Second Appellate District, Division Six, case number B263325

Dear Honorable Justices of the Court of Appeal:

The Sonoma County Employees' Retirement Association (SCERA) joins with the Orange County Employees' Retirement System (OCERS) in its letter dated February 18, 2016 requesting publication of the following case: *Astorga v. Retirement Board of the Santa Barbara Employees Retirement System*, Court of Appeal of California, Second Appellate District, Division Six, case number B263325. SCERA agrees with the reasoning set forth in OCERS' correspondence and respectfully requests that the court grant the request for publication.

Very truly yours,

  
Julie Wyne  
Retirement Administrator

**LEROY SMITH**  
COUNTY COUNSEL

**MICHAEL G. WALKER**  
CHIEF ASSISTANT

**ALBERTO BOADA**  
PRINCIPAL ASSISTANT



**ASSISTANTS**

Linda K. Ash	Roberto R. Orellana
Jeffrey E. Barnes	John E. Polich
Charmaine Buchner	Marina Porche
Mitchell B. Davis	Joseph J. Randazzo
Emily T. Gardner	Jaclyn Smith
Alison L. Harris	Matthew A. Smith
Cynthia Krause	Linda L. Stevenson
Ronda McKaig	Thomas W. Temple
Ilene F. Mickens	Eric Walts
Lori A. Nemiroff	Anthony A. Zepeda

**COUNTY COUNSEL**

COUNTY GOVERNMENT CENTER  
800 SOUTH VICTORIA AVENUE, L/C #1830  
VENTURA, CALIFORNIA 93009  
PHONE NO. (805) 654-2580  
FAX NO. (805) 654-2185

February 16, 2016

California Court of Appeal  
Second Appellate District, Division Six  
200 East Santa Clara Street  
Ventura, California 93001

Re: Request for Publication; *Astorga v. Retirement Board of the Santa Barbara County Employees Retirement System*; Case No. B263325; Santa Barbara County Superior Court Case No. 1468905

Dear Honorable Justices of the Court of Appeal:

The Board of Retirement of the Ventura County Employees' Retirement Association ("VCERA") has authorized me to notify the court that VCERA joins with the Orange County Employees Retirement System ("OCERS") in its letter dated February 18, 2016, requesting publication of *Astorga v. Retirement Board of the Santa Barbara County Employees Retirement System*, referenced above, pursuant to California Rules of Court, rule 8.1120. VCERA respectfully requests that the court grant the request for publication on the grounds and for the reasons set forth in OCERS' correspondence.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lori A. Nemiroff".

LORI A. NEMIROFF  
Assistant County Counsel

LAN:se



COUNTY OF TULARE  
BOARD OF RETIREMENT

David J. Kehler  
Retirement Administrator

136 N. AKERS STREET  
VISALIA, CA 93291

TELEPHONE (559) 713-2900  
FAX (559) 730-2631  
WEBSITE: [www.tccra.org](http://www.tccra.org)

February 11, 2016

California Court of Appeal  
Second Appellate District, Division Six  
Court Place  
200 East Santa Clara Street  
Ventura, CA 93001

Re: Request for Publication  
Case Name: *Astorga v. Retirement Board of the Santa Barbara County Employees Retirement System*  
Case No.: B263325  
Sup. Ct. Case No.: 1468905 (Santa Barbara County)

May it please the Court:

The Tulare County Employees' Retirement Association (TCERA) joins with the Orange County Employees Retirement System ("OCERS") in its letter dated February 18, 2016 requesting publication of the above referenced case.

TCERA agrees with the reasoning set forth in OCERS' correspondence and respectfully requests that the court grant the request for publication.

Very truly yours,

A handwritten signature in black ink that reads "David J. Kehler".

David J. Kehler  
Retirement Administrator

RECEIVED

FEB 16 2016

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**PROOF OF SERVICE**

I do hereby declare that I am employed in the County of Orange, over 18 years old and that my business address is 2223 Wellington Avenue, Santa Ana, California. I am not a party to the within action.

On February 18, 2016, I served the foregoing **OCERS REQUEST FOR PUBLICATION; SCERA REQUEST TO JOIN OCERS REQUEST FOR PUBLICATION; VCERA REQUEST TO JOIN OCERS REQUEST FOR PUBLICATION; TCERA REQUEST TO JOIN OCERS REQUEST FOR PUBLICATION** on all parties to this action by placing a true copy of said document in a sealed envelope in the following manner:

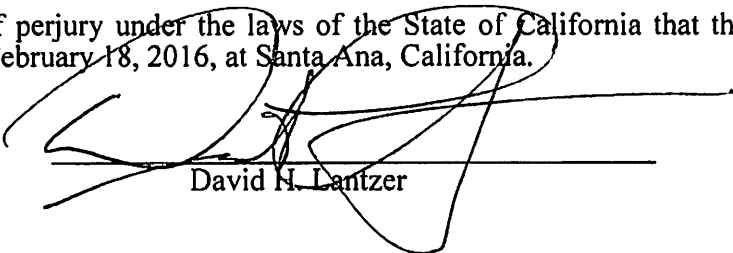
(BY U.S. MAIL) I placed such envelope(s) addressed as shown below for collection and mailing at Santa Ana, California following our ordinary business practices. I am readily familiar with this office's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

(BY AIRBORNE EXPRESS) I placed such envelope(s) addressed as shown below for collection and delivery by Airborne Express with delivery fees paid or provided for in accordance with this office's practice. I am readily familiar with this office's practice for processing correspondence for delivery the following day by Airborne Express.

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(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 18, 2016, at Santa Ana, California.

  
\_\_\_\_\_  
David H. Lantzer

**NAME AND ADDRESS OF EACH PERSON TO WHOM SERVICE WAS MADE**

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The Honorable Donna D. Geck Department 4  
Santa Barbara County Superior Court  
Anacapa Division  
P. O. Box 21107  
Santa Barbara, CA 93121-1107

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

DIVISION SIX

SARA ASTORGA,  
Plaintiff and Appellant,

v.

RETIREMENT BOARD OF THE SANTA  
BARBARA COUNTY EMPLOYEES  
RETIREMENT SYSTEM,  
Defendant and Respondent.

2d Civil No. B263325  
(Super. Ct. No. 1468905)  
(Santa Barbara County)

Sara Astorga applied for retirement disability. To maintain health insurance pending the decision on her application, she elected to remain on the payroll and receive her accrued sick leave, vacation and holiday pay in small but regular increments.

The Retirement Board of the Santa Barbara County Employees Retirement System (Board) approved Astorga's disability retirement application. Government Code section 31724<sup>1</sup> states that a disability retirement may not commence until the day following the last day the applicant received "regular compensation." The Board determined the effective date of her retirement was the day after she received her last sick leave, vacation or holiday payment. It rejected her argument that the effective date

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<sup>1</sup> All statutory references are to the Government Code unless otherwise stated.



should be calculated based on the day her sick leave, vacation and holiday pay balances would have been exhausted had she taken them in full rather than in smaller increments.

Astorga petitioned for a writ of mandate. (Code Civ. Proc., § 1094.5.) The trial court denied the petition, concluding that the Board correctly calculated Astorga's effective date of disability retirement. We affirm.

#### FACTS AND PROCEDURAL BACKGROUND

Astorga began working for the County of Santa Barbara (County) on September 11, 1995. She ceased working on November 18, 2011 and applied for disability retirement on December 19, 2011. At that time, she was provided with a copy of the Board's Guidelines for Disability Effective Dates (Guidelines), which define "regular compensation" to mean "compensation of any kind or amount that the employer pays (a) at the member's regular rate of pay, (b) for employment in the member's regular position, and (c) for actually working, or for an absence from work."

Prior to her last day of work, Astorga had taken periods of leave for which she received State Disability Insurance (SDI) payments. During the periods she received SDI, Astorga "executed a document electing to receive a portion of her accrued sick leave, overtime, holiday and vacation loan balances to be 'integrated' with her SDI payments such that the combined benefit would equal 80% of her regular pay." The document advised that "[i]ntegrating leave balances with SDI benefits may impact the effective date of a disability retirement benefit."

On January 20, 2012, Astorga and the County executed a Separation Agreement confirming Astorga's election to remain on the County payroll until the effective date of her disability retirement. The Separation Agreement, which Astorga signed with the advice of counsel, provided that she would continue to receive leave balances in small but regular amounts corresponding to the amount of her health insurance payments.

Astorga received compensation in some amount of vacation, holiday or sick leave pay in each pay period between November 18, 2011, and December 8, 2013. She also received donated sick and vacation leave credits from other employees on three

occasions, with the last donation occurring during the pay period ending December 8, 2013.

On November 20, 2013, the Board granted Astorga's application for disability retirement. The Board's staff determined, pursuant to *Katosh v. Sonoma County Employees' Retirement Assn.* (2008) 163 Cal.App.4th 56 (*Katosh*), that the effective date of her disability retirement was December 9, 2013, the day following the last day she received compensation in the form of sick leave, vacation or holiday pay. Astorga disputed this date, arguing that "the effective date of her disability retirement should be February 28, 2012, the date that the compensation she received during the last two years of her employment would have been paid out had it been paid in consecutive 80 hour pay periods."

In lieu of an administrative hearing, the parties stipulated to the facts underlying Astorga's claim of an earlier effective date of disability retirement. Among other things, Astorga conceded that in accordance with the Separation Agreement, her "last day of employment with the County was December 8, 2013 and [that] she received from the County pay for all remaining accrued leave balances through that date." She also did "not dispute that amounts she received from December 2011 through December 8, 2013 were 'regular' compensation pursuant to . . . section 31724 and the Guidelines."

The Board subsequently confirmed that pursuant to its Guidelines, section 31724 and interpretative case law, Astorga's disability retirement date was in fact December 9, 2013. The trial court denied Astorga's petition for writ of mandate, finding *Katosh, supra*, 163 Cal.App.4th 56, "dispositive" on the issue. It noted that the Board "modified its practices to conform [to] the requirements set forth in *Katosh* in 2009 and has been using those practices consistently since 2009." Astorga appeals.

#### DISCUSSION

Section 31724 states that the payment of disability retirement "shall be effective as of the date [the] application [for retirement] is filed with the board, *but not earlier than the day following the last day for which he [or she] received regular compensation.*" (Italics added.) Astorga posits two questions for our review:

(1) whether donated sick leave or vacation time from co-workers is considered "regular compensation" of the disabled employee under section 31724, and (2) whether the incremental payments of sick leave, vacation and holiday pay should be "compressed" to achieve an earlier date of retirement. We conclude that the first question is not properly before us, and that the second question is answered by *Katosh, supra*, 163 Cal.App.4th 56.

#### *Standard of Review*

We review de novo Astorga's challenge to the trial court's application of section 31724 to the stipulated facts. (*In re Retirement Cases* (2003) 110 Cal.App.4th 426, 443; *Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 437.) In applying this standard, the interpretation of the agency charged with applying the statute is accorded weight, but is not dispositive. (*Santa Clara Valley Transp. Authority v. Rea* (2006) 140 Cal.App.4th 1303, 1314.)

Any ambiguity or uncertainty in the meaning of pension legislation should be resolved in favor of the pensioner. (*Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 490.) Such construction, however, must be consistent with the clear language and purpose of the statute. (*In re Retirement Cases, supra*, 110 Cal.App.4th at p. 439.) Where the meaning of a statute is without ambiguity, doubt or uncertainty, the statutory language controls. (*Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998.)

#### *Donated Vacation and Sick Leave Credits*

Astorga claims that the Board and the trial court erred by finding that the donated sick leave or vacation pay credits from other employees constituted "regular compensation" under section 31724. Astorga asserts there is no authority discussing whether donated leave qualifies as the "regular compensation" of the disabled employee as opposed to the "regular compensation" of the donor employee.

The Board maintains this issue was not preserved for review. We agree. Astorga not only forfeited the issue by failing to raise it in the administrative or trial court proceedings (*Newton v. Clemons* (2003) 110 Cal.App.4th 1, 11), but she also stipulated as

a matter of fact that all the "amounts she received from December 2011 through December 8, 2013 were 'regular' compensation pursuant to . . . [s]ection 31724 and the Guidelines." By stipulating that the donated leave was regular compensation, Astorga mooted any potential dispute regarding the factual or legal significance of the leave credits. She also waived the right to assert the purported error under the doctrine of invited error. (See *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403 ["Where a party by his conduct induces the commission of error, he is estopped from asserting it as a ground for reversal' on appeal"]; *Cushman v. Cushman* (1960) 178 Cal.App.2d 492, 498 ["one cannot on appeal complain of rulings assented to or acquiesced in by him in the court below"].)

#### *Effective Date of Disability Retirement*

Astorga contends that, regardless of the source of her sick leave, vacation or holiday pay, the effective date of her disability retirement should be calculated based on the last day she would have received such compensation had she not elected to take it incrementally to preserve her health insurance coverage. She maintains the Board and the trial court should have liberally construed section 31724 to treat all of her leave as being taken in consecutive pay periods commencing in December 2011 rather than over a two-year period.

Astorga cites no current authority for this construction of section 31724. Instead, she urges us to revive a policy the Board applied prior to adopting the Guidelines in 2009. At that time, the Board calculated the effective date for disability retirement based on the last day the employee was compensated for actually working. Any leave time received after that date was effectively offset by postponement of disability retirement until after the date the employee would have received the leave time had it been paid in consecutive pay periods. The Board changed this policy in 2009 to conform to the holding in *Katosh, supra*, 163 Cal.App.4th 56, that a disability retirement is effective under section 31724 the day after the disabled employee's accrued leave is actually exhausted.

In *Katosh*, the appellant applied for disability retirement after she ceased working. (*Katosh, supra*, 163 Cal.App.4th at pp. 59-60.) Two years later, she briefly returned to "in pay status" with her employer, but did not provide any services. She received a payment of 40 hours of sick leave and vacation pay, giving her the hours necessary to reinstate her health insurance pending a final decision on her disability retirement application. (*Id.* at p. 60.) When her application was approved, the appellant's retirement date was set as the day after she received the 40 hours of sick leave and vacation pay. (*Id.* at p. 61.)

The appellant contended that "regular compensation," as used in section 31724, did not include sick leave or vacation pay. (*Katosh, supra*, 163 Cal.App.4th at p. 61.) The court disagreed, holding that receipt of sick leave or vacation pay by an employee during a leave of absence constitutes "regular compensation." (*Id.* at pp. 77-78.) It further concluded that receipt of such pay postpones the effective date of a disability retirement "until the last day the employee utilizes sick leave or vacation." (*Id.* at p. 78.) The court found it irrelevant that the amount received was intermittent and less than the full amount of compensation usually received for a single pay period. (*Ibid.*)

Like the appellant in *Katosh*, Astorga knew or should have known the consequences of choosing to retain her health benefits in lieu of receiving retroactive disability retirement. (See *Katosh, supra*, 163 Cal.App.4th at p. 78.) It is undisputed that the Board provided Astorga with a copy of the Guidelines, which also are posted on its website, and that she was represented by counsel when she elected to remain on the County payroll until the effective date of her disability retirement. As the trial court aptly observed, Astorga's decision to remain employed through December 8, 2013, "was probably the wise decision on her part because it allowed her additional donations of leave time from coworkers, it allowed her the ability to obtain additional leave time and holiday pay accruals that she would not have had over a shorter period of time, and it allowed her to maintain her medical insurance."

In sum, *Katosh* confirmed the bright line rule that disability retirement benefits are not available until the day following the day paid leave was last received. By

Astorga's own admission, the last day she received regular compensation in the form of paid leave was December 8, 2013. Thus, under section 31724, as interpreted by *Katosh*, her disability retirement was effective on the following day, i.e., December 9, 2013. The trial court properly denied her petition for writ of mandate challenging that date.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Donna D. Geck, Judge

Superior Court County of Santa Barbara

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Ghitterman, Ghitterman & Feld, Russell R. Ghitterman, for Plaintiff and  
Appellant.

Reicker, Pfau, Pyle & McRoy LLP, Alan A. Blakeboro, for Defendant and  
Respondent.

Filed 3/2/16

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SARA ASTORGA,

Plaintiff and Appellant,

v.

RETIREMENT BOARD OF THE SANTA  
BARBARA COUNTY EMPLOYEES  
RETIREMENT SYSTEM,

Defendant and Respondent.

2d Civil No. B263325  
(Super. Ct. No. 1468905)  
(Santa Barbara County)

ORDER CERTIFYING OPINION  
FOR PUBLICATION

**THE COURT:**

The opinion in the above-entitled matter filed on February 2, 2016, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.





NEPC, LLC

## **SAVE THE DATE!**

**May 10 – 11, 2016**

### **NEPC's 21st Annual Investment Conference**

The conference will be held at the  
*Hynes Convention Center*  
900 Boylston Street, Boston, MA 02115

#### **Keynote Speaker (Day 1)**

Michael Cembalest  
Chairman of Market and Investment Strategy  
J.P. Morgan Asset Management

#### **Keynote Speaker (Day 2)**

Dr. Dambisa Moyo  
Global Economist and Author

**NEPC's online registration site will be ready in March!  
We will send additional information at that time.**

**\*NEW\*** this year, we will be offering an optional Pre-Conference  
Workshop on Monday, May 9th at NEPC's Boston office.  
See below for a brief schedule of events.

## **Monday, May 9**

1:30 PM – 3:00 PM: Pre-Conference Workshop (Optional)

If you are interested in attending one of our sessions, be sure to sign up via the registration site. Session options are below:

Session #1: How NEPC Works with Clients

Session #2: Investments 101

Session #3: NEPC Risk Management 101

3:00 PM – 5:00 PM: Welcome Reception

## **Tuesday, May 10**

8:30 AM – 4:30 PM: Investment Conference (Day 1)

4:30 PM– 5:30 PM: Cocktail Reception

5:30 PM – 8:00 PM: Organized Dinners

We will be hosting several group dinners. If you are interested in attending a dinner, be sure to sign up via the registration site.

## **Wednesday, May 11**

8:00 AM – 2:00 PM: Investment Conference (Day 2)

Make your hotel reservations early!  
A block of rooms has been reserved at the  
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To make your hotel reservation, call 1-888-627-7054.  
Be sure to reference the NEPC Conference in order to receive the  
discounted room rate of \$299 per night.  
Or click [here](#) to reserve your room online.  
The room reservation cut-off date is April 18, 2016.

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